

**BUYING AND SELLING A BUSINESS
PARTS I & II**

**CHICAGO BAR ASSOCIATION
CORPORATION & BUSINESS LAW COMMITTEE
SEMINAR**

February 4 and February 11, 2010

LEGAL DUE DILIGENCE – February 4, 2010

Speaker: **Arthur E. Mertes, Esq.**
Synergy Law Group, L.L.C.

Table of Contents

- I. Legal Due Diligence in Merger & Acquisition Transactions – Lecture Slides
- II. Sample Confidentiality Agreement
- III. Sample Short Form Due Diligence Request List
- IV. Sample Long Form Due Diligence Request List



ARTHUR E. MERTES

J.D./M.B.A./B.S.M.E.

Art Mertes is a founding Partner of Synergy Law Group (May 2000) and practices in the areas of Corporate Law, Mergers & Acquisitions, Securities & Finance Law, and Technology & Licensing. His experience is transactions-intensive and includes work with privately-held middle market and emerging growth companies, public companies, financial institutions, family-owned businesses, investors and entrepreneurs in matters involving business and capital structure, mergers and acquisitions, private equity and venture capital, commercial finance, licensing and intellectual property protection, joint ventures, distribution and supply, international transactions, incentive compensation structures, corporate governance, and other general corporate, shareholder and contract matters. His work with companies includes strategies for creation of enterprise value. He has negotiated and closed numerous transactions with public companies and institutional investors.

Prior to founding the firm, Art held positions as an associate attorney in the mergers & acquisitions practice of Altheimer & Gray, formerly a well-known large Chicago-based international firm, and the corporate law practice of a mid-sized business law firm in Chicago. His participation as an associate attorney in the summer program of one of Chicago's former and oldest intellectual property firms, Hill, Steadman & Simpson, instilled a keen insight for intellectual property matters in business and transactions. Prior to his law career, Art gained Fortune 500 sales and distribution experience as a top Technical Salesperson for Ingersoll-Rand Company, which garnered him key insight into distribution models and manufacturing.

Art received his J.D., magna cum laude, from the University of Illinois College of Law, and a Master of Business Administration, with highest honors for academic achievement, from the University of Illinois College of Commerce, each awarded in 1994, and holds a B.S. in Mechanical Engineering from the University of Illinois College of Engineering awarded in 1988.

Art has participated in numerous legal and business organizations in the Chicago community, including the Chicago Bar Association, Midwest Business Brokers & Intermediaries (MBBI), the Midwest Entrepreneurs Forum, MIT Enterprise Forum, TIE Midwest, Entrepreneur's Round Table (GSB), and local angel investor groups.

Art has served as a Business Plan/Funding Request Review Panel Volunteer for the Illinois Coalition; lectured at the Lake Forest Graduate School of Management on the topic of Capital Formation; lectured for the University of Illinois Executive MBA program on topics of Intellectual Property, Licensing, Joint Ventures and Business Organizations; and been included in various panels / lectured on topics related to Venture and Angel Financing. Art holds an Illinois Real Estate Broker license and has engaged in real estate developments. He has served on Charitable and fraternal boards associated with education, including 9 years with the associate board of the LEARN Charter School.

LEGAL DUE DILIGENCE – February 4, 2010

Speaker: **Arthur E. Mertes, Esq.**
Synergy Law Group, L.L.C.

- I. Legal Due Diligence in Merger & Acquisition Transactions – Lecture Slides

Legal Due Diligence in Merger & Acquisition Transactions

February 4, 2010

Presented by:

Arthur E. Mertes, Esq.

Synergy Law Group, L.L.C.

730 West Randolph

Floor 6

Chicago, Illinois 60661

T: 312.454.0015

Email: amertes@synergylawgroup.com



© 2010 Arthur E. Mertes, Esq.

1

What is Due Diligence

- It is defined in Black's Law Dictionary as:

"Such a measure of prudence, activity or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man ...".



© 2010 Arthur E. Mertes, Esq.

2

Legal Due Diligence in M&A

- Reasonable investigation in order to evaluate:
 - Attributes and risks associated with what is being sold or purchased
 - Whether attributes of stock, the business and/or assets relied upon in pricing the deal are as represented or assumed
 - The steps and actions required to consummate the transaction
- Buy Side
- Sell Side



© 2010 Arthur E. Mertes, Esq.

3

Professional Negligence Liability

■ The Malpractice Attorney's Point of View

The attorney should conduct the necessary due diligence so that the client is aware of all material information relevant to the transaction. In essence, anything that could devalue a client's investment or result in financial harm is the responsibility of the attorney.



Failure to Perform Due Diligence

■ Buyer's reliance on only public materials is insufficient to be considered due diligence and as such, no claim for omission or fraudulent misrepresentation can exist

- *Silva Run Worldwide Ltd. v. Gaming Lottery Corp.*, 1998 WL 167330 (S.D.N.Y. Apr. 08, 1998)
- *Dallas Aerospace, Inc. v. CIS Air Corp.*, 2002 WL 31453789 (S.D.N.Y. Oct. 31, 2002)

■ A denial of access to information will place purchasers on notice that some financial discrepancies may exist and as such, the purchaser will be precluded from later claiming a misrepresentation or material omission so as to rescind the sale.



Explaining to the Client: The Importance of Due Diligence

- For seller, disclosures based upon due diligence may limit post-closing exposure and make a buyer comfortable to close
- For buyer, critical to ensuring the buyer is getting what it is paying for without landmines, reconcile to purchase consideration, and used to justify additional protections post-closing



Unique Explanation

- Seller receives consideration which is stock of a non-reporting company
 - Need to assess and evaluate the risks associated with accepting non-cash consideration, and to understand the rights and preferences of any securities being received
 - These considerations also apply to accepting a promissory note or subordinated note in seller financing arrangements



What are you looking for?

- Potential exposure
- Unusual Patterns
- Contingent liabilities
- Indemnity and other contractual obligations
- Contractual Shortcomings
- Obligations under restrictive covenants
- Change in control triggers (e.g. event of default, acceleration) and Consent Requirements
- Ownership



What are you looking for?

- Capital structure flaws
- Securities Exposure (past issuance, exceptions, etc)
- Intellectual Property (ownership, protection of proprietary rights issues)
- Prohibitions on assignment, special assignment needs
- Bonuses, Compensation (due on Sale or unaccrued)



Protecting the Buyer from Competitive Information

- While buyer may want own key personnel (intellectual property, business development, or client management personnel), competitive considerations may dictate need for Chinese Wall in the event deal doesn't close



Stock v. Asset Deal

- Is there a difference regarding my due diligence requests?
 - Typically same request, slightly different focus
 - Asset deal – concerns for fraudulent transfers (creditors, owners) and ensuring creditors of the business are paid, purchased contracts continue as valid, binding and enforceable
 - Stock deal – successor to all historical liabilities and obligations, practically means more of a need to see everything



Seller vs. Buyer Engagements

- Most buyers understand the importance of thorough due diligence
- Should there be less attorney due diligence when representing the seller?
 - Seller representation – strong case for performing as thorough a due diligence review as if are buying
 - Purchase agreement representations and warranties and indemnities required from a seller means that disclosure of exceptions may eliminate or reduce liability of the seller



Organization in Due Diligence

- Full Blown Due Diligence Review
 - Attorney sees all documents and information having any direct or indirect legal or exposure implication
 - Attorney prepares the due diligence memorandum, highlighting all information that was reviewed, the key provisions, terms and findings
 - Attorney issues sell-side client its own due diligence request



Organization in Due Diligence

- Scaled Review (may work for buy side, not sell side)
 - Key Areas
 - Key Contracts
 - Agree with client how client instructs you to prioritize, consider asset vs stock, attributes in pricing the deal, requirements to close transaction
 - Discuss directly with client and take written instructions
 - Disclosure schedule



Organization in Due Diligence

- Striking the Balance
 - Depends on the client's needs and what they want to pay; reasonable prudence should be a guiding factor; document your recommendation to see everything, and get client's instruction in writing; accountant with M&A diligence experience is essential
- Confidentiality Agreement – sample attached – prior to any disclosures



Sources of Information

- Target Company disclosures and document releases
- Target Company website, collateral and advertising materials, press releases, public filings
- Minutes of meetings
- Owners and key personnel
- Site visit

Sources of Information

- Customers – key questions list/protocol
- Searches – UCC, tax lien, pending suit, bankruptcy, judgment searches, USPTO
- State-specific regulatory requirements – do not assume (bulk sale, tax clearance, securities compliance)

Managing the Process

- Digital media – simplifies organization, creates confidentiality concerns
- Due Diligence Room – confidentiality concerns may dictate reasons for a paper-based due diligence
- Online Repositories
 - Capabilities include security, monitoring, limiting due diligence team access by functional area
 - E.g. BrokerFiles.com
 - E.g. ShareFile.com – Virtual Data Viewing Room

Managing the Process

- Physical sign in with acknowledgement of NDA and Due Diligence Protocol – large groups, this can work nicely
- Managing your client's information disclosure
 - Responsive materials should flow through the attorney, saves client money in the long run
 - Sensitive material may be conditioned on transaction milestones



Record of what has been disclosed or

19

Managing the Process

- Limiting Physical Access and Checkout
 - If buyer is kicking the tires, particularly in highly competitive industries or where trade secrets are involved, this is critical (particularly at early stage of transaction)
- Milestone-based disclosure
 - Phased sign-off by buyer that protects economics – buyer affirms satisfaction to get to next segment
 - Employee, customer and supplier disruption considerations



© 2010 Arthur E. Mertes, Esq.

20

Managing the Process

- Ensure that an attorney with the appropriate level of competence in a given area reviews diligence materials
- Communication
 - Communicate Findings to Client
 - Ask Follow-Up Questions and Issue Follow-Up Requests



© 2010 Arthur E. Mertes, Esq.

21

The Request

- Short Form of Request
- Long Form of Request
- Combination – deeper requests for priority items (risk / magnitude considerations)
- Deal Size Matters – or does it?

Common Questionable Responses

- We don't own any "intellectual" property
- We don't have any "material" contracts
- Do they really need to see all this?
- Can we just make that a post-closing item?

Areas of Due Diligence Examples/Highlights

- Corporate Organization & Structure
 - Changes in ownership – review transfer/sale documents
 - Past acquisitions or dispositions – review transaction documents
 - Rights and preferences of equity holders, convertible / unexercised securities – review stockholder and equity purchase agreements
 - Stock Records ledger / issuance failures – trace through
 - For complicated capital structures, recommend narrative prepared in advance of formal disclosure
- Identification of failures to observe corporate formalities

Areas of Due Diligence

Examples/Highlights

- Financial Information & Accounting Policies
 - Outstanding or Contemplated Indebtedness
 - Material Agreements creating lien or encumbrance upon assets
 - Prospectus & Internal Financial Status Memos
- Personnel
 - Employment Contracts – severance provisions, guaranteed term
 - Non-Competition Agreements – lock up key personnel prior to or simultaneous w/ close
 - Discrimination / Sexual Harassment Claims
 - Pending IRS, Dept. of Labor or Workers Comp. Claims



Areas of Due Diligence

Examples/Highlights

- Benefits
 - Funding deficiencies under all plans
 - Stock Option Contracts – tax implications and closing mechanisms
 - Handbook promises – e.g. carryover vacation
- Related Party Transactions
 - Loans or agreements with shareholders
 - Inter-company and affiliate transactions
 - Shareholder or Director interests in vendors or distribution channels



Areas of Due Diligence

Examples/Highlights

- Financing
 - All documents relating to sale of securities/notes or indebtedness
 - Correspondence with Shareholders for obtaining additional financing
 - Correspondence & letters of consent or waiver from lending institutions
 - Liens & Pledges, Guarantees
- Securities Offerings & Filings
 - Records of all of filings & communication with SEC
 - Offering Documents - promises, risk factors
 - Exemptions from Registration – documented and secured



Areas of Due Diligence

Examples/Highlights

- Material Contracts
 - Transaction causes failure of continuation of licenses or key contract (e.g. successor cannot be competitor)
 - Contract contains preferred pricing clauses
 - Termination or renegotiation of undesirable contracts
 - Limitations under distribution or license agreements (e.g. disguised non-competes)
- Tax Matters
 - Notes to Audited financials disclose material information of concern – always check these
 - Prior audit issues (income, franchise)
 - State-level tax clearance requirements



28

Areas of Due Diligence

Examples/Highlights

- Regulatory Matters
 - Regulatory prohibitions affecting business model (highly regulated industry e.g. insurance overrides)
 - Nontransferable permits – failure of continuity of operations issues
 - Approvals or Clearance (tax, anti-trust)



© 2010 Arthur E. Mertes, Esq.

29

Areas of Due Diligence

Examples/Highlights

- Real Estate
 - Unfavorable lease terms
 - Deed restrictions
 - Landlord lien – waiver
 - Special assessment
 - Title, PIN and Survey issues
- Environmental Matters
 - Remediation plans being followed
 - No further action letters obtained
 - Rely on current environmental assessment



© 2010 Arthur E. Mertes, Esq.

30

Areas of Due Diligence Examples/Highlights

- Sales & Marketing
 - Renewals and timing (e.g. automatic)
 - Claims in Advertising/Collateral Materials
- Technology
 - Third Party Software Licensing Agreements
 - Limitations on scope of use or ownership of further developments
 - Proprietary Status (Watch for diversion of ownership via permitted further development)



Areas of Due Diligence Examples/Highlights

- Intellectual Property
 - Ownership of developments (trace through)
 - Identification of important items or features being purchased (e.g. software, functionality)
 - Cease and desist letters (issued, received)
 - Copyright & Patent assignment requirements
 - Trade Secrets – reasonable measures taken to protect confidentiality
 - Exact registration details (patents, copyrights, trademarks)



Areas of Due Diligence Examples/Highlights

- Controls & Procedures
 - Deficiencies identified in audit recommendations – do they recognize potential exposure?
- Insurance
 - Coverage & Policies – get the broker involved
 - Current or Pending Claims – (Coverage of these claims)
 - Underinsured issues, tail coverage for claims made policies



Areas of Due Diligence

Examples/Highlights

- **Litigation Matters & Legal Compliance**
 - Make seller have counsel deliver a written evaluation of open litigation matters
 - Ensure that any open litigation matter is evaluated by your litigation attorney(s) and review pleadings
 - Take Threatened claims seriously (e.g. looming threats)
 - Review terms of Settlement Agreements and Past Judgments



Areas of Due Diligence

Examples/Highlights

- **Other Information**
 - Past Diligence Reports
 - Public Relations Materials & Press Releases
 - Internal or external appraisals of Company, assets, financial position or future prospects



Lack of disclosure or meaningful responses to requests - What do I do now?

- **John Quincy Adams:** Patience and perseverance have a magical effect before which difficulties disappear and obstacles vanish.
- **Dale Carnegie:** Most of the important things in the world have been accomplished by people who have kept on trying when there seemed to be no hope at all.



What do I do with this Information?

- Due diligence memorandum to client (full vs highlights)
- Identify deal breakers early-on
- Purchase agreement preparation
 - representations and warranties
 - specific indemnities
 - covenants (pre and post closing)
 - consents

What do I do with this Information?

- Reconciliation to transaction consideration
- Seller's Disclosure Schedule preparation / analysis
- The legal opinion

What do I do with this Information?

- Transaction closing checklist items – assignments, consents, governmental approvals, stockholder approvals, important closing deliveries
- Identify post closing items, particularly those of immediate need e.g. amendment to organizational documents

Best Practices

- Buy Side
 - Understand the target company and its industry-specific risks
 - Be persistent with requests, & follow ups
 - Communicate exposure issues to client early-on
 - Seek specific indemnities for exposure issues identified in Due
- Sell Side
 - Identify Proprietary items and how best to protect in the course of due diligence
 - Be ahead of the ball on exposure issues & manage them
 - Face to face meetings with reps. to 'extract' materials & information
 - Diligence your seller and Limit seller post-



© 2010 Arthur E. Mertes, Esq.

41

Best Practices

- Get the confidentiality agreement in place before disclosures are made
- All Due Diligence Materials route through the Attorney
 - Tracking Issues, document as you go
- If your deal blows up (i.e. doesn't close), Seller should request return of due diligence materials disclosed, and Buyer should consider offering return even if Seller doesn't request
- Seller request for certification (returned or destroyed, all copies paper and electronic)



© 2010 Arthur E. Mertes, Esq.

41

Other Resources

- Accountant
- Insurance Broker
- Field-specific treatises
- *Due Diligence in Business Transactions* (Gary M. Lawrence, Law Journal Seminars-Press)



© 2010 Arthur E. Mertes, Esq.

42

LEGAL DUE DILIGENCE – February 4, 2010

Speaker: **Arthur E. Mertes, Esq.**
Synergy Law Group, L.L.C.

II. Sample Confidentiality Agreement

NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement (this “Agreement”), dated as of _____, is entered into by and between _____ (hereinafter referred to collectively as the “Parties” and individually as a “Party”).

WHEREAS, pursuant to the terms of this Agreement, the Parties desire to disclose to each other certain proprietary information in connection with a potential business transaction between the Parties.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Confidential Information

(a) The Parties understand and agree that, in their course of dealing with each other, each Party (or its affiliates) may, from time to time, disclose to the other Party, or provide the other Party with access to, the disclosing Party’s proprietary information, including without limitation, such Party’s models, source code, object code, programs and related documentation, drawings, know-how, formulas, processes, prospect or customer lists, data, research, specifications, memoranda, files, records, plans, concepts, flow charts, drawings, designs, descriptions, formulations, products, ideas, trade secrets, inventions, other technical, business and financial plans, forecasts and strategies and other confidential and/or proprietary information and property, including but not limited to, information regarding its operations, business, affairs, management and market structure (all of the foregoing is collectively referred to as the “Confidential Information”).

(b) Notwithstanding the definition set forth in Section 1(a) above, the term “Confidential Information” shall not include any information that (a) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing Party; (b) becomes publicly known and made generally available after disclosure by the disclosing Party to the receiving Party through no action or inaction of the receiving Party; (c) is already in the possession of the receiving Party at the time of disclosure by the disclosing Party as shown by the receiving Party’s files and records immediately prior to the time of disclosures; (d) is obtained by the receiving Party from a third party without a breach of such third party’s obligations of confidentiality; (e) is independently developed by the receiving Party without use of or reference to the disclosing Party’s Confidential Information, as shown by documents and other competent evidence in the receiving Party’s possession; or (f) is required by law to be disclosed by the receiving Party, provided that the receiving Party gives the disclosing Party both prompt written notice of such requirement prior to disclosure and any necessary assistance in obtaining an order protecting the information from public disclosure.

2. Nondisclosure and Nonuse of Confidential Information

(a) Each Party agrees that it will hold in confidence, and will not to disclose or reveal to any person or entity, the other Party’s Confidential Information without the prior written consent of such other Party.

(b) Other than for purposes of pursuing a potential business transaction between the Parties hereto, each Party agrees that it will not, directly or indirectly, use for the benefit of itself or any other person or entity, the other Party’s Confidential Information without the prior written consent of such other Party (the “Nonuse Agreement”). The Nonuse Agreement shall specifically apply, without limitation, to (a) the unauthorized use of the disclosing Party’s prospect or customer lists in connection with a transaction that could reasonably be deemed to be competitive with the disclosing Party’s business and (b) the unauthorized use of the disclosing Party’s Confidential Information for the purpose of obtaining a gain or avoiding a loss in the disclosing Party’s securities.

(c) Each Party agrees that Confidential Information may be furnished in connection with, as a part of or in the form of tangible materials, in either written or other fixed tangible form. In furtherance thereof, the Parties agree that any such tangible materials shall be furnished in confidence and all of the terms and conditions of this

Agreement shall apply to these tangible materials. Each Party agrees that it will not copy, alter, modify, disassemble, reverse engineer or decompile any such tangible materials without the prior written consent of the disclosing Party.

(d) Each Party agrees that Confidential Information may be furnished in the form of a product. In furtherance thereof, the Parties agree that any such products shall be furnished in confidence and for the sole purpose of familiarizing the receiving Party with the product or technology. The concepts, design, contents, documentation, screen layouts, report layouts, programming techniques and other information about such product, including without limitation, the present state of the product's development, pricing, promotion plans and planned availability date, that are not known to the general public constitute Confidential Information and all of the terms and conditions of this Agreement shall apply to such product. The Parties understand that when such Confidential Information relates to products that are under development or are planned for development, the Party that owns the Confidential Information makes no warranties regarding the accuracy of the Confidential Information and accepts no responsibility for any expenses, losses incurred or action undertaken by the receiving Party as a result of its receipt of the Confidential Information. The Parties also agree and acknowledge that the Party that owns the product does not warrant or represent that the product received and/or discussed will be made available to the general public, or that any product made available by such Party will be in the specific form received and/or discussed.

(e) Each Party's Confidential Information shall remain the sole and exclusive property of such Party. Upon request by the disclosing Party for any reason whatsoever, the receiving Party shall promptly return to the disclosing Party any and all Confidential Information in the receiving Party's possession or control, including any tangible materials or products that contain or constitute Confidential Information, including any copies thereof.

(f) Any employee or consultant of a Party (where such Party is the recipient of Confidential Information of the other Party (the "Receiving Party")) who is given access to the other Party's Confidential Information (the "Disclosing Party") must have a legitimate "need to know", and shall have executed and delivered with Receiving Party a written agreement between them containing provisions at least as protective as those set forth herein regarding use or disclosure of Confidential Information of the Disclosing Party, including, without limitation, with respect to employees, customers and prospects.

3. Competition. It is understood that each Party may be developing, currently or in the future, new products, projects, ideas, and/or concepts, either internally or through external sources, which may be similar to the other Party's products, projects, ideas and/or concepts. Accordingly, nothing in this Agreement shall be construed as a representation or inference that either Party will not independently develop products, projects, ideas and/or concepts for itself or for others which are similar to or compete directly or indirectly with the products, projects, ideas and/or concepts otherwise protected under this Agreement and without reference to the Confidential Information, so long as such actions do not violate the terms of this Agreement.

4. Term. This Agreement shall remain in effect for so long as any piece of information disclosed pursuant to this Agreement qualifies as Confidential Information hereunder.

5. Miscellaneous

(a) Remedies. The Parties understand and agree that, because of the unique nature of the Confidential Information, each Party will suffer immediate, irreparable harm in the event that the other Party fails to comply with any of the obligations hereunder and that monetary damages will be inadequate to compensate for such breach. Accordingly, the Parties agree that, in addition to any other remedies available at law or in equity, the Party affected by the breach will be entitled to injunctive or other equitable relief to enforce the terms of this Agreement, without the requirement that such party post a bond. This clause shall not apply if a Party is required to disclose the Confidential Information by law.

(b) No Inference of License. Neither the execution of this Agreement, nor the furnishing of any Confidential Information pursuant hereto, shall be construed as a grant, expressly, by implication, by estoppel or

otherwise, of any license under any invention, patent, trademark, copyright or other proprietary right now or hereafter owned or controlled by the Party furnishing same.

(c) Amendment and Modification. This Agreement may not be amended, modified and supplemented except by the written agreement of both Parties hereto.

(d) Entire Agreement. This Agreement is the entire agreement and understanding between the Parties relating to the subject matter hereof and supersedes all other oral or written representations and understandings with respect thereto.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to its conflicts of law doctrine.

(f) Waivers. A waiver of any breach or default of this Agreement shall not be effective unless such waiver is set forth in writing and executed by the Party granting the waiver. A waiver by one Party of any breach or default of this Agreement by the other Party shall not operate or be construed as a waiver of any subsequent breach or default of the same or any other provision of this Agreement by that Party.

(g) Severability. If one or more provisions of this Agreement are held to be unenforceable in whole or in part under applicable law, such provision or provisions, or portion or portions thereof, shall be excluded from this Agreement and the balance of this Agreement shall be interpreted and enforced as if such provision or provisions, or portion or portions thereof, were excluded and the remainder of this Agreement shall be enforced in accordance with its terms to the maximum extent permitted by applicable law.

(h) Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or by telecopy or telefacsimile, upon confirmation of receipt, (b) on the first business day following the date of dispatch if delivered by a recognized next-day courier service, or (c) on the third business day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

If to PARTY A.

If to PARTY B:

(i) Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(j) Headings. The headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement as of the date and year first written above.

PARTY A

PARTY B

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

LEGAL DUE DILIGENCE – February 4, 2010

Speaker: **Arthur E. Mertes, Esq.**
Synergy Law Group, L.L.C.

III. Sample Short Form Due Diligence Request List

CONFIDENTIAL**INITIAL DUE DILIGENCE DOCUMENT REQUEST LIST**

In connection with the potential purchase of TargetCo (the “Company”) Synergy Law Group, L.L.C., as Buyer’s counsel, will need to conduct a “due diligence” review of the Company and its business (the “Business”).

Set forth below is a list of documents which should be provided to us, to the extent they exist. For completeness, the list below is highly inclusive. Accordingly, all items will not necessarily apply to the Company or the Business. To the extent an item is not applicable or documents with respect thereto do not exist, please so indicate to us. As to those items which are applicable, please assemble one copy of each of the items listed below which is currently in effort or which will come into effect in the future (i.e., commitments) or upon the happening of some event (i.e. contingent arrangements) or covering the time period listed opposite each item. Where available, copies of signed documents should be provided. Please note that this is an initial list. Additional documentation may be requested at a future date.

If you have any questions or comments concerning any items on this list, please contact Art E. Mertes of Synergy Law Group, L.L.C. at (312) 454-0311.

Documents RequestedTime Period

<u>Documents Requested</u>	<u>Time Period</u>
A. Structure and Records	
1. Information concerning the Company:	
(a) Certificate of Incorporation (or other organizational documents) and by-laws, as amended;	Since inception
(b) minute books, including organization and incorporation materials, and minutes of the meetings of stockholders, the Board of Directors, and committee of the Board of Directors;	Since inception
(c) states or foreign countries where the Company is qualified as a foreign entity;	Current
(d) states where the Company has a significant presence, does substantial business or owns or leases real estate; and	Current
(e) names under which the Business is operated or used to be operated by the Company or its predecessors.	Five years

2. Name of any affiliate, subsidiary or other entity in which the Company had or has an interest.	Five years
3. All contracts, agreements, arrangements or transactions related to the Business and to which directors, officers or equity holders of the Company or its affiliates are or have been parties.	Three years
4. Agreements relating to the Company's securities, including buy/sell, voting and shareholders agreements.	Current
(a) Agreements and other documents involving acquisitions and dispositions.	Five years
(b) All private placement memoranda, registration statements, prospectuses or offering circulars relating to sales of securities of the Company, recent analyses of the Business or its industry, all news releases and press releases issued by or relating to the Company, specimens of representative advertising and promotional material for all material products and services, and any other materials and reports that describe the history, present operations, ownership and/or management of the Business.	Five years
B. Management and Employment Matters	
1. List of employees indicating full or part-time status, union/non-union status, position, age, start date and salary, wages and other compensation (other than benefits under any employee benefit plan), together with a current personnel organization chart.	Current
2. Employment agreements, including any severance or termination agreements and agreements applicable in the event of a change in control, non-compete and confidentiality agreements.	Two years
3. Agreements relating to consulting, management and other professional engagements.	
(a) Union contracts, collective bargaining agreements and union pension and welfare plan agreements, summary plan descriptions and summaries of material modification, together with any assessments of withdrawal liability or estimates of withdrawal liability if contributions were to cease with respect to such union pension and welfare plans.	Three years
(b) Documents regarding any pending or threatened unfair labor practice complaints at the National Labor Relations Board or any comparable state or local agency.	Three years
2. Employee benefit plans and programs, including all bonus, profit sharing, stock appreciation and stock option (together with a list of all outstanding	Three years

awards and the terms thereof), stock purchase, cafeteria, credit union, incentive and deferred compensation, golden parachutes, supplemental retirement, pension, retirement and severance and salary continuation plans and programs and all medical, dental and other welfare plans and programs and all insurance plans and policies, sick, holiday and vacation day policies, fringe benefits, employee discounts, cars and loan programs and all funding vehicles for employee benefit plans, voluntary employees' beneficiary association (VEBA), policies or programs (and copies of all documents and literature which describe or are prepared in connection with such plans, policies or programs, including employee handbooks, summary plan descriptions, summaries of material modification and COBRA documents, IRS determination letters, including IRS tax exemption relating to any VEBA and other governmental correspondence, reports, including Forms 5500 series reports and schedules thereto, financial statements and auditor's reports, Forms 990, Forms 5310 relating to plan termination, merger or transfer of assets and liabilities, accountings, schedules of assets, minimum funding waivers, PBGC reportable events, prohibited transaction exemptions, government filings and other documents, actuarial reports and statements of contributions).	
3. Description of any threatened or actual strikes or work slow-downs or stoppages, any union organizing activities and any other unusual labor relations matters.	Five years
4. All EEOC and affirmative action compliance files.	Three years
5. All OSHA records, including OSHA injury logs.	Three years
6. List of controlled group members, their relationship to the Business and a list of any tax qualified employee benefit plans sponsored by such member.	Current
C. Property	
1. List of all real estate owned or leased, including warehouses, and, for each, the location and legal description.	Current
2. For each property listed in item C.1 above, please provide the following: leases and subleases, mortgages, option agreements, operating agreements, management agreements, license and concession agreements, liens, encumbrances and easements, annual costs, title policy, survey, and contracts for the purchase, sale or removal of electricity, gas, water, telephone, sewage, power, or any other utility service.	Current
3. Real estate tax bills and all notices of changes in valuation with respect to each property listed in Item C.1.	Three years
4. Copies of all leases and other commitments for rented or leased personal property, as well as all documents with respect to liens, encumbrances and other restrictions regarding personal property.	Current

5. List of all trademarks, service marks, trade dress, trade names, (formal business names), logos, slogans, main names held on the Internet and all registrations or applications for registration of the same with dates of first use, dates of application, dates of registration, dates of any renewal and copies of all registrations and applications for registration for the foregoing.	Two years
6. Copies of all foreign and U.S. patents issued and applied for, copyright registrations and applications therefor, and a list of all material unregistered copyrights and mask works.	Current
7. Indicate whether any of the items listed in items C.5 and C.6 above are the subject of any threatened or actual infringement proceedings or any liens or other encumbrances. If any unlicensed use is being made of such, please provide the details thereof.	Current
8. Agreements for the payment or receipt of license fees or royalties and royalty free licenses.	Current
9. A list of all computer software owned, used or licensed by the Company.	Current
10. A description of the Company's business dealings on or through the Internet or other computer networks.	Current
D. Environmental Matters	
1. A list identifying any on-site waste disposal sites, the location and contents of any underground storage tanks or underground injection wells located on any property related to the Business, as well as a copy of all documents related to or referring to any presently or previously existing underground storage tank or the removal or closure-in-place of any underground storage tanks.	Since inception
2. A list of all plants or facilities owned or leased, including name, address, RCRA facility number, description of operations and wastes generated, and names of plant manager and primary environmental affairs officer.	Since inception
(a) A list of all capital projects at any facility which are projected or anticipated over the next five years relating to environmental compliance.	Current
3. A copy of all building plans and specifications, as-built drawings, current and historical aerial site photographs, geological/hydrology records and any Sanborn maps.	Since inception
4. A list of the contractors or firms used for landscaping, herbicide and pesticide applications and (if applicable) building demolition.	Five years
5. All environmental compliance files.	Five years

6. A copy of each spill control plan.	Current
7. Any notice, threatened or pending action or claim, citation, request for information, filings, notifications, submittals or any other correspondence regarding any laws or regulations relating to any of the following: environmental protection and health and safety laws; solid, hazardous, toxic or otherwise dangerous waste, substance or material treatment, storage, disposal, generation or transportation; air and/or water pollution; groundwater contamination; the release, threat of release into the environment of hazardous materials or hazardous substances, including injuries to persons or property caused by such substances.	Since inception
8. A copy of all environmental inspection, audit, consulting or assessment reports, correspondence, memoranda or other documents, including drafts thereof, and copies of all soil and/or groundwater sampling results.	Since inception
9. A list of all companies, facilities, landfills and other sites used at any time in connection with the Business for the treatment, storage, disposal, recycling, or reclamation of any industrial, toxic or hazardous substance or solid (non-hazardous), special or hazardous waste, a list of all transporters of such substances and wastes and a copy of all manifests initiated with the off-site shipment of any wastes.	Since inception
10. A list of all chemicals, compounds, substances and materials (including radioactive materials, if any) used or otherwise present at any facility owned or leased.	Current
11. A list of (and all documents referring to or relating to) all federal "Superfund" and similar state-listed sites where the Company is named as a potentially responsible party, or for which either has received a CERCLA §122(e), §104(e) or similar notice or request for information with respect to any hazardous substance generated or transported.	Since inception
12. A list of (and all documents referring or relating to) all threatened or pending environmental actions or claims in which allegations have been made regarding the release or threat of release of hazardous or toxic substances, or regarding injuries to persons or property caused by hazardous or toxic substances, including governmental enforcement actions, citizen suits and third-party claims.	Since inception
E. Operations	
1. Copies of, or in the absence thereof, description of, all agreements, arrangements and understandings with respect to the Business, including: contracts relating to the purchase of equipment, fixtures, supplies or other materials; agreements for the purchase of services; franchise, representation, licensing, distribution and agency agreements; contracts and covenants relating to duties of confidentiality, [both made by the Company, on behalf of the Company, to the Company or otherwise for the Company's benefit,] including invention secrecy agreements and confidential disclosure agreements; "Work-for-Hire" agreements and all other agreements relating to the vesting of any patent or copyright in the	Current

Company, any employee of the Company or any other person commissioned by the Company to perform work; EDI or Electronic Data Interchange agreements; agreements restricting the right to compete in any business; joint venture and other similar agreements; consignment agreements; agreements with transportation companies (including waste haulers); and all other material agreements, and all other documents relating to material arrangements, understandings or relationships with respect to the Business.	
2. Copies of all standard forms of agreements, including standard forms of purchase orders, sale contracts and confirmation statements.	Five years
3. Federal, state, local and foreign licenses, permits and governmental approvals applied for or issued relating to any of the following: state certification; environmental matters; hazardous waste; each property listed in item C.1, including with respect to state certification, zoning, safety, elevators; and other operating permits.	Current
4. A copy of all pending applications for and a copy of each application pursuant to which licenses, permits and approvals were issued.	Since inception
5. Text of express warranties and description of oral warranties given in connection with the Business.	Five years
6. List of the distributors and sales representatives.	Current
7. List of the ten largest suppliers and customers.	Three years
8. List (and complete copies) of all current liability, casualty, key man and indemnity insurance policies, including for each a description of: coverage, policy type and number, insurer, premium, expiration date, deductible, material changes in any of the foregoing during the last three years, and outstanding claims made or notices provided, including insurer's responses and coverage opinions provided.	Current
9. List of any and all outstanding claims made to any insurer of the Business, including the insurer's responses and coverage opinions provided.	Current
10. List of performance bonds, guaranties, letters of credit and surety or indemnification agreements, including for each a general description, the dates entered into, the date of the beginning of performance, the expiration or due date, economic terms and copies of relevant documents.	Current
F. Litigation and Claims	
1. The following documentation with respect to legal proceedings (including all civil and criminal actions, pre-suit claims and any enforcement actions): summaries, status reports, attorneys' evaluations and listings which document parties involved; basis of suit; jurisdiction; names of involved counsel (in-	Five years

house and outside); relevant dates as to injuries, pleadings and all significant litigation events; relevant amounts as to damages, settlements, judgments and appeals; and attorneys' fees paid.	
2. Case files from (including responses to auditors' inquiries) each lawyer or law firm prosecuting or defending significant litigation related to the Business, describing such litigation.	Current
3. List of decrees, judgments, orders, settlement agreements or arbitration awards affecting or related to the Business.	Since inception
4. Product warranty claim history.	Five years
5. Files relating to investigation and inquiries of, and correspondence, reports and filings with, federal, state and local governmental agencies or other regulatory bodies.	Five years
6. All complaints of residents and business establishments near any of the facilities involved in the business of the Company.	One year
G. Financial Matters	
1. Financial Statements:	
(a) annual audited balance sheets and statements of earnings, shareholder's equity and changes in financial condition, with accompanying notes;	Three years
(b) quarterly (or other available) balance sheets and statements of earnings, shareholder's equity and changes in financial condition, with accompanying notes;	Three years
(c) list of liabilities not revealed in financial statements;	Current
(d) current inventories (including a description of practices regarding aging and obsolescence);	Current
(e) list of all material tangible assets (excluding real estate and inventory) and accumulated depreciation.	Current
2. A list of all capital budget commitments which are projected or anticipated over the next fiscal year.	Current
3. Description of all significant accounting policies adopted with respect to the Business.	Current
4. Letters of counsel in response to auditors' requests related to the Business.	Five years

5. Reports and correspondence to and from accountants related to the Business.	Five years
6. Revolving credit and term loan agreements, indentures, bonds and other debt instruments, and any guaranties associated with such loans, together with a schedule of maturities of all funded debt.	Current
7. Correspondence with principal lenders, including all compliance reports submitted by the Company or its accountants.	Three years
8. Federal, state, local and foreign income tax returns and correspondence with tax officials.	Six years
9. Federal, state, local and foreign tax returns, reports, statements or filings relating to taxes other than income taxes, including such returns, reports or filings relating to the following taxes: payroll, employment, unemployment, sales, use, transfer, franchise, excise, profits, gross receipts, ad valorem, lease, service, severance, stamp, occupation, windfall profits, customs, duties or other taxes.	Three years
10. Any information, correspondence, filings or reports relating to tax assessment investigations, audits, or inquiries of any tax authorities.	Seven years
11. Copies of all agreements (including Master Agreements and Confirmations) relating to "derivatives."	Current

LEGAL DUE DILIGENCE – February 4, 2010

Speaker: **Arthur E. Mertes, Esq.**
Synergy Law Group, L.L.C.

IV. Sample Long Form Due Diligence Request List

BUYER, INC.

INITIAL DUE DILIGENCE REQUEST LIST

[DATE]

Set forth below is our initial due diligence request list relating to Seller, Inc. (“Target”) and its direct and indirect subsidiaries, if any (Target and each of its subsidiaries, a “Company” and, collectively, the “Companies”) and the [CERTAIN] intellectual property and developments (the “NEW Developments”). Based on the responses to this list, we may have additional follow-up requests.

This request list is general in nature and you must provide a response to all items of this request. If there is no information that is or could be relevant to the request, you may indicate “none.” If the Companies believe a request is “not applicable” to them, so state with clear reason why not applicable. If further investigation or inquiry by the Companies is required, please so indicate. If any requested information is an oral agreement or arrangement, please provide a brief written description of the terms of the agreement or arrangement. To the extent certain document requests are only with respect to a specific period of time, such period will be indicated in the specific request. Responses should be organized with reference to the relevant section of this request. In providing responses and documentation, please read the item to also constitute Buyer’s request for documents and information concerning the NEW Developments and provide any and all documents and information related to the NEW Developments that is or could be responsive or informative about the NEW Developments.

While the initial request is lengthy, it is designed to facilitate due diligence in an expedient manner. If you have any questions, please feel free to contact an officer at Buyer, Inc.

I. Corporate Organization and Capital Structure

- A. A description (or organizational chart) of the ownership structure (including percentage ownership) of the Companies.
- B. Charter Documents
 - 1. Certificate of incorporation or similar constitution documents (e.g., certificate of formation, certificate of organization, etc.) of each Company, and all amendments and restatements thereof.
 - 2. By-laws, partnership agreements, LLC operating agreements or similar governance documents of each Company, and all amendments thereof.
- C. Minutes of meetings, written consents in lieu of meetings and other records of meetings of the board of directors (or equivalent), committees of the boards of directors and shareholders (or other equity interest holders) of each Company.
- D. Schedule of the states and foreign jurisdictions in which each Company (1) is qualified to do business as a foreign corporation or (2) is not qualified to do

business as a foreign corporation but in which it conducts significant operations (e.g., maintains an office, inventory, employees or agents).

- E. List of any assumed, fictitious or other names under which any Company, or any predecessor thereof, operates or has operated.
- F. All quarterly and annual reports and other communications and notices provided to shareholders (or other equity interest holders) of any of the Companies during the past five years.
- G. Communications from shareholders (or other equity interest holders) delivered to any of the Companies during the past five years.
- H. Description of outstanding and treasury shares of common stock, preferred stock (including a complete description of the rights attaching to such preferred stock) and any other securities of any of the Companies, including the history of such issuances.
- I. Schedule of holders of all equity and debt securities of each Company, setting forth the amount and type of securities held by each holder, including the date of acquisition and acquisition price.
- J. Schedule of all outstanding warrants, options, restricted stock units and other instruments convertible into or exchangeable for securities of any Company, including the issue or grant date, number of shares into or for which such securities can be converted or exchanged, conversion or exercise price, conversion or vesting date, termination or expiration date and the holders of such securities.
- K. Copies of all documents under which any person or entity has the right to subscribe for or purchase securities of any Company, or the right or option to acquire shares of the capital stock or other interests of any Company, if any, including signed copies of all warrant, option and restricted stock unit agreements listed in the schedule above.
- L. All stock books, stock ledgers and forms of stock certificates of each Company.
- M. All investor rights, preemptive rights, voting, shareholder, redemption, put, call, purchase or repurchase agreements, voting trusts, proxies and other investor or restrictive agreements relating to the sale or voting of shares of capital stock or other securities of any Company.
- N. Copies of registration rights and other agreements with respect to any securities of any Company.

II. Financial Information and Accounting Policies

- A. Consolidated audited financial statements of Target and audited financial statements of each Company for the last five years, and consolidated unaudited financial statements of Target for all interim periods in the last five years. Financial statements of any acquired or less-than-majority-owned business for the past five years. Please supply audited financial statements if available; otherwise please supply unaudited financial statements.
- B. Monthly Internal Financials Statements for the past year.
- C. A complete and reasonably detailed schedule of all asset and liability accounts in the form of the most recent general ledger summary trial balance and for the most recent annual period subject to audit.
- D. All current internal budgets, operating and financial plans and projections and reports or papers relating to any long-term budget, capital development, restructuring program or strategic plan, including any plans regarding systems and operations. Include all assumptions related to the foregoing.
- E. Detailed listing of property, equipment and other fixed assets of the Companies, including description, historical cost, accumulated depreciation, purchase date and current location. Specify book versus tax depreciation and amortization for each category.
- F. List of all material assets which are used but not owned by the Companies.
- G. List of all bank accounts, lock boxes and safe deposit boxes of each Company at any bank or other financial institution.
- H. List all persons authorized to draw thereon or with access thereto, including current investment portfolio detail and analysis.
- I. Copy of investment policy and procedure. Provide copies of supporting documentation.
- J. List of all other financial assets of each Company, including, securities, instruments and cash. List of all entities in which any Company owns an equity interest, direct or indirect, and in which any Company is a partner or joint venture. Provide copies of supporting documentation.
- K. List of each Company's material suppliers, distributors, sales representatives and subcontractors, and the amounts paid to each of them in each of the last three years.
- L. List of each Company's material customers and revenues generated from each customer in each of the last three years.
- M. Description of each Company's revenue recognition policy and description of current deferred revenue and revenue recognition schedule.

- N. Detailed descriptions of revenue, cost of revenue and operating expense line items by month for the past three years.
- O. Detailed description of revenue listed by product and by location and/or type of customer for each of the past three years.
- P. Detail capital expenditures and software capitalization for current fiscal year and prior year.
- Q. Projected capital expenditure and product development capitalization for fiscal 2009 with assumed additions to revenue/operating profit.
- R. Detailed description of all outstanding commitments for capital expenditures in excess of \$5,000.
- S. Copies of accounts payable and accounts receivable aging reports, write-off experience and reserve history for the past three years.
- T. Any documents relating to material write-downs or write-offs of notes or accounts receivable other than in the ordinary course of business
- U. Schedule of any excess and obsolete inventory
- V. A complete and reasonably detailed schedule of revenue listed by product and by customer for the past year.
- W. Annual depreciation and amortization for current fiscal year and year 2008.
- X. Provide asset valuation studies and identify any specific asset valuation accounting issues.
- Y. Summarize details of recent acquisitions, divestitures, spin-offs or disposition of sets.
- Z. List of balance sheet reserves, identifying type, status and amount.
- AA. Identify restricted cash, compensation balance requirements and line-of-credit arrangements
- BB. Describe nature and amount of any commitments relating to fixed assets, inventory, advertising, employment contracts, etc.
- CC. Schedule of royalty agreements.
- DD. List of guarantees or indemnity undertakings given by any Company.
- EE. Description of other contingent liabilities of any Company and whether or not such liabilities are reflected on such Company's balance sheet.

- FF. Detailed description of any off-balance sheet liabilities or any other liabilities not reflected on the Companies' balance sheets.
- GG. Detailed description of accrued or non-current liabilities by category for each of the past three years.
- HH. Detailed description and balance information related to any advances from customers.
- II. All agreements relating to auditors or financial advisors retained by any Company during the past five years.
- JJ. Attorney's opinion letters to Company concerning the potential effects of any significant proposed or pending changes in any state or federal law, rule or regulation.
- KK. List of all non-audit services or products provided by any Company's auditors, including nature of and amounts paid for such services or products.
- LL. All correspondence between any Company and its auditors, including "management letters" and other reports to the board of directors (or equivalent) or audit committee of any Company, during the past five years and the corresponding responses of management, and internal memoranda of a similar nature.
- MM. All reports prepared by any Company, its internal auditors or others regarding material accounting matters (such as memoranda relating to a change in any Company's auditors, inventory mark-downs or increases in reserves for doubtful accounts) during the past five years.
- NN. Detailed description of every disagreement with the Company's auditors regarding financial statements issued during the last five years.
- OO. All reports prepared by any Company or others for the board of directors (or equivalent) or any board committee of any Company during the past five years.
- PP. Copies of the results from all "customer/client audits" during the past three years.
- QQ. Recent analyses of the Companies or their industries prepared by investment bankers, engineers, management consultants, accountants or others, including marketing studies, credit reports and other types of reports, financial or otherwise.
- RR. Description of any change in accounting policies or procedures during the past five years.
- SS. Detailed description of any extraordinary, unusual, one-time or non-recurring events or items that have impacted the financial statements of any Company during the last five years.

TT. All other significant information with respect to any aspect of the business of any Company or which should be considered regarding the business and financial condition of any Company.

III. Personnel

- A. List of the current directors (or equivalent) of each Company, including a description of all compensation and benefits provided to directors and any terms or formulae for receiving such compensation and benefits.
- B. List of the current executive officers and “key employees” of each Company, including name, date of hire, position, biography, compensation (including bonus), accrued sick days and vacation for each employee for the current year and the previous year. “Key employees” shall include all employees with salaries in excess of \$75,000.
- C. Organizational chart for executive officers and key employees of the Companies.
- D. Director and officer questionnaires for all directors (or equivalent), executive officers and/or key employees of the Companies during the last three years.
- E. Agreements in effect with any person with respect to election or appointment as an officer or director (or equivalent) of any Company.
- F. All employment, management or other personal service agreements to which any Company is a party.
- G. All agreements with consultants and independent contractors to which any Company is a party.
- H. Name and address of each person who has a power of attorney to act on behalf of any Company, and copies of such powers of attorney.
- I. All labor union and collective bargaining agreements (including the number of employees covered by each such agreement) to which any Company is a party.
- J. Description of all material labor disputes, strikes, grievances or work stoppages involving any Company that have occurred or have been threatened in the past five years, including the disposition and status thereof.
- K. Description of all employee claims (including worker’s compensation, disability, employment discrimination, unfair labor practices, etc.) asserted in the past five years involving any Company.
- L. List of all employee terminations within the past five years, including name, age, race, sex, position, date of termination and the reason for termination.

- M. Copies of completed I-9 forms for current employees (or similar forms in non-US jurisdictions).
- N. Copies of EEO-1 reports for the preceding five years (or similar forms in non-US jurisdictions).
- O. Sample copies of standard employment applications and agreements that employees are required to sign (e.g., confidentiality agreements, invention assignment agreements and non-competition agreements) and list identifying which current and past employees have executed, or not executed, such agreements.
- P. All personnel policies, manuals and handbooks.
- Q. Copies of the most recent OSHA forms 101 and 200 along with copies of any serious accident reports filed in the past five years (or similar forms in non-US jurisdictions).

IV. Benefits

- A. Copies of all retirement plans (e.g., pension plans, profit sharing plans, 401(k) plans, multiemployer plans and non-qualified deferred compensation arrangements) which are maintained or contributed to by any of the Companies or with respect to which any of the Companies may have any liability (collectively, the “Pension Benefit Plans”), together with any related trust agreements, summary plan descriptions and, with respect to Pension Benefit Plans which are intended to be tax-qualified, IRS determination letters. Copies of the latest audit and actuarial reports for each Pension Benefit Plan.
- B. Copies of all medical, dental, life, disability, cafeteria plans, fringe benefit plans and other such employee benefit plans, programs, policies, arrangements and agreements which are maintained or contributed to by any of the Companies or with respect to which any of the Companies may have any liability (collectively, the “Welfare Benefit Plans”), together with related summary plan descriptions and a summary of the current costs of each such arrangement, including specifically a summary of the costs associated with retiree medial benefits.
- C. Copies of stock option, stock appreciation rights, restricted stock performance unit plans, any other management incentive compensation or bonus plans and any agreements relating to such arrangements in which employees of any of the Companies are eligible to participate.
- D. Copies of all plans, programs, policies, arrangements and agreements that provide for severance or termination payments or benefits, parachute or change in control payments or benefits retention payments or benefits or supplemental unemployment compensation payments or benefits to any current or former employee of any Company or with respect to which any Company may have any liability.

- E. Copies of all non competition agreements, confidentiality agreements or similar agreements covering any current or former employee of any Company.
- F. Copies of the latest 5500 series annual reports for all Pension Benefit Plans and Welfare Benefit Plans, to the extent applicable.
- G. Copies of the latest financial statements, schedules of assets and accountants' opinions for all Pension Benefit Plans and Welfare Benefit Plans, to the extent applicable.
- H. Statement as to the amount of any funding deficiency with respect to any Pension Benefit Plan and details relating to any such deficiency. Copies of all studies, analyses and reports regarding the funding status of any Pension Benefit Plan.
- I. Summary of any pending or threatened claims by the IRS, PBGC, Department of Labor, individuals, collective bargaining units or others relating to or affecting any of the Pension Benefit Plans or Welfare Benefit Plans (other than routine claims for benefits).
- J. Estimates of multiemployer plan withdrawal liability for any Pension Benefit Plan that is a multiemployer plan and total annual contributions for each such Pension Benefit Plan.
- K. Estimates of all tax gross up payments payable to employees or directors and estimates of any excess parachute payments.
- L. Estimates of any unfunded liabilities under any employee benefit plan, program, policy or arrangement.
- M. Copies of all contracts relating to the Pension Benefit Plans and Welfare Benefit Plans, including insurance contracts, investment management agreements and third-party administrator arrangements.
- N. Summary of ownership of stocks (or other equity interests) and options exercisable for stock (or other equity interests) of each of the Companies held by directors, officers and employees, including stock option ledgers and vesting schedules.
- O. Description of any employee benefit plan, program, policy or arrangement not otherwise referenced above or that is not otherwise in written form.

V. Related-Party Transactions

- A. List of all loans and other arrangements (including guaranty and indemnification arrangements) between any Company and any present or former shareholder (or other equity interest holder), director (or equivalent), executive officer or key employee of any Company, or any entity in which any such person has a material

interest, including the dates thereof, and copies of documents evidencing all such loans or other arrangements.

- B. List of all interests which any present or former shareholder (or other equity interest holder), director (or equivalent), executive officer or key employee of any Company may have in customer or vendor businesses.
- C. All documents relating to any other transactions or relationships between any Company and any present or former shareholder (or other equity interest holder), director (or equivalent), executive officer or key employee of any Company, or any entity in which such person has a material interest.
- D. Descriptions of all relationships and transactions with persons or entities with whom any Company has or has had an unusual interdependent relationship, including those who are not clearly “independent” and/or those who might be or might have been able to negotiate transactions on terms that would not be available to clearly “independent” parties.
- E. Description of all intercompany and affiliate transactions and business relationships between or affecting the Companies, including: (1) borrowing arrangements or other credit arrangements, (2) joint or shared activities, including management information or other computer services, purchasing, marketing, sales, common offices and common management and (3) staff or other services provided.
- F. For all such intercompany and affiliate transactions, (1) copies of agreements or written descriptions of such arrangements and (2) fee schedules and amounts involved for each of the last three years.

VI. Financing

- A. Schedule of all liens, security interests, charges or other encumbrances that relate directly or indirectly to any asset of or to the conduct of business by any Company, along with copies of any security agreement and financing statement relating thereto.
- B. Offering circulars, private placement memoranda, registration statements, prospectuses, stock purchase agreements, subscription agreements and other documents relating to the sale of capital stock or debt by the Company or to which it is a party.
- C. Correspondence with and reports to lenders, including all compliance reports or certificates submitted by the Company or its independent public accountants.
- D. Any presentations given to creditors in connection with obtaining credit or prepared for potential lenders in connection with any proposed financings

- E. Copies of all loan agreements and other documents relating to outstanding indebtedness of, or pursuant to which credit may be extended to, any Company, whether secured or unsecured, and all notes, loan or revolving credit agreements, indentures, mortgages, trust agreements, security agreements, lease-back agreements, installment purchases and guarantee agreements of any Company, and any and all amendments, waivers and consents relating thereto.
- F. Copies of all correspondence and letters of consent from lending institutions relating to any of the agreements or other documents described in Item E above.
- G. Term sheets or commitment letters relating to proposed new indebtedness.
- H. Description of material deposits or escrows held by or affecting any Company.
- I. All credit agreements and descriptions of all credit arrangements with suppliers and customers of any Company and related correspondence.
- J. All letters of credit (or equivalent instruments) where any Company is the account party or in respect of which such Company has a reimbursement obligation.
- K. Description of all off-balance sheet financing arrangements, including a description of the business purpose of such arrangements and the key terms and conditions that govern such arrangements. Provide all documents evidencing the entities, including all special purpose or similar entities, used to achieve such off-balance sheet accounting.

VII. Securities Offerings and Filings

- A. All substantive correspondence and filings with the Securities and Exchange Commission by any Company during the past five years.
- B. Copies of all disclosure or offering documents relating to the issuance, sale, purchase or exchange of securities (debt or equity) by any Company during the last five years, including private placement memoranda, subscription agreements, purchase agreements, prospectuses, tender offer documents, indentures and exchange agreements.
- C. Listing applications filed by any Company with any United States and foreign securities exchange during the past five years and all listing agreements, other material filings and correspondence with any such exchange(s).

VIII. Other Material Contracts

- A. All currently effective agreements and arrangements between any Company and any of its customers, clients, suppliers or vendors, including a description of each oral agreement or arrangement, and any other material documents and correspondence relating to agreements or arrangements with customers, clients, suppliers or vendors.

- B. All sale, agency, supply, distribution, management, service, warehousing and advertising agreements to which any Company is a party.
- C. All agreements between any Company and any government or quasi-government entity, any material correspondence related thereto and any material correspondence between any Company and any government or quasi-government entity related to entering into a future agreement or arrangement.
- D. All joint venture, partnership, operating and similar agreements to which any Company is a party including, all significant documents relating to any current or proposed technology alliance between any Company and any other person or entity.
- E. All acquisition or divestiture documentation (including purchase agreements and plans of merger, reorganization, recapitalization or consolidation and all schedules and exhibits thereto) relating to any pending or completed acquisitions or divestitures by any Company.
- F. All license agreements under which any Company is either a licensee or licensor indicating the estimated amount of royalties paid annually and any documents related to any material licensing agreements being currently negotiated or discussed by any Company.
- G. Forms of warranties and guarantees for products or services offered by any Company. Please provide copies of any material forms or exhibits that have been materially altered before execution, and any material third-party form used by any Company.
- H. Forms of purchase or transaction orders, sales orders and acknowledgments used by any Company in the ordinary course of business and any other form contracts covering a material portion of any Company's revenues. Please provide copies of any material forms or exhibits that have been materially altered before execution, and any material third-party form used by any Company.
- I. All installment purchase agreements involving any Company.
- J. All leases or subleases (including capital leases) of equipment or other personal property to which any Company is a party, either as lessor or lessee. Provide a schedule of the locations of all such personal property.
- K. Forms of any rental and service agreements of any Company. Please provide copies of any material forms or exhibits that have been materially altered before execution, and any material third-party form used by any Company.
- L. Description of and any documentation or correspondence relating to any Company's material hedging activities and swap and derivative contracts, including energy or weather trading activities, commodity trading activities, and

any contracts for derivatives involving the same commodities that are part of any trading activities.

- M. All agreements relating to competition, non-competition, solicitation, licensing, territorial restrictions or arrangements, franchises or distributorships to which any Company is a party.
- N. All other written and unwritten agreements or arrangements, not otherwise described, that are or may reasonably become material to the business, operations or prospects of any Company.
- O. List of contract manufacturers and components manufactured, including evidence of ISO-9001 certification (if applicable).

IX. Real Estate

- A. List and provide copies of all documents evidencing real property owned or subject to purchase by any Company, together with (1) location and legal description, (2) description of all encumbrances on currently owned property, including any encroachment or boundary disputes, (3) appraisal reports, surveys and title insurance policies, if any, in respect of currently owned property, (4) all title reports relating to currently owned property and copies of preliminary title reports relating to real property subject to purchase, (5) property tax identification numbers and (6) a description of the business conducted on the property.
- B. List of all real property leased by any Company (as lessee or lessor), together with (1) location and brief description of leased real property, (2) copies of all lease and sublease agreements (and proposed modifications) in respect of currently leased property, (3) if available, a summary of date, term and termination rights, renewal rights and rent for currently owned or leased property, (4) description of all encumbrances on the property, including any encroachment or boundary disputes and (5) a description of the business conducted on the property.
- C. All agreements or options held by any Company to purchase, lease, rent or sell any real property or material interest thereon.
- D. The results of all lien searches in respect of and documents evidencing claims against or encumbrances on any real property owned or leased by any Company.
- E. Copies of documents relating to any alleged non-compliance by any Company or its business with any law, regulation or order relating to any real property owned or used by any Company within the last five years.
- F. Copies of all landlord and tenant estoppel letters, if applicable.
- G. Description of any significant restrictions on real property (including facilities) owned or leased by any Company imposed by building codes, zoning laws or otherwise.

- H. Description of any material repairs required to be made to any facility owned or used by the any Company.
- I. List of real property owned by any Company during the last ten years and no longer owned as of the date hereof.

X. Litigation Matters and Legal Compliance (excluding Environmental)

- A. List of all pending or threatened claims, suits, actions, litigation, arbitrations and/or government or administrative proceedings, investigations or inquiries by, against or involving any Company or any officer, director or key employee thereof (or any employee benefit plan or any fiduciary thereof), including a brief description of the nature of the claim or other matter, corporate resources devoted to its pursuit, settlement or defense, and the amount of damages or the nature of any other remedy sought.
- B. List and description of significant past litigation against any Company and documentation regarding the results thereof.
- C. Copies of all correspondence, internal memoranda and review letters and other documents related to loss or gain contingencies considered in audits, including audit letters from attorneys relating to pending or threatened litigation, during the past five years.
- D. Provide list and copies of correspondence in respect of any inquiries from governmental agencies received by any Company during the last five years concerning actual or potential violations of laws, rules or regulations.
- E. Copies of all correspondence, internal memoranda, reports, notices of violation or default and other documents relating to compliance or non-compliance with foreign, federal or state laws, rules or regulations.
- F. All consent decrees, injunctions, similar orders and settlement agreements applicable to any Company or its operations during the last five years.
- G. All documentation, including policies and reports to employees, officers or the board of directors (or equivalent) of any Company, relating to any Company's actions in response to or compliance with the Foreign Corrupt Practices Act.
- H. All documentation related to each Company's compliance or non-compliance with the regulations of the US Department of the Treasury's Office of Foreign Assets Controls (to the extent such Company has significant assets, business ventures, investments or investors overseas). Provide a list of each major shareholder (or other equity interest holder), director (or equivalent), officer or investor of any Company that is designated as a "specially designated national" or "blocked person."

- I. All documentation relating to material customer or supplier complaints or patterns of repeated customer or supplier complaints received during the past five years.
- J. Information relating to and description of all litigation involving an executive officer or director (or equivalent) of any Company and concerning his or her actual or alleged bankruptcy, criminal activity, violations of securities or commodity laws or unethical or illegal business practices.

XI. Regulatory Matters; Government Approvals; Permits (excluding Environmental)

- A. List and description of all permits, licenses, authorizations or approvals by or from any international, federal, state or local governmental authority or agency, held by any Company, or any of its employees, or required for its current or planned operations. Include information relating to expiration, termination, compliance or renewal of such permits, licenses or authorizations.
- B. All material correspondence with, reports of or to, filings with, or other material information with respect to any regulatory bodies which regulate a material portion of the business or assets of any Company.

XII. Technology

- A. List and description of all drawings, designs, data, specifications, databases, models and designations relating to all Technology and related technology designed, in development, produced or offered by the Companies, and location thereof.
- B. List and description of all machine tools, jigs, dies and other items used in prototypes, development or production activities, and location of all such items. If any such items are owned or possessed by customers or third parties please describe with specificity.
- C. List of each software program used by each Company, whether licensed to or owned by such Company, a description of the functions and features of such software, and for software developed by any Company, a chronology of each program's development.
- D. List of all public domain materials incorporated in each Company's software; list of all third-party materials incorporated in such software; and list of all open source software used by each Company, and the open source licenses, in particular GPL or LGPL governing such software.
- E. To the extent third parties have designed, developed, programmed, enhanced or maintained any Company's software without having executed any agreement, a list of all such third parties and a description of the work performed, and the period during which such work was performed, by each such third party.

- F. Description of the instances in which source code relating to any Company's software has been disclosed to persons outside the Companies and any agreements involving disclosure of source code relating to any Company's software.
- G. Agreements with third parties, whether now in effect or terminated, for technology services, granted to third parties by any Company or by any third party to any Company, including facilities management or outsourcing arrangements for the provision of computer services, web-hosting services or web-design services, network connection, database access, telecommunications or connectivity services agreements, consulting agreements relating to technology and computer operations, equipment lease/purchase and maintenance agreements, database license agreements, content provider agreements, credit card processing agreements, and electronic data interchange agreements.
- H. Descriptions of the material technology used by each Company with respect to its business, including encryption technology, computer and network architecture and topology, material hardware and software platforms and material business applications.
- I. List of all computer and hardware and related equipment used by each Company in the operation of its business, including any servicing agreements, and any leases or financing agreements related thereto.
- J. List of all individuals who have made substantial contributions to the development of each Company's proprietary technology, including all persons who may be characterized as "authors" or "inventors" of such items (collectively, "Developers"), and contact information for each Developer, where available.
- K. Copies of all agreements between any Developer and any Company, including employment agreements, nondisclosure agreements and development agreements
- L. Research and Development ("R&D") and engineering organizational charts, biographical information, length of tenure, salary relating to key R&D managers, authors, inventors and developers.
- M. Provide a staff count by the following disciplines:
 - 1. Engineering
 - 2. Design
 - 3. Quality Assessment
 - 4. Publications
 - 5. Configuration Management

6. Internationalization and Localization
 7. Technical Support
- N. Provide a breakdown of R&D costs by discipline
- O. Please list the number of R&D labs, their location and their primary activities (e.g., engineering, QA, etc.).
- P. Products
1. Please list all of Company's available products and related Technology, software applications, components and other products. For each include:
 - a. Product name
 - b. Brief description of product function and target customer, and monthly production volume
 - c. Manufacturing specifications, performance, specifications, shop drawings, product design and documents
 - d. Test results
 - e. 3rd-party technology dependencies. Please include copies of all development agreements to which Company is party.
 - f. Any known defects
 - g. Please provide the following product documents where available:
 - (i) User and reference manuals
 - (ii) White papers
 - (iii) Industry analyst articles
 - (iv) Case studies, user stories, customer testimonials
- Q. Please provide customer technical support logs or reports with details by customer, severity and resolution for the past three months
- R. Development Plans and Schedules
1. Please provide project plans and schedules for current development projects

2. Please describe or provide a product technology roadmap that details Company's strategic direction for the next 18 months.

S. Process

1. For each discipline listed below, please describe Company's processes – formal or informal - in support of the development life cycle. List include any developer tools and applications used in support of the process. If available, please provide any relevant supporting documentation

- a. Product/technology planning
- b. Development
- c. Quality Assurance
- d. Configuration Management
- e. Change Management
- f. Publications
- g. Packaging and/or distribution
- h. Technical Support
- i. Product maintenance

T. Identification of software, inventions, know-how, materials, works, etc. that any Company seeks to protect by trade secret, copyright, patent or other means.

U. Copies of all agreements relating to the license or other use of each Company's software, trade secrets, patents, copyrights or other intellectual properties (Licenses Out).

V. Copies of all agreements relating to the license or other use by each Company of software, trade secrets, patents, copyrights or other intellectual properties of third parties (Licenses In).

W. Copies of all agreements under which (1) a third party undertakes to develop or modify any technology or other intellectual property for any Company and (2) any Company undertakes to develop or modify any technology or other intellectual property for a third party.

X. Copies of all agreements under which (1) a third party agrees to maintain or otherwise service technology or other intellectual property for any Company or (2) any Company agrees to maintain or otherwise service technology or other intellectual property for a third party.

- Y. Copies of all other agreements to which any Company is a party relating to computer hardware or software, including data processing, distributorship, maintenance, timesharing and disaster recovery agreements.
- Z. List of all domain names owned by each Company, and copies of all website terms of use, privacy policies, linking agreements and similar agreements.
- AA. List and description of all data centers and other facilities used by any Company.
- BB. Copies of any agreements or documentation concerning the physical or electronic security of any location or facility where sensitive proprietary information is maintained.
- CC. Copies or descriptions of each Company's disaster-recovery and business-continuity plans, including copies of any related vendor agreements.
- DD. Copies of all test results related to each Company's disaster-recovery and business-continuity plans.
- EE. List of all computer hardware and related equipment used by each Company in the scope of its business operations, including any servicing agreements, and any leases or financing agreements related thereto.
- FF. List and description of any systems that store, process, transmit and/or contain personal information.
- GG. Copies of any policies intended to comply with laws related to the protection of personal information, including copies of any notices sent to consumers pursuant to such laws
- HH. Identity of all third parties who possess Company proprietary information related to Company products or developments.

XIII. Intellectual Property

- A. Patents
 - 1. List of all U.S. and foreign issued patents and pending applications, both utility and design, used in or associated with each Company's business.
 - 2. List of any invention disclosures and copies of unfiled invention records not covered by patents or patent applications.
 - 3. Copies of documents including title to and payment of maintenance fees for U.S. and foreign patents.
 - 4. Copies of documents confirming foreign patents have been "worked" in countries requiring working.

5. Information and documents with respect to all opposition, reexamination, interference, reissue, confirmation of scope, nullity, inter partes and post grant proceedings.
6. Information and documents with respect to other R&D which may be appropriate for future patent protection.
7. Copies or descriptions of each Company's procedures for identifying and protecting inventions, including procedures for determining that an invention should remain a trade secret, making foreign filing decisions and ensuring the timeliness of patent filings.
8. Copies of developer notes, earlier versions of technology/developments, lab notebooks and other documents which are used for recording the date of inventions.
9. List of all patents owned or licensed by each Company and its inventors. Indicate whether these inventors are still employed by such Company. Identify the term remaining on patents. Provide invention assignment agreements.
10. Information and documents with respect to any patents which have been acquired by assignment, including evidence of recordation of assignments.
11. List of which patents cover which products made/sold by each Company.
12. Samples of patent marking on patented products.
13. Copies of all agreements dealing with patents, including licenses or settlement agreements.
14. List of revenue streams or royalty obligations associated with each license.
15. Documents evidencing any restrictions or limitations on the use of the U.S. or foreign patent portfolio or third party ownership rights, including, for example, security interests, financing agreements or collateral assignments.
16. Copies of documents of all prior art searches, conclusions, reports and opinions, whether internal or external, including opinion letters from patent counsel, that each Company possesses concerning the validity of its patents, the infringement of its patents by others, the infringement of third party patents by its products and the validity of such third party patents.
17. Copies of documents concerning past enforcement of each Company's patents. Provide information concerning any specific enforcement programs.

18. Copies of all correspondence relating to patent disputes, cease and desist letters, letters alleging infringement, warning letters, service of notice, letters threatening lawsuits or other legal notices received or sent by any Company.
 19. Information and documents with respect to all litigation involving the patents and provide copies of complaints, answers, motions, judgments, decrees and settlement agreements.
 20. Copies of all written results of any searches and/or analyses of competitors' patents.
 21. Copies of all product/patent clearance procedures and any results and/or opinions.
 22. Copies of all correspondence to or from any Company inquiring about a possible license or the status of a patent or patent application.
 23. Information and documents with respect to all actions needed to be taken during the transition or due diligence periods to protect the patents, including paying maintenance fees or responding to Office Actions.
 24. List of all bar dates or disclosures of new products which may necessitate new filings in order to avoid loss of rights.
 25. Information and documents with respect to any joint ventures in any patent technology or any joint ownership in any patented technology.
 26. Copies of documents concerning any potential shop rights in patented technology.
 27. Copies of any documents related to governmental funding of any Company's R&D, including documents concerning Bayh-Dole restrictions.
- B. Trademarks - The term "trademark" includes trademarks, service marks, trade names and trade dress.
1. List of all federal, state and foreign trademark registrations and pending applications used in or associated with the business of each Company. Provide copies of prosecution histories and evidence of the date of first use in interstate commerce for each trademark.
 2. Copies of documents evidencing title to and payment of renewal fees for federal, state and foreign trademarks.
 3. Copies of all Lanham Act Section 8 and 15 filings.

4. Copies of all registered user documents.
5. Information and documents concerning all opposition, cancellation, inter partes, concurrent use and registration proceedings.
6. Information and documents concerning the Company's procedures for selecting, clearing, using and protecting trademarks, including the procedure for deciding whether or not to seek registrations.
7. Samples or listings of the products on which each trademark is used.
8. Copies of product advertising and other promotional literature.
9. Information concerning use on the internet of name and key trademarks both by any Company and others.
10. Information concerning any non-use of any trademarks, including specific periods of time.
11. List of all non-registered trademarks, the products on which these trademarks are used, the breadth of such trademarks and whether these trademarks are used in interstate commerce.
12. List of all products and services that are not covered by a trademark.
13. List of any trademarks which have been acquired by assignment, and provide documents, including evidence of recordation of assignments.
14. Copies of all agreements dealing with trademarks, including consent letters, mutual use agreements, licenses or opposition settlement agreements, whether any Company is licensee or licensor.
15. Identify revenue streams or payment obligations associated with each license.
16. Provide information concerning any restrictions or limitations on the use of the U.S. and foreign trademark portfolio or third party ownership rights, including copies of security interests, including financing agreements or collateral assignments.
17. Copies of all searches, conclusions, reports and opinions, whether internal or external, that each Company possesses concerning the validity of its trademark registrations, the scope of rights, geographical limitations, expansion restrictions, the infringement of its trademarks by others and infringement of third party trademarks by its activities.
18. Information concerning trademark enforcement procedures and policy and trademark notices on products/services.

19. Copies of all correspondence relating to trademark disputes, cease and desist letters, letters alleging infringement, letters threatening lawsuits, or other legal notices received or sent by any Company.
20. List all litigation involving the trademarks and copies of complaints, answers, motions judgments and settlement agreements.
21. Copies of all clearance procedures and any search results and/or opinions.
22. Correspondence to or from any Company inquiring about a possible license or the status of a trademark registration or application.
23. List renewal dates of all trademarks and description of any actions needed to be taken during transition or due diligence periods to protect the trademarks (e.g. maintenance fees; filing of required documents).

C. Copyrights

1. Identify all copyrighted materials used in or associated with the business of any Company. Provide any copies of applications and registrations of copyrights.
2. Provide information concerning each Company's procedures for identifying copyrightable material, clearing, using and protecting copyrights, including procedures for deciding whether to make materials and/or filing registrations.
3. Provide documents concerning any work for hire. Provide copies of any assignments of copyrighted works, including blueprints or software, from consultants and independent contractors.
4. Provide documents and details concerning any modification of any original registered copyrighted work.
5. Identify any copyrights which have been acquired by assignment and provide copies of the assignment documents and evidence of recordation.
6. Identify all agreements dealing with copyrights, including licenses, whether any Company is licensor or licensee. Provide copies.
7. Identify revenue streams or payment obligations associated with each license.
8. Identify all documents evidencing any restrictions or limitations on the use of the copyright portfolio or third party ownership rights, for example, security interests, financing agreements or collateral assignments.

9. Provide all searches, conclusions, reports and opinions, whether internal or external, that each Company possesses concerning the validity of its copyright registrations, the scope of rights, the infringement of its copyrights by others and infringement of third party copyrights by its activities.
10. Provide documents regarding each Company's enforcement of its copyrights, and the copyright notice policy of each Company.
11. Provide copies of all correspondence relating to copyright disputes, cease and desist letters, letters alleging infringement, letters threatening lawsuits and other legal notices received or sent by any Company.
12. Identify all litigation involving the copyrights and provide copies of complaints, answers, motions, judgments and settlement agreements.

D. Trade Secrets

1. To the extent possible, identify all trade secrets and know-how used in or associated with each Company. Particularly identify confidential information that each Company acquired from a third party, including all restrictions on use of the information.
2. Identify all procedures of each Company for protecting both its own and third party confidential information from disclosure, including site security, contractor and vendor access, sign in logs, badges, keys, marketing documents, secure storage for documents, restricted employee access and monitoring obligations to third parties.
3. Identify all procedures of each Company for approving public release of information for example in marketing materials, technical publications, at seminars, or in other manners.
4. Identify all agreements dealing with trade secrets, including license, secrecy, or non-analysis, whether any Company is licensor or licensee. Provide copies.
5. Identify any restrictions or limitations on the use of the trade secrets or third party ownership rights, including all security interests in specific trade secrets or "general intangibles" or financing agreements or collateral assignments.
6. Identify the enforcement policy/procedure of each Company for its trade secrets.
7. Provide copies of all correspondence relating to trade secret disputes, cease and desist letters, letters alleging misappropriation, letters

threatening lawsuits and other legal notices received or sent by any Company.

8. Identify all litigation involving trade secrets and provide copies of complaints, answers, motions, judgments and settlement agreements.
 9. Provide a copy of the document retention policy for each Company and identify procedures of such Company to comply with that policy.
 10. Provide samples of the employment agreements of each Company, including all non-compete, exit interview memoranda and any and all confidentiality agreements relating to intellectual property.
- E. Other Agreements Affecting Intellectual Property Assets - Provide copies of all agreements dealing with intellectual property rights, including, the following:
1. Research (university) agreements - rights in inventions and secrecy.
 2. Consulting agreements - rights in inventions, secrecy and non-compete.
 3. Joint venture agreements - rights in inventions, secrecy and non-compete.
 4. Joint development agreements - rights in inventions, secrecy and non-compete.
 5. Sales, distributor or formulator agreements - particularly general or special warranties and/or indemnifications against patent infringement.
 6. Indemnification agreements.
 7. Tolling agreements - technical information restrictions and patent immunity.
 8. Government contracts - patents/data rights clauses, accounting/record keeping to track government funding or property used.
 9. Franchise agreements.
 10. Agreement negotiations in progress.
- F. List of proprietary formulations, manufacturing methods, know-how and trade secrets related to manufacturing which are material to the Companies that are either owned or licensed by the Companies.

XIV. Tax Matters

- A. Copies of all federal tax returns of each Company for all years for which the statute of limitations is not closed, copies of any amended returns or carryback claims for the same period and copies of any IRS determination letters.

- B. Copies of tax returns filed with countries other than the United States for all years for which the statute of limitations is not closed, and copies of any amended returns or carryback claims for the same period.
- C. Copies of any revenue agent reports and related documents for any prior or current examinations and information regarding the status of any examination currently in process.
- D. Provide a description of the formation and ownership structure of each foreign entity.
- E. List of states and foreign countries in which tax returns are filed because of the ownership of property or conduct of business by any Company.
- F. Copies of all correspondence, including, without limitation, applications for private letter rulings and opinions of counsel, regarding the tax treatment of any transaction to which any Company is a party.
- G. Reports of IRS auditors and auditors of the applicable state taxing authorities, and related materials, including claims for refunds, investigations, audits or disputes for any year not barred by the applicable statute of limitations.
- H. Correspondence with respect to any pending or completed tax audits conducted since inception.
- I. Indicate whether any Company is or has been included in a consolidated group for tax purposes with any other person or entity, naming such person or entity.
- J. Indicate whether there are any outstanding agreements or waivers extending the statute of limitations with respect to any federal or state income tax or other tax. Copies of the same should be furnished.
- K. Documentation concerning any tax deficiencies (including deficiencies proposed or threatened) or ongoing tax disputes, including revenue agents reports and correspondence or complaints with regard to federal, state, local, foreign or international tax proceedings.
- L. Detailed support for tax liability reserves and deferred taxes, including an analysis of the current and deferred tax provision and liability accounts for the most recent tax year and for the most recent interim period, including a summary of book/tax temporary differences.
- M. Copies of any written or a summary of any unwritten tax sharing, tax indemnity or tax allocation agreements to which any Company is a party.
- N. A summary by entity of any attribute carryforwards, including but not limited to any tax credits, capital losses, net operating losses, and alternative minimum tax net operating losses and credits. For each attribute indicate the date of

origination, original amount, remaining amount unused as of the end of the last year, date of expiration and any limitations imposed on future use under the applicable tax law.

- O. Listing of potential unrealized built in gains or losses for Section 382 purposes.
- P. Listing of any prior Section 382 limitations.
- Q. Detailed schedules of tax basis and cost recovery schedules for all tangible and intangible assets.
- R. If any Company is a Subchapter S corporation, copies of the initial S Corporation election of such Company and related IRS acknowledgment, as well as access to documents evidencing that any Trust type shareholders meet the tests for a Qualified S Corporation shareholder.
- S. List of all required tax filings and tax calendar.
- T. List of all regulatory fees, and amounts, paid in the past three years, and any fees or regulatory charges any Company anticipates having to pay going forward.
- U. A description of any changes in accounting method for tax purposes for the past five years, and a copy of any related filings with the IRS.
- V. A description of the use of special tax accounting methods, and any tax opinions and tax workpapers in connection therewith.
- W. A copy of any tax rulings obtained during the past five years, and a description of any pending ruling requests.
- X. A copy of any bankruptcy filings or documents related to any discharge or reduction in outstanding indebtedness.
- Y. A copy of the most recent tax basis balance sheet for the Company, and the tax basis of the stock of each entity. Also, a summary of the current and accumulated earnings and profits of each entity.
- Z. A description of the ownership structure of the Company, and any changes in stock ownership of each entity occurring during the prior five years.
- AA. A copy of any elections under Section 338 or 338(h)(10).
- BB. A description and list of all current or past call options, warrants, convertible debt, or similar instruments
- CC. A copy of any buy-sell agreement
- DD. Copies of any agreements of merger, stock acquisition or acquisition of assets constituting a trade or business entered into by the Company during the past five

years. Further, copies of any due diligence reports, appraisals or valuations, and purchase price allocations related to any acquisition

- EE. Information pertaining to any other significant transactions which have occurred during the current or prior five years, including any transfers of assets constituting a trade or business entered into by the Company
- FF. A description of any significant intercompany and related party transactions with any U.S. or foreign affiliate.
- GG. A copy of each state income and franchise tax return filed for all years for which the statute of limitations is not closed for the Company, and copies of any amended returns or carryback claims for the same period.
- HH. A list of any state net operating losses or other state tax attributes, indicating the amount and year of expiration, for each entity.
- II. A list of property, payroll, and sales apportionment data by state for all years for which the statute of limitations is not closed.
- JJ. Status of any state tax examination currently in process, and a copy of any revenue agent report received in any prior or current examinations.
- KK. A copy of any state waivers of the statute of limitations granted by the Company or any other entity that joins the Company in the filing of a consolidated or combined return.
- LL. A list by state by entity of where sales and use tax returns are filed, including a description of the types of transactions or purchases that are reported in each return. Further, provide a list by state by entity of where sales or other activities exist, but no sales and use tax returns are filed.
- MM. A list by state of any sales and use tax audits, showing the periods covered by the audit, approximate date of completion, and the amount of additional sales tax, additional use tax and any interest or penalties assessed. Indicate whether the amount assessed was paid or contested and the result of any contest. Also describe the principal issue or reason for the assessment. Provide copies of any significant audit reports or other significant documents.
- NN. Destination sales by state for the prior five years.
- OO. Analysis of customer support services by customer and state for the last five years.
- PP. A list of customers which claim an exemption from sales tax, including an indication of whether or not exemption certificates are held for all open years for which each entity claims it is protected.

- QQ. Copies of sales/use tax returns for the last quarter (or year, if annual filer).
- RR. A list of individuals who are paid as independent contractors rather than employees, including the amount of compensation for the current year and the past three years and a description of the individual's duties.
- SS. A list of all state and federal payroll tax audits during the prior five years, including the entity examined, the period covered by the audit, and the amount of additional payroll taxes, interest or penalties assessed. Indicate whether the amount assessed was paid or contested and the result of any contest. Also describe the principal issue or reason for the assessment.
- TT. Copies of state unemployment rate notices for the prior three years.
- UU. Provide an analysis of the current status of the state unemployment account balances for the prior five quarters.
- VV. Copies of federal Form 940 filed by the Company for the prior three years.
- WW. List of any other federal, state, local, franchise, fuel, property, value added, excise, withholding, or any other tax for which the Company is liable.
- XX. Provide a description of any policy or methodology pertaining to intercompany pricing and the allocation of income and expenses among related entities, including the documentation for transfers of inventory and other assets between the Company and the related foreign entities and any transfers of intangible property or the payment of a royalty.
- YY. Payroll/employment tax considerations (request specific information)
- ZZ. VAT considerations (request specific information)

XV. Environmental and Related Matters

- A. Information describing the current and past activities at each site listed pursuant to Sections IX.A or IX.B above, and any other property currently or previously owned or operated by any Company (each of the foregoing, a "Facility," and collectively, the "Facilities").
- B. All environmental or health and safety studies, reports, assessments, audits, surveys or disclosures related to the Facilities prepared by, for or otherwise in the possession or control of any Company, including, any Phase I or Phase II site assessment reports, subsurface or hydrogeological investigations, asbestos, PCB, lead-paint or "toxic mold" surveys.
- C. All spill reports or other documents reflecting the release of hazardous substances at any Facility that required or are reasonably likely to require remedial action

(excluding releases of *de minimis* quantities or releases permitted under applicable law).

- D. Information (such as soil, ground water, surface water, or indoor air quality investigation or remediation reports and related correspondence with governmental agencies or third parties) available to any Company that states or reasonably suggests the presence of contaminants, chemicals, pollutants or other substances that would give rise to an obligation or liability by any Company for the clean-up or remediation of a property or any Facility.
- E. An inventory of current and former underground storage tanks owned or controlled by any Company, closure reports, correspondence with applicable regulatory agencies regarding same, and confirmation that existing tanks comply with current regulatory standards.
- F. An inventory of all environmental permits and licenses (e.g., air, water, waste, hazardous waste generator identification numbers) required for current operation of any Company, any significant correspondence relating to such permits, and pending applications for new or modified permits. Identify where proposed changes in Facility operations or applicable regulations will require submission of applications for new or modified permits.
- G. Information regarding all cases of actual or alleged noncompliance (including pending or threatened investigations) with applicable environmental health and safety laws involving any Company or any Facilities, that either (1) are pending or otherwise not yet resolved; (2) are resolved but still have material outstanding compliance or financial obligations; (3) have been resolved within the last year; (4) relate to events or circumstances that occurred within the last five years; or (5) relate to events or circumstances for which the applicable statute of limitations has not expired. All material communications, notices, investigation reports, orders, consent orders, judgments, settlement agreements and other similar documents with respect to such matters.
- H. Information regarding litigation or third-party claims against any Company relating to environmental matters, including (1) pending or threatened claims; (2) significant matters raised within the last five years; (3) resolved matters for which any Company still has outstanding obligations under the terms of the relevant settlement agreement or judicial matter; or (4) known or contingent liabilities (including indemnities relating to former properties) for which any Company anticipates a claim may be brought.
- I. All communications, notices, orders, claims, consent decrees, requests for information, settlements and correspondence with respect to any Company's current or potential responsibility for environmental contamination or site remediation, including "potentially responsible party" notices, Section 104(e) requests, private party cost-recovery claims, and other documents relating to potential liability under CERCLA or any similar state, local or foreign laws.

- J. All agreements pursuant to which any Company is obligated to perform or make any payment for known or reasonably anticipated environmental clean-ups or compliance actions at any Facility or other site or is obligated to indemnify any other person or entity for the cost of such clean-up or compliance.
- K. For sites where any Company has responsibility or liability for existing contamination or site remediation, provide documentation describing the progress of the remediation of the site to date, the anticipated schedule and plans for future remedial activities, and the estimated cost to be incurred by such Company to complete remediation of the site.
- L. List all hazardous substances, hazardous materials, hazardous wastes, toxic chemicals or substances, petroleum, petroleum fractions, derivatives or byproducts, hazardous air pollutants or toxic pollutants generated, stored or used at or released into or out of, any of the Facilities. If applicable, provide a copy of each Facility's most recent RCRA Biennial Report, Emergency Planning and Community Right-to-Know Act filings, Risk Management Plans (Clean Air Act Section 112(r)), Spill Prevention, Containment and Countermeasure (SPCC), and Facility Response Plans.
- M. Identify any asbestos-containing materials or any PCB transformers, capacitors, or hydraulic equipment that are located at, on, or about any of the Facilities. Provide information and documentation regarding the anticipated costs for abatement and/or maintenance of such materials or equipment. Indicate whether any Company's products contain or have ever been manufactured with asbestos.
- N. The Company's budget and/or accounting reserves for capital expenditures related to environmental matters for the prior, current and forthcoming years (if available), including a breakdown of the major items included in such budget or reserves. Identify any significant changes that are anticipated in such budget or reserves.
- O. List all material capital expenditures made during the past three years or that are anticipated to be required by any Company in order to comply with applicable, pending, and reasonably anticipated environmental or occupational safety and health laws and regulations. Identify whether such expenditures are presently included in such Company's financial reserves or capital budgets.
- P. List all insurance policies that may provide coverage related to any Company for any environmental liabilities associated with its business, operations or properties. Identify the extent to which any anticipated insurance recoveries are used to reduce accounting reserves for environmental liabilities.
- Q. Any other documents relating to material potential or alleged violations, investigations, litigation, liability or responsibility under domestic or foreign environmental laws or regulations.

XVI. Controls and Procedures

- A. List of the members of the committees and subcommittees of the board of directors (or equivalent) of each Company.
- B. All material documentation relating to any Company's disclosure controls and procedures, including Company policies on and amendments to such controls and procedures.
- C. All internal certifications by officers and sub-certifications by subordinates obtained in connection with the preparation of disclosure documents, financial reports and proxy material.
- D. All material reports, analyses and evaluations by any Company's management, and any material correspondence or written material to or from Company management from or to such Company's outside auditors or audit committee relating to such Company's internal and disclosure controls and procedures and compliance therewith.
- E. All documents and correspondence directed to or promulgated by each committee of the board of directors of each Company.
- F. All codes of ethics, governance guidelines or other codes of conduct of the Companies.
- G. All documentation, including reports to members of the management team or the board of directors of any Company, relating to such Company's document and/or records retention and destruction policies.
- H. All communications (including emails) and documents relating to questions, allegations or issues raised by "whistleblowers" about any Company's accounting controls, audit issues, financial reporting and disclosure, other violations of law, and all correspondence between such whistleblowers and any Company, the board of directors of any Company or any committee of the board of directors of any Company.

XVII. Insurance

- A. A list and summary of insurance coverage (including coverage for property, liabilities, operations, "key persons," officer and directors, workers' compensation, automobile, etc.) specifying the name of the insurer and the per occurrence or per claim or other loss limits and the deductible, retention or self-insurance amounts thereunder.
- B. Complete copies of all policies listed on the insurance summary requested above.
- C. A loss claim history under such policies for the past five years, including pending claims.

- D. All insurance analyses and reports prepared internally or by consultants for any Company.

XVIII. Sales and Marketing

- A. Description of the direct and indirect sales force channels, composition and structure.
- B. List of all customers, size of initial transaction, date of initial transaction and revenue received from each customer (categorized by new software, services, and maintenance) for the last three years (including current year).
- C. Provide an analysis of customer by application / industry / user type (or any of classification scheme you use to describe the customer base).
- D. Major competitors (by product line) and strengths / weaknesses relative to each (including both marketing and technology discussion). Provide a description of the competitive landscape in the market – how often are sales opportunities competitive, what is the win / loss rate, when do you win, when do you lose?
- E. Provide an analysis of revenue and profitability for each major product line for the last three years (including current year).
- F. Provide a schedule of maintenance agreements by customer, listing terms and conditions for each.
- G. Describe support services provides by your organization – type of support, volume of activity, how issues are resolved, staffing requirements, etc.
- H. Provide a detailed description of the training programs offered by your organization – including types of training, how delivered, what is required by a customer to become knowledgeable with your offerings, financial aspects of this part of the business (revenue and cost), staffing, etc.
- I. What new products do you plan to introduce in the next two years (including upgrades to existing technology). Describe each, define target audience, what business problems are addressed, revenue expectations for each.
- J. Describe domestic and international distribution channels.
- K. List distributors representing Company product lines.
- L. Provide a detailed schedule of current sales pipeline for the next four quarters and sales forecast for existing quarter. Include client name, the date sales opportunity began, application, the products to be sold to them, revenue by type and confidence in closing.

- M. Describe method by which lead generation is handled. Provide details on spend rate, methods used, success of programs.
- N. Provide details on all marketing promotional spend – programs, amounts, success metrics. Description of any planned marketing activities (such as trade shows, etc.) for the next two years.
- O. Define the sales methodology and process including methods for proof of concept, and details for the types of personnel involved and the steps and timing to closure for each product and service. Provide copies of sales proposal.
- P. List of major consultants, suppliers, distributors and manufacturers (top 10 by dollar volume for the last three fiscal years).
- Q. Describe product fulfillment and shipping process.
- R. Describe current customer database and prospect tracking systems.
- S. Provide copies of your current prospect presentation(s).
- T. Provide details for how your technology is demonstrated to the customer.
- U. Describe your implementation process – staff and time requirements, major steps in the process, customer involvement, etc.
- V. Description of the roles and responsibilities of the sales team and customer allocation within the sales team.
- W. Provide detailed pricing information and schedules for all products and services.
- X. Description of the average deal size for each product and service.
- Y. Description of any discounting policies for each product and service.
- Z. Description of the customer decision-making process and timelines.
- AA. Provide industry data and research reports dissecting growth in various product segments and target markets.
- BB. Provide market share statistics by geography for each product segment.
- CC. Description of general industry trends, pricing, demand and competition.
- DD. Provide samples of marketing and sales literature currently used by any Company, including product brochures and advertisements.
- EE. Description of the domestic and international distribution channels.

XIX. Services

- A. Provide job descriptions for each role defined within Services, including management, business development, and all levels of consultant, education consultant, project manager, etc. Include any certifications required by role.
- B. Provide a description of internal training programs and external training opportunities required by or offered to Services staff.
- C. Provide the current fiscal year business plan for the Services organization. Include summary of current customer engagements and backlog of projects.
- D. Provide a workflow chart depicting how Services engages with customers throughout the selling and delivery process. This includes a description of any internal and external Services methodologies, documenting all steps necessary to complete the customer engagement, from selling to delivery.
- E. List systems used to manage Services and their functions.
- F. Provide rate sheet that outlines Services pricing.
- G. Provide examples of customer proposals.
- H. Copies of marketing literature/customer collateral of all Services and Support products and offerings that are available to customers (include Web Site locations where same information is publicly available).

XX. Other Information

- A. All “diligence reports” and other analyses of any Company or its products prepared within the past five years by investment bankers, management consultants, stockholders, accountants, customers or others, including marketing studies, credit reports and other types of reports, financial or otherwise.
- B. Internal or external appraisals or valuations of any Company, its assets, properties, financial position or future prospects, including any presentations given to lenders, potential lenders or rating agencies, prepared within the last five years.
- C. All press releases issued during the past five years concerning developments outside the ordinary course of business.
- D. Any other documents or information not otherwise requested which, in your judgment, could be material to an understanding of any Company or which you believe should be considered and reviewed in making disclosures regarding the business and financial condition of any Company to prospective purchasers.