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PRIVATE EQUITY

Connections
IN THE MIDDLE MARKET

Welcome To

Taking “Capital” from “Private Capital”: Demystifying the Private Equity Process



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Prospect Partners, LLC
Private Equity Expertise. Small Company Focus.



ROTH Capital Partners



Connections
IN THE MIDDLE MARKET

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PRIVATE EQUITY

DUANE MORRIS WELCOMES YOU TO

Taking “Capital” from “Private Capital”: *Demystifying the Private Equity Process*

Private equity investors have an edge: They routinely buy and sell companies according to their investment objectives. Business owners have their own advantages: They operate and grow businesses for a living and build assets private equity investors covet. In this give-and-take, who really has the upper hand?

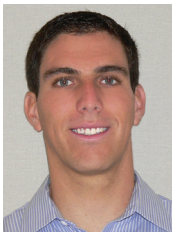
This informative, interactive edition of Duane Morris’ Connections Forum Series is where insiders from all sides of the buy-sell equation discuss some of the many questions faced by those engaged in, or considering, the middle-market buyout process. Panelists examine the factors of valuation and maximizing that value; the role of management teams; decision-making; due diligence; and how lawyers, accountants and investment bankers can help the process. Those considering a sale or growth capital transaction, or who are involved in formulating and making deals, will gain state-of-the-art insight into what is “market” for sellers, buyers and all sides of the transactional advisory universe, and how they can navigate the sometimes murky waters of the middle market.

Produced with the support of:





ABOUT THE SPEAKERS



Dan Friedman

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Dan Friedman is a Vice President in ROTH Capital Partners' consumer and Internet investment banking team, where he focuses on advising clients on mergers and acquisitions, equity and debt financings and general corporate finance. Prior to joining ROTH, he worked in the Investment Banking Division of Goldman Sachs in Los Angeles and Sydney. Mr. Friedman graduated *magna cum laude* from the University of Southern California with a B.S. in Business Administration and a dual emphasis in Corporate Finance and Investment Markets.



Joel Gragg

Principal, Huntington Capital
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Joel Gragg is a principal with Huntington Capital, a San Diego-based private equity fund and leading growth capital provider to lower-middle-market companies. He is responsible for originating, structuring and monitoring the firm's investments. Mr. Gragg joined Huntington Capital in 2008, bringing more than 10 years of commercial banking and private equity experience, and earned an M.B.A. from San Diego State University's nationally ranked Entrepreneurship Program, EMC.



Erik Maurer

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Erik Maurer is a veteran lower-middle-market investor with more than a decade of experience investing in small companies. As a principal of Prospect Partners, he is involved in all aspects of investment sourcing, execution and management. Prior to joining the firm in 1998, Mr. Maurer was a commercial banking officer at Northern Trust Company, where he focused on making loans to middle-market companies. He earned a B.A. from Stanford University and an M.B.A. from Northwestern University's Kellogg School of Management.





James Pettit

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James Pettit is President and CEO of Crestone Group, LLC, an innovative food solutions company headquartered in San Diego. He most recently served as President and COO of American Corrective Counseling Services, Inc. (ACCS), the largest provider of pre-trial diversion programs for district attorneys nationwide. Prior to ACCS, Mr. Pettit was an investment banker and principal with Avondale Partners, LLC; worked at Morgan Keegan & Co. as part of its Mergers & Acquisitions Group; and served as a naval officer for more than six years. He has a B.S. in Economics from the U.S. Naval Academy and an M.B.A. from the University of Southern California.

ABOUT THE MODERATOR



Stuart L. Sorenson

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Stuart Sorenson focuses his practice on private equity, mergers and acquisitions, public and private securities offerings, joint ventures finance, and general corporate matters. He has participated in more than \$10 billion in transactions in the area of mergers and acquisitions throughout a variety of industries, including telecommunications; medical devices; post-secondary education; biotech; and consumer products. Mr. Sorenson is chair of the board of advisors for the family and closely held business group at the EMC at San Diego State University, and earned his undergraduate and law degrees from the University of Minnesota, his J.D. *cum laude*.

DUANE MORRIS LLP – PRIVATE EQUITY GROUP

With experienced private equity lawyers across our domestic and global platform, coupled with the deep capabilities of more than 700 lawyers, Duane Morris offers the resources to optimize transactional value for owners and buyers; provide guidance on fund formation and exit strategies; and support and expand portfolio company operations. With our strategic focus on the middle market, broad experience in major industry sectors and an innovative culture deeply committed to client service, we are regularly called upon to work with the most sophisticated and demanding players in the middle market.

SAN DIEGO STATE UNIVERSITY – COLLEGE OF BUSINESS ADMINISTRATION

The College of Business Administration provides a challenging learning environment that fosters excellence in business education and develops business professionals through innovative programs, applied learning, research and collaboration with the local business community. Programs allow students and faculty to integrate their academic work with real-world experience in the San Diego business arena.



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This is for general information. The invitation to contact attorneys in our firm is not a solicitation to provide professional services and should not be construed as a statement as to any availability to perform legal services in any jurisdiction in which such attorney is not permitted to practice.

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Key Considerations When Financing Your Growth Company

Preparing Your Company for a Process

- In order to maximize the terms you are able to receive from an investor, lender or acquirer, it is critical that you ensure both you and your business are properly prepared for the process. Although each business is unique, the following steps will help you present your business in the best light possible:

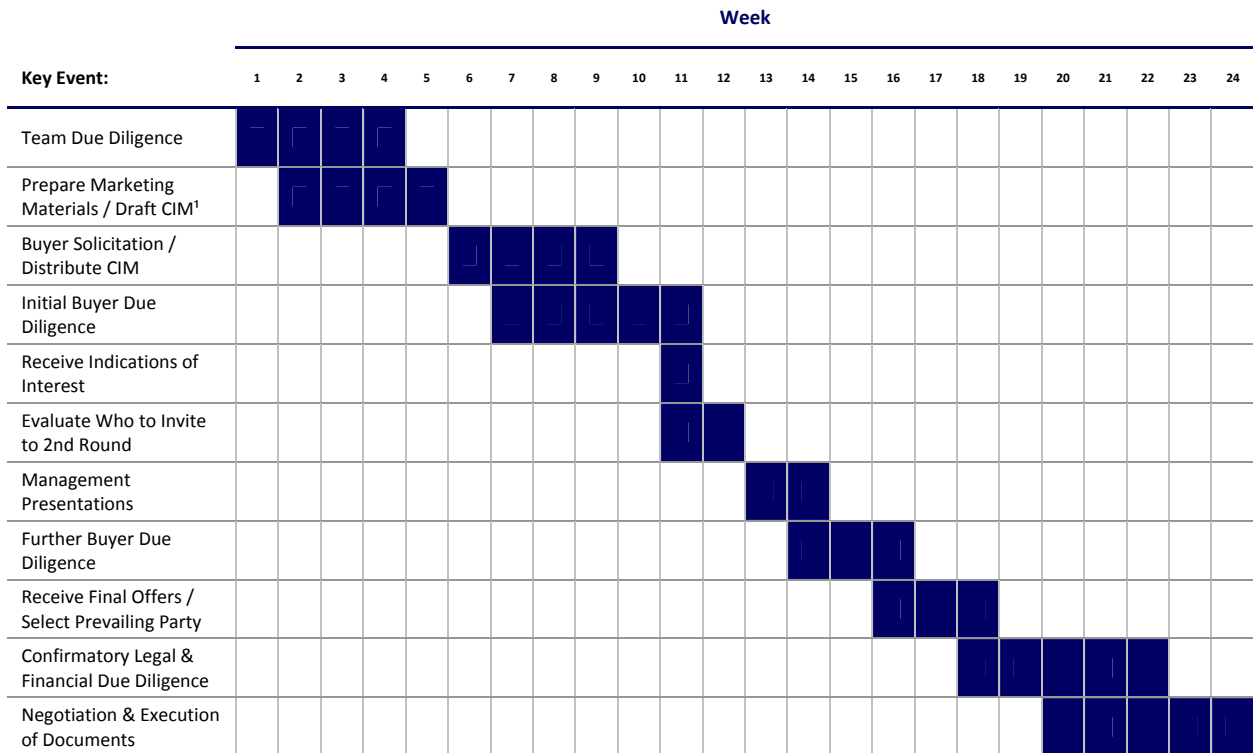
	Comments
Ensure Your Financials Are In Order	<ul style="list-style-type: none"> • Most potential investors, lenders and acquirers will require either reviewed or audited financial statements • Having your financials either audited or reviewed prior to the process will reduce the length of the diligence process • For most entrepreneurial businesses, it is not cost effective to use a “Big Four” accounting firm; a reputable middle market or regional accounting firm is more cost effective and will be more familiar with working with an entrepreneurial company
Review Key Legal Documents	<ul style="list-style-type: none"> • Make sure all corporate documents (partnership agreements, by-laws, etc.) are up to date and reflect the current understanding among shareholders • Review contracts with key employees, suppliers, customers, landlords and others to learn what consents, if any, you will need to complete your desired transaction • Properly document any informal or verbal agreements that are important to your business • Consult with a tax accountant or lawyer to determine if there are steps you can take now to help reduce the tax impact of your desired transaction
Have Key Operating Metrics Readily Available	<ul style="list-style-type: none"> • Potential partners will want to understand the key operating metrics of your business; being able to quickly access this data will give them increased confidence in your ability to run your business and give you more flexibility in negotiating terms • Examples of data that partners will want to analyze include sales and gross profit by product and customer or channel, sales backlog, key customer and supplier terms, organizational charts and intellectual property summaries
Develop a Clear Rationale for Why You are Pursuing the Transaction	<ul style="list-style-type: none"> • Potential partners will want to understand why you are choosing to pursue your desired transaction now; investors and lenders will want to fully understand what the use of proceeds from the transaction will be and potential acquirers will want to know why you are interested in selling your business now • Being open and upfront with your transaction rationale early in the process will help weed out potential partners who may not agree with this rationale, saving both sides significant time and effort
Continue to Focus on Your Business	<ul style="list-style-type: none"> • Although pursuing a transaction can be time-consuming and distracting, it is important to keep your underlying business running smoothly • Any deterioration in your business during a transaction will have a significant impact on the ultimate terms of the transaction, so it is important to keep your business growing and on budget throughout the process

Sources of Growth Capital

	Type	Benefits	Considerations
	Strategic Acquisition	<ul style="list-style-type: none"> + Will most likely provide an entrepreneur with the greatest amount of upfront proceeds + Stock or earn-out components can provide opportunities for future upside + Partnering with a larger company can help accelerate growth opportunities + Potential to leverage existing back office infrastructure to allow the entrepreneur to focus on his/her passions: design, sales, etc. 	<ul style="list-style-type: none"> - Most strategic acquirers seek to buy 100% of targets - Entrepreneur has limited ability to influence the direction of the business post-transaction - Cultural issues may complicate post-transaction integration - If the acquirer is a competitor, due diligence process would require the company to share sensitive information
	Private Equity Investment	<ul style="list-style-type: none"> + Private equity investments can be structured as minority or majority control transactions + Allows the entrepreneur to participate in the future upside of the business + Private equity investors can help provide guidance on challenges the entrepreneur hasn't faced before + Senior-level contacts can help recruit a deeper management team and open doors with potential customers 	<ul style="list-style-type: none"> - Even if structured as a minority investment, investors will most likely demand some amount of control provisions - Less upfront proceeds to the entrepreneur - Higher cost of capital than either mezzanine capital or senior debt - Typical investment horizon of 3 – 5 years may not match entrepreneur's objectives
	Mezzanine Capital	<ul style="list-style-type: none"> + Can provide a greater amount of capital than senior debt while minimizing dilution to current shareholders + Highly flexible structure; can be tailored to meet specific companies' needs and concerns + Current management retains control over operations + Expedited due diligence process 	<ul style="list-style-type: none"> - Cash interest expense would divert cash flow away from funding growth - Would include financial covenants that may restrict future growth and limit dividends to shareholders - Mezzanine capital would be senior to current shareholders in a liquidation scenario - May require board representation
	Senior Debt	<ul style="list-style-type: none"> + Lowest cost of capital + No dilution to current shareholders + If the company remains in compliance with covenants, senior lenders have limited ability to influence operations + Least intensive diligence process 	<ul style="list-style-type: none"> - Requires minimum levels of assets and/or profitability to qualify - Cash interest expense would divert cash flow away from funding growth - Financial covenants may restrict future growth and limit dividends to shareholders - Would be senior to all other forms of capital in a liquidation scenario

Sample Process Timeline

- An investment process from start to finish typically lasts between four to six months; however, there are a number of different factors and slight nuances with each transaction that can greatly accelerate or decelerate a timeline



¹ Confidential Information Memorandum.

Sample Process Overview

Step	Description	Primary Responsibility
Due Diligence & Preparation	<ul style="list-style-type: none"> Roth works closely with the Company's senior management team to obtain an in-depth understanding of Company's current business and future growth opportunities in order to facilitate its role as the primary contact for interested parties Prepare marketing materials, including a confidential information memorandum ("CIM") and management presentation Populate an online data room to facilitate and monitor interested parties' diligence efforts Develop investor list 	<ul style="list-style-type: none"> Company, Roth Company, Roth Company, Roth, Counsel, Accountants Company, Roth
Marketing	<ul style="list-style-type: none"> Contact senior management and/or board members of potential investors to ascertain interest in pursuing a transaction Negotiate non-disclosure ("NDA") agreements with interested parties, prohibiting them from disclosing the existence of the process or any of the confidential materials they review 	<ul style="list-style-type: none"> Roth Roth, Counsel
Initial Investor Due Diligence	<ul style="list-style-type: none"> After executing the NDA, send interested parties CIM and facilitate high-level business diligence Send interested parties "Bid Process Letter", outlining timing and procedures for submitting an offer for Company Work with interested parties to answer initial diligence questions Depending on the scope of the process, Roth can either ask interested parties to submit written indications prior to scheduling management presentations (if a broader process) or schedule a management presentation with each interested party (if a narrower process) 	<ul style="list-style-type: none"> Roth Roth Roth Company, Roth
Management Presentations	<ul style="list-style-type: none"> Meet with interested parties, either at Company's offices or offsite, depending on management's preference Senior executives give detailed management presentation, typically ~3 hours, covering strategy, operations, product development and financials 	<ul style="list-style-type: none"> Company, Roth Company, Roth

Sample Process Overview (cont'd)

Step	Description	Primary Responsibility
Secondary Investor Due Diligence	<ul style="list-style-type: none"> • After management presentations, investors are given access to an online data room in order to facilitate the diligence needed to prepare final offers • Roth works with the Company and counsel to facilitate final diligence requests in advance of bid date 	<ul style="list-style-type: none"> • Roth • Company, Roth, Counsel
Evaluate Offer(s)	<ul style="list-style-type: none"> • Evaluate final offer(s), which should contain: purchase price, letters from financing sources (if needed), description of any additional approvals needed and closing timeline • If offers are satisfactory to Company's shareholders, choose a final investor with which to enter into an exclusivity agreement 	<ul style="list-style-type: none"> • Company, Roth, Counsel • Company, Roth
Confirmatory Diligence & Documentation	<ul style="list-style-type: none"> • Complete final confirmatory due diligence • Negotiate and execute stock purchase agreement and ancillary documents • Finalize financing agreements, if needed • Obtain any necessary third party consents • Sign and announce transaction 	<ul style="list-style-type: none"> • Company, Roth, Counsel, Accountants • Company, Roth, Counsel • Investor, Company, Counsel • Company, Counsel • Company, Roth, Counsel

Process Comparison

- Although below are three sample process structures, Roth works closely with our clients' management and shareholders to carefully craft a process that meets their objectives in terms of maximizing terms, speed of execution and confidentiality

Process Type			
	Negotiated Sale	Targeted Solicitation	Robust Auction
Mechanism	<ul style="list-style-type: none"> • Identify 2-5 most logical investors • Contact such parties, disseminate information and negotiate until an offer is accepted 	<ul style="list-style-type: none"> • Identify targeted group of 20-30 most likely investors • Contact parties, disseminate information and request indications of interest 	<ul style="list-style-type: none"> • Approach a large group of well-capitalized financial sponsors • Select most qualified investors, request indications of interest, negotiate with select bidders until an offer is accepted
Competition	• Negotiated	• Competitive	• Most competitive
Pressure on Investors	• Least	• Moderate	• Most
Confidentiality	• Most confidential	• More confidential	• Large groups more susceptible to leaks
Timing	• Rapid if optimal candidate is identified; however, investor dictates process and can introduce delays	• Moderate	• Longer process
Advantages	<ul style="list-style-type: none"> + Least disruptive to business and employees + Opportunity to capture preemptive value + Opportunity to accelerate closing + Greatest confidentiality 	<ul style="list-style-type: none"> + Reduces risk of failed auction + Signals credible alternatives to ultimate investor + Maximum flexibility in timing and investor selection + Limited disruption to business and employees 	<ul style="list-style-type: none"> + Enhances competitive bidding + Investors willing to commit resources early + Limits investors' ability to assess negotiating position of seller + Maximum pressure on investors to submit fully-financed bids
Disadvantages	<ul style="list-style-type: none"> – Serious loss of negotiating leverage with subsequent investors if first investor walks – Less ability to dictate terms and timing – Not effective when logical investor is not known 	<ul style="list-style-type: none"> – More difficult to close in a timely manner – Difficult to sustain competitive investor interest 	<ul style="list-style-type: none"> – If auction does not result in a transaction, the company can be perceived as a less desirable asset in the future – Loss of credibility and leverage if deadlines and terms are unenforceable due to weak interest

Roth's Role in a Process

- Roth is an active advisor to our clients throughout a transaction process, working diligently to ensure an optimal outcome for the company, its shareholders and its management team

Transaction Preparation

- Works closely with management and shareholders to understand their objectives in the transaction
- Drafts marketing materials, including a teaser and confidential information memorandum to distribute to potential partners
- Works with the company to present its historical financial statements in a format that is easy for potential partners to understand and which presents the company in a positive light
- Works closely with the company to develop detailed projected financial statements to ensure potential partners understand the growth prospects of the business
- Helps develop a list of potential partners to contact regarding the transaction

Partner Solicitation

- Contacts potential partners and serves as the primary source of contact throughout the process
- Coordinates information requests to minimize the strain on management's time and resources
- Helps to qualify potential partners to make sure they have the willingness and wherewithal to complete the transactions on terms acceptable to the company
- Drafts management presentation and coordinates meetings with potential partners

Due Diligence and Documentation

- Coordinates due diligence efforts between the company's and potential partner's lawyers, accountants and consultants to help expedite the diligence process and minimize the strain on management
- Reviews all diligence materials prior to sending to potential partner in order to correct any errors and anticipate any questions or concerns the diligence may raise
- Is responsible for ensuring key milestones are met and the potential partner is working as diligently as possible to complete the transaction
- Works closely with the company's attorneys in negotiating the definitive documentation

XYZ Acquisition, Inc.

SUMMARY OF TERMS AND CONDITIONS

for a

_____ PREFERRED B STOCK INVESTMENT

October __, 2012

This summary does not constitute a commitment to lend or to invest. This summary does not purport to summarize all the terms, conditions, covenants, representations, warranties, and other provisions, which would be contained in the definitive legal documentation for the contemplated financing. ABC Investments, LLC, is pursuing this investment on a “best efforts” basis. No exclusivity exists on the part of the Company. Additional due diligence may be required. All terms for Series B Preferred Stock are intended to conform to Series A Preferred Stock terms.

\$5,000,000 PREFERRED B STOCK INVESTMENT

Issuer: XYZ Acquisition, Inc. (“XYZ” or the “Company”)

Investor: ABC Investments, LLC (“ABC”) (or its appropriately defined designee).

Amount of Investment: \$5,000,000 (the “Investment Amount”), \$3,000,000 by ABC (the “ABC Investment Amount” and \$2,000,000 by BTV (the “BTV Further Investment Amount”)

Ownership: (Based on the fully-diluted post-money capitalization table, as set forth in Appendix A).

Co - Investor: Big Top Ventures, L.P. (“BTV”)

Previous Investor: Big Top Ventures, L.P. (“BTV”) – Series A Preferred)”Preferred A”)

Type of Security: Series B Preferred Stock (“Preferred B”)

Share Price: \$___/share

Use of Proceeds: The funds will be used for working capital purposes, including the pay-down of certain outstanding amounts related to an existing line of credit.

**Rights, Preferences,
Privileges and
Restrictions of Preferred
B:**

- (1) **Conversion:** Each share of Preferred B will be convertible at any time, at the option of the holder, into one share of Common Stock of the Company. The conversion rate will be subject to appropriate adjustment in the event of stock splits, stock dividends, recapitalizations, etc. as set forth in paragraph (6) below. The Preferred B will be automatically converted into Common Stock, at the then applicable conversion rate, in the event of an underwritten public offering of shares in which the net proceeds to the Company are not less than \$40,000,000 and the per share issue price is at least 10x the Original Purchase Price (“Qualified Public Offering”).
- (2) **Redemption Put:** Redeemable at the holders’ option within 90 days of written notice, at the greater of (i) the Original Purchase Price (plus accrued or accumulated and unpaid dividends thereon), or (ii) the then current fair market value of the Preferred B Stock (using the same formula in the Mandatory Warrant Redemption). Such redemption shall occur on or after the fifth anniversary of the issuance of the Preferred B.
- (3) **Liquidation Preference:** In the event of any liquidation or winding up of the Company, the holders of Preferred B will be entitled to receive in preference to the common stock, and on a pro-rata basis with Preferred A, an amount equal to the greater of:
 - i) One and a half (1.5X) times the Original Purchase Price (plus accrued or accumulated and unpaid dividends to the date of redemption, to the extent of retained earnings) and the amount the Preferred B would be entitled to receive from a pro rata distribution to the Common shareholders on an as-if converted basis assuming the Preferred B converted to Common Stock immediately prior to the liquidation or winding up of the Company. The amount calculated under this formula shall be capped at three (3X) times the Original Purchase Price; or
 - ii) The Original Purchase Price (plus accrued or accumulated and unpaid dividends to the date of redemption, to the extent of retained earnings) and the amount the Preferred B is entitled to receive from a pro rata distribution to the Common shareholders on an as-if converted basis assuming the Preferred B converted to Common Stock immediately prior to the liquidation or

winding up of the Company.

This liquidation preference would be pari passu with the liquidation preferences of Preferred A. A consolidation or merger of the Company or sale of all or substantially all of its assets will be deemed to be a liquidation for purposes of the liquidation preference.

- (4) **Dividend Provisions:** The Preferred B shall be entitled to cumulative dividends, which shall accrue at the per share annual rate of 7% of the Original Purchase Price. Such dividends shall be payable in cash, (unless the Company is acquired in a cashless transaction, in which case the dividends will be paid in kind), prior to any dividends paid on the Common Stock, upon any conversion of the Preferred A and B or any distribution which is calculated on an as converted basis. The Preferred A and B will also share pari passu on an as converted basis in any dividends declared on the Common Stock.
- (5) **Voting Rights:** Except as with respect to the election of directors and standard protective provisions, all matters requiring shareholder approval will be submitted to the holders of Preferred A and B and Common, voting together as a single class. The holders of Preferred B will have the right to that number of votes equal to the number of shares of Common issuable upon conversion of the Preferred B.
- (6) **Anti-dilution Protection:** The conversion price will be subject to weighted average adjustments for capital reorganizations, reclassifications or other changes and issuances below conversion price, except for such adjustments approved with the written consent of holders of not less than a majority of the Preferred B Stock then outstanding (a) then in effect to persons other than officers, employees, or consultants, (b) for securities issuable pursuant to strategic alliances, real and personal property leases, debt financings and other key service relationships, (c) for securities issued pursuant to acquisitions, and (d) any other securities issued with the written consent of holders of not less than a majority of the Preferred B Stock then outstanding.

Option Pool:

Concurrent with the investment of ABC and BTV, XYZ will add to its option pool an amount equal to 2.35% of the post transaction fully diluted shares of the Company on an as converted basis.

Shareholder's Agreement:	The Company will secure a Shareholder's Agreement among ABC, BTV, Other Investors, the Company, and all principal shareholders, providing ABC, BTV and the Other Investors with (a) preemptive rights, (b) a right of first refusal, (c) a co-sale provision, (d) a take-along provision, and (e) a drag-along provision.
Registration Rights:	Standard registration rights.
Board Representation:	<p>The Board will consist of 5 members. Unless a default under the Series A or Series B Purchase Agreement or the Subordinated Note occurs, and is continuing, the majority holders of the Common shares will elect two (2) directors, ABC will elect one (1) director, and BTV will elect two (2) directors.. The Common shareholders will have the right to nominate one of the BTV Directors (which BTV will have the right to accept or reject at their discretion). Additionally, one of the BTV Directors will be a non-affiliate of Big Top. The charter or by-laws will contain appropriate protective provisions under the laws of the Company's state of incorporation.</p> <p>In the event of a default under the Series A or Series B Purchase Agreement or the Subordinated Note, Series A and Series B Investors shall have the right to designate the management Directors.</p>
D&O Insurance:	The Company shall obtain and maintain an appropriate level of Directors and Officers insurance.
Key Man Insurance:	The Company shall obtain and maintain an appropriate level of key man term life insurance on executives to be determined, with proceeds payable to the Company.
Expenses:	The Company will pay all fees and expenses associated with these transactions, including accounting and legal fees and expenses to the Investors, provided that such fees and expenses shall not exceed \$50,000 for the Investors. If the contemplated transaction does not close, for whatever reason, each party shall be responsible for their own expenses.
Conditions to Closing:	(1) Investors shall complete their due diligence investigation of all aspects of the Company. During the due diligence investigation, the Company agrees to provide Investors and its accountants, attorneys and other agents and representatives complete access, as is reasonable practical, to the Company's facilities, employees, books, records, customers, prospective business pipeline, and suppliers.

- (2) The Company shall have provided to the Investors (a) reviewed financial statements for the fiscal years ended ___ and ____, and (b) unaudited financial statements for the most recent year-to-date period.
- (3) All documents required by the Investors, including without limitation a Securities Purchase Agreement, a Shareholder Agreement, and all required agreements with management and employees.
- (4) Absence of litigation or adverse proceedings against the Company
- (5) Approval of the investment by the Investors respective investment committees.
- (6) No material adverse changes shall have occurred with respect to the Company.
- (7) Investment will be compliant with all requirements of the U.S. Small Business Administration.
- (8) Execution of an updated/renewed intercreditor agreement with the senior lender on terms and conditions acceptable to the Investors, if applicable.
- (9) Satisfactory review of all purchase documents and related due diligence.

Investors shall be under no obligation to continue with their due diligence investigation or to extend the financing contemplated herein if, at any time, the results of their due diligence investigation are not satisfactory to the Investors for any reason at their sole discretion.

Except for the terms of this Summary under the heading “Exclusivity”, “Commitment Fee”, and “Expenses” which upon execution will be binding on the parties, this letter is not a binding agreement or an offer. This letter does not contain all material terms upon which the parties intend to agree and is only intended to provide a basis on which to begin to work on a final agreement. A binding commitment will only be made pursuant to the execution of a definitive purchase agreement mutually acceptable to the Company and the previous Investor and only after all of the Conditions and Conditions Precedent noted above have been satisfied.

We look forward to working with you to complete our due diligence and continuing the relationship that we have developed to date.

ABC Investments, LLC

By: _____

Managing Partner

Date: _____

XYZ Acquisition, Inc.

By: _____

CEO

Date: _____

Big Top Ventures, L.P.

By: _____

Partner

Date: _____

SAMPLE FORM - PE BUY-OUT LETTER OF INTENT

[DATE]

SELLER CO PLC
c/o _____
1234 Sample Street
San Diego, CA 92101

Dear _____:

Below we have outlined our non-binding proposal in terms of value to be received, financing, and transaction structure. We believe this proposal provides substantial cash proceeds to the Seller at closing, a high probability of closing quickly, positioning of TARGET with investors who understand and desire to grow the business, and a meaningful stake for management in the Company's future success.

1. STRUCTURE AND VALUATION

PE FUND will form a new entity ("Newco") to acquire the stock of TARGET based on a total enterprise value (the "Enterprise Value") of \$_____ million. The Enterprise Value is conditioned on the Company generating minimum adjusted EBITDA for calendar year 2012 of \$_____ million to be validated by PE FUND to its sole satisfaction.

This Enterprise Value assumes a cash-free, debt-free balance sheet containing ordinary course levels of net working capital (excluding cash/debt), where "debt" shall mean all current and non-current interest bearing indebtedness for borrowed monies, if any, as well as any intercompany balances between TARGET and any other SELLER CO entity that is not recorded as a true arms-length transaction. In arriving at the Enterprise Value, we have relied on the information we have received from the Company, including financial statements, financial projections and certain descriptive materials, as well as our discussions with you.

2. SOURCES AND USES

The Acquisition would be funded with a new senior bank facility and cash equity provided by PE FUND and certain key members of the management team. PE FUND has the sources for the cash equity requirement readily available, and, based on discussions with several lenders, we are confident we can secure the debt financing to complete the transaction. We have designed the capital structure with a view to supporting TARGET's future growth plans while maintaining total indebtedness at a reasonable level.

3. WORKING CAPITAL

The Enterprise Value assumes among other things, delivery of a level of working capital at the time of closing consistent with the current business practices of the Company. During the due diligence period, SELLER and PE FUND will mutually agree what constitutes a "normal" level of working capital for the business and on a range above and below the "normal" level that is fair to both parties and consistent with current business practices of TARGET (the "Normal Working Capital Range"). The definitive purchase agreement will contemplate a "Working Capital Adjustment" equal to the amount by which the actual working capital at closing (the "Closing Working Capital") is above or below the Normal Working Capital Range. This adjustment, which may be either positive or negative, is designed to eliminate any penalties or benefits caused by seasonal or extraordinary changes in working capital required by the business. If the Closing Working Capital is within the Normal Working Capital Range there will be no Working Capital Adjustment.

4. CLOSING

We are confident we can complete the Acquisition within 90 days of the acceptance of this letter of intent and will make reasonable efforts to close this transaction by _____, in accordance with the goals expressed by SELLER CO PLC. However, this proposal and our willingness to enter into a definitive purchase agreement remains subject to certain contingencies, including satisfactory completion of due diligence, the achievement of debt financing and execution of definitive transaction documentation. In addition, accomplishing a closing by November 30th will require the cooperation of both parties in making timely decisions regarding the many details involved in a transaction such as this.

As we have discussed, the first step of due diligence will be for us to meet with the key managers of TARGET and mutually develop a strategy for growing the business which will provide the foundation for financial projections for our lenders and investors. Following this, the principal diligence items will include customary operational, legal, environmental, accounting, systems, insurance and confirmatory financial diligence. We have our team of third-party representatives ready to begin the process once you sign and return this letter of intent.. These firms include _____, Inc. (accounting) and Duane Morris LLP (legal). Since we do not have to deal with public shareholders nor require the approval of any outside investment committees or owners, we can move quickly.

5. MANAGEMENT TEAM

Among the key elements of our acquisition program is to establish a true partnership with management teams in the investments that we make. Our plan is that _____ will become the Chief Executive Officer and President of TARGET, and we will retain other key members of the management team, adding additional management talent as appropriate, as we work to build the Company to the next level. As discussed below, we are delighted to have the opportunity to extend an offer to purchase equity to selected key members of the management team (to be mutually agreed upon) in the form of direct investment opportunity alongside us, and in the creation of a management incentive equity plan.

We will govern the company from the Board of Directors that will oversee the Company but not be involved in day-to-day operations. We expect the initial Board of Directors will consist of two members from PE FUND and _____. We would envision adding one or two other individuals over the near to mid-term who could provide additional value to the Company.

6. MANAGEMENT INVESTMENT/INCENTIVE EQUITY PLAN

At the core of our investment philosophy is the belief that the interests of owners and managers should be closely aligned. It is our strong desire that the key members of the TARGET management team invest side by side with us on the same basis as we pursue the successful acquisition of the Company. Key members of management would invest in an amount that is deemed to be meaningful to these individuals. For those members of management who desire to invest but have limited liquid resources, we may be able to implement a company loan program to support their investment. For planning purposes only, we have estimated that the aggregate investment by key managers would be approximately \$_____ or ___% of the equity (see Section 2- Sources and Uses above).

Additionally, we intend to implement a management incentive equity plan for management at, or shortly after, closing. This "Management Incentive Equity Plan" will be offered to certain key managers to be agreed upon between us. The incentive program contemplated represents the opportunity for the key manager group as a whole to earn up to an additional _____% of the primary shares outstanding (or ___% of fully-diluted shares outstanding). Vesting of the incentive equity would be based on a combination of the passage of time (and continued employment) and the achievement of financial performance hurdles

(typically annual EBITDA targets) to be established by the Board of Directors as part of the business planning process.

7. MANAGEMENT COMPENSATION

We anticipate that salary and bonus compensation for the key managers will be structured at levels competitive with current market rates for similar roles and responsibilities. The levels of compensation will reflect the contribution of each individual manager and shall be subject to periodic review. The performance thresholds for determination of bonus payments for management, as well as salary increases, shall be recommended by _____ as President, and approved by the Board on an annual basis.

8. NON-COMPETE/NON-SOLICITATION/NON-HIRE ARRANGEMENT/EMPLOYMENT AGREEMENT

In connection with the Acquisition, we would plan to enter into a non-compete, non-solicitation and non-hire agreement with key executives of TARGET deemed appropriate by PE FUND. We believe such agreements are important in maintaining the Company's competitive position in each of its markets and supporting its growth initiatives in the future. Additionally, we expect we would enter into a mutually agreeable Employment Agreement with certain key members of management that also may contain non-compete, non-solicitation and non-hire terms.

9. PURCHASE AND SALE AGREEMENT, INDEMNIFICATION AND ESCROW PROVISIONS

We envision a customary purchase and sale agreement that will include representations, warranties, indemnities, conditions and covenants typically found in agreements relating to transactions of this type, size and complexity, with the limitations and baskets stated below, subject to our due diligence review:

- Basket: There shall be no indemnification obligation for you until claims/breaches exceed \$_____ (not carried back to dollar one). The Basket will not apply to indemnity claims related to breaches of covenants and breach of representations and warranties covering title/authority, due incorporation, capitalization and qualification ("Fundamental Representations"), and liabilities for pre-closing occurrences related to taxes, ERISA, environmental matters or fraud.
- Cap: SELLER CO's aggregate indemnification obligation shall be capped at \$_____, with the exception of obligations for Fundamental Representations, taxes, ERISA and environmental matters which shall be capped at \$_____ (and which shall not be subject to the Basket). There will be no Cap for fraud.
- Escrow: \$_____ shall be placed in a cash escrow account, to remain in place for one year after closing of the transaction. Interest earned on this account shall accrue to SELLER CO.
- Time Limits: Claims for indemnification for breach of representations and warranties may be made for a period of 12 months from the date of closing; however, claims for the breach of representations and warranties regarding any tax, ERISA, and environmental matters may be made until the expiration of the statute of limitations, and Fundamental Representations and fraud indemnities shall survive indefinitely.

The definitive purchase agreement, which shall be prepared by our counsel, shall provide for signing with a deferred closing, to accommodate anticipated mechanics of the closing (e.g., assignment of leases and permits, and solicitation of any required consents to the transactions).

10. PE FUND'S ROLE AND ADVISORY FEES

PE FUND desires to contribute to TARGET's future success principally from the Board level. Accordingly, we will rely on the management team to continue to assume day-to-day responsibility for operating the business, while PE FUND fulfills the roles of actively involved owner and members of the Board of Directors. In lieu of Director's fees, PE FUND will receive an annual financial advisory fee of \$_____ payable quarterly in advance, plus reimbursement for all reasonable out-of-pocket expenses incurred (i.e., all customary travel expenses) in their capacity as Directors. In addition, as compensation for organizing the transaction and arranging the necessary financing, PE FUND will receive a transaction fee at closing of \$_____ as part of the expenses of the transaction. The transaction fee payable at closing will not impact calculation of Closing Working Capital.

11. OPERATION OF BUSINESS PENDING CLOSING

After executing this letter of intent, SELLER CO and TARGET agree to operate the business consistent with past practices and shall not initiate any action that could reasonably be expected to disrupt the organization, operational or financial condition of the Company. In addition, we expect that the Company will continue to maintain normal levels of spending for capital expenditures consistent with its past practices and business plan.

12. EXCLUSIVITY

In consideration of the time and resources that we intend to devote to the contemplated transaction, upon executing this letter of intent, SELLER CO and TARGET represent that neither is a party to or bound by any agreement with respect to a possible merger, sale, investment, restructuring, refinancing, or other disposition of all or part of TARGET or its assets (other than in the ordinary course of business) or issued or unissued capital stock (an "Alternative Transaction") other than under this letter of intent. SELLER CO and the Company agree and covenant that for 90 days after the date of this letter (the "Exclusivity Period") neither SELLER CO nor the Company will, either directly or through an intermediary, (i) solicit offers or have any discussions regarding an Alternative Transaction with any party or provide any information to any other party regarding the Company in that connection, or (ii) enter into any agreement (whether or not in writing) regarding an Alternative Transaction. You agree to inform us of your receipt of any such proposal whether written or oral. Exclusivity will automatically end if at any time during the Exclusivity Period, PE FUND provides written notice that it has decided not to proceed with the transaction. The Exclusivity Period will be automatically extended for an additional 30 days if PE FUND is actively and demonstrably expending funds and resources in furtherance of the transaction contemplated herein.

13. CONFIDENTIALITY

Through the closing of the transaction contemplated by this letter or the termination of the Exclusivity Period, neither party hereto shall, without the consent of the other party (which shall not be unreasonably withheld), disclose the existence, terms or substance of this letter of intent except to its advisors, employees, agents, counsel, financing sources or accountants who are directly involved in the consideration of this matter and are advised of the confidential nature and agree similarly to keep it confidential, and except where such disclosure may be compelled in a judicial or administrative proceeding or as otherwise required by law.

14. EXPENSES

Each party shall pay its respective expenses (including fees and expenses of legal counsel) ("Expenses") in connection with the transaction contemplated herein including termination by either party in the event of

force majeure or occurrence of a major event of similar negative impact; provided, however, that if the transaction is consummated, all fees and expenses incurred by PE FUND and their third party representatives in connection with the transaction and the financing thereof (including fees and expenses relating to the financing of the transaction), shall be paid by Newco, and incorporated into the total financing of the Acquisition.

It is understood that this letter of intent reflects the interest of the parties in proceeding with the transaction but does not constitute a binding commitment by any party to enter the transactions described herein and does not contain all matters upon which agreement must be reached in order for the Acquisition to be consummated. A binding commitment with respect to the Acquisition will result only from the execution of a definitive agreement. Notwithstanding the foregoing, upon execution of this letter of intent, the provisions of numbered paragraphs 11, 12, 13 and 14 will become binding.

We are excited about TARGET and its future prospects and very much hope to move forward. If you are in agreement with the terms of this letter, please execute one copy in the space provided below and return it to the undersigned.

Very truly yours,

ACCEPTED AND AGREED:

PE FUND ENTERPRISES, LLC

SELLER CO PLC

By: _____
[Name], Managing Director

By: _____
[Name], [Title]

Date: _____

Date: _____

CONFIDENTIAL – NOT TO BE COPIED OR REDISTRIBUTED



[Date]

[Officer of Company]
[Title of Officer]
[Legal Name of Company]
[Address of Company]
[Address of Company]

RE: Letter of Interest for Mezzanine Financing

Dear [Name]:

Huntington Capital Fund II, L.P. ("**Huntington**") is pleased to present this Letter of Interest (this "**LOI**") to [Name of Company], a [state of organization] [corporation/limited liability company] (the "**Company**") to provide capital to the Company (the "**Financing**") to support [growth initiatives and general working capital requirements]. This LOI will be followed by a more extensive due diligence investigation into the background of Borrower and its principals, as well as legal, financial and accounting history of Borrower, and if this investigation proves satisfactory, Huntington may choose to proceed forward in issuing a formal commitment letter.

This LOI is for discussion purposes only and neither party shall have any legal obligation to the other until (except as set forth in the sections below entitled, "Confidentiality", "Exclusivity" and "Expenses" which are binding upon the parties hereto) such time as terms of the Financing are negotiated and are embodied in definitive legal agreements, which are mutually executed and delivered by Borrower (as defined below) and Huntington. Proposed Financing terms include:

- Borrower: The Company and each of the subsidiaries of the Company (collectively, the "**Borrower**").
- Amount: \$3,000,000 Mezzanine Term Loan (the "**Loan**").
- Loan Purpose: [To support planned growth initiatives and general working capital requirements, including without limitation the retirement of indebtedness of the Borrower as the same becomes due and payable.] [In no event, however, shall the Loan be used to _____].
- Maturity: 60 months from the date of issuance of the Loan (the "**Maturity Date**"), which is expected to be on or before [_____, 20__] (the "**Closing Date**").
- Interest; Amortization: 12.0% consist of [12-24] months of interest-only payments, followed by [36-48] months of principal plus interest payments of approximately \$[_____] per month plus interest (based on a [__]-month principal amortization). On the Maturity Date, a balloon payment of approximately \$[_____] will be due.
- [3.0% PIK deferred interest, compounded quarterly, payable upon the earlier of the Maturity Date or a Change in Control (as defined below).]

4660 La Jolla Village Drive, Suite 650, San Diego, California 92122
Phone (858) 259-7654 Fax (858) 259-0074

Security: [Second] position priority lien and security interest in all tangible and intangible assets (including intellectual property) of Borrower now owned or hereafter acquired. Huntington will take a subordinated position to the Borrower's senior secured lending institution, [] (the "**Senior Bank**") [and] subject to terms and conditions reasonably acceptable to Huntington.

In addition, the Company will obtain key man life insurance on [] for the full amount of the Loan and Huntington shall be named as the Company's loss payee on such policy.

[Equity securities of the Borrower now owned or hereafter acquired by [] shall be pledged as additional collateral to secure the Loan.] OR [] shall agree to a negative pledge on all equity securities of the Borrower now owned or hereafter acquired.]

Optional Prepayment: At Borrower's option and upon sixty days prior written notice, the Borrower may prepay the Loan in whole or in part by payment to Huntington of: (i) the outstanding principal amount (the "**Principal Amount**") to be prepaid, (ii) the accrued but unpaid interest at the time of prepayment on the [entire Loan] [outstanding Principal Amount being prepaid], and (iii) a prepayment premium, expressed as a percentage of the Principal Amount being prepaid, as follows (the "**Prepayment Premium**"):

Months 0-12: [3.0]%; months 12-24: [2.0]%; months 24-36: [1.0]%; and no Prepayment Premium in the fourth year.

Mandatory Payment: The Maturity Date of the Loan shall be accelerated in each of the following circumstances, unless waived by Huntington: (i) a material transfer, sale or other encumbrance of Borrower's assets except in the ordinary course of business, (ii) an event of default, or (iii) a change of control or initial public offering of Borrower, including any merger, acquisition or consolidation of Borrower (a "**Change of Control**" and each of subsections (i)-(iii), collectively, an "**Acceleration Event**").

Board of Directors: The Company shall agree to continue, or establish a Board of Directors (the "**Board**") with a minimum of three directors. The Board shall hold meetings not less than quarterly.

[Huntington shall have a right to designate one member of the Board, which individual shall initially be _____. The Company will agree to enter into Huntington's form of Indemnification Agreement in connection with such designation.] OR [During the term of the Loan, Huntington will have Board observation rights, and if Borrower defaults under terms of the definitive Loan documents and such default remains uncured in accordance with the terms of such documents, Huntington will have the right to appoint a member of the Board for the duration of, and during, such uncured default; it being understood that such board member if appointed will resign effective upon default being cured. The Company will agree to enter into Huntington's form of Indemnification Agreement in connection with such Board designation.]

Borrower shall reimburse Huntington for all reasonable out-of-pocket expenses incurred by Huntington's representative in connection with his

attendance at Borrower's Board meetings. Borrower and its equity holders shall revise such agreements or documents or prepare such documents as is necessary to provide for the foregoing appointment rights and such rights of Huntington pursuant to such agreement shall not be amended or waived without Huntington's consent.

Warrant:

In connection with the Financing, the Company shall issue to Huntington a warrant to purchase a number of shares of the [Common] Stock of the Company (the "**Shares**") equal to [_____] Shares and at an aggregate exercise price for all of such Shares of \$[100] (the "**Warrant**").] OR [_____] % of the Fully Diluted Capitalization (as defined below) at the time of exercise of such Warrant following the Closing, and at an aggregate exercise price for all of such Shares of \$[100] (the "**Warrant**"). "**Fully Diluted Capitalization**" means the capitalization of the Company on a fully-diluted, as-exercised and as-converted basis[, including any shares reserved for issuance pursuant to any equity incentive plans].] The Warrant shall be exercisable in whole or in part at any time on or prior to [ten] years from the Closing Date and shall include a net exercise provision.

Put Provision: Huntington shall have the right to put the Warrant and any shares issued or issuable upon exercise of the Warrant (the "**Put**"), to Borrower on or after the earlier of the Maturity Date or any Acceleration Event. The Put price per Share shall be equal to the greater of (i) the fair market value per share of the Shares as determined by an independent appraiser and (ii) [the result of (a) ____ times the gross revenue of the Borrower for the trailing twelve month period prior to the exercise of the Put, divided by (b) the number of issued and outstanding shares of capital stock of the Company on the date of exercise of the Put], in each case less the exercise price for such Shares.

Covenants

[Customary affirmative and negative covenants. Financial covenants are to be measured quarterly on a rolling, four quarter basis and include[, but are not limited to,] tests of:

Fixed charge coverage ratio (the ratio of EBITDA to the sum of (i) the current portion of principal and interest payments on the Loan and all other funded debt, (ii) capital expense items, (iii) taxes and (iv) the current portion of lease payments (operating and capitalized)) of [1.10] to [1.00] for the quarter ending [_____] and thereafter;

Funded debt to EBITDA (total funded debt divided by EBITDA) not to exceed [4.0x] for the quarter ending [_____] reducing to [3.75x] at [_____] and further reducing to [3.0x] at [_____] and thereafter;

Minimum revenue of at least \$[_____].

Due Diligence:

Prior to the Closing, Huntington may have an outside CPA firm perform an agreed upon procedures audit associated with Borrower's reviewed financial statements to confirm the accuracy of the financial data. Any expense incurred by Huntington shall be included in the Expenses. The outside CPA firm chosen by Huntington shall execute a nondisclosure agreement in favor of Borrower, on terms reasonably acceptable to Company. Huntington's satisfaction with the results of such report is a condition to closing. [In addition, certain of Borrower's key employees

shall agree to submit to background checks, the results of which shall be provided to Huntington.]

Additional Huntington Rights: Until the repayment of the Loan [and the termination of all rights pursuant to the Warrant], Huntington shall be entitled to customary financial monitoring and reporting requirements, including but not limited to: monthly financial statements, annual audited financial statements [provided that no audit shall be required for the 20[] fiscal year], reasonable right to inspection, and other financial information as reasonably requested by Huntington, with such rights being not less than those offered to other creditors. Huntington shall also have such registration rights and pre-emptive rights with respect to equity offerings of Borrower as are granted to any other party.

Fee: A [2.0 – 3.0]% fee (\$[]) payable at closing (the “**Origination Fee**”).

Expenses: Huntington’s reasonable documented third-party expenses related to this Financing (“**Expenses**”), including, without limitation, reasonable out-of-pocket expenses for appraisals, filing fees, background searches, accounting due diligence and legal counsel are the responsibility of the Borrower, whether or not the Financing closes. [Borrower will be advised if Expenses exceed \$_____ and Borrower’s payment of Expenses will not exceed \$_____.]

Upon the execution of this LOI and the approval of the Financing by Huntington’s investment committee, Borrower shall remit to Huntington a \$[] deposit, the proceeds of which will be applied towards Expenses. This deposit will be non-refundable in the event Borrower chooses not to proceed forward with the subject transaction for any or no reason. If the Financing closes, Huntington shall credit towards the Origination Fee the amount that Huntington’s actual Expenses are less than the \$[] deposit.

Confidentiality: The Borrower has not disclosed and will not disclose the terms of this LOI to any person other than its officers, general partners, attorneys and accountants, each on a need to know basis.

Exclusivity: The Borrower and its officers agree that they will not, for a period of [six] weeks from the date of execution hereof, take any action to solicit, initiate, encourage or assist the submission of any proposal, negotiation or offer from any person or entity other than Huntington relating to the subject matter hereof and shall notify Huntington promptly of any inquiries by any third parties in regards to the foregoing.

Conditions precedent to closing and/or funding may include, but are not limited to, satisfactory completion of the following: final due diligence and credit investigation; no material adverse change in Borrower’s business condition; execution and delivery of definitive legal documents.

This LOI supersedes all previous agreements, term sheets or discussions relating to a transaction between Borrower and Huntington. This LOI shall be governed by the laws of the state of California and may be executed electronically and in one or more counterparts. This LOI expires unless executed before the close of business day on [].

Sincerely,

HUNTINGTON CAPITAL FUND II, L.P.

Signature: _____

Name:

Title:

Agreed and accepted:

[NAME OF COMPANY]

Signature: _____

Printed Name: _____

Title: _____

Date: _____

IT Information Request List

This is a preliminary request for information for our due diligence of (the "Company"). Additional items may be requested as our work proceeds. If any of the following items are better addressed via discussion or are not applicable, please indicate as such and we can address these items during our on-site visit.

Requests	Periods	Status	Priority	Comments
General				
1. IT Organization Chart and IT personnel job descriptions	N/A		High	
2. List and description of noteworthy technology projects: Recent projects (completed in the past 6 months) Active projects (currently implementing, unfinished) Pending / approved (starting within the next 12 months)	N/A		Low	
3. Three year Strategic Technology Plan	N/A		Low	
4. Information Security Policy and reports over the past 24 months, including any third party security reviews (SAS70, for instance)	N/A		Low	
5. IT budget for the upcoming year	N/A		High	
6. List of all IT vendors and associated contracts	N/A		Low	
7. Technology Disaster Recovery / Business Continuity Plan	N/A		Low	
8. Recovery site and/or collocation facility inventory	N/A		High	
Systems Development Environment				
9. Development tools and software language	N/A		High	
10. Systems development lifecycle methodology	N/A		Low	
11. Documentation	N/A		Low	
12. Processes and procedures - Change Management, version control, etc.	N/A		Low	
13. Application development plan	N/A		Low	
14. Coding operations	N/A		Low	
Data Network Communications Infrastructure				
15. LAN / WAN diagrams	N/A		High	
16. Equipment type (switch, wireless access points, router, firewall, internet / WAN appliances, etc.) including quantity, mfr, model, physical site location, equipment age and configuration	N/A		High	
Business Software Application				
17. Inventory of all business software applications (e.g. accounting, operational systems, etc). For each application, provide whether the application is commercial off the shelf (COTS) or custom developed, software vendor for COTS software, number of user licenses, level of modification/customization and any other pertinent information that will allow us to understand the application software environment	N/A		High	
Website(s)				
18. Overview of corporate websites, whether they are used for any e-commerce/transaction process, and hosting methods (ASP / ISP verses internal) for all Web-based solutions	N/A		High	
Servers				
19. List of all network server operating systems	N/A		High	
20. Role, quantity, mfr, model, specifications, physical site location, equipment age and configuration	N/A		Low	
21. Number of virtual servers and virtualization software type and version	N/A		Low	
22. Virtual servers' network names, roles and physical host assignments	N/A		Low	
23. Inventory of all server-based applications Quantity, version(s), number and type of licenses and license expiration Purpose and whether custom developed or package software Software invoices and maintenance agreements	N/A		Low	
Backup and Storage				
24. Storage appliances, e.g. SAN, NAS, etc. and Virtual tape libraries including quantity, mfr, model, physical site location, capacity and equipment age	N/A		Low	
25. Storage, backup and/or replication software name(s), type(s) and version(s)	N/A		Low	
Desktops				
26. General overview of your desktop infrastructure including quantity and types of desktops, laptops and/or terminals, versions of operating systems and licenses - OEM, Box, Open License, Open Source, etc.	N/A		Low	
27. List of end-user applications, including name, purpose, version, number of licenses, license expiration, maintenance, etc.	N/A		Low	
Telecommunications				
28. Data, telephony and cellular communications contracts - carriers, service, maintenance, etc.	N/A		Low	
29. Copies of most current month's telephone bills for each site (including all Private Data circuits, Internet circuits, Local Voice & Long Distance services for each location)	N/A		Low	
30. List of telephone and voicemail equipment (manufacturer, model, software release)			Low	

Financial Due Diligence Request List

This is a preliminary request for information for our due diligence of (the "Company"). Additional items may be requested as our work proceeds. If any of the following items are better addressed via discussion or are not applicable, please indicate as such and we can address these items during our on-site visit.

Where possible, please provide electronic copies (Excel, Word) of documents prior to our on-site visit. We are assuming that the fiscal year ends on December 31 and the financial statements for the most recent interim period of August 2012 will be available at the time of fieldwork.

Note: ## indicates that information may be obtained verbally.

FY11 = Year ended December 31, 2011

YTD11 = Year-to-date period ended August 30, 2011

YTD12 = Year-to-date period ended August 30, 2012

LTM12 = Last-twelve-months ended August 30, 2012

Financial Due Diligence

General:

1. Copies of audited, reviewed or compiled financial statements for the last three fiscal years, if applicable.
2. Copies of the internal monthly financial statements for FY10, FY11 and YTD12.
3. Copies of detailed (account level) trial balances that agree to the financial statements at the last fiscal year end (FY11) and most recent interim period (August 2012).
4. Provide access to the workpapers prepared by the Company's independent accountant, in connection with the Company's last two fiscal year years. Additionally, provide a copy of the Management Letter and the Schedule of Proposed Adjustments/Unadjusted Differences related to the periods under review (if applicable).
5. A report detailing adjusting journal entries proposed by auditors (if applicable) for FY11.
6. Provide a summary of unusual/nonrecurring items identified in the last fiscal year and most recent interim period available. Also provide supporting documentation regarding the timing and amount of such adjustments.

	<u>Date</u> <u>Received</u>	<u>Priority</u>	<u>Comments</u>
1. Copies of audited, reviewed or compiled financial statements for the last three fiscal years, if applicable.	X	X	
2. Copies of the internal monthly financial statements for FY10, FY11 and YTD12.		X	
3. Copies of detailed (account level) trial balances that agree to the financial statements at the last fiscal year end (FY11) and most recent interim period (August 2012).		X	
4. Provide access to the workpapers prepared by the Company's independent accountant, in connection with the Company's last two fiscal year years. Additionally, provide a copy of the Management Letter and the Schedule of Proposed Adjustments/Unadjusted Differences related to the periods under review (if applicable).			
5. A report detailing adjusting journal entries proposed by auditors (if applicable) for FY11.			
6. Provide a summary of unusual/nonrecurring items identified in the last fiscal year and most recent interim period available. Also provide supporting documentation regarding the timing and amount of such adjustments.			

Financial Due Diligence

7. Summary of significant accounting policies and procedures including revenue recognition, receivable/payable cut off procedures, accruals, inventory pricing, slow-moving or excess inventory, sales pricing, transfer pricing, capitalization policies, store fixtures, etc. Discuss any significant changes in these polices over the past few years. ##
8. Provide a summary of the year end close procedures (compared to month end) and any manual journal entries posted for at year end. ##
9. Name of external CPA or tax preparer and contact information
10. Provide an organization chart of all related parties.

<u>Date</u>	<u>Received</u>	<u>Priority</u>	<u>Comments</u>

Results of Operations (P&L):

11. Provide a sales report by customer for FY11 and the last-twelve-months ended August 30, 2012 ("LTM12"). Indicate each type of customer, if applicable, and the gross margin for each customer. Note: If LTM12 is unavailable, please provide YTD 2011 and YTD 2012.
12. Provide a sales report of all sales, by type, to your top customer for FY11 and YTD12. Also provide gross margin, by type, for these sales for the same periods.
13. Provide a list of lost customers and new customers for FY11 and YTD August 2012.
14. Provide a report detailing revenue by product line for FY11 and LTM12.
15. Provide a report detailing revenue and profitability by channel/customer for FY11 and LTM12.
16. Provide access to contracts/agreements with the Company's current customers, subcontractors and vendors. Summarize key terms for significant parties and prepare copies for the Company's top 10 customers.
17. Provide a sales forecast for FY12 and FY13, including significant assumptions utilized in preparing the projections and any relevant supporting schedules. To the extent projections are built up by customer, please provide this support.
18. Provide a detail backlog (booked/contracted business) by customer as of today. Please also detail the order date and delivery date.
19. Provide a summary of contra-sales ("gross to net reconciliation") for FY11 and LTM12 (if not already in the trial balances). This should include anything booked directly against sales (discounts, rebates, returns, warranty, credits, etc.).
20. Provide a summary of components of cost of sales (if not already detailed in trial balances) for FY11 and LTM12. Please also provide this breakdown by product line, if applicable.

	X	
	X	
	X	
	X	

Financial Due Diligence

21. Provide a summary of the purchases from top 20 vendors for FY11 and YTD August 2012. Indicate significant products/services purchased, current payment terms, minimum purchase requirements and any rebate/discount programs.
22. Provide a summary of components of SG&A (if not already detailed in trial balances) for FY11 and LTM12.
23. Provide details of return/warranty programs and historical experience for FY11 and YTD12.
24. Provide an analysis of transactions occurring between the Company and their management/shareholders as well as any transactions with any other related parties within the past three years. The nature of the transactions and the amounts involved should be provided.

<u>Date</u>	<u>Received</u>	<u>Priority</u>	<u>Comments</u>
		X	

Balance Sheet

Please provide the requested items below as of the "Historical Dates" (12/31/11, and 8/30/12) unless otherwise indicated.

25. Provide cash/bank reconciliations for December 31, 2011 and August 30, 2012, which agree to the general ledger. Also, provide access to related bank statements.
26. Provide access to bank statements for December 31, 2011 through September 2012.
27. Detailed accounts receivable aging reports (by customer) as of the Historical Dates. Include a reconciliation to the general ledger, if necessary. *This request must be provided in electronic format.*
28. Prepare a listing of all credit memos, sales returns, allowance & discounts issued subsequent to the most recent balance sheet.
29. Summary roll-forwards of all accounts receivable, returns and warranty reserves as of the Historical Dates. Include beginning balance, reserve additions, write-offs, recoveries and ending balances.
30. Summary of significant past due accounts (greater than 60 days past due) at August 30, 2012 with the explanation of collectability and specific reserve amount, if applicable. Provide amounts of related cash collections subsequent to the respective balance sheet dates.
31. Provide a detailed schedule of deposits, prepaids and other assets as of the Historical Dates. Provide supporting documentation for significant individual components.
32. Provide a detailed listing of fixed assets as the most recent balance sheet date available.
33. Provide a rollforward of fixed assets (by significant category) for FY10, FY11 and YTD August 2012.
34. Provide a summary of significant planned capital expenditures for the next two fiscal years. In addition, provide a listing of "in-process" capital expenditures (investment to date and how much needed to complete).

		X	
		X	
		X	
		X	

Financial Due Diligence

- 35. Provide a lease schedule (operating and capital) of future annual minimum payments by lease (with lease terms summarized) as of the most recent balance sheet date.
- 36. Provide a copy of all operating and capital lease agreements.
- 37. Provide a detailed accounts payable aging report (sorted by value) as of the Historical Dates. Include a reconciliation, if necessary, to the financial statements. *This request must be provided in electronic format.*
- 38. Provide a detail listing of the accrual balances as of the Historical Dates; including schedules to support the balances.
- 39. Provide a detail listing of unvouchered accounts payable at August 30, 2012.
- 40. Provide a detail listing of other liabilities at the Historical Dates.
- 41. Summary of key terms of debt instruments at the most recent balance sheet date.
- 42. Provide equity rollforward from 1/1/2011 through 8/30/12.

	<u>Date</u>	
	<u>Received</u>	<u>Priority</u>
		<u>Comments</u>
	X	
	X	
	X	

Employees, Benefit Plans and Insurance

- 43. Provide a summary of total employees by department/function at the Historical Dates; and segregate these employees between salary vs. hourly if applicable. Indicate any significant fluctuations in headcount between FY11 and YTD12.
- 44. Provide a copy of all significant employee agreements (401(k) plan, pensions, severance agreements, deferred compensation, change of control bonus, etc.).
- 45. Provide a description of bonuses, deferred compensation, commission or other compensation agreements.
- 46. Provide an organization chart of employees.

	X	

Note: See separate document request listing for Information Technology.

[ACQUIRED CORPORATION]

**Initial Document and
Information Request**

Set forth below is a list of categories of documents and other information which is intended as an aid in conducting a document review of [Acquired Corporation] (“Acquired Corporation”) [in connection with the proposed [DESCRIBE TRANSACTION, SUCH AS:] [offering of securities of] [acquisition of the [stock][assets] of] Acquired Corporation]. This list is designed to highlight the general areas of consideration and should not be understood as exclusive. As the due diligence process progresses, our review may necessitate a request for additional documents and information.

[NOTE: A short form of Acquired Corporation’s name should be substituted for the term “Acquired Corporation” throughout. The description of the transaction is helpful, but may be deleted where the transaction is sensitive.]

As many of the categories of information requested are broad and general, please discuss with us any requests which may be unduly burdensome in Acquired Corporation’s circumstances, or if it is unclear how they apply to Acquired Corporation. Also, it will greatly facilitate our review if Acquired Corporation, as it provides documents, would identify the category or categories to which each document relates, as well as those requests which do not apply to Acquired Corporation (*i.e.*, no documents of that type exist). That identification can be made by annotating a copy of this list or in any manner convenient for Acquired Corporation and reasonably clear to the reviewers. [If certain items are too voluminous to copy, please notify us and arrangements will be made to review them on your premises.]

[NOTE: The requests are intentionally broad and over-inclusive. Although the list can be narrowed and tailored to the particular circumstances, typically counsel does not yet have sufficient information to effectively narrow the requests. Consequently, the above paragraph invites Acquired Corporation’s personnel to discuss the scope of the requests with counsel as appropriate.

On the other hand, while the requests are broad and include some financial and accounting information, the client and its accountants may have additional requests. Counsel should coordinate those requests to avoid over-burdening Acquired Corporation’s personnel.]

Please direct any questions regarding this list to _____ at (____)____-_____.

A. **Corporate Records.**

1. The certificate or articles of incorporation, formation, or partnership, or similar charter document, as amended to date, of Acquired Corporation and of each subsidiary of Acquired Corporation, if any (collectively, the “Subsidiaries”).

[NOTE: If “significant” subsidiaries can be identified, certain of the requests can be limited to those subsidiaries.]

2. The by-laws, operating agreement, partnership agreement, or similar document, as amended to date, of Acquired Corporation and each Subsidiary.
3. Minutes of the meetings of the board of directors or any similar body, committees of such body, and stockholders, members, or partners of Acquired Corporation and each Subsidiary [since inception][for the last five years].

[NOTE: For companies with a lengthy history, all minutes since inception may be burdensome and unnecessary. Generally, obtaining minutes for the last five years should be sufficient to obtain all relevant information. However, if, for example, we are representing Acquired Corporation and may be required to give opinions on matters such as whether all its outstanding stock has been validly issued, a complete review may be needed.]

4. All stock transfer and stock certificate books or similar records of Acquired Corporation and each Subsidiary. [ALTERNATIVE: Documents related to issued stock, including:
 - a. Documentation as to the number of authorized, issued, and outstanding shares;
 - b. Existence of any treasury shares; and
 - c. Information as to the beneficial ownership of stock (i) by each stockholder known by the Acquired Corporation to own beneficially at least 5% of Acquired Corporation’s stock, (ii) by each director and director nominee of the Acquired Corporation, and (iii) by all officers and directors of Acquired Corporation as a group.]

[NOTE: Consider alternative for situations in which examination of stock transfer books is not feasible.]

5. A list of any stop transfer orders or legends in effect.
6. All agreements or other documents providing registration rights, preemptive rights, options or rights to acquire, or securities convertible into or exchangeable for, capital stock of Acquired Corporation or any Subsidiary, and any assignments of any such rights.

7. Corporate organization chart and other information identifying, for Acquired Corporation and each Subsidiary:
 - a. Name, date, form of entity, and jurisdiction of incorporation or other organization, and, if applicable, date of acquisition;
 - b. For each Subsidiary, [percentage ownership, and, if applicable, other owners and nature and percentage ownership] [ALTERNATIVE: number and classes of securities owned by Acquired Corporation, other Subsidiaries, and any other owners]; and
 - c. List of all jurisdictions where qualified to do business or otherwise operating.
8. All registration statements, reports, and other documents filed with the Securities and Exchange Commission by or with respect to Acquired Corporation or any Subsidiary or any state securities commission, and any related correspondence, in the last five years (including reports by principal securityholders).

[NOTE: Item 8 should be included only if Acquired Corporation or a Subsidiary is or has been a public company.]
9. All annual reports, quarterly reports, proxy statements, and other communications from Acquired Corporation or any Subsidiary to its securityholders in the last five years.
10. All offering memoranda, forms and completed copies of investor questionnaires and subscription or similar agreements, and other documents, relating to any offering or sale of securities of Acquired Corporation or any Subsidiary, including filings with the Securities and Exchange Commission or any state securities commission relating to any such offering.

[NOTE: Item 10 should be included only if Acquired Corporation or a Subsidiary may have been involved in such an offering.]
11. All completed questionnaires most recently distributed to the officers, directors, and principal securityholders of Acquired Corporation or any Subsidiary.

[NOTE: Item 11 should be included only if Acquired Corporation or any Subsidiary is or has been a public company or otherwise may have distributed such questionnaires in connection with an offering.]
12. All agreements and other documentation relating to repurchases, redemptions, exchanges, conversions, or similar transactions involving any securities of Acquired Corporation or any [significant] Subsidiary.

B. Financial Information.

1. All audited and unaudited financial statements of Acquired Corporation and the Subsidiaries and reports of accountants thereon for all periods during the past five years and all interim financial statements thereafter.
2. All written financial plans, business plans, strategic plans, budgets, projections and similar materials prepared by or for Acquired Corporation or any Subsidiary (including any such materials prepared specifically for internal corporate use) during the past five years.
3. All auditor's letters to management of Acquired Corporation or any Subsidiary during the past five years.
4. All reports of actuaries, financial consultants, and similar outside specialists prepared by or for Acquired Corporation or any Subsidiary (including any such materials prepared specifically for internal corporate use) during the past five years.
5. The following information with respect to the accounts receivable of Acquired Corporation and each [significant] Subsidiary [ALTERNATIVE: of Acquired Corporation and the Subsidiaries as a whole]:
 - a. A list showing the amount owed by the five largest debtors as of a recent date;
 - b. An aging schedule of the accounts receivable as of a recent date; and
 - c. A description of the payment terms of accounts receivable.
6. The following information with respect to the accounts payable of Acquired Corporation and each [significant] Subsidiary [ALTERNATIVE: of acquired Corporation and the Subsidiaries as a whole]:
 - a. A list of the five largest creditors as of a recent date;
 - b. An aging schedule of the accounts payable as of a recent date; and
 - c. A description of the payment terms of accounts payable.
7. A schedule of bad debt reserves and unusual charges to operations of Acquired Corporation and the [significant] Subsidiaries during the last five years.
8. Information on inventory turnover of Acquired Corporation and the [significant] Subsidiaries.
9. Explanation of the revenue and cost recognition methods of Acquired Corporation and the [significant] Subsidiaries.

10. Breakdown of gross revenue, net income, and total assets of Acquired Corporation and the [significant] Subsidiaries by country.
11. Documentation regarding any intra-company services and how they are charged.
12. All transcripts, slides, videotapes, literature, and other materials relating to Acquired Corporation or any [significant] Subsidiary used in connection with meetings of management of Acquired Corporation or any [significant] Subsidiary with security analysts prepared during the past five years.
13. Any analyst reports relating to Acquired Corporation or any [significant] Subsidiary in the last five years.

[NOTE: Item 13 may be deleted if neither Acquired Corporation nor any Subsidiary is a public company.]

C. Properties.

1. All currently effective purchase contracts, installment sales contracts, leases (capital or operating), or other arrangements with respect to material items of equipment utilized by Acquired Corporation or any Subsidiary.
2. A list of all real property owned or leased by Acquired Corporation or any Subsidiary (giving a brief description of each structure thereon and its use) and all deeds and leases relating to such real property.

D. Competitors.

1. A list of all known competitors of Acquired Corporation or any [significant] Subsidiary.

E. Financing Documents.

1. A schedule of notes payable and other indebtedness of Acquired Corporation and the Subsidiaries, and copies of all currently effective loan agreements, indentures (including industrial revenue bond and mortgage bond indentures), debt instruments, letters of credit, and other financing instruments, and all amendments and supplements thereto, and all related material documentation, to which any properties (real or personal) or assets of Acquired Corporation or any Subsidiary are subject.
2. A list of all mortgages, liens, pledges, security interests (including margin accounts), charges, or other encumbrances to which any properties (real or personal) or assets of Acquired Corporation or any Subsidiary are subject and all related material documentation.
3. All correspondence with the lenders and other debt security holders and indenture trustees referred to in items 1 and 2 above, including compliance reports.

4. Any documentation given to lenders or creditors, or prospective lenders or creditors, of Acquired Corporation or any [significant] Subsidiary in connection with obtaining credit or to credit rating agencies.

F. Other Material Agreements.

1. All agreements relating to the acquisition or disposition by Acquired Corporation or any Subsidiary of any business or (other than in the ordinary course of business) assets, or any merger, consolidation, or similar matter, and information on any planned or contemplated acquisitions or dispositions.
2. A list and description of all significant oral contracts and commitments to which Acquired Corporation or any [significant] Subsidiary is a party or has rights or to which any of their assets are subject.
3. All currently effective bonds, surety contracts, guarantees, or agreements to which Acquired Corporation or any [significant] Subsidiary is a party or has rights to which any of their assets are subject with respect to the payment or performance of obligations of any third parties.
4. A list of all contracts and commitments to which Acquired Corporation or any [significant] Subsidiary is a party or has rights or to which any of their assets are subject under which a default has occurred or is claimed to have occurred setting forth:
 - a. Nature of default;
 - b. Name of party in default;
 - c. Monetary amount claimed; and
 - d. Current status of contract or claim.
5. A list of all contracts to which Acquired Corporation or any [significant] Subsidiary is a party or has rights or to which any of their assets are subject and which are subject to renegotiation, indicating those contracts which are currently being renegotiated.
6. All agreements to which Acquired Corporation or a [significant] Subsidiary is a party or has rights or to which any of their assets are subject and in which any officer, director, manager, employee, shareholder, member, or partner of Acquired Corporation or any Subsidiary, or any family member of any of them, has or had an interest, whether directly or indirectly.
7. All agreements with any past or present officer, director, manager, employee, shareholder, member, or partner of Acquired Corporation or any [significant] Subsidiary, or any family member of any of them, regarding termination or severance.

8. Documentation with respect to any loans by or to Acquired Corporation or any [significant] Subsidiary and involving any officer, director, manager, employee, shareholder, member, or partner of Acquired Corporation or any Subsidiary, or any family member of any of them.
9. Any stockholders or voting trust agreement or other agreements with respect to the voting of shares of capital stock of Acquired Corporation or any Subsidiaries.
10. All license, franchise, research, development, collaborative, funding, management, service, affiliation, and other similar agreements to which Acquired Corporation or any [significant] Subsidiary is a party or has rights or to which any of their assets are subject.
11. All joint venture, partnership, or limited partnership agreements to which Acquired Corporation or any [significant] Subsidiary is a party or has rights or to which any of their assets are subject, and all related material documentation.
12. All distribution agreements to which Acquired Corporation or any [significant] Subsidiary is a party or has rights or to which any of their assets are subject.
13. All agreements with respect to confidentiality or non-competition to which Acquired Corporation or any Subsidiary is a party.
14. List of major suppliers of Acquired Corporation and the Subsidiaries, showing total and type of purchases from each supplier during the most recent fiscal year, indicating which are sole and single sources. Copies of all material supplier and other purchase contracts to which Acquired Corporation or any [significant] Subsidiary is a party or has rights or to which any of their assets are subject, including all sole or single source agreements. Backlog of orders to suppliers at end of two most recent fiscal years and four most recent fiscal quarters.
15. All agreements and documents relating to any rights in personality of spokespersons for Acquired Corporation or any [significant] Subsidiary, or its products and services, including the image, name, signature, performance, persona, appearance, or character of such person(s), and any waivers and releases of the rights of privacy and publicity or such other similar rights.
16. All standard forms of agreement used by Acquired Corporation or any [significant] Subsidiary.

G. Employees and Consultants.

1. A list of [key] employees and consultants of Acquired Corporation and its [significant] Subsidiaries, indicating their salaries and bonuses for the previous fiscal year and their scheduled compensation for the current fiscal year.

2. All confidentiality or non-competition agreements to which any key employee or consultant of Acquired Corporation and its [significant] Subsidiaries are bound as a result of prior employment.
3. All employment agreements and consulting agreements to which Acquired Corporation or a [significant] Subsidiary is a party or has rights.
4. All performance bonus plans which are currently, or have ever been, in effect as to any employees, officers, directors, managers, or consultants of Acquired Corporation or any [significant] Subsidiary.
5. All stock option or other equity-based compensation or benefit plans or other rights to acquire equity which are currently, or have ever been, in effect as to any employees, officers, directors, managers, or consultants of Acquired Corporation or any [significant] Subsidiary, all forms of agreements issued thereunder, a list of all persons who have outstanding options or other rights (including with respect to each such person the issuance date of issuance of the options or rights, the nature of such options or other rights (including identification of whether options are incentive or non-qualified options), the number of shares or other interests covered thereby (identifying the numbers vested and unvested), and the exercise price thereof), and all plan descriptions furnished to participating persons.
6. A list of any oral or written promises to issue or grant options or other equity-based interests with respect to Acquired Corporation or any [significant] Subsidiary.
7. All other management perquisites, fringe benefits, and profit sharing, pension, deferred compensation, and similar plans or arrangements currently in effect as to employees, officers, directors, managers, or consultants of Acquired Corporation or any [significant] Subsidiary (provide a written description of any such arrangements which are not in writing), including copies of all plan documents and summary plan descriptions, and other related documentation.
8. Any indemnification obligations to directors, managers, or officers of Acquired Corporation or any [significant] Subsidiary (other than those which may be set forth in the organizational documents thereof).
9. Material documentation with respect to employment policies of Acquired Corporation or any [significant] Subsidiary.
10. All written policies concerning trading in securities by employees of Acquired Corporation or any Subsidiary.
11. Policies of Acquired Corporation or any [significant] Subsidiary regarding conflicts of interest, ethics, "improper payments," or similar matters, and copies of all recent investigative reports relating to such matters.

12. Policies of Acquired Corporation or any [significant] Subsidiary addressing the protection of proprietary information.
13. Status of non-resident alien employees of Acquired Corporation or any [significant] Subsidiary and confirmation of compliance with applicable law.
14. All collective bargaining agreements covering any employees of Acquired Corporation or any [significant] Subsidiary, and description of any significant labor problems or union activities.
15. Copies of all filings by Acquired Corporation or any [significant] Subsidiary with the National Labor Relations Board or U.S. Department of Labor or any similar agency within the last five years.

H. Rights and Permits.

1. A list of all intellectual property rights owned by, licensed to, or used by Acquired Corporation or any [significant] Subsidiary (*e.g.*, patents, copyrights, trademarks, trade names, etc., including any applications therefor) and any agreements, licenses, or other documentation related thereto.
2. All [material] federal, state, or local governmental licenses, permits, authorizations, or similar rights[, domestic or foreign.]
3. All correspondence, reports, and notices made or received by Acquired Corporation or any [significant] Subsidiary (or its counsel, agent, or representative) relating to laws and regulations administered by any federal, state, or local governmental agency[, domestic or foreign,] for each of the past five fiscal years.
4. All applications, filings, or reports submitted to any federal, state, or local governmental or regulatory agency[, domestic or foreign,] in connection with obtaining any license, or a similar right of Acquired Corporation or any [significant] Subsidiary to operate its business for each of the past five fiscal years.

I. Legal Matters.

1. A description of all investigations, litigation, claims, and proceedings involving Acquired Corporation, any [significant] Subsidiary, or any of their respective directors, officers, manager, or key employees or consultants with respect to the business of Acquired Corporation and the Subsidiaries [and a copy of all complaints, answers, and other material pleadings in respect of any such litigation [not fully covered by insurance]].
2. All letters from counsel to accountants with respect to litigation or contingent liabilities of Acquired Corporation or any Subsidiary, and any other opinions of

counsel with respect to any [material] litigation or regulatory proceedings [for the last five years].

[NOTE: If there is any material litigation, counsel should consider whether to ask for copies of pleadings and other documents relating to the litigation.]

3. All consent decrees, settlement agreements, judgments, orders, and other decrees to which Acquired Corporation, any Subsidiary, or any of their assets is subject or bound.
4. Documentation as to any disputes between Acquired Corporation or any Subsidiary and any governmental agency or other regulatory authority.
5. All correspondence relating to actual or alleged infringement by Acquired Corporation or any Subsidiary of intellectual property rights of others.
6. Files relating to matters before any federal, state or local agencies[, domestic or foreign,] charged with environmental protection responsibilities to which Acquired Corporation or any [significant] Subsidiary is a party or has rights or to which any of their assets are subject.

J. Tax.

1. All correspondence with any federal, state, local or other governmental authorities, or agencies[, domestic or foreign,] charged with tax collection or enforcement concerning adjustments or questioning compliance positions taken by Acquired Corporation or any Subsidiary.
2. All audit or similar papers from the most recently completed audit by any federal, state, local or other governmental authorities or agencies[, domestic or foreign,] charged with tax collection of Acquired Corporation or any Subsidiary.
3. Any tax sharing, tax allocation, or transfer pricing agreements to which Acquired Corporation or any Subsidiary is a party.
4. All federal, state and local tax returns[, domestic or foreign,] filed by or with respect to Acquired Corporation or any Subsidiary during the past five years.
5. List of all foreign tax credits of Acquired Corporation or any Subsidiary, and analysis of taxes on undistributed foreign earnings.

K. Insurance.

1. A schedule of all insurance policies maintained by or covering Acquired Corporation or any [significant] Subsidiary (including key person life insurance, directors and officers or similar liability insurance, product liability insurance, and bonding and suretyship contracts), including type of coverage, annual premiums therefor, name of insurer, and term.

L. Marketing and Sales.

1. All market studies, feasibility studies, analyses, and similar reports concerning Acquired Corporation or any [significant] Subsidiary prepared during the past five years.
2. All marketing, advertising, training, and other descriptive brochures or catalogs regarding Acquired Corporation or any [significant] Subsidiary prepared during the past five years.
3. List of the top twenty-five customers or groups of related customers of Acquired Corporation and the Subsidiaries, indicating amounts, credit quality and nature of purchases.
4. All customer and other sales agency and representative contracts to which Acquired Corporation or any [significant] Subsidiary is a party or has rights or to which any of their assets are subject.
5. Customer purchase agreements financed by Acquired Corporation or any [significant] Subsidiary, if any.
6. Forms of warranties and guarantees used by Acquired Corporation or any [significant] Subsidiary, together with the warranty reserve policy and warranty claims history of Acquired Corporation and each [significant] Subsidiary over past three years.
7. Copies of sales literature and forms used by Acquired Corporation or any [significant] Subsidiary, including price lists, catalogs, purchase orders, etc.
8. Schedule of current pricing policies (products and services) of Acquired Corporation or any [significant] Subsidiary and price changes over past three fiscal years.

M. Other Matters

1. All press releases (excluding press releases announcing promotions and other immaterial actions) and press clippings related to Acquired Corporation or any Subsidiary in the last five years.
2. Information with respect to Acquired Corporation and its [significant] Subsidiaries' computer systems (hardware and software), networking topology, databases and applications installed, WAN/LAN capability, field deployed assets, organizational structure, and infrastructure applications (e-mail, accounting).
3. Any other documents or information which, in the judgment of officers of Acquired Corporation, is significant with respect to the business of Acquired Corporation or any [significant] Subsidiary.

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Duane Morris LLP, a global law firm with more than 700 attorneys in offices across the United States and around the world, is asked by a broad array of clients to provide innovative solutions to today's legal and business challenges.