

# **Selling the Closely-Held Business**

**Presented by: Robert F. Dow, Shareholder**

**Negotiating M&A Deals**

**AccountantsOne Program, Atlanta,**

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# Some Economic Consideration Affecting M&A Markets



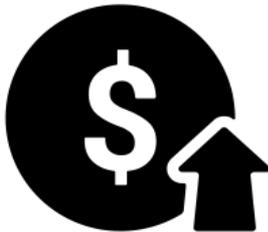
**Upsurge in  
stock market**



**Low interest  
rates**



**Consumer  
confidence**



**Return of  
inflation**



**Political  
instability**



**IRS  
Tax  
Reform**

# Considerations for Determining Whether to Sell the Company

- ▼ Why am I selling?
- ▼ What role to play after sale:
  - ▼ Walk away and retire
  - ▼ Consulting for specific period
  - ▼ Run the business for the buyer
- ▼ Valuation – right time to sell?
- ▼ Tax/estate planning
- ▼ Relationships: employees, customers, members
- ▼ Stakeholders – consensus to sell?

# Preparing to Sell the Company

- ▼ Financial statements (audited?)
- ▼ Capital structure
- ▼ Long-term contracts
- ▼ Intellectual property
- ▼ Tax returns
- ▼ Regulatory issues
- ▼ Hidden (or not so hidden) liabilities
  - ▼ Environmental
  - ▼ Unpaid payroll or other taxes
- ▼ Employment arrangements
  - ▼ Non-competes
- ▼ Regulatory compliance
- ▼ Personal assets embedded in the business
- ▼ Technology challenges



# Will I remain involved in the business after the sale and if so what will be my role?

Many business owners want to sell and sail into the sunset of retirement, or move on to the next venture. But there may be reasons to stay involved, for instance:

- ▼ Many buyers may desire to have, or even insist that, the manager stay on for some period to maintain customer loyalty or enable a smooth transition.
- ▼ Continued employment may represent an important source of income.
- ▼ The seller may retain an ownership interest.
- ▼ If there's an earn-out arrangement, the seller may want to retain some input in the business until the return is maximized.

# Using Advisors in the Sale of the Business

- ▼ **Investment Banker/M&A Broker**
- ▼ **Valuation expert**
- ▼ **Attorney**
- ▼ **Lender**
- ▼ **CPA or other tax/financial advisor**



# Type of Sales Process

- ▼ Responding to unsolicited offer
- ▼ Targeted sale to specific buyer or group
- ▼ Limited auction process
- ▼ Full auction
- ▼ Distressed sale



# Overview of Directors' Fiduciary Duties

- ▼ Duty of care
- ▼ Duty of loyalty
- ▼ Duty of good faith
- ▼ Duty of candor
- ▼ The business judgment rule
- ▼ Conflicts of interest
- ▼ Corporate opportunities
- ▼ Duty to creditors



# Legal Form of Transaction

## ▼ Sale of assets – “Asset Purchase Agreement”

- ▼ Exchange purchase price for bundle of assets
- ▼ Can “cherry pick” liabilities
- ▼ Potential complications in individual asset transfers
- ▼ Allows “step up” of assets for purchaser

## ▼ Sale of stock – “Stock Purchase Agreement”

- ▼ Exchange purchase price for all stock of target
- ▼ Easiest form of transfer but need all shareholders consent

## ▼ Merger – “Agreement and Plan of Merger”

- ▼ Merge target with acquirer or its subsidiary
- ▼ Can “freeze out” minority shareholders, but they may have dissenters rights

# Letter of Intent

- ▼ **Early in process**
- ▼ **Latest point at which a lawyer should be consulted**
- ▼ **May also take the form of a Memorandum of Understanding or Term Sheet**
- ▼ **Customarily non-binding other than certain protective covenants**
- ▼ **Establish basic terms and parameters of transaction**



# Letter of Intent *(cont'd)*

## Why Enter into One?

- ▼ **Formal announcements**
  - ▼ **Regulators**
  - ▼ **Customers**
  - ▼ **Employees**
  - ▼ **Sources of capital**

# Letter of Intent *(cont'd)*

- ▼ **Protection of rights during further negotiations**
  - ▼ Confidentiality
  - ▼ “No shop”
  
- ▼ **Framework for deal**
  - ▼ Timeline
  - ▼ Tentative list of “final” documents
  - ▼ Sharing of expenses and costs

# Letter of Intent *(cont'd)*

## ▼ Typical “binding” points

- ▼ For example, confidentiality and “no shop”

## ▼ Typical “non-binding” points

- ▼ For example:
  - Price-due diligence
  - Ancillary agreements
  - Regulatory approvals
  - Third party approvals
- ▼ Subject to due diligence verification

# Consideration

- ▼ All cash up front
- ▼ Deferred purchase price (earnout)
- ▼ Stock as a portion of the purchase price
- ▼ Seller financing
  - ▼ subordinated security interest in the purchased assets
  - ▼ pledge of stock in stock purchase
  - ▼ personal guaranties



# Definition of Due Diligence

- ▼ Investigation of the other party and its business
- ▼ The process by which a company considering an acquisition will attempt to verify that it will get what it bargained for
- ▼ Often a neglected aspect of a transaction

# Purposes of Due Diligence

- ▼ Go/no-go decision on closing the deal
- ▼ Finding undisclosed liabilities and problems
- ▼ Liability protection for D&Os
- ▼ Confirming or adjusting the price
- ▼ Determining adjustments to other deal terms
- ▼ Verifies initial financial, legal and operational assumptions made by the purchaser
- ▼ Allows parties to address issues and risks prior to closing
- ▼ Narrows the focus of representations and warranties
- ▼ Planning for post-closing integration
- ▼ Tax planning
- ▼ Setting the baseline for earn-outs

# Factors that Determine the Scope of Due Diligence

- ▼ Objectives of the deal
- ▼ Deal structure
- ▼ Materiality of the deal
- ▼ Industry
- ▼ Existing knowledge of the target
- ▼ Time and resources available
- ▼ Relative bargaining position of the parties

# Timing of Due Diligence

- ▼ Prior to contacting target
- ▼ Prior to bid
- ▼ Prior to LOI
- ▼ After LOI, before definitive agreement
- ▼ After definitive agreement



# Due Diligence is a Two-Way Street

- ▼ Typically, purchaser conducts due diligence of seller
- ▼ Due diligence of purchaser may also be appropriate
  - ▼ Seller receives stock of purchaser in the transaction
  - ▼ Seller provides financing to the purchaser in the transaction
  - ▼ Purchase price depends upon purchaser's performance, e.g., an earnout

# Due Diligence with Competitors

- ▼ **Seller's reluctance to share information; concerned information may be used to seller's disadvantage**
- ▼ **Customer lists and intellectual property**
- ▼ **Execute Non-Disclosure Agreement**
- ▼ **Increase disclosure of information with increased commitment from the other party – e.g., execution of the letter of intent**

# Focus Due Diligence on Particular Transaction

- ▼ Understand the business of the other party
- ▼ Service business
  - ▼ Intellectual Property
  - ▼ Key management and personnel
  - ▼ Employment agreements, non-solicitation agreements and non-compete agreements
  - ▼ Stock Option Plans
  - ▼ Customer contracts



# Focus Due Diligence on Particular Transaction

*(cont'd)*

## ▼ Real estate intensive

- ▼ Title policies
- ▼ Covenants, conditions and restrictions of record
- ▼ Surveys
- ▼ Leases

## ▼ Start up businesses vs. well-established businesses

# Intellectual Property

- ▼ Seller's technology can be its most valuable asset
- ▼ Value may depend on the ability to exclude others from using the technology, i.e., strength of intellectual property rights
- ▼ Increasingly important component of the assets of many companies

# Cybersecurity Due Diligence

According to a study sponsored by the ABA, the M&A cybersecurity due diligence process should address these six topics:

- ▼ Identify the target's high-value digital assets and evaluate the relative importance of those assets to the target's business;
- ▼ Evaluate the target's internal cybersecurity program to protect those high-value digital assets, e.g., whether it is appropriate for the business; whether it is complete, etc.;
- ▼ Assess the target's cyber-risk-management efforts related to third parties on which the target depends for goods, services, data, etc.;
- ▼ Identify the target's prior breaches and assess its incident-response capabilities;
- ▼ Evaluate the status of the target's cybersecurity regulatory compliance; and
- ▼ Consider and evaluate the target's overall resilience and general ability to withstand a direct cyber attack on its digital assets.

Source: Trope and Smedinghoff, *The Importance of Cybersecurity Due Diligence in M&A Transactions* (American Bar Association 2017)

# Results of Due Diligence

- ▼ **Allocate discovered risks between the parties**
- ▼ **Address particular issues in representations, warranties and indemnification**
- ▼ **Restructure original terms of the transaction based upon due diligence**
  - ▼ **Adjust the purchase price**
  - ▼ **Adjust the payment terms**
  - ▼ **Include escrows and holdbacks**
- ▼ **Change the legal structure of the deal**
- ▼ **Terminate the transaction**

# Representations and Warranties

- ▼ **Guarantees by Seller**
- ▼ **Snapshot of business as of signing and closing**
- ▼ **Purposes**
  - ▼ **Framework for due diligence**
  - ▼ **Provide closing “out”**
  - ▼ **Provide Buyer with post-closing remedies against Seller**



# Representations and Warranties *(cont'd)*

- ▼ **Role of Disclosure Schedules**
- ▼ **Materiality and knowledge qualifications**
- ▼ **Insurance for Representations and Warranties**

# Key Representations

- ▼ **Capitalization**
- ▼ **Title to stock/assets**
- ▼ **Accuracy of financial statements**
- ▼ **No undisclosed liabilities**
- ▼ **Taxes**
- ▼ **Absence of changes since audited financials**
- ▼ **Compliance with laws**
- ▼ **Employee benefit plans**

# Key Representations *(cont'd)*

- ▼ **Condition of assets**
- ▼ **Environmental**
- ▼ **Intellectual property**
- ▼ **Labor matters**
- ▼ **Related party Transactions**
- ▼ **Third party Consents**
- ▼ **Material Contracts**

# “No Undisclosed Liabilities” Representation

## ▼ *Buyer-Favorable Formulation [61% of deals]:*

- ▼ Target has no liability except for liabilities reflected or reserved against in the Balance Sheet or the Interim Balance Sheet and current liabilities incurred in Target’s ordinary course of business since the date of the Interim Balance Sheet.

## ▼ *Target -Favorable Formulation [39% of deals]:*

- ▼ Target has no liability of the nature required to be disclosed in a balance sheet prepared in accordance with GAAP except for...

Source: 2017 Deal Points Study, M&A Market Trends Subcommittee, American Bar Association Mergers & Acquisitions Committee

# Covenants

- ▼ **Conduct of business pending closing**
- ▼ **Noncompetition**
- ▼ **Due diligence/access**
- ▼ **Efforts to close transaction**
- ▼ **No-Shop/exclusivity**
- ▼ **Tax matters**
- ▼ **Employee benefits/transition**

# Conditions to Closing

- ▼ Give rise to termination rights
- ▼ Typical conditions
  - ▼ Governmental approvals
  - ▼ Third party consents
  - ▼ Shareholder approval
  - ▼ No material adverse change
  - ▼ Representations and warranties correct
  - ▼ Covenants have been performed



# Post-Closing Obligations

▼ Working capital true-ups

▼ Earn-out

▼ Noncompetes

▼ Employment/Severance

▼ Indemnification

# Brief Overview of Some Tax Issues



**IRS**

Department of the Treasury  
**Internal Revenue Service**

- ▼ Structuring a tax-free reorganization
- ▼ Capital gains vs. ordinary income
- ▼ Step-up of assets
- ▼ Allocation of purchase price
- ▼ State and local taxes
- ▼ Gift and estate tax implications for owners



Any Questions?



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# Our Securities & Corporate Governance Practice

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We regularly counsel companies and underwriters in a variety of complex securities transactions, including initial and follow-on public offerings, “going private” and “roll-up” transactions, mergers, PIPES offerings, and private offerings.

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**BUYER Inc.**

**Proposed Transaction with**

**SELLER, LLC**

**DUE DILIGENCE CHECKLIST**

\_\_\_\_\_, 2019

**OUTLINE OF CHECKLIST**

- (A) BASIC ORGANIZATIONAL DOCUMENTS OF SELLER, LLC (THE "COMPANY")
- (B) PREVIOUS ISSUANCES OF SECURITIES
- (C) CUSTOMERS & SUPPLIERS; CUSTOMER & SUPPLIER AGREEMENTS; INDEBTEDNESS; OTHER MATERIAL AGREEMENTS & INFORMATION
- (D) LITIGATION
- (E) BUSINESS PLANS, COMPETITION, MANAGEMENT & EMPLOYEES
- (F) COMPLIANCE WITH LAWS
- (G) PROPERTY & EQUIPMENT
- (H) PROFESSIONALS
- (I) INTELLECTUAL PROPERTY & PRIVACY
- (J) FINANCIAL INFORMATION
- (K) TAXES

NO.	ITEM DESCRIPTION	PREVIOUSLY PROVIDED	PROVIDED HEREWITH	TO BE PROVIDED	NOT APPLICABLE	NOTES
	Example Response:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Pertinent comments regarding the information that has already been provided, or the projected date that information will become available.
(A)	<b>BASIC ORGANIZATIONAL DOCUMENTS OF THE COMPANY:</b>					
A1	Certificate of Formation, Articles of Organization or other similar document, including all amendments thereto					

NO.	ITEM DESCRIPTION	PREVIOUSLY PROVIDED	PROVIDED HEREWITH	TO BE PROVIDED	NOT APPLICABLE	NOTES
A2	<b>LLC Agreement or other similar document</b> , including all amendments thereto					
A3	<b>Minutes, Resolutions and Written Consents of Board of Managers, or other similar body and committees thereof</b> , including copies of notices of all such meetings where written notices were given					
A4	<b>Minutes, Resolutions and Written Consents of Members</b> , including copies of notices of all such meetings where written notices were given					
A5	<b>Where Qualified to do Business:</b> List and copies of good standing certificates for all states and foreign countries in which Company is qualified to do business					
A6	<b>Other Organizational Records</b> or similar information of any type related to legal existence, ownership, and structure of Company					
A7	<b>List all Subsidiaries</b> of the Company ("Subsidiaries"); if there are any, please provide all of the information requested within this Due Diligence Checklist with respect to each such Subsidiary					
<b>(B)</b>	<b>PREVIOUS ISSUANCES OF SECURITIES AND ACQUISITIONS AND DIVESTITURES:</b>					
B1	<b>Issuances of Securities:</b> Fully-diluted capitalization table of the Company, including schedules/ledgers of all issuances or grants of membership units or interests, profits interests, options, warrants, convertible debt, and other convertible securities by the Company (collectively, "Company Securities"), listing the names of the holders thereof, the amounts issued, the dates of the issuances, and the consideration received by the Company					
B2	<b>Equity Incentive Plans and Agreements</b> , pursuant to which Company Securities, performance-based or phantom securities, stock appreciation rights (SARs), or other incentives comprising, tied to, or based upon any Company Securities (collectively, "Equity Incentive Awards")					
B3	<b>Schedule of all Equity Incentive Awards</b> , listing the name and address of the Equity Incentive Award recipient, the type and amount					

NO.	ITEM DESCRIPTION	PREVIOUSLY PROVIDED	PROVIDED HEREWITH	TO BE PROVIDED	NOT APPLICABLE	NOTES
	of each award, the dates of the issuances, the vesting terms, and the consideration, if any, received by the Company					
B4	<b>Voting Trust, Member Agreements</b> , or other similar agreement covering any Company Securities					
B5	<b>Member Communications:</b> All communications with members, other holders of Company Securities, or holders of Equity Incentive Awards					
B6	<b>Securities Purchase Agreements</b> which have been used for sales or issuances of any Company Securities					
B7	<b>Any Other Agreements</b> relating to sales or issuances of any Company Securities, including, without limitation, registration rights agreements, co-sale, right of first refusal, information rights, preemptive rights, and other similar agreements					
B8	<b>Securities Compliance:</b> All state and federal securities filings made by the Company, including all Form Ds, and, if no filings were made with respect to any particular financing, a summary of the self-executing exemptions from registration relied upon by the Company					
B9	<b>A summary of the pre-money and post-money valuations</b> established in all prior rounds of equity funding by the Company					

NO.	ITEM DESCRIPTION	PREVIOUSLY PROVIDED	PROVIDED HEREWITH	TO BE PROVIDED	NOT APPLICABLE	NOTES
(C)	<b>CUSTOMERS &amp; SUPPLIERS; CUSTOMER &amp; SUPPLIER AGREEMENTS; INDEBTEDNESS; OTHER MATERIAL AGREEMENTS &amp; INFORMATION</b>					
C1	<b>List of all current customers of the Company</b> , including the revenue of each customer over the prior 12 months and the expected revenue over the following 12 months					
C2	<b>Form of standard customer agreement</b> (the "Standard Customer Agreement")					
C3	<b>Agreements</b> with present customers for the performance of any services or provision of any products by Company that do not materially conform to the Standard Customer Agreement					
C4	<b>Future Obligations to Customers</b> , including any obligation owed to customers other than to provide the Company's products or services in the ordinary source of business (e.g., any obligation to develop a product or service for a customer or any improvement or additional functionality with respect to a Company product or service).					
C5	<b>List of all current suppliers and vendors of the Company</b> , including the amounts paid to each supplier or vendor over the prior 12 months and the expected payments over the following 12 months					
C6	<b>Agreements</b> with all material suppliers, vendors and independent contractors					
C7	<b>Future Obligations to Suppliers and Vendors</b> , including any obligation owed to suppliers and vendors to purchase a minimum volume or amount of goods or services from them					
C8	<b>Schedule of all outstanding indebtedness of the Company</b> , including principal amounts and accrued interest owed, maturity dates, and collateral					
C9	<b>Promissory Notes, Loans, and Credit Agreements</b> and any other debt related agreements or credit facilities					
C10	<b>Security Agreements</b> affecting any of the Company's assets or properties, all currently effective financing documents (such as					

NO.	ITEM DESCRIPTION	PREVIOUSLY PROVIDED	PROVIDED HEREWITH	TO BE PROVIDED	NOT APPLICABLE	NOTES
	installment sales and sales leaseback transactions) and all liens and financing statements					
C11	<b>Interest Rate Cap Agreements</b> entered into by the Company					
C12	<b>Factoring Agreements</b> entered into by the Company					
C13	<b>Lender Correspondence</b> related to any alleged or actual defaults under any agreements relating to indebtedness of the Company					
C14	<b>Other Financial Documents</b> not described above but material to understanding the assets and liabilities of Company					
C15	<b>Payment Processing Contracts</b> entered into by the Company					
C16	<b>Guaranty Agreements</b> entered into by Company					
C17	<b>Deferred Compensation Plans and/or Agreements</b> , including Split Dollar or Rabbi Trust Agreements and similar arrangements					
C18	<b>Securities or Asset Purchase Agreements and</b> related closing documents for any equity security or asset acquisitions or divestitures by the Company					
C19	<b>Partnership or Joint Venture Agreements</b> entered into by Company					
C20	<b>Summary of all real or personal property</b> owned, leased or subleased by the Company					
C21	<b>Leases or Subleases</b> for any real property, building, furniture, automobiles, computers, or premises					
C22	<b>Leases or Subleases</b> for any equipment, machinery, or other items of tangible personal property, whether capital lease or true/operating lease					
C23	<b>Certain Transactions:</b> Contracts, agreements, cost sharing or management services agreements or other documents relating to any transaction between the Company, on the one hand, and directors, officers, owners or related parties of the Company, on the other hand					

NO.	ITEM DESCRIPTION	PREVIOUSLY PROVIDED	PROVIDED HEREWITH	TO BE PROVIDED	NOT APPLICABLE	NOTES
C24	<b>Distribution, Sales Agent, Sales Representative, Reseller Agreements and Similar Agreements</b> entered into by the Company					
C25	<b>Consulting or Services Contracts</b> entered into by the Company					
C26	<b>Noncompetition, No-Hire, and Non-Solicitation Agreements and Other Agreements with any Restrictive Covenants</b> entered into by Company or to which the Company is bound/subject to that restrict the Company's ability to compete, solicit, or engage in any business activities without restriction of any kind					
C27	<b>Nondisclosure Agreements</b> entered into by the Company pursuant to which the Company is obligated to maintain the confidentiality of any third party information					
C28	<b>A summary of all insurance maintained by the Company</b> including property, casualty, general liability, products liability, key man, cybersecurity, etc.					
C29	<b>Insurance Policies</b> issued in favor of or for the Company, and a summary of all claims made by the Company over the last five years					
C30	<b>Other Material Contracts</b> entered into by the Company or to which the Company is bound or subject to					
C31	<b>All Valuations and Appraisals</b> of the Company provided or performed to date					
C32	<b>Third Party Consents:</b> List and brief description of any contracts, leases, security agreements, licenses, authorizations, etc., that may require the consent of any third party (including any governmental agency or instrumentality or contract counterparty) to the proposed transaction					
C33	<b>Notices:</b> Indicate any other notification required to be given to or consents required from any third party (including any governmental agency or instrumentality and contract counterparty) in connection with the proposed transaction					

NO.	ITEM DESCRIPTION	PREVIOUSLY PROVIDED	PROVIDED HEREWITH	TO BE PROVIDED	NOT APPLICABLE	NOTES
(D)	<b>LITIGATION:</b>					
D1	<b>Schedule of all Litigation or Arbitration Proceedings</b> , administrative proceedings or governmental investigations or inquiries, pending or threatened, affecting the Company and names and telephone numbers of outside counsel retained to represent the Company in these matters					
D2	Copies of documentation relating to any <b>Litigation or Arbitration and Related Pleadings</b>					
D3	<b>Auditor Litigation Correspondence</b> regarding threatened or pending litigation, assessments or claims					
D4	<b>Warranty Claims</b> and other litigation with customers or third parties					
D5	<b>Environmental Violations:</b> Correspondence, memoranda or notes concerning inquiries from federal or state environmental officials					
D6	<b>Contract Disputes:</b> Correspondence, memoranda or notes concerning any dispute with suppliers, competitors, or customers					
D7	<b>Government Contract Violations:</b> Correspondence, memoranda or notes concerning United States or other government contract violations.					
D8	<b>Tax Violations:</b> Correspondence, memoranda or notes concerning inquiries from federal, state or local tax authorities					
D9	<b>Health &amp; Safety Violations:</b> Correspondence, memoranda or notes concerning inquiries from federal, state or local occupational safety and hazard officials					
D10	<b>Equal Opportunity Violations:</b> Correspondence, memoranda or notes concerning inquiries from federal or state authorities regarding equal opportunities violations					
D11	<b>Antitrust Violations:</b> Correspondence, memoranda or notes concerning inquiries from federal or state authorities regarding antitrust					

NO.	ITEM DESCRIPTION	PREVIOUSLY PROVIDED	PROVIDED HEREWITH	TO BE PROVIDED	NOT APPLICABLE	NOTES
	violations					
D12	<b>Other Regulatory or Governmental Violations:</b> Correspondence, memoranda or notes concerning inquiries from federal, state or local agencies regarding potential violations of any law, statute, rule, ordinance or other regulation					
D13	<b>Settlement Documents</b> related to any litigation or arbitration proceedings or other disputes with any other party (including threatened disputes)					
D14	<b>Attorneys' Opinion Letters to Auditors</b> in connection with audits					
D15	<b>Attorneys' Opinion Letters to Company</b> concerning the potential effects of any significant proposed or pending changes in any federal or state law, statute, rule or regulation					
(E)	<b>BUSINESS PLANS, COMPETITION, MANAGEMENT &amp; EMPLOYEES:</b>					
E1	<b>Business, sales, marketing, and product or service development plans</b> for the Company					
E2	<b>Summary of all known material competitors of the Company</b> , including any available comparisons or analysis regarding the same					
E3	<b>Management/Biographies</b> including names, ages, complete biographies and all positions and offices held by officers, directors, managers, and all other key employees of the Company					
E4	<b>Summary of any bankruptcy filings, criminal convictions, or other similar matters</b> involving any of the people listed in item E3 above					
E5	<b>Management Incentive/Bonus Plans and Other Compensation Plans</b> including material terms and associate liabilities					
E6	<b>Employee Benefit Plans</b> and related agreements, including group health, dental, disability and life insurance plans, other than unit/stock plans					
E7	<b>Pension or Retirement Plans</b> , including copies of any 401(k) Plan and related documents					

NO.	ITEM DESCRIPTION	PREVIOUSLY PROVIDED	PROVIDED HEREWITH	TO BE PROVIDED	NOT APPLICABLE	NOTES
E8	<b>Labor Disputes:</b> Correspondence, memoranda or notes concerning labor disputes which have been referred to or threatened to be referred to federal or state authorities					
E9	<b>Work Stoppage/Strikes:</b> Correspondence, memoranda or notes concerning any pending or threatened work stoppage(s), strike or similar activity					
E10	<b>Other Significant Labor Issues or Problems or Union Activities</b>					
E11	<b>Collective Bargaining Agreements</b>					
E12	<b>Complete copy of any 401(k) Plans or any Other Similar Employee Benefit Plans</b>					
E13	<b>Existing or Contingent Pension Liabilities</b>					
E14	<b>Unusual Employee Turnover</b> and ability of Company to hire qualified personnel					
E15	<b>Affirmative Action Plans</b>					
E16	<b>Employment Agreements.</b> All employment, consulting, nondisclosure, nonsolicitation, noncompetition, confidentiality and intellectual property transfer agreements between the Company, on the one hand, and any of employee of the Company, on the other hand					
E17	<b>Employee Problems.</b> A description of all of the following: (1) employee problems within the last three years, including alleged wrongful termination, harassment, and discrimination, (2) any labor disputes, requests for arbitration, or grievance procedures currently pending or settled within the last five years, (4) worker's compensation claim history, and (4) unemployment insurance claims history					
E18	<b>Other Significant Labor/HR/Employee Problems or Issues</b>					
E19	<b>Independent Contractor, Temporary Employee and Contract Labor Arrangements,</b> including any agreements, contracts, correspondence, memoranda or other materials related thereto and a description of the purpose(s) of any such relationships					

NO.	ITEM DESCRIPTION	PREVIOUSLY PROVIDED	PROVIDED HEREWITH	TO BE PROVIDED	NOT APPLICABLE	NOTES
<b>(F)</b>	<b>COMPLIANCE WITH LAWS:</b>					
F1	<b>Schedule of Governmental Agencies</b> (local, state, federal and foreign) to which Company reports					
F2	<b>Regulatory Compliance:</b> Summarize the regulatory compliance programs for all Company products and services, including all applicable regulatory authorities in all applicable jurisdictions, a summary of the results of any recently completed regulatory audits, and a summary of any pending investigations, inquiries or known issues regarding any of the Company's products or services.					
F3	<b>Citations and Notices</b> received from federal, state and local government agencies					
F4	<b>Governmental Permits, Licenses and Consents</b> held or required to be held by the Company in connection with the operation of its business					
F5	<b>Communications</b> including other filings with local, state, federal and foreign governmental agencies during the last five years in jurisdiction where assets are located or operations are conducted by the Company					
F6	<b>Reports, Notices or Correspondence</b> in relation to Company and any suspended or revoked governmental permits or licenses and copies of all other material correspondence with governmental agencies					
F7	<b>Summary of all International Regulations, Reporting Requirements, and Taxation</b> relating to Company's international sales and operations					
<b>(G)</b>	<b>PROPERTY &amp; EQUIPMENT:</b>					
G1	<b>Schedule of PP&amp;E and Facilities (i.e., list of all assets of the Company)</b>					
G2	<b>Deeds and Other Documents Evidencing Title to Real Property</b> owned or to be acquired by the Company, and copies of policies of title insurance or title searches relating thereto (or confirm that the Company does not own any real property)					

NO.	ITEM DESCRIPTION	PREVIOUSLY PROVIDED	PROVIDED HEREWITH	TO BE PROVIDED	NOT APPLICABLE	NOTES
G3	<b>Liens, Claims or Other Encumbrances of Any Kind Against Real or Personal Property</b> , including, without limitation, tax liens, judgment liens, liens of creditors, and liens arising by operation of law					
G4	<b>Current Appraisals</b> of property owned or to be acquired by Company prepared by independent appraisers and furnished to the Company by lessees or future lessees of the Company					
G5	<b>Facilities and Equipment</b> (a) Please provide: (i) Location/address (ii) Function (iii) Year constructed or occupied (iv) Major improvements or renovations (v) Terms (including renewal options) and lessor of any operating lease (b) Describe physical constraints to increasing production capacity (c) Describe in detail any expansion plans under construction					
G6	<b>Environmental surveys, site assessments or reports</b> (including any Phase I and Phase II reports or other engineering or consultants reports) concerning any real property currently or formerly owned or leased by the Company					
G7	<b>Other Documents Related to Property, Plant and Equipment of Company</b>					
(H)	<b>PROFESSIONALS:</b> Provide a schedule of all law firms, accounting firms, consulting firms, and similar professionals engaged by the Company during past five years.					
(I)	<b>INTELLECTUAL PROPERTY &amp; PRIVACY:</b>					
I1	<b>A summary of all material technology, innovation and intellectual property developed, owned or otherwise rightfully possessed by the Company</b> that management believes provides the Company with competitive advantage and present barriers to entry by competitors					
I2	<b>Patents:</b> All U.S. and other domestic and foreign patents and patent applications, together with any continuations of continuations in part thereof, and all patents issuing thereon					

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	including reissues, patents of addition and any registration or confirmation patents corresponding thereto (collectively, "Patents") owned by the Company or used in its business, including all Patents and licenses to use the patents, of others, along with a brief description of all of the foregoing, and any "freedom to operate" opinions obtained by the Company					
13	<b>Trade Secrets:</b> All inventions, proprietary or confidential information and secret know how or business intelligence (collectively, "Trade Secrets") owned by the Company or used in its business and a description of the protective measures taken to protect the secrecy of the same, including all secrecy agreements with all persons and/or entities (including employees) relating to the Trade Secrets, and information regarding any failures to obtain such agreements with any person or entity which has obtained any Trade Secrets or access thereto, along with a brief description of all of the foregoing					
14	<b>Trademarks:</b> All U.S. and other domestic and foreign trademarks, identifying designations owned by the Company or used in its business, including all trademark registrations and applications and licenses to use the trademarks of others					
15	<b>Trade Names:</b> All trade names owned by the Company or used in its business, including all trade name registrations and licenses to use the trade names of others					
16	<b>Copyrights:</b> All U.S. and other domestic and foreign copyrights owned by the Company or used in its business, including all copyright registration and licenses to use the copyrighted materials of others					
17	<b>Infringement Claims:</b> Description of any pending or threatened infringement claims or actions involving any of the Company's intellectual property rights or involving alleged infringement by the Company of the intellectual property rights of others, including any opposition proceedings with the U.S. Patent and Trademark Office.					

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18	<b>Negotiations for Rights:</b> All documents concerning the Company's negotiations to acquire any new rights					
19	<b>Licensing Agreements,</b> including both (i) to third parties for use of the Company's technology, and (ii) from third parties for use by the Company of other technology. Without limiting the foregoing, copies of all agreements pursuant to which intellectual property is licensed to the Company or any third party, and all agreements pursuant to which intellectual property is licensed by the Company to any third party					
110	<b>Software Programs:</b> A list of each of the software programs of the Company (the "Software Programs"), a description of the functions and features of each Software Program, and a chronology of each Software Program's respective development					
111	<b>Product Roadmap,</b> including all planned releases with regard to the Software Programs and any customer-specific commitments. Please include correspondence to customers regarding binding promises of future developments					
112	<b>Proprietary Information and Assignment Agreements:</b> All records and documentation maintained by the Company documenting the development, authorship, or ownership of the Software Programs and related technology, including any "work for hire" agreements, consulting agreements, or license agreements. A list of all public domain materials incorporated in the Software Programs. A list of all third-party materials (including work under U.S. or other government ownership) incorporated in the Software Programs					
113	<b>Source Code/Licenses:</b> A copy of all license agreements pursuant to which Company utilizes source code					
114	<b>Open Source Code:</b> A list of any and all open source code contained or embedded within any software/hardware or other products of the Company, and a copy of any agreement restricting or limiting the Company's rights to use any intellectual property presently used by the Company					

NO.	ITEM DESCRIPTION	PREVIOUSLY PROVIDED	PROVIDED HEREWITH	TO BE PROVIDED	NOT APPLICABLE	NOTES
115	<p><b>Software Program Agreements:</b> A list of all agreements with third parties, whether now in effect or terminated, for the design, development, programming, enhancement, or maintenance of the Software Programs. To the extent third parties have designed, developed, programmed, enhanced, or maintained such Software Programs without having executed any agreement, a list of all such third parties and a description of the work performed, and the period during which such work was performed, by such party</p>					
116	<p><b>Source Code Disclosure:</b> A description of the instances in which source code relating to the Software Programs has been disclosed to persons outside the organization of the Company, and any agreements involving disclosure of source code relating to the Software Programs</p>					
117	<p><b>Requirements:</b> A description of the devices, programming, or documentation required to be used in combination with the source code relating to the Software Programs for the effective development, maintenance, and implementation of the Software Programs (e.g., compilers, "work-benches," tools, and higher-level or "proprietary" languages)</p>					
118	<p><b>Software Options:</b> Agreements, options, or other commitments giving anyone any rights to acquire any right, title, or interest in the Software Programs or related technology</p>					
119	<p><b>Description of Computer Hardware Systems used by Company</b></p>					
120	<p>A description of the software/hardware development process used by the Company, procedures to ensure meeting ISO9000 compliance, engineering product development procedures and quality assurance procedures</p>					
121	<p>A breakdown and details of software/hardware developed internally vs. obtained externally (and with respect to internally developed software/hardware, a breakdown of which items were worked on by consultants, contract labor or any third party other than employees of the Company), as well as a description of plans going forward as to internal/external</p>					

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	development and/or licensing of software					
I22	A copy of the general support policy of Company including pricing, system to track customer calls, system to handle field inventory as it relates to support, return material authorization process, internal benchmarks related to support or quality, compensation structure for support personnel, an organization chart for support personnel, and the level of field patches done in various regions					
I23	Identify any past or present key employees, consultants or contractors who are not parties to all of the following agreements in favor of the Company: (i) confidentiality agreements; (ii) assignment of inventions agreements; and (iii) assignment of all other intellectual property agreements					
I24	A list of any and all students, faculty or other third parties associated with a college, university or other similar educational institution or any research institution that have provided services to the Company at any time when such parties were students of, employed by or otherwise associated with such college, university or other similar educational institution or research institution					
I25	A list of any cooperative research agreements to which the Company is or has ever been a party					
I26	A list of any and all government grants or other similar funds or programs applied for or received by the Company					
I27	A summary of all computer access control policies and security policies implemented or observed by the Company					
I28	Copy of disaster recovery plan					
I29	Network overview and/or summary, including how many servers there are and where they are located					
I30	Privacy and security policies and plans of the Company and industry standards to which it conforms					

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I31	Summary of all known security or privacy breaches of the Company, including theft of credit card or other customer information, intellectual property, data, etc.					
<b>(J)</b>	<b>FINANCIAL INFORMATION:</b>					
J1	Summary of all deviations from GAAP					
J2	Summary of revenue recognition methodology					
J3	Annual financial statements for the last five years, audited if available and unaudited if not					
J4	Monthly financial statements for the last twelve months					
J5	All available future financial forecasts/pro forma financial statements					
J6	Detailed breakdown of operating costs including breakdown of fixed vs. variable costs and detailed maintenance costs for last five years					
J7	<b>Description of historical acquisitions;</b> impact on pro forma financials (sales and EBITDA trending by acquired company post-transaction)					
J8	<b>Detailed financials (at time of acquisition and in prior full year results) for acquired businesses,</b> if applicable					
J9	<b>Current fixed asset register</b>					
J10	Detail of employee benefit liabilities and latest calculation					
J11	Detail of all other employee-related provisions (e.g., severance to the extent applicable)					
J12	Detail of any accruals and deferred payments, including tax items					
J13	Detailed plan of expected capital expenditures over next three years					
J14	Describe any off-balance sheet arrangements, liabilities or obligations (fixed or contingent, matured or unmatured) that are not shown or otherwise provided for in the Company's current financial statements					

NO.	ITEM DESCRIPTION	PREVIOUSLY PROVIDED	PROVIDED HEREWITH	TO BE PROVIDED	NOT APPLICABLE	NOTES
<b>(K)</b>	<b>TAXES:</b>					
K1	<b>Federal tax returns</b> for the past 5 years					
K2	<b>State and local tax returns</b> for the past 5 years					
K3	<b>A list of all states in which the Company collects or pays sales or use taxes, and any state-by-state sales and use tax analysis performed by or for the Company</b> with respect to the sale or use of its products or services					
K4	<b>A list of all foreign jurisdictions in which the Company pays any taxes or files any tax returns</b>					
K5	<b>A summary of all tax audits performed with respect to the Company and the resolution of any such audits</b>					
K6	<b>Report on tax position</b> , including tax basis in assets, NOLs and tax credits					
K7	<b>Copy of all correspondence with Internal Revenue Service</b>					
K8	<b>Tax indemnification</b> , tax sharing or tax allocation agreements					
K9	<b>Current property tax assessments</b>					
K9	<b>Form 940, W2, W3 and federal and state quarterly payroll tax filings</b>					