

The following should serve as a checklist for Some Software Corporation's due diligence investigation with respect to the proposed acquisition of the assets of SomeCo, Inc. (the "Company") from SomeCorp. Please respond to all items in writing and indicate "none" or "not applicable" where appropriate. Where the information requested is contained in written documents, please provide a copy of each such document to Some Company at or prior to our meetings on SomeDate _____, 2009. Where agreements requested are oral, please describe.

I. GENERAL CORPORATE MATTERS OF THE COMPANY

- A. Certificate of Incorporation, as amended.
- B. By-Laws, as amended.
- C. List of stockholders (including with respect to each stockholder, class of shares, number of shares owned, purchase price for shares and date of purchase) for the past five years.
- D. Minutes of meetings and consents of the stockholders, directors, and any committees for the past five years.
- E. Materials distributed to stockholders, directors and committees thereof in connection with meetings or consents for the past five years.
- F. Reports to stockholders for the past five years.
- G. List of directors and officers.
- H. List of jurisdictions in which the Company is qualified to do business or is otherwise operating or pays sales, excise or intangible property taxes on its software programs or revenues generated.
- I. List of investments in other corporations, partnerships and other business enterprises.
- J. Documents relating to acquisitions and divestitures of companies, significant assets or operations.
- K. Copy of the most recent business plan for the Company.

II. GENERAL CORPORATE MATTERS OF SomeCo COMPANY

- A. Minutes of meetings and consents of the stockholders, directors, and any committees, which relate to the Some Company-related assets of the Company.
- B. Materials distributed to stockholders, directors and committees thereof, which relate to the Some Company-related assets of the Company.
- C. Documents relating to the Some Company-centric operations of the Company for the past five years.

III. ACCOUNTING AND TAXES

- A. Financial statements of the Company (internal by division and parent company format) for 1998, 1999, 2000, 2001 and for each month of the current year.
- B. Accountants' letters, opinions, and any Company management letter comments reported by Y Company's independent accountants for the past three years.
- C. The Company's budgets and financial projections for 1999, 2000, 2001, 2002 and monthly actual to budget comparisons for 2002.

- D. Copies of the Company's tax filings and those of the consolidated group that include the Company's federal and state returns for the last 5 years including income, sales, use, property and franchise taxes.
- E. Correspondence and work papers received from or submitted to any taxing authority in connection with the examination of any tax return.
- F. Information relating to any changes in accounting methods or principles during the past three years.
- G. Information relating to any loss contingencies or related provisions or reserves identified for or discussed with the accountants during the past three years.
- H. The reports/results of internal audits of the Company performed by Y Company from 1996 to present.
- I. The Accounts Receivable Aging reports of the Company for December 2000 and 2001 and for each month during 2002 with accounts identified as Some Company related or X Company related.
- J. Invoices related to the Some Company-related balances in the Accounts Receivable aging as of the current date.
- K. Fixed Asset ledgers of the Company for December 2000 and 2001 and each month of the current year with assets identified as x related or y related.

IV. FINANCINGS OF THE COMPANY

- A. Credit agreements, loan agreements, notes, indentures, capital leases, security agreements and pledges relating to financing transactions, agreements regarding sales of accounts receivable and other agreements.
- B. Agreements relating to the purchase, issuance or sale of securities and related documents (including disclosure memoranda), whether oral or written.
- C. Agreements relating to voting of securities including voting trusts, stockholder agreements, voting agreements and irrevocable proxies, preemptive rights, rights of first refusal or first offer regarding securities sales, and other restrictions on stock transfers.
- D. Guarantees of third-party obligations.
- E. Schedule of issuances, sale and repurchases of stock or other securities since inception.
- F. Information relating to all transactions in derivatives.
- G. Agreements relating to the redemption or repurchase of stock of the Company.
- H. Agreements granting the right to cause the Company to register securities of the Company under the Securities Act of 1933, as amended.
- I. Agreements with brokers, investment bankers or finders relating to any transaction or proposed transaction since inception.
- J. Copies of all documentation related to stock options and grant agreements for all grantees, and employee stock purchase plans.
- K. Description of any oral or written commitments made to any person related to stock options or any other security in the Company.
- L. Copies of any recent filings with respect to security interests relating to the Company or any of its subsidiaries.

V. SERVICES AND LICENSE AGREEMENTS AND INTELLECTUAL PROPERTY RELATED TO THE COMPANY

- A. List of all Some Company related customers of the Company and copies of their services and license agreements.
- B. List of all Some Company related customer contracts that may require further action and the supporting documents related to the status of the project.
- C. All software license, support and similar agreements, including any agreements affording third parties rights to distribute software not owned by them.
- D. Standard forms of software license, quotations, support and similar agreements.
- E. Standard forms of warranties, quotations, purchase orders and invoices.
- F. Secrecy, confidentiality and nondisclosure agreements with employees, developers or other third parties (please indicate any employee not covered by such agreements).
- G. List of software developers and/or contractors who may have contributed to the work.
- H. Source code listings in both hard copy and electronic format; and a list of persons having copies of, or access to source codes.
- I. Schedule of patents, trademarks, service marks, trade secrets, copyrights, domain names and other intangible assets, and all related applications, registrations, licenses, assignments, security agreements and ownership documents.
- J. All systems integrator (“SI”), value-added reseller (“VAR”), original equipment manufacturer (“OEM”), independent software vendors (“ISV”), private label, joint venture, partnership, distributorship, teaming, agency, commission, brokerage, conditional sale, consulting, franchise or representative agreements to which the Company is a party.
- K. Copies of all issued patents and patent applications.
- L. Proprietary rights policies and usage guidelines, including intellectual property audits, trademark and service mark proper use rules, copyright notice and proprietary rights notice templates and usage guidelines, employee invention disclosure policies and procedures for protection, marking and use of confidential information.
- M. Schedules of royalty payment obligations and of royalties paid and accrued by license and product.
- N. Any reports or analyses of backlog.
- O. Methods used for accounting for software development expenditures and software maintenance revenues.
- P. List, by product, of all third party and public domain intellectual property rights and technologies used in or required for developing, using, selling or copying the Company's products.
- Q. List and description, and copies of all documents for all significant domain names, trade secrets, copyrights, patents, patents pending, proprietary designs or proprietary schematics.
- R. List of all restrictions/required consents relating to transfer of any assets including intellectual property rights and licenses.

- S. Agreements with third parties under which the Company has the right to make, use or sell products or technology, use third party trademarks, trade names, copyrighted or proprietary information or other intellectual property or which obligate the Company to pay royalties with respect to intellectual property.
- T. A list of each of the software programs of the Company, a description of the functions and features of each, and a chronology of their respective development.
- U. All records and documentation maintained by the Company documenting the development, authorship or ownership of the software programs and related technology. A list of all public domain materials incorporated in the software programs. A list of all third-party materials (including work under U.S. government ownership) incorporated in the software programs.
- V. A description of the instances in which source code relating to the software programs of the Company has been disclosed to the persons outside the organization of the Company and any agreements involving disclosure of source code related to the software programs including source code escrow agreements.
- W. Agreements, options, or other commitments giving anyone any rights to acquire any right, title, or interest in the software programs or related technology of the Company.
- X. A description of the how services and software are currently marketed.
- Y. A copy of all promotional material.

VI. LITIGATION OF THE COMPANY

- A. Pleadings, motions, orders, rulings and correspondence in connection with any litigation or administrative proceedings.
- B. Schedule of legal counsel for the past five years.
- C. Description of pending, threatened or concluded litigation, claims and proceedings since incorporation.
- D. Litigation letters submitted by counsel for the Company or Y Company to independent accountants since incorporation.
- E. Consent decrees, settlement agreements, judgments and the like imposing continuing or contingent obligations.
- F. Correspondence dealing with actual or alleged infringement of trademarks, copyrights or patents, domain names or complaints of misappropriations of trade secrets or proprietary rights.

VII. LEGAL COMPLIANCE BY THE COMPANY

- A. Notices, citations, reports, letters and other communications to or from federal, state or foreign governmental agencies.
- B. List of pending investigations and governmental proceedings.
- C. Export licenses and other documents relating to the export of the Company's products.
- D. Other governmental permits, licenses, approvals and consents, together with related documents and correspondence, including authorization to do business in jurisdictions outside the United States, conversion of foreign currency and repatriation of earnings, royalties or other payments.
- E. Material reports filed, delivered or otherwise presented to federal, state or foreign governmental agencies or regulatory bodies since inception.

- F. Environmental audit and inspection reports and monitoring and test reports (such as underground storage tank, groundwater, surface water, soil, sewer discharges and air emissions), whether performed internally or by third parties, and any related memoranda and correspondence.

VIII. PERSONNEL OF THE COMPANY

- A. List of all employees of the Company setting forth their names, age, sex, functions, compensation (including perquisites) and any other relationships to the Company or any of its officers and directors; copies of employment agreements with such employees.
- B. List of all consultants to the Company setting forth their names, functions, compensation (including perquisites) and any other relationships to the Company or any of its officers and directors; copies of consulting agreements with such consultants.
- C. All agreements with, or compensatory plans or arrangements with respect to, directors, officers and other key employees (collectively, "key personnel") which involve payments or other compensation to key personnel by the Company or any other person in connection with (a) the resignation, retirement or other termination of the employment of key personnel, (b) a change in control of the Company or (c) a change in the responsibilities of key personnel following a change in control.
- D. Collective bargaining or other labor agreements.
- E. Contracts or plans related to, or descriptions of, union, pension, retirement, employee benefit, health, deferred compensation and profit-sharing plans or programs, and any audit reports covering pension plans, together with a schedule of accrued vacation and severance liabilities.
- F. Deferred compensation or bonus plans, and similar arrangements, together with offering documents and Blue Sky or other securities law filings, if any, related to the foregoing.
- G. Copies of any contracts with, or loans to or from, management personnel, directors or stockholders or any entities affiliated with management personnel, directors or stockholders.
- H. Personnel policies, personnel manuals and employee handbooks including copies and descriptions of all health and benefit plans.
- I. Non-competition, confidentiality, non-solicitation or similar agreements between the Company and any officer, director, employee, consultant, representative, supplier or customer, including standard forms of such agreements currently used by the Company and a list of persons covered by such agreements.
- J. A copy of every employee's employee agreement.
- K. A list of all employees of the Company who are no longer employed by the Company, but continue to receive compensation and/or benefits, with copies of any severance agreements into which the Company has entered.
- L. A copy of the employee manual (if any) and of any bonus, profit-sharing, pension, health benefit, group insurance, and similar plans and agreements relating to employee benefits (with all amendments) and related documentation, including bills, invoices, tax filings, discrimination test results, and records of consulting or brokerage fees.
- M. Documentation of any commitments or understandings with employees (written or verbal).
- N. Current salary information by job function showing minimum, maximum and average salary and number of incumbents.

- O. Copies of any bonus plans, deferred compensation plans, commission plans, etc.; and complete list of employees who are covered by each plan with target compensation.

IX. REAL PROPERTY OF THE COMPANY

- A. Schedule of all real property owned, leased or otherwise occupied.
- B. Deeds and mortgages.
- C. Leases or subleases of real property used by the Company.
- D. Communications relating to any defaults or waivers under any leases or subleases of the Company.
- E. Documentation concerning the payment status of lease obligations, and related taxes.

X. PERSONAL PROPERTY OF THE COMPANY

- A. Financing leases and sale and leaseback agreements.
- B. Conditional sale agreements.
- C. Equipment or other personal property leases.
- D. Documentation concerning the payment status of equipment or other personal property leases and related taxes.

XI. REPORTS, STUDIES AND PLANS, RESEARCH AND DEVELOPMENT OF THE COMPANY

- A. Strategic, marketing and business plans and studies describing current or expected business.
- B. External and internal analysis and research regarding competing products or technologies.
- C. Articles, market research and studies, consulting reports, Company research, industry newsletters and studies, competitive analyses and similar documents, prepared by third parties.
- D. Other consultants', engineers' or management reports and studies related to material aspects of the Company's business operations.
- E. A description of any pending research and development activity.
- F. Backup, archive and disaster recovery procedures.
- G. Resumes or professional backgrounders of all technical employees together with a list of their accomplishments and a description of their current involvement with particular projects. Question – is this for the services department's evaluation?
- H. Systems, procedures, schedules and backup materials for the development and maintenance of the software.
- I. Current “bug” lists, customer support logs, and problem reports.
- J. Future product design specifications or descriptions for any and all projects underway or anticipated, including projected dates of delivery, schedules and resource requirements.

XII. OTHER CONTRACTS OF THE COMPANY

- A. Any agreement with affiliates or related parties of management or key personnel.

- B. Indemnification contracts and similar arrangements for officers, directors or others.
- C. Insurance policies, including casualty, property, liability, key man, directors and officers, and errors and omissions.
- D. Other contracts involving in excess of \$5,000 whether or not entered into in the ordinary course of business, including:
 - 1. Domestic and foreign marketing agreements, including sales agent, sales representative, dealer and distributor agreements, consignment and pricing agreements
 - 2. Government contracts and subcontracts
 - 3. Supply agreements
 - 4. Purchase, output and requirements contracts
 - 5. Joint venture and partnership agreements
 - 6. Agreements regarding research and development
 - 7. Management and service agreements
 - 8. Performance guarantees and bonds
 - 9. Advertising agreements.
- E. Other contracts entered into outside the ordinary course of business.
- F. All agreements, agreements in principle or letters of intent concerning confidentiality, non-competition, acquisition or disposition of the Company's product lines, assets or operations, mergers and the like, which might restrict the activities of the Company or its successors or assigns.

XIII. PUBLICITY

- A. Copies of all press releases issued by the Company for the last three years.
- B. Press clips and other articles concerning the Company or its competitors collected from trade, financial and other publications for the last three years.
- C. Current product literature and other marketing materials regarding the Some Company-related operations of the Company.
- D. Other published Company literature.

XIV. CUSTOMERS AND SUPPLIERS OF THE COMPANY

- A. List of outstanding purchase orders as of the current date.
- B. List of Some Company related customers and distributors since inception of the Company, together with contact names and telephone numbers.
- C. Contracts and subcontracts relating to the provision of Some Company related services by the Company to its customers.
- D. Some Company related training course materials, documentation, product literature and manuals provided or to be provided to the Company's customers or prospective customers.
- E. Detailed list of accounts payable by customer and vendor, with aging.

- F. Identify and describe any transaction occurring within the last five (5) years between Company or any of its subsidiaries, on the one hand, and any Related Party (as defined below), on the other hand, pursuant to which services or products have been purchased, sold or leased. “Related Party” will mean any officer, director, shareholder or employee of Company or any of its subsidiaries, or any corporation, firm, partnership, association or entity in which any such officer, director, shareholder or employee has a direct or indirect beneficial interest.

XV. OTHER

- A. Identify and provide full information concerning the occurrence of any event for the last 5 years having or expected to have a material adverse effect on the business, properties, financial condition or assets of Company or any of its subsidiaries, including, without limitation, any strike, default, governmental injunction, lawsuit, fire, disaster, accident or other event or casualty.