

**[BUYER] CORPORATION**  
**LEGAL DUE DILIGENCE CHECKLIST FOR ACQUISITION OF IP ASSETS**

As a part of [Buyer's] due diligence investigation, please provide the following documents to \_\_\_\_\_. If documents in any category do not exist, please make a note to that effect on a copy of this list and return it to \_\_\_\_\_. This Checklist is divided into two parts. Part I asks [Seller] to identify and provide copies of documents relevant to the diligence review. Part II focuses on intellectual property rights and asks for information, and in some cases documents, relevant to the intellectual property rights underlying the IP Assets. In each case, (Seller)'s responses should cover all persons or entities defined as "Seller" in the Letter of Intent between [Buyer] and [Seller] and others.

For purposes of this Checklist, IP Assets are defined as those assets to be acquired by [Buyer] from [Seller] that may include any or all of the following: (1) all intangible intellectual property assets and rights to be acquired, including, without limitation, all trademarks, service marks, trade names, service names, domain names, copyrights, moral rights, patents, inventions, trade secrets, confidential information, mask works, know-how, show-how, and all rights of privacy and publicity and the like, all applications or registrations for any of the foregoing, and all contract and license rights relating to any of the foregoing and (2) all tangible assets, items, embodiments, models and prototypes that incorporate or are protected by any of the foregoing intellectual property assets and rights: As used herein "products based on IP Assets" means commercial goods or services that incorporate, are protected by or would otherwise, infringe any of the IP Assets. The purpose of this Checklist is to identify all intangible and tangible assets and related commercial products that will be acquired by [Buyer], to determine the extent of [Seller]'s rights in them, and to provide disclosure to [Buyer] of information about them that Buyer would consider relevant.

**Part I – GENERAL DILIGENCE RELATING TO IP ASSETS**

**1. Corporate Records**

- Articles of Incorporation and all amendments thereto and restatements thereof from formation.
- Current Bylaws
- Minutes and consent resolutions reflecting all action of the stockholders and the board of directors, including any committees, relating to IP Assets.
- List of States and other jurisdictions in which [Seller] is qualified to do business as a foreign corporation.
- If [Seller] owns an interest in any other business entity, comparable documents for each such entity. If any such entity exists, the requests in the following Sections apply to documents of [Seller] and all such entities.

## 2. Tax Records

- Complete copies of federal and state tax returns for the previous tax year and any filings during the current year, including all depreciation and amortization schedules for IP Assets.
- Personal or real property tax bills for the last year and current year.
- Copies of any and all correspondence with the IRS, State or other tax authorities relating to audits, prospective audits or any claims of deficiency in the payment of taxes.
- List of persons performing work on a regular basis for [Seller] that are treated as independent contractors and brief explanation of the basis for such treatment of any such person. Copies of any rulings or opinions related to such treatment.
- Copies of internal or external memoranda reflecting material tax issues with respect to [Seller's] taxation of IP Assets, including legal or accounting opinions.
- Sales tax records by State for the past three years and current year relating to sales of products incorporating or based on the IP Assets.
- Copies of all tax returns, claims or notices from a non-U.S. jurisdiction.
- Copies of all notices of tax liens against [Seller] or the IP Assets.

## 3. Financial Statements

- Balance Sheet, Income Statement and related statements produced by [Seller] for the most recent fiscal year and all subsequent periods for which statements exist, including depreciation and amortization schedules of IP Assets.
- Correspondence with outside accountants and internal memoranda relating to material accounting issues for IP Assets.
- All documents and correspondence relating to capitalization or expense treatment of IP Assets.
- Most recent inventory of products based on IP Assets.
- List of all changes in accounting method (with dates) to the extent not reflected in notes to the financial statements requested above.

## 4. Leases

- Copies of all lease agreements and amendments thereto and renewals thereof relating to IP Assets.

**5. Contracts**

- Copies of all contracts and amendments thereto that relate to the IP Assets.
- Copies of all contracts as to which a material default exists and the statement as to the nature of the default.

**6. Insurance Policies**

- Copies of all insurance policies and amendments thereto and renewals thereof covering IP Assets or claims against IP Assets.
- Any correspondence relating to termination of any insurance policy covering IP Assets pending or having occurred within the last two years.

**7. Employee Matters**

- Copy of any company employee policy manuals or similar documents.
- Documents relating to any employee claims pending or resolved relating to ownership of IP Assets, including inventions and intellectual property designated by employees to be theirs and not owned by [Seller].
- Forms of employee confidentiality, non-disclosure, inventions and similar agreements.
- Form or employee hiring letter (if used).
- Copies of all consulting or other independent contractor agreements.
- Copies of all work-for-hire agreements.
- Copies of all invention agreements.

**8. Regulatory Matters**

- Copies of all material business and operating licenses, permits, authorizations, tests, trials, approvals, and the like, from any local, state, federal or foreign government or regulatory agency, such as FDA, FCC, FTC, and similar agencies relating to the IP Assets or products based on the IP Assets.
- Copies of all notices, correspondence and rejected applications relating to the foregoing governmental or regulatory matters.
- Copies of any documentation relating to any failure or claimed failure by [Seller] to comply with any law, rule, regulation, ordinance, license or permit or any action involving regulatory non-compliance relating to the IP Assets, products based on the IP Assets or the production or manufacture of the IP Assets or products based on the IP Assets (including, without limitation, any environmental or hazardous substances matters).

**9. Credit Matters**

- Copies of all bank or other commercial loan agreements and all related security agreements, whether or not [Seller] is currently indebted under them relating to the IP Assets or products based on the IP Assets.
- Copies of all documents relating to indebtedness of others to [Seller], excluding ordinary trade receivables, involving the IP Assets.

**10. Transactions with Management**

- Copies of all documents relating to any agreement, understanding, contract or other obligation involving [Seller] and any stockholder, director, officer or members of the immediate families of any such person involving the IP Assets.
- List of all management claims of ownership or license rights with respect to IP Assets.

**11. University Matters**

- Copies of all documents relating to any agreement, understanding, contract or other obligation involving [Seller], its directors, officers, employees, or independent contractors, and any university or education institution.

**12. Government Matters**

- Copies of all documents relating to any agreement, understanding, contract or other obligation involving [Seller], its directors, officers, employees, or independent contractors, and any government or governmental agency using any of the foregoing for work or awarding any contract to any of the foregoing relating to the IP Assets.
- List or explanation of all issues relating to national security and the IP Assets or products based on the IP Assets, including whether any security clearance is required of the [Seller] or any of its personnel to perform routine work involving the IP Assets and products based on the IP Assets or to perform any government contracts.

**13. Export and Import Matters**

- Copies of all documents relating to the export or import classification or tariff schedules applicable to the exportation or importation of any IP Assets or products based on IP Assets worldwide.
- Copies of all agreement, understanding, contract or other obligation involving [Seller], its directors, officers, employees, or independent contractors, and any

government or governmental agency relating to the conduct of the foregoing with respect to importing and exporting IP Assets and products based on IP Assets.

#### 14. **Litigation**

- Copies of all relevant documents relating to litigation, whether pending or threatened, involving [Seller] or any of its properties or any of its officers, directors or stockholders in that capacity.

### **Part II – INTELLECTUAL PROPERTY QUESTIONNAIRE**

Please answer the following specific questions about intellectual property and the IP Assets. If any previous answers are relevant, please cross reference your answers to the other relevant paragraphs of this list. Please attach additional sheets as necessary to respond completely to this questionnaire. If any of these categories are not relevant to the IP Assets for this specific transaction, please indicate as appropriate.

#### **1. Trademarks and Service Marks (Federal and State), Trade Names.**

- A.** Please list all federal and state trademarks and service marks registered to [Seller] that are part of the IP Assets or products based on the IP Assets.
- B.** Please list all of the [Seller]'s pending applications to register any mark relating to the IP Assets or products based on IP Assets.
- C.** Please list all federal and state trademarks or service marks used but not owned by [Seller] for IP Assets and products based on IP Assets.
- D.** Please list all claims demands or assertions of trademark ownership the [Seller] has received from third parties relating to IP Assets or products based on IP Assets.
- E.** Please list all trademark current or resolved disputes that involve the [Seller] and IP Assets or products based on the IP Assets.
- F.** Please list all of the [Seller]'s trade names, service names, business names and corporate names, and where, if anywhere, they are registered, and the address or registered agent used for the registration.
- G.** Be prepared to supply all relevant files, file wrappers and certificates relating to the trademarks.

**2. Copyrights.**

- A.** Please list all copyrights registered to the [Seller] that are part of the IP Assets or products based on the IP Assets. Please include copyright registration numbers and dates.
- B.** Please list all unregistered copyrights owned by the [Seller], including works of software, textual, visual and performing arts, involving the IP Assets or products based on the IP Assets. Please include the date any such item was created and the date such item was published.
- C.** Please list all consultants or independent contractors used to create original works of textual, audio, visual art or other content, including for example advertising agencies, photographers, designers, or illustrators, and the works created in connection with the IP Assets or products based on the IP Assets. Please also list the dates any such works were created as well as whether any agreement relating to ownership of such works.
- D.** Please describe the processes used to develop the [Seller]'s IP Assets and products or services based on the IP Assets. List all persons involved including employees, independent contractors, programmers, printers, photographers, designers, and any other person, as well as any agreements the [Seller] has with such persons, including dates and parties.
- E.** Please list all software used by the [Seller] in all aspects of its operations. Please include word processing, inventory control, accounting, graphic design, security, "off the shelf" and custom software and database programs.
- F.** Please list all software maintenance agreements, site licenses or development agreements that the [Seller] has with any service providers for the IP Assets or products based on the IP Assets.
- G.** Does the [Seller] broadcast or play music on its premises or through its telephone service? If yes, please list all agreements concerning the [Seller]'s rights to use such music.
- H.** Please list all licenses the [Seller] holds to use the copyrighted material of other parties in connection with the IP Assets or products based on the IP Assets. Please indicate the owner of the copyright and date of the license agreement.
- I.** Please list all licenses the [Seller] has granted for its copyrights based on the IP Assets. Please indicate the licensee and date of the license agreement.
- J.** Does [Seller] have a policy for identifying and licensing copyrights owned by others? If yes, please describe the policy.

- K.** Please list all demands or assertions of copyright ownership the [Seller] has received from other parties relating to the IP Assets or products based on the IP Assets.

**3. Patents.**

- A.** Please list all patents owned by the [Seller] or of which the [Seller] is an assignee relating to the IP Assets. Please list each patent owner and the respective patent registration number and date.
- B.** Please list any assertions of patent ownership claims or infringements the [Seller] has received from third parties in connection with the IP Assets or products based on the IP Assets. Please list any alleged patent owner and the registration number and date of all relevant patents.
- C.** Please list all patents or inventions of other parties that are licensed or used by the [Seller] as part of or in connection with the IP Assets or products based on the IP Assets, with a brief explanation about each.
- D.** Please list all invention disclosure forms completed or in process by the [Seller] and pending patent applications related to the IP Assets and products based on the IP Assets, with a brief explanation, about each.
- E.** Please list all patent or invention licenses held by [Seller] for use with the IP Assets and products based on IP Assets. Please provide the names of the licensors and dates of the agreements.
- F.** Please list all patents and inventions of [Seller] for which [Seller] has granted license rights to others. Please provide the names of the licensees and dates of the agreements.
- G.** Please identify all items used to develop inventions of patents related to the IP Assets and products based on the IP Assets, including, without limitation, invention records, reports, research notes, laboratory tests, results and notes, experiments, development logs, manufacturing and production designs and plans, raw material requirements, blue prints, drawings, models, tools, molds, parts, quality control plans, production equipment and cost studies.
- H.** Please list all prior art known to [Seller] and all information related to the IP Assets and products based on IP Assets for all-inventions and patents claimed by [Seller] and the dates, if known, that such prior art became public information.
- I.** Please identify when [Seller] first offered the IP Assets or products based on the IP Assets for sale to the public. Be specific for each invention or patent claimed by [Seller].

**4. Trade Secrets and Confidential Information.**

- A. Please list information owned by the [Seller] (such as technology, cost data, customer lists, patterns, etc.) which the [Seller] considers a trade secret. Trade secrets generally (1) have economic value derived from the fact that the information is not generally known, and (2) are subject to reasonable efforts to maintain secrecy.
- B. Please list all information considered to be know-how, show-how or other [Seller] information not generally disclosed to the public.
- C. Please list and describe any policies the [Seller] has concerning trade secrets or confidential information.
- D. Please list all agreements by which [Seller] grants rights to others to use the trade secrets or confidential information of [Seller]. Please provide the names of the other parties to the agreement and dates.
- E. Please list all agreements by which [Seller] has received the rights to use the trade secrets or confidential information of another party as part of the IP Assets or products based on IP Assets.
- F. Please list any of the items in Section 3(G) above that are used in connection with trade secrets or confidential information apart from the [Seller]'s patents.
- G. Please identify any patent pooling arrangements or standards committees or specifications relevant to [Seller]'s IP Assets or products based on the IP Assets.

**5. Contracts.**

- A. Please list all contracts with outside agents who act on behalf of the [Seller] to purchase, promote or sell products.
- B. Please list all contracts relating to development of IP Assets or products based on IP Assets, including, without limitation, joint development agreements, strategic partnership agreements, cross licenses and open source licenses.

**6. License and Distribution Agreements Of [Seller].** Please list all license agreements and distribution agreements of the [Seller].**7. Uniform Commercial Code (“UCC”).**

- A. Please list UCC filings made by the [Seller] including all tangible and intangible property.
- B. Has the [Seller] used any of its intellectual property to secure performance of any obligations? If yes, please list the secured party and the security interest.

**8. Web Sites.**

- A. Please list all web sites the [Seller] owns, operates or in which the [Seller] holds, an interest.
- B. Please list and provide copies of all web site subscriber or user agreements ever used in connection with such web sites.
- C. Please list and provide copies of all web site privacy policies or statements ever used in connection with such web sites.
- D. Please describe what personally identifiable information is collected from visitors to such web sites and how that information is used.
- E. Please describe what personally identifiable information is, collected from visitors to such web sites who are under 13 years of age and how such information is used.
- F. Please list all laws and regulations governing the operation of web sites with which the [Seller] the company is in or is not in compliance.
- G. Please list all law enforcement actions, proceedings, or investigations in which the [Seller] has been involved and all legal notifications the [Seller] has received concerning. the operation of such web sites.
- H. Please list all complaints or notices the [Seller] has received concerning such domain name registrations.
- I. Please list all domain name registrations owned or applied for by the [Seller], including dates of registration.

**9. Government Contracts.**

- A. Please list any government contracts to which the [Seller] is a party. Please list by party and date.

**10. University Contracts**

- A. Please list all contracts, understandings and agreements between any university or education institution and [Seller]. Please list by party and date.

**11. Employment Procedures**

- A. Please provide copies of all employment agreements, forms and contracts relating to any IP Assets.

- B. In order to determine the treatment of intellectual property at the [Seller], please list and provide samples of all employee manuals, handouts, guidelines and termination procedures.

**12. Miscellaneous.**

- A. Please describe the [Seller]'s system for maintaining and retrieving records related to patents, trademarks, service marks, copyrights, or trade secrets, including the names of personnel with responsibility for or access to the records.
- B. Does [Seller] have any intellectual property marking guidelines, labeling guidelines, knock-off rules or procedures for reviewing and investigating products? If so, please provide a list and a sample.
- C. Please list any insurance policies held by the [Seller] that may include coverage for intellectual property.
- D. Does the [Seller] have any accounting policies for valuing intellectual property as an asset for tax purposes or for outside sources or investors? If yes, please describe them.
- E. Please provide sample purchase orders currently in use for all products bought from vendors.
- F. Please list all significant telecommunications contracts or other communications arrangements with a telephone company or other communications company or common carrier.

**END**