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Due diligence request

outline

contents

a.	corporate matters.....	2
b.	financial information and advisors.....	3
c.	offices, facilities and equipment.....	4
d.	intellectual property	5
e.	material contracts	6
f.	material litigation.....	8
g.	employee matters.....	8
h.	regulatory matters, government approvals and permits, resource consents.....	10
i.	tax matters	11
j.	insurance	13
k.	marketing & disclosure information.....	14
l.	accounting matters	14
m.	general.....	14

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PLEASE PROVIDE ALL INFORMATION OR DOCUMENTS WITH RESPECT TO THE COMPANY RESPONSIVE TO THE FOLLOWING ITEMS BY <insert date>:

a. corporate matters

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
A1.	Names and details of the ownership structure of all companies in the Group (i.e., the Company and its subsidiary), including lists of all shares owned by any company in the Group in any other company.		
A2.	Certificate of incorporation and constitution, including all amendments thereto, for each company in the Group.		
A3.	Minutes of all meetings of the Board of Directors and all Board Committees (e.g., Audit, Executive, Finance, etc.) for last three years for each company in the Group.		
A4.	Minutes of all Shareholder meetings for last three years for each company in the Group.		
A5.	Any certificates given by the directors under the Companies Act 1993 for each company in the Group, and copies of any contracts relating to these transactions.		
A6.	Description of acquisitions, as well as any other significant transactions for each company in the Group, and copies of any contracts relating to these transactions.		
A7.	List of shares outstanding, list of shareholders (i.e., the share register) (including details specifying whether shares are held on trust) and % ownership, including a listing of the ordinary shareholders for each company in the Group.		
A8.	Register of security interests.		
A9.	Option plans.		
A10.	Schedules/ledgers of issuances or grants of stock, stock options, warrants and other equity securities, including name, amount, date, price paid and vesting schedule.		
A11.	Stock purchase agreements that have been used for sales of stock and any agreements relating to sales of other outstanding equity securities.		
A12.	Any other agreements or plans covering any portion of the Company's securities, including any stock repurchases, as well as any Shareholder agreements (for example, pre-emptive rights agreements, voting agreements, demand or piggyback registration rights, restrictions on resale, rights of first offer or first refusal, drag-along and tag-along rights, trusts, security or other encumbrance documentation, etc.).		
A13.	Offering documents, bank books, prospectuses, investment statements and any other disclosure documents related to the offering of securities or the obtaining of financing of the Company on either a public or private basis for last three years.		

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
A14.	List of current officers and directors (i.e., the register of directors) and their biographies and the register of interests for each company in the Group.		
A15.	Confirmation that each company in the Group has complied with all relevant filing requirements under the Companies Act 1993.		
A16.	Organisational chart showing current legal structure, including subsidiaries, associated companies and joint ventures.		

b. financial information and advisors

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
B1.	Copies of financial statements prepared in accordance with the Financial Reporting Act 1993 of each company in the Group for last three years (including, Balance Sheets, Income Statements, Cash Flow Statements); audited in the case of annual financial statements, as well as detail around any off-balance sheet liabilities.		
B2.	Copies of all annual returns prepared in accordance with the Companies Act 1993 for the last three years, for each company in the Group.		
B3.	Quarterly revenues over the last 8 quarters by region, type, product, platform, channel and partner, as well as number of transactions in each of those quarters, average deal size and average discount and copies of all annual reports and other communications to shareholders for the last three years for each company in the Group.		
B4.	Details of any inter-company transactions within the Group.		
B5.	Details of any material transaction that has been entered into in the last three years between any company in the Group and any director or proposed director of any company in the Group, any immediate relative of any director or proposed director of any company in the Group and any company majority owned directly or indirectly by any director, proposed director or immediate relative.		
B6.	Management letters from auditors concerning internal accounting controls in connection with any audits of each company in the Group, as well as all audit response letters and management representation letters to auditors in the last three years.		
B7.	Copies of all reports and communications received by external advisors with respect to the Group in the last three years (e.g., accountant's reports).		

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
B8.	Budgets and projections for last two years and recent one-year forward looking budgets for this year and next year, prepared on a monthly basis (if available) along with detail regarding expenses included in each Income Statement line item.		
B9.	Detail of assumptions underlying financial projections, including pipeline and backlog detail, product pricing lists, timing of new product roll-outs and projected contribution, projected market growth, projected market share capture, projected sales force growth and ramp time, and detail around anticipated contribution from existing and new partners.		
B10.	Details of any material liabilities (whether contingent or otherwise) of any company in the Group, including any money owed to shareholders.		
B11.	Schedule of aged accounts receivable as of the most recent date, and schedule showing [DSO's].		
B12.	Copy of analysis of reserve for bad debts and other material reserves as of the most recent fiscal year.		
B13.	All agreements relating to advisers retained, fees payable to them and claims for payment.		
B14.	All credit agreements, debt instruments, capital leases, sale-leaseback agreements, deferred purchase price contracts, guarantees, keepwell letters and reimbursement agreements for letters of credit and any other agreements relating to any security interest.		
B15.	All material interest rate, currency and other hedging arrangements.		
B16.	All other material agreements with creditors.		
B17.	Schedules, reports or other computations as to compliance with covenants in any existing financing arrangements.		
B18.	Any presentations given to lenders or potential lenders since the beginning of the Company's last full fiscal year.		

c. offices, facilities and equipment

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
C1.	Locations (by street address, city, state and country) at which any company in the Group has offices, conducts business, or stores equipment.		

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
C2.	List of real property leased and owned (whether or not currently leased or owned), together with (a) location and brief description, (b) description of all financing, mortgages and encumbrances, (c) copies of all lease agreements (including amendments and proposed modifications), appraisal reports and certificates of title, (d) summary of date, rent, term, termination rights and renewal rights.		
C3.	List of material assets or personal property owned, together with security interests or encumbrances thereon, by each company in the Group.		
C4.	List of material personal property leased, together with (a) copies of lease agreements and (b) a summary of date, lease payments, term and termination rights and renewal rights.		
C5.	All maintenance or service contracts involving payment to or by the Company of N.Z. \$25,000 or more on an annual basis.		
C6.	Future office, facilities and equipment requirements.		

d. intellectual property

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
D1.	List of all Products, together with (a) a description of the Product, (b) copies of all documentation relating to the Product, (c) the actual or anticipated market for the Product, and (d) the date or expected date of initial sale or license of the Product. As used herein, the term "Product" also applies to a commercially available service offering of Company.		
D2.	List of all common law and registered trademarks, trade names, patents, copyright, registered designs, brand names, company and business names, internet domain names and service marks owned by any company in the Group and, with respect to each such name or mark, state: (a) the mark or name, (b) date of first use, (c) manner of use and Product(s) with which used, (d) jurisdictions in which used and (e) rights granted to any other person to use any intellectual property right. Provide copies of all registrations and applications for registration.		
D3.	List of all technology and works, including any patents, trademarks, copyrights, service marks, trade secrets and other intellectual property rights associated with or embodied in such technology or works, that are licensed to any company in the Group, including the name of the licensor and a copy of the license agreement. Include any software licensed under an Open Source license agreement.		
D4.	List of all patented and patentable inventions (including those for which an application has been filed) that are owned by any company in the Group, and with respect to each such patent or invention, provide (if applicable) title, inventor, date and manner of assignment to company, patent number, serial number, jurisdictions in which registered or filed and evidence of the payment of maintenance fees.		

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
D5.	Describe Company's procedures for protecting its trade secrets and confidential information, including: (a) the procedures in place to properly mark the information as confidential, (b) the procedures in place to properly dispose of the information and (c) the form(s) of nondisclosure agreement used when dealing with third parties. Identify any disclosure of a material portion of the Company's confidential information or any source code of the Company during the past three years and for each such disclosure provide a copy of any non-disclosure agreement and/or license agreement and state: (a) the party to whom disclosed, (b) the information disclosed and (c) the circumstances and purpose of the disclosure.		
D6.	Identify any infringement of any intellectual property rights of any company in the Group and misappropriation of the trade secrets of the Company in each case known or suspected by the company.		
D7.	Identify any instances of escrowed technology or source code of any company in the Group, including with respect to each such escrow: (a) the identity of the escrow agent, (b) the technology or code escrowed and (c) the parties to any escrow agreement or holding any rights to access or contingently access the escrow.		
D8.	All agreements with independent firms, consultants or contractors for product research and development.		
D9.	All disaster recovery programs and service contracts.		

e. material contracts

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
E1.	Copies of standard forms of sales/distribution agreements and supply/purchase/service/manufacturing agreements. Copies of standard form end user license agreements (i.e., "shrink wrap" or "clickwrap") if used.		
E2.	Copies of all documents relating to acquisitions or disposals by any company in the Group, which are outside the ordinary course of trading in the last three years.		
E3.	List the top 20 customers during the last 4 quarters. Copies of material sales agreements with these customers, including contract size, date, product mix and discount.		
E4.	Capital leases, contracts for the deferred purchase of property and sale-leaseback arrangements.		
E5.	All partnership, joint venture, marketing or other similar agreements or arrangements.		
E6.	All agreements with local or foreign governmental authorities.		

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
E7.	All agreements, which may limit any company in the Group's ability to engage in any line of business, with any person or at any place.		
E8.	All agreements, including indemnity agreements, related to acquisitions, restructurings, amalgamations, reorganisations and dispositions of businesses and material assets.		
E9.	All agreements and arrangements (and drafts of agreements under consideration) with directors, officers, employees, shareholders, debtholders, members of their families or entities, of each company in the Group, in which any of such persons have an interest.		
E10.	To the extent not previously requested under "Financial Information and Advisors," any and all loan agreements, including commercial paper, credit lines, debentures, indentures, notes, preferred stock agreements, rights agreements, security agreements and warrants.		
E11.	All guarantee agreements.		
E12.	Copies of any warranty provisions relating to the Company's products.		
E13.	All non-compete and confidentiality agreements and any other agreements that restrict the Company's business.		
E14.	To the extent not previously requested under "Offices, Facilities and Equipment," all material supply or service contracts.		
E15.	Identify all other material agreements or arrangements which, in your judgment, are significant with respect to the business or which should be considered and reviewed in making disclosures regarding the business and financial condition of the Company.		
E16.	Identify each agreement under which consents or approvals will be required in order to consummate the proposed transaction or which will be subject to modification or acceleration as a result of the proposed transaction.		
E17.	Copies of all technology license, transfer and assignment agreements entered into by (a) any company in the Group; or (b) any entity listed in response to A6.		
E18.	Identify all contracts currently being renegotiated.		
E19.	Identify all agreements of any kind where any party thereto may be in default.		

f. material litigation

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
F1.	List of past, pending, threatened or potential litigation, arbitration, administrative actions or other disputes, identifying party, court or panel, case number, nature of the claim, amount at issue and status.		
F2.	Are any of the Company's patents, patent applications, copyrights, trade secrets or inventions identified subject to any (a) ownership dispute; (b) litigation; (c) re-examination; (d) reissue; or (e) patent interference? If yes, please explain.		
F3.	Describe any claims of patent, copyright, trademark or trade secret (or any other intellectual property) infringement that have been or are being raised against any companying the Group, including current status, whether any reserves have been established, and whether any outside legal counsel opinion has been obtained.		
F4.	Describe any issues or claims of infringement of a patent, copyright, trademark or trade secret (or any other intellectual property) belonging to any company in the Group that are being raised by third parties.		
F5.	Describe any warranty claims.		
F6.	Any consent decrees or settlement documents.		
F7.	Correspondence, memoranda or notes concerning any disputes (or potential disputes) with competitors, contractors, customers, distributors, landlords, suppliers or tenants regarding any claim for an amount in excess of N.Z.\$10,000 or which could otherwise have a material impact.		
F8.	All lawyers' litigation letters prepared for auditors for last five years.		

g. employee matters

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
G1.	Organisational chart indicating functions and reporting responsibilities.		
G2.	List of key management personnel (including directors, officers and key employees) showing name, age, starting date, responsibilities, compensation (including cash or stock bonuses), education and prior service.		
G3.	List of employees, including name, position and salary, along with headcount by division and fully burdened employee cost per division.		

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
G4.	List of all members of the Company's sales organisation, including breakdown between field sales, telesales, SEs, etc., as well as information requested in G3, quotas, and detail around productivity metrics and sales force turnover during the last 8 quarters.		
G5.	A list of contractors and consultants, including names, date(s) of retention, amounts paid, whether a Form 1099 was issued, and general services performed. With respect to any contractor or consultant engaged in the provision of development services or creation of works of authorship or inventions, provide a copy of the agreement with such contractor or consultant. A list of any temporary employees including forecasted lengths of assignment.		
G6.	To the extent not previously requested under "Material Contracts", copies of employment agreements for all employees (particularly including those employees listed in response to G2), any consulting agreements (including contracts for services) and any change of control, severance and termination agreements or arrangements (whether formal or information, written or verbal).		
G7.	Description and copies of all existing or contemplated employee benefit plans (including bonuses, health plans, incentive plans, pension plans, perks, retirement plans, superannuation plans, stock option plans, stock ownership plans) and copies of all personnel policies and manuals and trust agreements relating thereto.		
G8.	To the extent not previously requested under "Corporate Matters," all employee stock option, share purchase, share bonus or other stock plans and all other employee compensation, bonus, incentive, retirement, benefit or similar plans.		
G9.	Union/collective bargaining agreements, if any, and details of any employees whose terms of employment are prescribed by such agreements.		
G10.	All Company policies, which apply to employees, including any redundancy or severance policies.		
G11.	Copies of all written pension and welfare benefit plans and arrangements of the Company, together with all trust agreements and any amendments and written interpretations thereof; all reports for the last three years relating to benefit plans of the Company and its affiliates; the most recent actuarial valuation report prepared in connection with any such plan; any tax determination letters received with respect to any such plan; and summary plan descriptions Description of all other employee plans or arrangements and description of funding arrangements.		
G12.	Summaries of employee benefit plan and deferred compensation arrangement account balances of the Company, including savings and profit sharing plans, as well as information as to outstanding employee stock options, stock appreciation rights, restricted stock and other forms of stock based compensation.		
G13.	Details of any strikes, lockouts, labour disputes, grievances, employment problems and other employment, litigation raised to the Company's attention or brought by way of mediation or proceeding in any forum.		

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
G14.	Agreements for loans or any other compensation or consideration to management or employees (e.g., non-standard perks, special bonuses, payment due), including any agreement or understanding related to the disposition of the Company.		
G15.	To the extent not previously requested under "Material Contracts", all employee non-compete, confidentiality, assignment of inventions, or similar agreements (or, alternatively, each form thereof, together with a list of the employees subject thereto). Identify any employee that did not execute a form of confidentiality/assignment agreement on or before the first day worked.		
G16.	A list of pending starts and offers, open requisitions, anticipated turnover, employees on severance or salary continuance, inactive status employees.		
G17.	List of all employees terminated during the last two fiscal years, including name, position, date of termination, whether voluntary or involuntary termination and exit interview notes.		
G18.	Details of any Company policy relating to health and safety, together with details of any prohibition or improvement notices issued to, or prosecutions or other proceedings brought against, the Company under the Health and Safety in Employment Act 1992.		

h. regulatory matters, government approvals and permits, resource consents

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
H1.	List of any statutes and regulations (other than those already noted or which apply to companies generally), which are known to apply to the activities of any company in the Group.		
H2.	Procedures in place to ensure compliance with the Consumer Guarantees Act 1993, the Fair Trading Act 1986 and any other legislation relevant to any company in the Group.		
H3.	Copies of any licences, permits or other authorisations required for any company in the Group, and confirmation that all necessary licences, permits and other authorisations have been obtained and complied with.		
H4.	Any outstanding court or administrative orders or decrees and any correspondence, memoranda or notes concerning inquiries from local or foreign governmental agencies regarding potential violations of the terms of any permit, license, authorization, approval or other potential violations of law, rule or regulation.		
H5.	Filings with local or foreign governmental agencies having jurisdiction over the Company's operation.		

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
H6.	Details on all export licenses held and export licensing procedures followed by Company with respect to the distribution of Products.		
H7.	Details of any investigations by the Commerce Commission or the Securities Commission (or any other regulatory body) against any company in the Group in the last three years, including details of any threatened investigations or breaches of the Commerce Act 1986 or the Securities Act 1978.		
H8.	Details of Company's compliance with the Privacy Act 1993 and the Human Rights Act 1993, including copies of all privacy policies utilized by Company.		
H9.	Details of any resource consents, licences or permits required for any company in the Group to carry on its business and confirmation that they have in fact been obtained.		
H10.	Environmental: Please note that if there is any possibility of an environmental issue, we will need to review additional documents and will provide a supplemental detailed request list.		

i. tax matters

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
11.	All income tax returns (including all attachments, schedules, etc.) filed with respect to the last five years or relating to any open years and the corresponding assessments and statements of account issued by Inland Revenue for each company in the Group.		
12.	Tax provision work papers for last year and subsequent quarters for each company in the Group, if applicable, including details of the principal accounting methods adopted and details of accounting for deferred tax.		
13.	Documentation regarding PAYE (or withholding payments) and deposits of amounts withheld for last five years and fringe benefits provided to employees along with the methods and calculation of fringe benefit tax for each company in the Group.		
14.	To the extent not previously requested, documentation relating to all employee stock incentive plans.		
15.	Description of all current and past investigations and audits and copies of all materials relating thereto (including assessments and any notices from taxing authorities with respect to audits) for each company in the Group. Closing agreements, binding rulings and ruling requests for all open years for each company in the Group.		
16.	All agreements (e.g., tax sharing agreements) with affiliates regarding taxes; description of transactions between the Company or any affiliate, shareholder or employee and copies of documentation relating thereto.		

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
17.	To the extent not previously requested under "Corporate Matters" or elsewhere, description of significant transactions (inter-company or otherwise) undertaken in the last five years.		
18.	Copies of latest tax agent's or similar reports for each company in the Group		
19.	Details concerning any net operating loss carry-forwards for each company in the Group		
110.	Description of significant deductions claimed on any return within the last five years for each company in the Group		
111.	Details concerning any imputation (or other memorandum account) tax credits carry-forward amounts, including a copy of the imputation credit account statement, for each company in the Group		
112.	Present tax basis of the Company's assets, including depreciation rates and details of amortisation of fixed life intangible property for each company in the Group.		
113.	Details of any assets that have been sold on deferred settlement terms for each company in the Group.		
114.	Details of the tax planning strategies adopted and copies of all tax advice received from external tax advisers in the last five years for each company in the Group.		
115.	Details of any off-balance sheet transactions in the last five years for each company in the Group.		
116.	Confirmation that all appropriate elections and disclosures have been made on a timely basis by each company in the Group.		
117.	Details of any forgiveness, assignment or remittance of debt in the last five years for each company in the Group.		
118.	On what basis is GST calculated, invoice or payments, and at what intervals is it paid?		
119.	Copies of the GST returns (including all attachments, schedules, etc.) filed with Inland Revenue with respect to the last five years or relating to any open years and the corresponding assessments and statements of account issued by Inland Revenue for each company in the Group.		

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
I20.	<p>Details of how the following are treated for taxation purposes:</p> <ul style="list-style-type: none"> warranties and reserves; bad and doubtful debts; royalties under software licence agreements or similar; payments to contractors (domestic or offshore) healthcare premiums; legal expenditure; inter-company balances. 		
I21.	Details of tax refunds owing to each company in the Group.		
I22.	<p>Details on the issued capital of each company in the Group including details of whether the company has ever been involved in the following transactions:</p> <ul style="list-style-type: none"> bonus issue of shares; issues of shares for the consideration of shares in other companies; earlier amalgamations acquisitions by a company of shares in itself cancellation or redemption of shares cancellation or redemption of shares. 		
I23.	Details of foreign assets held by each company in the Group and income tax treatment adopted for those assets.		
I24.	Details of any consolidated group.		

j. insurance

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
J1.	Copies and descriptions (including limits of coverage, policy dates, premiums and insurance brokers) of existing insurance policies (including casualty, D&O, key employee, professional indemnity, liability, property, third party), including Company, agent, coverage, premiums and inter-group premium reimbursement agreements (describe any self-insurance).		
J2.	Summary of claims experience for past five years under policies.		

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
J3.	Details of any insurance claim outstanding or in dispute.		
J4.	Insurance analyses/reports prepared internally or by consultants.		

k. marketing & disclosure information

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
K1.	Samples of marketing or sales literature and advertisements.		
K2.	Press clippings and releases on any company in the Group and its industry during last twelve months.		

l. accounting matters

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
L1.	Communications, if any, by the auditors with the Company pursuant to applicable accounting standards or any other communications from the auditors to the Company concerning internal control structure or accounting issues issued since the beginning of the Company's last full fiscal year.		

m. general

NO.	ITEM DESCRIPTION	Responsibility	Receipt Date
M1.	Studies, documents, reports or memoranda prepared for or by the Company that were material to the decision by the Company to develop a material product or to enter a material new business segment.		
M2.	Any other documents which in the Company's judgment are significant with respect to the business, financial condition, results of operations or prospects of the Company and which may be material.		

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