



## DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

### Sample Short-Form

### Due Diligence Request

\_\_\_\_\_, Inc.

(the "Company")

Note: Set forth below is a list of documents and information we wish to review in connection with a proposed transaction. As our review proceeds, we may determine there are additional items and materials we wish to examine. If compiling any of the requested items will be impracticable or unduly burdensome, please let us know and we will be happy to discuss such items with you. All items herein refer to the Company and its subsidiaries.

#### ***1. Basic Corporate Information***

1.1 Charter documents and bylaws of the Company, as currently in effect.

1.2 Minutes of all meetings of the Board of Directors and stockholders during the past five years (or written consents in lieu of such meetings).

1.3 Capitalization.

1.3.1 A list of all the security holders of the Company, indicating the class and number of securities held by each such holder.

1.3.2 Copies of the Company's stock transfer books and outstanding stock certificates.

1.3.3 Copies of all agreements relating to the issuance or sale, or proposed issuance and sale, ownership or voting of capital stock of the Company.

1.4 List of all states and other jurisdictions in which the Company is qualified to do business.

1.5 List of all subsidiaries of the Company and any equity interest in any other entity owned by the Company.

#### ***2. Revenue, Products, Customers and Competition***

2.1 List the top 25 customers of the Company as measured by sales revenue for the past two years. Indicate revenue by product, pricing, contract terms and expiration dates.

2.2 Provide forms of bills of lading and any warranties and guarantees provided to customers.

2.3 List the Company's principal competitors by product type.

### **3. Officers, Directors, Employees and Significant Shareholders**

- 3.1 All contracts, arrangements or understandings between the Company and its present (or former) directors, officers, shareholders and employees.
- 3.2 Copies of all welfare, group insurance, employee benefit, pension, retirement, and compensation-related plans or arrangements, if any, which cover employees or former employees of the Company, copies of any determination letters related to such plans, and copies of the most recently filed IRS Form 5500's for such plans.
- 3.3 Description of any examinations, audits, ruling requests or other inquiries by or with any agency, or any suits or actions which relate to any employee benefit plan.
- 3.4 Summary of standard employee benefits (vacation, sick leave, sabbatical, medical insurance, life and disability insurance, *etc.*) that relate to employees of the Company.
- 3.5 Copies of all agreements with present or former employees or agents with respect to confidentiality or noncompetition, and all such agreements between employees of the Company and former employers.
- 3.6 List of employees and consultants outlining their title, role and salary.

### **4. Financial Matters**

- 4.1 Copies of balance sheets, income statements and cash flow statements (annual and interim) for the last four years. Copies of any projected financial statements.
- 4.2 Description of cash management procedures including a list of banking relationships.
- 4.3 All documents and agreements evidencing or relating to indebtedness, borrowings or available borrowings, whether secured or unsecured, by the Company, or to which its assets may be subject, including, without limitation, loan and credit agreements, security agreements, mortgages, lines of credit, indentures, promissory notes and other evidence of indebtedness and any guarantees, contingent obligations or indemnities in respect of any indebtedness or other obligations of any other person.
- 4.4 All contracts and agreements involving obligations or commitments equaling or exceeding \$50,000.
- 4.5 Description of any default by the Company or any other party in the last two years under any material contract or commitment, or any circumstance which might reasonably be expected in the future to give rise to such default.
- 4.6 Describe the month-end closing process.
- 4.7 All significant accounting policies including, but not limited to, asset (including software) capitalization limits and policies, depreciable lives for book and tax, revenue recognition policies and methods, and expenditure authorization levels.
- 4.8 Provide tax and book asset listings with associated depreciation.
- 4.9 Provide a detail general ledger/trial balance of all balance sheet accounts as of the latest date available.
- 4.10 Provide reconciliations of all balance sheet accounts which detail and explain any reconciling items between the subledgers and the general ledger and explain or support the general ledger balance.

4.11 Provide support for the costs included in intangible assets (including any impairment analysis done on such assets).

4.12 Provide copies of all subledgers for accounts receivable, fixed assets, accounts payable and payroll.

### **5. Tax Matters**

*\*\* You should respond to each tax request with respect to federal, state, local and foreign jurisdictions. \*\**

5.1 Provide copies of the Company's 1994 -2000 tax returns (income, sales and use, property and payroll). List any tax returns for any jurisdiction that are on extension or that have not been filed, although due.

5.2 Provide a schedule of all net operating loss and credit carryovers by type, jurisdiction and year in which losses/credits originated. Include any known restrictions on use of any carryover item.

5.3 Provide descriptions (including jurisdictions) and amounts of material operating taxes (property, sales and use tax, *etc.*), business licenses and renewal dates.

5.4 Provide detail/analysis of tax reserves and deferred taxes.

5.5 Provide a list of open tax years for all jurisdictions. Provide the status of any significant tax audits, appeals and litigation for any jurisdiction currently under way or resolved in the last five years.

5.6 Provide a list of any tax penalties assessed or proposed to be assessed and the status thereof.

5.7 Provide copies of any rulings or settlement/closing agreements, received or requested, directed to the Company by any jurisdiction.

5.8 Provide a description of the Company's corporate and payroll tax functions and how they are managed. Are returns prepared in-house or is an outside service provider used? How are payroll tax deposits handled?

### **6. Material Agreements**

6.1 All partnership, alliance, product development, data processing, software license, research and development and joint venture agreements involving the Company including, but not limited to, any contract/outsourced R&D agreements.

6.2 Copies of all agreements with owner-operators.

6.3 List of significant acquisitions or dispositions of the Company's assets, mergers, business combinations and other material transactions completed, or proposed, within the last 5 years. Please provide all documentation relating thereto.

6.4 Any agreements that prohibit or restrict the Company's ability to compete in any business anywhere in any geographic region or the customers with which the Company may do business.

6.5 Any other material contract or agreement not listed above, including, without limitation, any contract, agreement or instrument that may contain restrictions relating to a sale of the Company or its assets, that may contain restrictions with respect to the payment of dividends or other distributions relating to the capital stock of the Company, that may require the consent of a third party to the sale of the Company or its assets or as to

which a default may occur as a result of the consummation of such a transaction.

### **7. Property (Real, Personal and Intellectual)**

7.1 A list of real property *owned or leased* by the Company, together with the location and a brief description thereof, and any liens or encumbrances thereon, as well as, with respect to leased property, a summary of basic lease terms, including whether the lease is capitalized, lease term, rent, termination and renewal rights, and any contingent rent payments or escalation clauses.

7.2 A list of material personal property *owned or leased* by the Company, together with the location and a brief description thereof, and any liens or encumbrances thereon, and with respect to leased property, a summary of basic lease terms, including whether the lease is capitalized, the lease term, rent, termination and renewal rights, and any contingent rent payments or escalation clauses.

7.3 List of all U.S and foreign patents, trademarks, service marks, trade names, copyrights, and licenses *owned or used* by the Company and any applications therefor (including the contents of all such application files and all prosecution papers), and copies of such instruments and applications, together with a list of numbers, descriptive titles, marks and countries with respect to each such item of intellectual property, and a list of law firms handling such matters for the Company (please indicate whether any such intellectual property rights are subject to adverse claims).

7.4 Description of material non-patented proprietary information (including, but not limited to, trade secrets and know-how) used or usable in the Company's business.

7.5 All significant agreements (whether current or proposed), pursuant to which the Company licenses any of its proprietary rights or is licensed by any third party to use any proprietary rights of such third party.

### **8. Other Items**

8.1 A list of all significant suits, actions, litigation, administrative or regulatory proceedings or other governmental (foreign, local, state and federal) investigations or inquiries, whether pending or threatened, which involve or affect the Company.

8.2 Provide a list, brief description and copies of all certificates, permits, qualifications, operating authorities and licenses necessary for the conduct of the Company's business.

8.3 Schedules of all insurance, specifying coverages, carriers, renewal dates, exposures, premiums, limits and deductibles for the past two years. Schedule of any threatened or potential insurance claims. Copies of any loss runs, claims reports or safety and loss control reports from any agent, broker, consultant or insurance company.

8.4 Any other document or information that, in your judgment, is significant with respect to the Company or any portion of the business of the Company or that you have considered or will consider in making disclosures regarding the assets, business, financial condition, results of operations and prospects of the Company.

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