

COMPANY, INC.

PRELIMINARY LEGAL DUE DILIGENCE REQUEST LIST FOR  
 PROPOSED SERIES [A] CONVERTIBLE PREFERRED STOCK FINANCING

In connection with the proposed sale by [Company, Inc.] (the “*Company*”) of its Series [A] Convertible Preferred Stock to an investor group led by [VC Fund I, L.P.] and its affiliates (“[VC Fund]”), below please find a list of the items which we would like to review as part of our due diligence effort (*note*: unless the context otherwise requires, all references to the “*Company*” herein are intended to include the Company and any and all of its subsidiaries and predecessors). Except where a list, schedule or description is requested, please provide us with a copy of the requested agreement, correspondence or other document. Please do not provide any “privileged” documents; however, please indicate whether any “privileged” documents have been withheld.

To complete this request, please send copies of each of the documents that are responsive to the items set forth below to [George Akers at Nelson Mullins at george.akers@nelsonmullins.com] and a duplicate set of all such materials to [REDACTED] at [VC Fund] (or upload them to a data room with access to such individuals). To facilitate our review of these materials, each document should be marked on the first page thereof (or in the file name if provided electronically) to indicate the roman numeral, letter and/or number to which it is responsive and/or be transmitted in one or more tabbed binders, using the numbering scheme below. If you believe that any request is unclear or too burdensome, please let us know. *Finally, please update this list manually or electronically to indicate the date responsive documents were provided (or check the “Does Not Exist” box for each request if there are no responsive documents) and return a cumulatively annotated, copy of this list with each due diligence response (if any particular response is a partial response, indicate this by inserting the word “partial” in the “Date Provided” column until all responsive materials have been provided).*

	<u>Date Provided</u>	<u>Does Not Exist</u>
<b>I. GENERAL CORPORATE MATTERS</b>		
<b>A. Minutes/Written Consents</b>		
1. Minutes and written consents of board of directors of the Company (and any committee thereof) since inception.	_____	_____
2. Minutes and written consents of the stockholders of the Company since inception.	_____	_____
<b>B. Charter Documents</b>		
1. Certificate of Incorporation, as amended to date.	_____	_____
2. List of jurisdictions in which the Company is qualified to do business, owns or leases real property, or is otherwise operating (and good standing certificates in such jurisdictions).	_____	_____
3. List of foreign countries where the Company does business and related good standing certificates (or comparable documents).	_____	_____

	<u>Date Provided</u>	<u>Does Not Exist</u>
<b>C. Corporate Organization</b>		
1. List of current officers and directors.	_____	_____
2. Management structure organization chart.	_____	_____
3. Schedule containing the name and ownership of each of the Company's subsidiaries, if any.	_____	_____
<b>D. Capital Stock and Other Securities</b>		
1. Equity ownership table showing ownership by: (i) class/series of shares; (ii) number of shares; (iii) dates of issuance; (iv) consideration received; and (v) shares subject to repurchase rights both prior to and pro forma for the current financing.	_____	_____
2. Equity ledger and related transfer and ownership records, including copies of all outstanding and retired stock certificates (front & back to show legends), if any.	_____	_____
3. List of outstanding options, warrants and convertible and nonconvertible debt securities. Include: (i) names of the optionees or grantees; (ii) amounts issued/granted; (iii) dates of issuances/grants; (iv) the plan under which issuance or grant occurred; (v) the consideration received; (vi) the exercise prices; (vii) the vesting schedules; and (viii) the expiration dates.	_____	_____
4. Forms of stock option agreements and plan and copies of any option agreements deviating from such form.	_____	_____
5. Warrant agreements, convertible debt instruments and any other agreements evidencing other outstanding convertible securities (other than stock options).	_____	_____
6. Copies of all agreements related to prior issuances of capital stock, including, without limitation, subscription agreements, operating agreements, purchase agreements, restricted stock agreements, investor rights agreements, stockholder agreements, registration rights agreements, preemptive rights, etc.	_____	_____
7. Agreements restricting the voting, sale, issuance, acquisition, redemption, registration or resale of any securities, including preemptive or other preferential rights to acquire securities, and waivers thereof.	_____	_____
8. Evidence of registration, qualification or exemption under applicable federal securities laws and state blue sky laws with respect to each issuance or transfer of the Company's securities.	_____	_____
9. Documents relating to recapitalizations, reorganizations or significant restructurings.	_____	_____
10. Any disclosure documents or memoranda used in private placements of the Company's securities.	_____	_____

**E. Acquisitions and Divestitures**

- 1. Agreements relating to (i) the acquisition or divestiture of equity interests in other companies, businesses or significant assets (other than purchases of goods in the ordinary course of business), including all materials related to any acquisitions, (ii) mergers, consolidations, reorganizations or similar corporate transactions; and (iii) any current plans or negotiations relating to either (i) or (ii), above.
- 2. Agreements containing (i) any “no-shop” or exclusivity obligation, or (ii) any right of first refusal, right of first offer or right of negotiation with respect to any acquisition transaction.

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**II. FINANCIAL INFORMATION**

- A. Audited financial statements for the company for all years since inception as well as any auditors’ reports to management and any management responses thereto (or unaudited if not available), and internal memoranda (particularly internal audit or regulatory compliance memoranda) concerning the Company, and unaudited interim financial statements (including a separate aged payables schedule) for the year ending December 31, [201 ] (or the latest available monthly statements).
- B. Budgets/annual business plans for the current fiscal year and the past three fiscal years (together with variances therefrom).
- C. Reports, studies and projections prepared by management with respect to the Company’s business, financial condition or planned operations, including business plan, since inception.
- D. Reports and studies prepared by outside consultants with respect to the Company’s business or financial condition, since inception.
- E. Financial reports and related materials prepared for the Company’s board of directors or a committee thereof since inception.

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**III. DEBT FINANCINGS**

- A. Debt instruments/notes, credit agreements, security agreements and guarantees, including documents relating to lease financings, along with copies of any warrants, equity purchase, or other rights issued or issuable in connection therewith.
- B. Material correspondence with lenders, including compliance reports submitted by the Company or its accountants, within the last year.
- C. Description of guarantees of third party obligations.
- D. Agreements restricting the payment of cash dividends.
- E. Schedule indicating the title, authorized amount and amount outstanding as of a recent date, of indebtedness of the Company (including convertible bridge loans and non-convertible loans), indicating interest rates and maturity dates.

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**IV. TAX MATTERS**

- A.** Federal, state, local and foreign income, sales and other tax returns filed since inception and settlement documents and related correspondence with the IRS or any other taxing authority re: same. \_\_\_\_\_
- B.** List and copies of all tax sharing and transfer pricing agreements currently in effect (if there are no written transfer pricing agreements, explain the transfer pricing methodology used between affiliated entities). \_\_\_\_\_
- C.** Schedule of the amount, origin and status of any U.S. net operating losses or credit carryforwards. \_\_\_\_\_
- D.** Copy of most recently filed Form 5500 for any and all 401(k) plans. \_\_\_\_\_
- E.** Agreements waiving statutes of limitations or extending the time during which suit might be brought with respect to taxes. \_\_\_\_\_
- F.** Correspondence regarding any tax liens. \_\_\_\_\_

**V. EMPLOYMENT MATTERS**

- A.** Employment agreements, restrictive covenant agreements, and offer letters for current and former employees and contracts with current or former consultants, as well as unexpired and outstanding offer letters for prospective employees. \_\_\_\_\_
- B.** Schedule showing employment detail for all employees, including date of hire, salary, bonus commitment range (if applicable), visa/immigration status and summarizing any non-standard terms of employment. \_\_\_\_\_
- C.** Agreements providing for (i) severance benefits, acceleration benefits or other benefits upon termination of employment or in connection with a change in control, or (ii) “stay bonuses.” \_\_\_\_\_
- D.** Employee benefit and profit-sharing plans or arrangements, including (i) stock option plans; (ii) stock purchase plans; (iii) deferred compensation plans; (iv) bonus plans; (v) incentive plans; (vi) pension and other retirement plans; (vii) severance plans; (viii) health and welfare plans (e.g., life or health insurance, medical reimbursement plans, etc.) and (ix) similar plans or arrangements. \_\_\_\_\_
- E.** Brief description of perquisites generally available to officers, directors and employees. \_\_\_\_\_
- F.** Contracts with unions and other similar agreements, including collective bargaining agreements. \_\_\_\_\_
- G.** Loans to, and guarantees for the benefit of, directors, officers or employees. \_\_\_\_\_
- H.** “Key Person” insurance policies. \_\_\_\_\_

- I. Employee handbooks, manuals, guidelines and bulletins, and any memoranda pertaining to the Company’s policies on vacation, termination, promotion and similar matters. \_\_\_\_\_
- J. Indemnification or similar agreements with directors and officers. D&O insurance policies, including premium information. \_\_\_\_\_
- K. Forms of proprietary information and inventions, confidentiality and non-competition agreements with current and former employees and consultants. Copies of any material deviations from forms. All invention disclosures from current and former employees and consultants. \_\_\_\_\_
- L. List of employees terminated within the past 12 months and a statement as to whether the Company has any reason to believe that such former employee has violated any non-disclosure, non-competition, non-solicitation or similar agreement or may have any claim of any kind against the Company. \_\_\_\_\_
- M. Documents relating to compliance with EEOC, NLRB, ERISA, COBRA, FLSA, OSHA and other regulations relating to employment and labor matters, within the last three years. \_\_\_\_\_
- N. Description of pending or threatened labor or employment disputes or work stoppages during the last three years. \_\_\_\_\_
- VI. INTELLECTUAL PROPERTY**
- A. Schedule of patent registrations and applications identifying each registration (application) by (i) title; (ii) registration (application) number; (iii) date of registration (application); and (iv) country. \_\_\_\_\_
- B. Schedule of trademark and service mark registrations and applications, including (i) identity of each mark; (ii) date of registration (application); (iii) registration (application) number; (iv) status (that is, registered, renewed, abandoned, Section 8 and 15 affidavits submitted, etc.); and (v) country or state where registered. In those instances where registration has not been sought, identify the mark and its date of first use anywhere in the United States. \_\_\_\_\_
- C. Schedule of copyright registrations and applications, if any, identifying each copyright by (i) title; (ii) registration (application) number; and (iii) date of registration (application). \_\_\_\_\_
- D. Schedule of mask work registrations and applications, if any, identifying each registration (application) by (i) title; (ii) registration (application) number; and (iii) date of registration (application). \_\_\_\_\_
- E. Manual or other written document detailing the procedures for maintaining the secrecy of trade secrets. \_\_\_\_\_
- F. Description of any software in which the Company has rights, whether as owner, licensee or otherwise and contracts/agreements with any software development vendors. \_\_\_\_\_
- G. License agreements (naming the Company as licensee or licensor) (including any software license agreements and royalty obligations). \_\_\_\_\_

- H. Communications to or from third parties relating to the validity or infringement of the Company’s patents, trade secrets, trademarks, service marks, copyrights and other intellectual property rights. \_\_\_\_\_
  - I. Studies or reports relating to the validity or value of the Company’s patents, trade secrets, trademarks, service marks, copyrights and other intellectual property rights, and the licensing thereof. \_\_\_\_\_
  - J. Agreements pursuant to which any patent, trademark, service mark or copyright has been sold or transferred by or to the Company and evidence of recording thereof. \_\_\_\_\_
  - K. Agreements relating to source or object code escrows, if any. \_\_\_\_\_
  - L. Schedule of software distributed by the Company (whether or not developed by the Company) subject to any “open source” obligations or any licenses which require that as a condition of the distribution of the object code the source code must be included or made available to any licensee, which includes the name and version of the software, the license under which it was obtained and the use of such software by the Company. \_\_\_\_\_
- VII. OTHER AGREEMENTS AND COMMITMENTS**
- A. Distribution, marketing, advertising, public relations, sales representative, resellers and supplier agreements; non-disclosure agreements. \_\_\_\_\_
  - B. Standard form of customer agreements and actual customer agreements with top 10 customers. \_\_\_\_\_
  - C. Joint venture, partnership or similar agreements and maintenance and service agreements. \_\_\_\_\_
  - D. Documents providing for any material contingent and/or earnout payments to be made to or by the Company. \_\_\_\_\_
  - E. Agreements with competitors. \_\_\_\_\_
  - F. Agreements restricting the Company’s right (i) to compete; (ii) to acquire any product or other asset or any services from any other person, to sell any product or other asset to or perform any services for any other person or to transact business or deal in any other manner with any other person; (iii) to develop or distribute any technology; or (iv) to solicit employees, consultants, contractors or customers. \_\_\_\_\_
  - G. Agreements with investment bankers, placement agents, and brokers. \_\_\_\_\_
  - H. Agreements with attorneys, accountants, consultants or other service providers providing for payment at other than standard hourly rates. \_\_\_\_\_
  - I. Product warranties and agreements providing for indemnification or other extraordinary remedies. \_\_\_\_\_
  - J. Memoranda of Understanding, letters of intent or term sheets with potential partners, significant customers or suppliers. \_\_\_\_\_

**K.** Other agreements that are material to the operation of the Company's business or that were entered into otherwise than in the ordinary course of business.

**L.** Agreements requiring consents or approvals, requiring special payments or resulting in changes in rights in connection with change in control transactions (or otherwise in connection with the transaction being proposed).

**VIII. LITIGATION/INSURANCE**

**A.** List and brief description of litigation, claims and proceedings settled or concluded or pending or threatened.

**B.** Consent decrees, injunctions, judgments, other decrees or orders, settlement agreements or similar documents.

**C.** Attorneys' letters to auditors within the last three years.

**D.** Correspondence and pleadings regarding the foregoing matters referred to in this Item VIII and any alleged breaches of any agreements.

**E.** Insurance policies (including property damage, third party liability, product liability and key employee insurance).

**F.** List and a brief description of potential claims, damages, injuries, losses or lawsuits for which the Company, or any person or entity acting on its behalf, has either provided notice to any insurer pursuant to any insurance arrangements or has sought coverage under such insurance arrangements.

**IX. COMPLIANCE WITH LAWS**

**A.** Citations, notices or inquiries received from government agencies within the last three years, including inquiries concerning potential violations of laws, rules or regulations.

**B.** List of material governmental permits, licenses and authorizations required to carry out the business of the Company.

**C.** Documents filed with the SEC or any state or foreign securities regulatory agency within the last three years.

**D.** Material reports to and correspondence with any government agency within the last three years.

**X. REAL PROPERTY; PERSONAL PROPERTY; ENVIRONMENTAL**

**A.** Deeds to real property and leases or subleases of real property.

**B.** Title insurance policies (including preliminary title reports).

**C.** Documents showing any certification of compliance with, or any deficiency with respect to, regulatory standards of the Company's facilities, within the last three years.

**D.** Financing leases and sale and lease-back agreements and conditional sale agreements.

- E.** Material equipment and personal property leases. \_\_\_\_\_
- F.** Agreements pursuant to which the Company is obligated to make any payment for environmental clean-up or compliance or is obligated to indemnify any other party for the cost of such clean-up or compliance. \_\_\_\_\_
- G.** Environmental or safety studies, audits or reports prepared by, for or in the possession of the Company and citations, notices or requests relating to environmental matters involving the Company. \_\_\_\_\_
- H.** Other documents, records and logs not specifically identified above that relate to potential or alleged violations, investigations, litigation or responsibility under applicable environmental laws. \_\_\_\_\_
- XI. RELATED PARTY TRANSACTIONS**
- A.** Written agreements (and description of oral arrangements) between the Company and any current or former stockholder, officer, director or employee of the Company. \_\_\_\_\_
- B.** Description of any direct or indirect interest of any stockholder, officer, director or employee of the Company in any corporation or business that competes with, conducts any business similar to or has any present (or contemplated) arrangement or agreement with (whether as a customer or vendor) the Company. \_\_\_\_\_
- XII. MISCELLANEOUS**
- A.** Reports/written communications with stockholders within the last three years. \_\_\_\_\_
- B.** Advertising, marketing and other selling materials currently used. \_\_\_\_\_
- C.** Press releases within the last three years. \_\_\_\_\_
- D.** Other documents or information viewed by the management of the Company as material to the current/proposed operations of the Company. \_\_\_\_\_