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ACQUISITION DOCUMENTS AND STRATEGIES

INTRODUCTION

For many early CEOs, the legal process of buying a company is brand new—and even for those that have some M&A legal experience, often that prior experience centered around larger deals between experienced buyers and sellers. Equally important, it's quite often the case that the for the seller the experience of selling his company is new, intimidating, high-stakes, and likely the most important business transaction of their life (as well, for you). The combination of two parties doing the most consequential transaction of their lifetime can create logjams, expensive legal bills, misunderstandings, and sometimes a failed transaction. To the extent you understand the legal documents, and can focus your attention and your bargaining asks only on what is important, your ability to explain what the documents mean in plain English, and your ease with the process, increase the chances you close on your deal and retain the seller relationship.

As well, the documents are important to get right. Absent fraud, nothing which happened between the parties matter if it's not included in the legal agreements. It's as if at closing, all parties agree: "Everything we said, gave to each other, promised, or implied is now voided. The only thing that counts is what is in those stacks of paper." You'll not be able to plead to an arbitrator that the seller told you such-and-such during diligence, and therefore misrepresented you. It's either in the contracts, or tough luck.

Keep in mind that there is nothing magical about a legal document. It's simply where two parties write down on paper what they agreed upon so there are no misunderstandings—keeping this in mind will help you guide the seller (e.g. "All we're trying to do here is get onto paper what you and I are agreeing to."). Nonetheless, buying a company often ends up involving hundreds of pages, and hundreds of thousands of dollars in expense. It's easy to find this overwhelming, confusing, and frustrating – which often manifests in relying too much on your legal counsel; which is neither good for you and your investors, or for your attorney.

Sections II and III of this white paper outline the principle relationships and contracts, giving you a critical overview of the legal process. Sections IV, V, and VI describe the primary agreement with the seller, strategies to protect yourself, and how to gain advantage in the contracts. The last

David Dodson, Lecturer in Strategic Management, prepared this note as the basis for class discussion.

three sections offer general negotiation guidance and ways to manage your relationship with your attorney.

This White Paper is long and best read at the time you begin the legal process. But by understanding what is in front of you, and knowing where to spend your time and how to gain leverage, you'll reduce your legal expense by $50,00 to $100,000, shorten the time to closing (and reduce deal risk) and better protect yourself and your shareholders.

SIX RELATIONSHIPS THAT REQUIRE CONTRACTS

It's helpful to think of the required documents in the context of the six principle relationships most common in acquisitions. If you keep the relationships in mind, then the underlying documents become more understandable. Within each of these key relationships, there are a handful of common-sense objectives that get memorialized into an agreement. While these objectives are straightforward, the legalese tends to mask the simplicity of what is being accomplished—they are not as technical or complicated as we are sometimes led to believe.

The six principle relationships are:

1. <u>Buyer and Seller</u>. This is of course the most important relationship and the one that is most likely to have problems down the road, which is why it is here that you should spend most of your time. Most of this relationship is captured in the purchase agreement, and addresses the following straightforward objectives:

    a. The purchase price, and how that consideration is being paid;
    b. Each party is who they say they are and that they have the authority to enter into the transaction;
    c. A series of promises made to one another called "representations", "warranties" and in the case of promises to do things after the closing called "covenants";
    d. What happens if one party breaks their promise ("indemnification").

2. <u>Entrepreneur and Investors</u>. You'll be taking capital from your investors, and in return you're offering up your hard work, a chunk of your career, and the opportunity for investors to participate:

    a. Who gets what when the company is sold (equity, vesting, etc.).
    b. What happens if we break up;
    c. How will we make business decisions going forward?

3. <u>Among your Investors</u>. Your investors have a relationship among them, and especially since you have some with influence (on the board or much larger than others), and some very passive, your investors will want to document these two objectives:

    a. We all want to be treated equally and fairly;
    b. How will we make business decisions going forward?

4. Buyer and Banker. In the instance you have a lender, you'll be entering into a long and often complicated agreement, but keep in mind it just meets three simple objectives:

    a. How much money is being borrowed;
    b. How much will that money cost;
    c. Agreement of early indicators that you may not be able to repay the loan ("covenants");
    d. What happens if you break one of those covenants?
    e. What happens if you don't make a payment?

5. Buyer and Select Employees. There is a good chance you'll have some things you want from the company employees (including the seller in her or his capacity as an employee). While the specifics are situational, generally the objectives are:

    a. What will they be paid;
    b. What if they leave;
    c. Restrictions on competing with the company;
    d. Restrictions on taking confidential information;
    e. Restrictions on interfering in your relationship with your employees.

6. Buyer and Government Authorities. While you'll spend very little time on these documents as they tend to be required but not controversial, you'll need to agree to certain things and make certain assurances to government authorities. These are generally taken care of by your legal counsel and don't take attention from you.

Contracts Used to Memorialize those Six Relationships

It is important you understand which contracts are points of leverage and where you should spend time, energy, and negotiating capital, and which are largely standard and of limited value in expending legal fees and your attention. Here are the primary agreements:

1. Buyer and Seller. There are generally four major contracts that outline the agreement between you and your seller:

    a. The Conveyance Agreement is the principle document, and along with the Disclosure Statement the most important document of your transaction. A Conveyance Agreement goes by several names depending upon the drafting lawyer and the nature of the transaction. But the most common names are: Purchase and Sale Agreement, Asset Purchase Agreement, Merger Agreement, or Stock Purchase Agreement.

    b. The Disclosure Statement is a critical companion to the Conveyance Agreement, and is where the buyer lists exceptions to promises he is making (e.g. *except as listed in the Disclosure Statement, all contracts are in full force*) or where the seller itemizes information you want them to stand behind (e.g. *all employment contracts that exist are attached to the Disclosure Schedule; the financial statements for the period ending on June 30, 2018 are attached to the Disclosure Schedule*). If you want the seller to stand behind something, you need to include it in the Disclosure Schedule because if it's not in the contracts, it's not part of the legal agreement.

c. The Escrow Agreement. In this agreement, you and the seller instruct the escrow agent as to the terms under which money is distributed to one party or the other. In most cases, this document represents standard terms and is not one to spend a great deal of time on.

d. The Seller Note would be used in the event you have future payments owed to the seller and you have chosen to structure them as a note versus installment payments or in the context of a non-compete agreement. The framework of a Seller Note is similar to that of the Credit Agreement (discussed below) but often not as restrictive on the company or as complex. While the form of the agreement will be standard, the business terms are worth your careful attention.

2. Entrepreneur and Investors. This understanding, between you and your investors, is captured in an LLC Agreement (similar to what you signed when you formed your company), and in some cases in a separate Employment Agreement. There will only be a few key issues you'll want to come to terms with (severance if you cease employment; vesting schedule for your stock and what happens to your stock if you leave; how proceeds are distributed; tax distributions; any preferred return that is paid to investors before you participate). The remainder of the agreement is generally standard and not worth a lot of your attention.

3. Among your Investors. These understandings, and the relationship among your investors, is also captured in the LLC Agreement. Since this contract captures the relationship with your investors (and is in nearly every case standard terms), generally you'll want to designate a "lead investor" to review this agreement, and provided they have a quality reputation among your investors, you can leave this agreement to them and your attorney. The key provisions in this agreement are: Registration Rights, Preemptive Rights, Drag-Along Provision, Share Transfers, and the logistics of the Board of Directors.

4. Buyer and Banker. You'll likely face two contracts that describe this relationship: Credit Agreement and Security Agreement. The Credit Agreement is where the economic terms are described, and as it pertains to covenants, you'll want to pay close attention (especially the definitions such as "EBITDA" or "Excess Cash Flow"), and any cure period for covenant violations. The remaining sections, such as the mechanics of the loan or what happens if you don't pay or you violate a covenant are largely out of your negotiating control and you can waste a lot of time and legal expense while not accomplishing much.

5. Buyer and Select Employees. The contracts required here depend upon what has been agreed to between the Buyer and the employee, but they generally fall into four categories, which of course can be combined into a single agreement. Because the other party to these agreements are often not represented by lawyers and less

experienced in contract law, you'll be advised to use simple and easily understandable language, and to avoid legalese.

a. An Employment Agreement lays out basic employment terms, which generally protect the employee, such as compensation, severance, bonuses.

b. A Non-Compete Agreement requires the employee to not directly compete with the buyer (or the company purchased). In most states, a person can't be asked to sign away their ability to make a living in their chosen field, so the scope of a non-compete agreement should be as narrow as possible in order to protect the Buyer. For example, a non-compete agreement that covers a 25-mile radius of your principle office is likely more enforceable than one covering the entire state.

c. Non-Solicitation Agreements may cover employees or customers. These generally are more enforceable than non-compete agreements and can have a similar benefit. For example, if you have a narrow scope to the non-compete agreement, but the other party can't hire any of your employees and cannot solicit any of your customers, you may have accomplished more than a far-reaching Non-Compete Agreement with the benefit of greater enforceability.

d. An Assignment of Inventions would be necessary in the event that your legal counsel advises you that individuals may have a claim to important intellectual property. You'll want to think about this carefully, and then consult with your attorney.

6. Buyer and Government Authorities. These agreements are almost always technical, non-controversial, and required. This is an area where you should rely on your legal counsel, and spend little time or expense reviewing.

The Conveyance Agreement and Disclosure Statement

The most important agreement to get right is the Conveyance Agreement (e.g. Asset Purchase Agreement) and the associated Disclosure Statement. Therefore, we want to give you a tour of the primary nine sections of these integrated agreements and offer some thoughts on how you can protect your interests. These sections are described in the general order that they appear in most Conveyance Agreements:

1. Transaction Structure (1-3 pages). These paragraphs outline the mechanics of the transaction (e.g. merger, acquisition, stock/equity purchase), what you are buying, and in the event of an asset sale what you are not buying. Once you agree on the form of the transaction, this section is straightforward.

2. Price and Terms (1-3 pages). This will articulate the form of consideration (generally cash, progress payment, note, and earn-out). In the event of an earn-out, it is here where those conditions may be described (likely extending the length beyond three pages), and if there are restrictions on how the company may be operated until the earn-out is fully paid. This is also where you would describe any purchase price

adjustments (most generally a "working capital adjustment") and reference to any hold-back or escrow agreement.

3. Definitions (3-10 pages). In order to make the agreement read more easily, and limit the length, you'll define certain terms. The convention to indicate a defined term is by first referencing the word or words in quotations, and thereafter capitalized (e.g. "Working Capital", "Knowledge", "Key Contracts", thereafter Working Capital, etc.). Here is where a skillful businessperson and contract negotiator can not only better protect themselves, but also find advantage. This section is often overlooked by both parties, and hence an opportunity for you in the negotiation.

   For example, your seller may want to limit certain promises ("representations" see below) based on what she or he knows to be true (e.g. "To the Seller's Knowledge…"). Rather than fight that battle, carefully construct a definition of "Seller's Knowledge" to include not just what they actually know, but what they would know had they made all necessary inquiries and diligence before making the representation.

   Another important defined term is "Materiality" or "Material". Often a seller will want that added to their promises, but if you have carefully defined that term to be narrow in scope or small in value, you may find yourself generous with his requests but nonetheless limiting the impact by the use of a tight definition.

4. Seller's Representations and Warranties (15-30 pages). This is the meat of the Conveyance Agreement where you outline the promises the seller made to you to which you are relying. Here you also list information and data you want them to be responsible for such as a list of customers, leases and key contracts, and the financials. Here is also where the seller's promise they are who they say they are and that they have the authority to enter into the agreement.

5. A common misunderstanding with sellers is that in this agreement they are being asked to make promises to which they cannot be certain (e.g. there is no basis for any third party to sue the company—the seller might claim, "how can I know that?"). The essence of this section is *Risk Allocation*, and therefore in this example while the seller is stating there is no basis for a lawsuit, the essence of the statement is that if there is a lawsuit, the seller takes that responsibility.

6. Buyer's Representations and Warranties (3-5 pages). This is generally limited to your promise that you are who you say you are, and that you have the authority to enter into the agreement. You'll not want to spend much time on this section.

7. Covenants (5-10 pages). Covenants outline how the parties are going to behave after the closing. Common covenants include: confidentiality, press releases, required filings, and subsequent tax returns/ refunds. If you find yourself in the unusual situation where you are signing the Conveyance Agreement but not closing because of a required approval or other matter, then the covenant section may be more involved as you'll need to define how the seller may operate the company between

signing and closing, and under what circumstances either party may choose not to close.

8. Indemnification (3-8 pages). Here the parties agree how long their promises will last, and what to do if someone's promise is not correct. The indemnification section is often overlooked by the seller, but a critical part of the Conveyance Agreement and often where economic value is lost or gained in typical post-closing disputes. The key terms include:

    a. Survival describes how long the promises are good for. Generally, a seller will insist that if you have a claim, you make it within a certain time frame. For a few issues like taxes or environmental claims, your attorney will advise you on special survival terms, but for most of the promises there will be a single deadline for you to make a claim. The practical fact is that you will know just about everything you need to know within the first three months, and certainly inside of six months. You may find yourself with advice from your team to fight for long survival terms, but that will likely buy you nothing from a practical standpoint, and cost you in other areas of the agreement as its especially burdensome to the seller. Our suggestion is you be generous with survival in return for concessions on the basket/threshold.

    b. Basket or Threshold. It's not uncommon for the seller to insist that you cannot make a claim unless the damages reach a certain threshold to avoid nitpicking. In some cases, it's a deductible or basket, whereby the first $100,000 is born by the buyer and then the seller is responsible for everything over that. In others, once the threshold is met, the seller is responsible back to the first dollar.

    c. You'll not want to have any basket or threshold apply to the working capital adjustment, if possible. Generally, the seller is leaving a certain level of working capital, and if there is a threshold or basket, they can just pull that amount of cash out of the company the day before closing and effectively increase the purchase price.

        This section is worth fighting hard for, because there is often a claim after closing, and the deductible essentially acts as a reduction to the purchase price. Unlike long survival clauses (which often do nothing for the buyer), the basket or threshold is quite likely to have a direct economic impact on your company. Furthermore, if a claim is made, it is because the Buyer suffered damages (e.g. there were unpaid bills left to the Buyer) and so you'll be incurring those damages with no recourse to the seller until the threshold is reached. For example, if the seller didn't tell you about certain cash obligations you have to make to third parties, and there is a $100,000 deductible, you'll have to make those payments and the seller won't be responsible.

        In the event of seller push-back on your request for a low basket or threshold, its often helpful to remind them that the representations and warranties often had materiality standards and thresholds, and there is where the seller already addressed their concern.

d. The "Cap". Absent fraud or a breach of certain "fundamental representations" like them not being who they say they are, the cap defines the maximum amount the Buyer can claim against the Seller (generally 15% to 25% of the total purchase price). This can be an emotional and over-negotiated term, as it plays into the fear of both parties, but generally the cap will never be reached as it would amount to a massive oversite in your due diligence, and if it is, you'll likely be facing a fraud claim anyway, where there is never a cap.

9. Housekeeping (2-5 pages). At the end of the agreement you'll find a handful of housekeeping paragraphs that you can rely on your attorney to address. Examples include: severability, notices, expenses, jury trial, deliveries, signatures and counterpart, and legal concepts like "time of the essence", and presumption against the drafting party.

10. Disclosure Statement. This is a critical addendum to the conveyance agreement where the seller carves out exceptions to the promises and attaches information that you want them to stand behind. It is critical to understand that if the seller lists an exception, you generally have no recourse. A skillful seller can more or less gut much of the hard work of the representations and warranties by listing exceptions.

    This statement is often written in layman's language, less precise, can provide for broad interpretation in a dispute if you are not careful, and for that reason is important to read and be willing to negotiate carefully. These Disclosure Statements are often lengthy as they have volumes of information you requested, delivered at the last minute, and certain carveouts may be inconspicuous. It is not uncommon for this to be presented almost as an afterthought, on the eve of the closing when there is tremendous momentum to sign everything and wire the money—to treat this as anything less than a critical agreement is a big mistake.

    For example, you may carefully craft a representation about environmental risk, but in the Disclosure Statement, a skillful seller may state:

    > *"The Company has an underground storage tank which has been used in the normal course of business and may be subject to normal wear and tear which could have an impact on the integrity of the tank."*

    You might read this on the day of closing and think "Okay, I guess that seems reasonable". But if you later find the underground tank has a leak, the seller will use this language to force you into an unattractive settlement or perhaps limit his liability altogether by saying that he fully disclosed there might be compromises to the integrity of the tank.

    a. Do not allow them to deliver the Disclosure Statement at the last minute. Stay on top of it, and if they do so you must delay the closing until you have had the chance to carefully review the contents.

b. Require any disclosures to be tied specifically to the representation or warranty it is intended to address. It is very important that a disclosure made for one representation cannot apply to another representation unless it is restated again with specific reference to that representation.

c. Pay attention to the wording and negotiate changes to protect the promises you have relied upon. For example, you might choose to require the seller to change the earlier disclosure to:

"The Company has an underground storage tank which has been used in the normal course of business and may be subject to normal wear and tear which could have an impact on the integrity of the tank, however, nothing in this disclosure will limit the seller's liability in the event of a leak or other Environmental Damage (as defined in the Agreement)."

TIPS FOR FIVE CRITICAL SELLER REPRESENTATIONS

In your contract there will be many seller representations, but there are five in particular that are especially important:

1. Financial Representation. This is the daddy of them all, because generally speaking if you get this one correct, you capture not only the financial picture of the company, but through the balance sheet have a seat at the table with all the assets and liabilities of the company. Make sure not to water down the standard (e.g. GAAP) and not to add qualifiers such as "material" or "knowledge" as that will be covered in the threshold or basket and any conventional standard such as GAAP already has a materiality clause.

   Include also a standard of consistent preparation (e.g. "…consistently prepared according to Generally Accepted…"), and that any inconsistencies are disclosed in the Disclosure Schedule.

   Make sure to include as exhibits an income statement through the most recent closing, and to get them far enough in advance that you can carefully review them. You'll want a balance sheet as of the day of closing.

2. Undisclosed Liabilities. The goal here is to make this as broad as possible and to try cover any liabilities not required under GAAP, as well to overlap with the Financial Representation as this can help you if there are errors in the balance sheet. In this representation, avoid conceding to a GAAP qualifier, or a material adverse effect ("MAE") standard. Be forceful to push back on qualifiers such as "except in the normal course of business". Remember, the Seller has the option of listing any exceptions in the Disclosure Schedule and so if he is worried about anything, he can disclose it and at the very least you are aware of the risk prior to closing.

3. Litigation. Here the Seller promises there is no undisclosed litigation, certifies to a litigation history, and ideally represents that there are no facts that could reasonably

be expected to lead to litigation. The point is that the Seller should take the risk of litigation for events prior to closing, and you take the risk for events taking place post-closing. By the way, explaining this allocation of risk to the Seller likely goes a long way to getting this representation to your satisfaction.

You'll want to consider broadening the rep with a strategic definition of "knowledge" (e.g. … "no knowledge of facts that would reasonably be expected to cause a Claim."). As well, avoid diluting phrases here such as ("…would reasonably be expected to result in a material liability" or "taken as a whole…") as thresholds of materiality are covered in the indemnification section.

4. Material Contracts. This defines what constitutes an important contract, requires the seller to disclose them in the Disclosure Schedule, and promises they are in full force and effect. Do not allow the Seller to simply name the contract in the Disclosure Schedule, but instead require the agreements to be attached as part of the contracts.

   As well, be strategic here as this section has the dual purpose of making sure that the key customer and supplier contracts are real and that none of the contracts have clauses that will cause you pain after closing (e.g. cancellation penalties, employee severance liability, etc.).

   Note however, that if he attaches the contract, and later you don't like a term in the contract or feel terms in the contract violate a representation, he may very well succeed in making the claim that all of that was properly disclosed. So if you ask for disclosure, you need to read it.

5. Customers. There will be a section where the seller makes assurances as to the state of their customer relationships, and this is important as it is a common post-closing issue. Here you define what issues or potential issues need disclosure, and you can broaden the representation with a strategic definition of "knowledge" to include "constructive knowledge" for issues like whether the customer does not intend to terminate their relationship.

As a footnote, the representations for Labor, ERISA, Tax, Intellectual Property, and Environmental are generally lawyerly and technical, often geared toward liability avoidance where you are unlikely to add much value as the client. Be careful on legal fees here, and if you get into a difficult negotiation over these terms, be sure to focus on your commercial requirements and not technical principles (this most often comes up under environmental language).

Complex and Extended Language

Require your attorney to write language in a form that is easily understandable to both parties. Often a paragraph has been created over time in earlier contracts where clauses were added through negotiation until the whole thing becomes unnecessarily complex with double-negatives and complex references. When language gets out of control, it's okay to tell your attorney to start over and re-write the paragraph in a simplified form starting from scratch. Complex and extended language is a place where mistakes are made, is more expensive, hard on the relationship with the Seller, and creates expensive and uncertain dispute resolution as the parties battle over what the sentence really meant. Appendix A of this White Paper offers three versions of a financial representation to make this point.

Some Negotiation Tips

First, prepare like crazy. Smart people tend to act as if a negotiation is simply improvisional theater, rather than a process that requires preparation, planning, and discipline. Next, make sure to Listen, Listen, Listen. When you are quiet, you are learning things about the other person's position; you are gaining information. When you are talking, you are providing information. In that light, never, ever interrupt. Be patient. While it may be tedious to let long winded people talk, they are giving you information if you are willing to carefully listen, and you never know what someone was just about to say before you interrupted. Finally, consider the medium not as a means of efficiency, but to gain advantage—email is very limiting, phone better, face to face the best.

Managing the Client-Attorney Relationship

Great attorneys are not short on work, do not overbill, and take no joy in seeing their client's money wasted. Most of the blame for big bills falls with the client. Here are five tips to a better attorney relationship:

1. Before getting on the phone with your attorney, do your homework, have your list ready, and get right to business.

2. Avoid "all hands meetings" whenever possible. You have every right to question whether three attorneys are necessary when one is sufficient. You don't need to pay for an attorney to be in a two-hour meeting, when they are only active for one agenda item—they can arrive for their section of the agreement and then leave. All hands meetings can cost you thousands of dollars per hour if you are not careful.

3. Spend our time, and your advisor's time, in areas that matter, and avoid negotiations on principle and in areas of little value.

4. Your attorney's job is to outline the risks, it is your job to decide whether to take that risk. When confronted with such a risk, put a dollar value against it and a probability. You will often find that the expected value of the risk is less than you'll spend negotiating the issue.

5. Receive bills at least monthly, and preferably every other week. Read them right away. It does no good to discover at the end of the process areas you could have controlled the expense after the attorney has legitimately worked those hours.

APPENDIX A

61 WORDS	**EXHIBIT C CONTAINS THE TAX RETURNS AND MONTHLY INCOME STATEMENTS (IF ANY) FOR THE LAST 24 MONTHS ("FINANCIALS"). TO THE BEST OF SELLER'S AND OWNER'S KNOWLEDGE THE FINANCIALS ARE ACCURATE, FAIRLY PRESENT THE CONDITION OF THE ASSETS. TO THE BEST OF SELLER'S KNOWLEDGE THE SELLER HAS DISCLOSED ALL MATERIAL FACTS WITH RESPECT TO THE FINANCIAL POSITION AND PROSPECTS OF THE ASSETS.**
151 WORDS	**FINANCIAL INFORMATION. SELLER HAS DELIVERED TO PURCHASER AS SCHEDULE 5.4 COPIES OF (I) THE CONSOLIDATED BALANCE SHEETS OF SELLER AS AT DECEMBER 31, 2011, 2010, 2009 AND 2008, AND THE RELATED UNAUDITED CONSOLIDATED STATEMENTS OF INCOME OF SELLER'S BUSINESS FOR THE YEARS THEN ENDED (SUCH STATEMENTS OF INCOME AND SUCH BALANCE SHEETS ARE REFERRED TO HEREIN AS THE "FINANCIAL INFORMATION"). SUCH FINANCIAL INFORMATION IS COMPLETE AND CORRECT IN ALL MATERIAL RESPECTS, HAS BEEN PREPARED ON A CASH BASIS FOR TAX PURPOSES CONSISTENTLY APPLIED WITHOUT MODIFICATION OF THE ACCOUNTING PRINCIPLES USED IN THE PREPARATION THEREOF THROUGHOUT THE PERIODS PRESENTED AND PRESENTS FAIRLY IN ALL MATERIAL RESPECTS THE CONSOLIDATED FINANCIAL POSITION, RESULTS OF OPERATIONS THE BUSINESS AS AT THE DATES AND FOR THE PERIODS INDICATED. SELLER HAS PROVIDED ACCESS TO PURCHASER TO CUSTOMER SALES RECORDS, CUSTOMER LISTS AND OTHER CUSTOMER SERVICE DATA AND SUCH RECORDS ARE ACCURATE AND COMPLETE IN ALL MATERIAL RESPECTS.**
244 WORDS	**THE COMPANY HAS PREVIOUSLY FURNISHED TO BUYER THE FOLLOWING FINANCIAL STATEMENTS, COPIES OF WHICH ARE ATTACHED HERETO IN 0 OF THE COMPANY DISCLOSURE SCHEDULE: (I) THE AUDITED CONSOLIDATED BALANCE SHEETS OF THE COMPANY FOR THE FISCAL YEARS ENDED JUNE 30, 2013, JUNE 30, 2012 AND JUNE 30, 2011 AND THE RELATED [AUDITED] CONSOLIDATED STATEMENTS OF INCOME, RETAINED EARNINGS, CASH FLOWS AND MEMBERS' EQUITY FOR THE FISCAL YEARS THEN ENDED (COLLECTIVELY, THE "ANNUAL FINANCIAL STATEMENTS"), AND (II) THE CONSOLIDATED UNAUDITED BALANCE SHEET OF THE COMPANY AS OF FEBRUARY 28, 2014 (THE "BASE BALANCE SHEET") AND THE RELATED CONSOLIDATED UNAUDITED STATEMENTS OF INCOME, RETAINED EARNINGS AND CASH FLOWS FOR THE EIGHT (8) MONTH PERIOD THEN ENDED (THE "MOST RECENT FINANCIAL STATEMENTS" AND, TOGETHER WITH THE COMPANY ANNUAL FINANCIAL STATEMENTS, THE "FINANCIAL STATEMENTS"). EXCEPT AS SET FORTH IN 0 OF THE COMPANY DISCLOSURE SCHEDULE, THE COMPANY FINANCIAL STATEMENTS (X) HAVE BEEN PREPARED FROM THE BOOKS AND RECORDS OF THE COMPANY IN ACCORDANCE WITH APPLICABLE LAW AND GAAP APPLIED ON A CONSISTENT BASIS THROUGHOUT THE PERIODS INVOLVED, AND (Y) FAIRLY PRESENT IN ALL MATERIAL RESPECTS THE FINANCIAL POSITION OF THE COMPANY AND ITS SUBSIDIARIES, ON A CONSOLIDATED BASIS, AS OF THE RESPECTIVE DATES THEREOF AND THE RESULTS OF OPERATIONS AND CASH FLOWS FOR THE PERIODS INDICATED (EXCEPT THAT THE MOST RECENT FINANCIAL STATEMENTS LACK FOOTNOTE DISCLOSURE AND OTHER PRESENTATION ITEMS, AND DOES NOT INCLUDE CERTAIN GAAP ADJUSTMENTS NORMALLY BOOKED IN CONJUNCTION WITH THE YEAR-END AUDIT).**