Due Diligence Request List

CONFIDENTIAL

September 23, 2021

In connection with the proposed transaction involving \_\_\_\_\_\_\_\_\_\_\_\_\_\_a New York corporation organized on July 16, 2019, d/b/a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“ the “***Corporation***”) we would appreciate it if you could make available to us copies of the documents and information requested below. All requests have been made based upon your representation that the Corporation has no subsidiaries (other than the newly formed limited liability company to which the Seller will contribute 100% of the Assets (the “Newco”)). As we proceed with our legal due diligence review, we may follow-up with additional requests. Also, please let us know if any of the requested items are unduly burdensome to the Corporation and we will work with you to modify our request.

Please send us copies of each of the documents that are responsive to the items set forth below. All documents should be final, complete and, if applicable, executed copies. If there are no documents or information responsive to an item or an item in not applicable, please mark by marking “N.A.” next to each such items. Confirmation that certain of these requests are inapplicable to the Corporation is itself an important part of our diligence process.

Please understand we may request additional information as the transaction progresses and we continue our diligence review. In addition, please regard this letter as a continuing request so that any documents or information which come into existence prior to the completion of the transaction and which would be covered by this request will also be forwarded or made available to us by you.

1. Corporate organization

| **Item #** | **Description** | **Provided** | **N/A** | **Documents Provided and/or Response** | **Comments** |
| --- | --- | --- | --- | --- | --- |
|  | Articles of Incorporation, including all amendments. |[ ] [ ]   |  |
|  | Bylaws of the Corporation, including all amendments. |[ ] [ ]   |  |
|  | Corporate minute books, including minutes of the meetings of the board of directors, management, executive, or any committees (whether of the board or otherwise) and shareholders |[ ] [ ]   |  |
|  | A list of all current Officers and Directors |[ ] [ ]   |  |
|  | A list of all shareholders of the Corporation, a copy of the stock ledger, and copies of all agreements related to the issue, transfer or redemption of shares of the Corporation |[ ] [ ]  . |  |
|  | If shares are certificated, copies of all share certificates |[ ] [ ]   |  |
| 1. A l
 | A list of States where the Corporation has business operations (including employees residing or working and including offices) or sales or maintains inventory  |[ ] [ ]   |  |
|  | A list of States where the Corporation has qualified as a foreign corporation |[ ] [ ]   |  |

1. Tangible Personal Property

| **Item #** | **Description** | **Provided** | **N/A** | **Documents Provided** | **Comments** |
| --- | --- | --- | --- | --- | --- |
|  | Copies of leases (and a description of any oral lease) for any personal property of the Corporation |[ ] [ ]   |  |
|  | Copies of all liens of record on personal property of the Corporation |[ ] [ ]   |  |
| 1.
 | Copies of all other existing contracts or agreements of the Corporation pertaining to management, service, operations, security, maintenance and use for all leased and owned personal property |[ ] [ ]   |  |
|  | List of all tangible personal property used in the business of the Corporation (whether owned by the Corporation or its shareholders or other affiliates) and designating who the legal owner is |[ ] [ ]   |  |

1. Contracts

| **Item #** | **Description** | **Provided** | **N/A** | **Documents Provided** | **Comments** |
| --- | --- | --- | --- | --- | --- |
|  | Copies of, agreements, contracts or commitments with any affiliate of the Corporation, or any agreement between the Corporation and any officer, director, shareholder (or relative of any of the foregoing) |[ ] [ ]   |  |
|  | Copies of all product supply and manufacturing contracts of the Corporation with vendors or suppliers of the Corporation |[ ] [ ]   | . |
|  | Copies of all sales or service contracts of the Corporation, including all contracts with all designers  |[ ] [ ]   | . |
| 1. C
 | Copies of all installment sales agreements |[ ] [ ]   |  |
|  | Copy of \_\_\_\_\_\_\_ contract  |[ ] [ ]   |  |
|  | Copies of all endorsement agreements and all media (including, but not limited to, television, radio, social media, blogs, etc.) and entertainment contracts  |[ ] [ ]   |  |
|  | All leases, installment purchase agreements, or other contracts (and a description of each oral agreement) with respect to any real property to which the Corporation or any subsidiary is a party. |[ ] [ ]   |  |
| 1.
 | Copies of all **distribution**, dealer, representative, **marketing** or sales agency agreements, contracts or commitments relating to or of the Corporation |[ ] [ ]  . |  |
|  | Copies of all advertising, media or promotional agreements, contracts or commitments of the Corporation |[ ] [ ]   |  |
|  | Copies of contracts of the Corporation relating to or including consulting, non-compete, confidentiality, powers of attorney, negative covenants/restrictions, exclusive dealings, exclusivity or franchising |[ ] [ ]   | . |
|  | Overview of the Corporation’s product warranty policies |[ ] [ ]  Website www.\_\_\_\_\_\_\_\_\_.com | . |
|  | Copies of contacts of the Corporation with any governmental agency |[ ] [ ]   |  |
|  | Copies of joint venture, business combination, or partnership agreements of the Corporation |[ ] [ ]   | . |
|  | Copies of all material agreements, contracts or commitments relating to the Corporation not made in the ordinary course of business |[ ] [ ]   | . |
|  | Copies of all agreements, contracts or commitments for the use or provision of public or private utilities (such as electricity, water, natural gas, etc.) by the Corporation |[ ] [ ]   |  |
|  | Copies of any other contracts material to the Corporation |[ ] [ ]   | . |

INTELLECTUAL PROPERTY MATTERS

| **Item #** | **Description** | **Provided** | **N/A** | **Documents Provided** | **Comments** |
| --- | --- | --- | --- | --- | --- |
|  | List of all US and foreign **copyright** registrations and applications owned or held for use by Corporation and material unregistered copyrights, indicating in each case, as applicable, the record owner, the dates of authorship, publication, application, registration and renewal, registration number, and copies of all related documents and files |[ ] [ ]   |  |
|  | List of all U.S. and foreign **trademark**, service mark and trade name registrations and applications (active, cancelled, expire, and abandoned) and unregistered (i.e., common law) trademarks, service marks and trade names owned or held for use by Corporation, indicating in each case, as applicable, the record owner, the date of first commercial use, application, registration and renewal, registration number or application serial number, and copies of all related prosecution files |[ ] [ ]   |  |
|  | A sample of how the main brands of the Corporation are used on product, labels, packaging, and package inserts. |[ ] [ ]  . |  |
|  | All trademark and patent searches and search reports conducted by or for the Corporation and all clearance, availability, patentability, and similar opinions or evaluations related thereto (for legal opinions, please provide just an executive summary of the evaluation). |[ ] [ ]   | . |
|  | List of all U.S. and foreign patents and patent applications (active, abandoned, and expired), indicating in each case, as applicable, the record owner, the date of first use, application, registration and renewal, registration number or application serial number, and copies of all related prosecution files |[ ] [ ]   |  |
|  | List of all domain names owned or held for use by Corporation, indicating in each case, the record owner, the registrar, registration and renewal date |[ ] [ ]  . |  |
|  | A schedule of intangible assets detailing type and, if goodwill, tax and accounting treatment. |[ ] [ ]  . |  |
| 1.
 | List of all intellectual property used by the Corporation under license |[ ] [ ]   | . |
|  | List of all Corporation intellectual property used by others under license from the Corporation |[ ] [ ]  . |  |
|  | Description of known active intellectual property disputes involving the Corporation (e.g., infringement, misappropriation, etc.) |[ ] [ ]   |  |
|  | Description of active or past disputes involving intellectual property of the Corporation, and resolution (e.g., if a cease and desist letter, did the infringer comply)? |[ ] [ ]   |  |
|  | Written contracts and written or unwritten arrangements and/or understandings relating to intellectual property of the Corporation (e.g., assignments, licenses, releases (e.g., models’ releases), consents, permissions, co-existence, settlements, noncompetes, etc.) |[ ] [ ]  . |  |
|  | List describing all proprietary technology and computer software owned, held for use by or being developed by or for the Corporation (“Proprietary Software”, which means custom software, and does not include commercial off-the-shelf software licensed or used by the Corporation) |[ ] [ ]   |  |
|  | List describing all material open source, freeware or other software which is subject to any “copyleft” or other obligation or condition under any open source software license that is used in a manner that would require the Corporation to license, distribute, offer or make available any material source code of the Proprietary Software to any third party |[ ] [ ]   |  |
|  | List describing all material third-party computer software used by Corporation or incorporated into any software or product of Corporation. |[ ] [ ]   | . |
|  | List of all email subscribers and media lists of the Corporation |[ ] [ ]   | . |
| 1.
 | List of all social media accounts (e.g., Facebook, Twitter, Instagram, etc.) of the Corporation |[ ] [ ]   |  |
|  | A list of all prior owners of the Corporation's copyrights, patents, trademarks, service marks, trade names, and other intellectual property |[ ] [ ]  . |  |
|  | How are intellectual property registration deadlines managed (e.g., an internal calendaring system, outside counsel responsible, etc.)? |[ ] [ ]  . |  |

Insurance and Risk MANAGEMENT

| **Item #** | **Description** | **Provided** | **N/A** | **Documents Provided** | **Comments** |
| --- | --- | --- | --- | --- | --- |
|  | Copies of all insurance policies covering the Corporation or its assets or employees |[x] [ ]  . |  |
|  | Liability claims experience by year for the Corporation, by product (insured and/or self-insured) for the last five fiscal years |[ ] [x]   |  |
|  | Copies of underwriters’ inspection reports of the Corporation for the past five fiscal years |[ ] [x]   |  |
|  | Copies of any liability, loss prevention inspections (internal or external) involving the Corporation for the last five fiscal years |[ ] [x]   |  |
|  | Summary of workers’ compensation loss experience for the Corporation during the past five fiscal years |[ ] [x]   |  |
|  | List of any declined claims, coverage, and terminate policies  |[ ] [x]   |  |
| 1. M
 | All material correspondence with any insurance broker, provider, or carrier related to any declined claims, coverage or terminated policies  |[ ] [x]   |  |

Health and Safety

| **Item #** | **Description** | **Provided** | **N/A** | **Documents Provided** | **Comments** |
| --- | --- | --- | --- | --- | --- |
|  | Description of any complaints, citations or fines related to OSHA or similar state agencies involving the Corporation during the past five fiscal years |[ ] [x]   |  |
|  | Copies of internal and external safety and health audits/reviews/inspections involving the Corporation during the past five fiscal years |[ ] [x]   |  |

Employees, Employee Relations, and Employee Benefits

| **Item #** | **Description** | **Provided** | **N/A** | **Documents Provided** | **Comments** |
| --- | --- | --- | --- | --- | --- |
|  | Organizational chart by department for the Corporation |[ ] [x]   |  |
|  | Provide a list of all employees of the Corporation, and with respect to each person, indicate the following:* Name
* Position
* Status (full time, part time, independent contractor, etc.)
* Length of employment
* Salary for last completed fiscal year
* Bonus for last completed fiscal year
 |[ ] [x]   |  |
|  | Provide a copy of the latest payroll run for the Corporation |[ ] [x]   |  |
|  | Copies of all control, severance, ownership plans and other agreements with employees of the Corporation |[ ] [x]   |  |
|  | Copies (or details if not in writing) of employment contracts between the Corporation and any management employees, including any specific severance terms |[ ] [x]   |  |
|  | Summary of pending/threatened civil rights charges, disability charges, including claims filed with federal and state DOL, OFCCP, EEO agencies involving the Corporation |[ ] [x]   |  |
|  | Summary of other pending/threatened employment/labor-related lawsuits involving the Corporation |[ ] [x]   |  |
| 1.
 | Copies of (or descriptions if unwritten) the severance policies and practices of the Corporation, including those mandated by contract or regulation |[ ] [x]   |  |
|  | Summary of unemployment claims for the last five fiscal years and current experience rates in force for both state and local taxes |[ ] [x]   |  |
|  | Description of any incentive payment plans of the Corporation, including profit sharing, gain-sharing, bonus, early retirement or other award or incentive programs |[ ] [x]   |  |
|  | Copies of all employee benefit plans of the Corporation, including all pension and welfare benefits plans and their related trust documents, insurance policies and related IRS determination letters |[ ] [x]   |  |
|  | Copies of all executive benefit plans of the Corporation, rabbi trusts, executive employment/termination agreements, individual employment contracts and SERPs. Copies of all summaries of such plans or programs provided to employees |[ ] [x]   |  |
|  | Most recent actuarial valuation report for defined benefit plans of the Corporation |[ ] [x]   |  |
|  | List of any multi-employer health, welfare and/or pension trust fund to which contributions are made by the Corporation indicating:* Name of fund
* Plan number
* Number of employees covered by plan
* Rate of contribution
* Maximum weekly contribution
* Method used to determine future contributions
* Details of any employer withdrawal liability provisions
 |[ ] [x]   |  |
|  | Copies of most recent two years Form 5500 filed for all benefit plans of the Corporation |[ ] [x]   |  |
| 1.
 | Copies of all communications to Corporation employees regarding retiree medical benefits, including, but not limited to, enrollment forms, memos, booklets and exit interview materials |[ ] [x]   |  |
|  | Copies of employee leasing arrangements of the Corporation and data regarding number of employees involved, duration of lease arrangement, etc. |[ ] [x]   |  |
|  | Copies of all employee related policies and manuals |[ ] [x]   |  |
|  | Are all employees when onboarded required to acknowledge receiving and agree to comply with an employee manual/handbook? |[ ] [x]   |  |

Financial and accounting

| **Item #** | **Description** | **Provided** | **N/A** | **Documents Provided** | **Comments** |
| --- | --- | --- | --- | --- | --- |
|  | Audited financial statements of the Corporation for last five fiscal years (if no audited financial statements, indicate the same and provide copies of the unaudited financial statements) |[x] [ ]   | . |
|  | Copies of all accounting procedures manuals of the Corporation, including: accounting policies and procedures, cost accounting policies and procedures, chart of accounts and intercompany pricing policies |[ ] [x]   |  |
|  | Description of any changes in accounting policies or classifications made by the Corporation over the last five fiscal years and impact on key financial statement line items |[ ] [x]   |  |
|  | Current products and price lists for the Corporation |[x] [ ]  , | . |
|  | Interim financial performance of the Corporation year-to-date versus budget and versus the comparable prior year period |[ ] [x]   | . |
|  | Detailed quarterly budget of the Corporation for current fiscal year |[ ] [x]   |  |
| 1.
 | Current project backlog of the Corporation for most recent quarter end |[ ] [x]   |  |
|  | List of top 10 customers of the Corporation for last fiscal year with dollar amount sold to each customer for each of 2019 and 2020 fiscal years and current year-to-date |[x] [ ]  . |  |
|  | List of top 10 suppliers of the Corporation for last fiscal year with dollar amount purchased each supplier for each of 2019 and 2020 fiscal years and current year-to-date |[x] [ ]  . |  |
|  | Detailed balance sheet of the Corporation as of most recent fiscal year end and most recent quarter end |[x] [ ]  . |  |
|  | Accounts and notes receivable detail and aging schedule of the Corporation as of most recent fiscal year end and most recent quarter end |[ ] [x]   |  |
|  | Details of any factored accounts of the Corporation |[ ] [x]   |  |
|  | Bad debt reserve policy and balance of the Corporation as of end of last five fiscal years and bad-debt write-offs during each of 2019, 2020, and current year-to-date |[ ] [x]   |  |
|  | Description of **inventory** and production cost systems and inventory valuation methods of the Corporation.  |[ ] [x]   |  |
|  | Analysis of **inventory** reserves and write-downs of the Corporation taken in the 2019 and 2020 fiscal years and current year-to-date |[ ] [x]   |  |
|  | Breakdown of **inventory** balances of the Corporation as of most recent fiscal year end and most recent quarter end |[x] [ ]   |  |
|  | Most current fixed asset listing of the Corporation |[ ] [ ]   |  |
|  | Accounts receivable detail and aging schedule of the Corporation as of most recent fiscal year end and most recent quarter end |[ ] [x]   |  |
| 1.
 | Accounts payable detail and aging schedule of the Corporation as of most recent fiscal year end and most recent quarter end |[ ] [x]   |  |
|  | List and analysis of other accrued expenses and notes payable and all other liabilities of the Corporation as of most recent fiscal year end and most recent quarter end |[ ] [x]    |  |
|  | All loan agreements, guarantees, indentures, promissory notes, debentures, line of credit and related documentation in connection with any loan or other indebtedness of the Corporation |[x] [ ]  . |  |
|  | All loan agreements, guarantees, indentures, promissory notes and related documentation in connection with any advances or loans made by the Corporation to an officer, director, employee or shareholder of the Corporation |[ ] [x]    |  |
|  | Description of any COVID-19 SBA loans or other government financial assistance as a result of the COVID-19 pandemic  |[ ] [x]   |  |

Taxes

| **Item #** | **Description** | **Provided** | **N/A** | **Documents Provided** | **Comments** |
| --- | --- | --- | --- | --- | --- |
|  | Copies of federal, state and local tax returns of the Corporation for 2019 and 2020 |[x] [ ]  . |  |
|  | Status summary for open years on federal, state, and local returns of the Corporation, including stature waivers, loss or credit carryovers, identified tax exposures or acquisitions/divestitures |[ ] [x]   |  |
|  | Information on pending or closed federal, state and local audits of the Corporation, appeals or private letter rulings |[ ] [x]   |  |

Litigation

| **Item #** | **Description** | **Provided** | **N/A** | **Documents Provided** | **Comments** |
| --- | --- | --- | --- | --- | --- |
|  | Summary of all pending and threatened claims, audits, charges, arbitrations, grievances, actions, suits, investigations, proceedings or litigation involving the Corporation |[ ] [x]   |  |
|  | Copies of all pleadings or similar documents served and other written documents, including settlement documents and correspondence, relating to the disputes described in J1 above |[ ] [x]   |  |
|  | Summary of all judgments, decrees, settlements, arbitrations or findings concerning the Corporation |[ ] [x]   |  |

COMPLIANCE WITH LAWS

| **Item #** | **Description** | **Provided** | **N/A** | **Documents Provided** | **Comments** |
| --- | --- | --- | --- | --- | --- |
|  | Copies of all notices of any citations, violations or claimed violations received by the Corporation relating to any laws, ordinances, rules, regulations or orders, including without limitation any licensure; insurance; zoning; environmental; employee health and safety; wage and hour; equal opportunity and anti-discrimination; food and drug laws; and ordinances, rules, regulations or orders |[ ] [x]   |  |
|  | Copies of all government licenses, permits and consents pertaining to the Corporation |[ ] [x]   |  |
|  | A description, together with any related materials, of any pending or threatened investigations and governmental proceedings regarding the Corporation |[ ] [x]   |  |
|  | Copies of all documents filed by the Corporation with any federal, state or foreign securities regulatory agency |[ ] [x]   |  |
|  | Copies of the Corporation’s material reports to, correspondence with or agreements with any government entity, municipality or government agencies |[ ] [x]   |  |
| 1.
 | Copies of any seizure or detention notices relating to exports from the U.S., or any other correspondence or documents relating to export violations, including but limited to voluntary disclosures, investigations, charging letters, consent agreements, orders, subpoenas, indictments, etc., issued by BIS, the Office of Foreign Assets Control (OFAC), the Department of Justice, etc. |[ ] [x]   |  |
|  | Please provide a list of licenses held or applied for under Commerce Department export regulations and Treasury Department Office of Foreign Assets (“OFAC”) sanctions regulations |[ ] [x]   |  |

DATA PRIVACY AND SECURITY; IT SYSTEMS

| **Item #** | **Description** | **Provided** | **N/A** | **Documents Provided** | **Comments** |
| --- | --- | --- | --- | --- | --- |
|  | Copies of all current and prior privacy and data security policies and procedures manuals of the Corporation, including, without limitation, all privacy policies and procedures for the use and disclosure of customer, member, visitor, or other individuals’ personal information |[x] [ ]  .. |  |
|  | Copies of all reports or audits that have been performed on the Corporation's information security programs or any other reports prepared by or for the Corporation concerning the implementation or testing of information security programs or systems |[ ] [x]   |  |
|  | Copies of any other documentation and information regarding the Corporation’s collection, use, storage, disclosure or disposal of personal information (whether the Corporation's or a third party's), including, but not limited to, data deletion, “do not sell”, and other requests |[x] [ ]  . |  |
| 1.
 | Does the Corporation sell any personal information? I.e., does it receive any consideration (whether monetary or otherwise) for sharing personal information of customers, prospects, etc.? |[ ] [x]   |  |
|  | How and where are consents obtained to use personal information and agreement/acknowledgement of the privacy policy? E.g., at email newsletter signup, shopping cart page, etc. |[ ] [ ]   | . |
|  | Is personal information collected of European residents or citizens? |[ ] [x]   |  |
|  | Do you collect and store full credit card numbers (even if you use a third party payment processor)? |[ ] [ ]   |  |
|  | Details of any actual or potential data security breaches, unauthorized use or access of the Corporation’s Computer Systems or data, or data and information security issues impacting the Company that have been identified in the past five years, including whether notifications were required to be sent to affected individuals or to government agencies |[ ] [x]   |  |
|  | Details of any ransomware attacks and resolution |[ ] [x]   |  |
|  | Within the past five years, did the Corporation have to pay any fines, penalties, or settlements, or receive any warnings, complaints, actions, or lawsuits from government agencies, individuals, customers, or standards bodies (e.g., PCI) related to a data security breach or vulnerability? If so, please provide details |[ ] [x]   |  |
|  | Copies of all agreements relating to the provision of IT, data, or internet-related products or services to or by the Company |[x] [ ]  . |  |
|  | Copies of all agreements under which the Corporation discloses personal information of its customers, members, website visitors, or the like (e.g., email distribution, data storage, marketing partners, resellers, fulfilment providers, etc.) |[ ] [x]  . |  |
| 1.
 | A description of all computer systems, third-party software packages, networks, and service bureaus in use by the Corporation, by location |[ ] [x]   |  |
|  | A description of any backup and disaster recovery arrangements, facilities management and ongoing support arrangements, including details of service levels and charges |[ ] [x]   |  |
|  | Is the \_\_\_\_\_\_\_\_\_.com website compliant with the Americans with Disabilities Act?  |[ ] [ ]   | . |