

## **Merger and/or Acquisition**

### **Due Diligence Checklist**

- I. Governance
  - a. Articles/Certificate of Incorporation and all amendments
  - b. Bylaws and all amendments
  - c. Corporate Minute Book
  - d. Annual Reports
  
- II. Policies
  - a. Conflict of Interest Policy
  - b. Investment Policy
  - c. Whistleblower Policy
  - d. Document Retention/Destruction Policy
  - e. Form 990 Review Policy
  - f. Other governance-related policies
  
- III. Organizational and Registration Information
  - a. Organizational chart
  - b. Membership roster (if voting membership organization)
  - c. Good standing certificate
  - d. Schedule of states where organization is doing business or raising funds, or owns property
  - e. Foreign qualifications
  - f. Charitable solicitation registrations
  
- IV. Tax:
  - a. Forms 990, 990-T
  - b. State tax returns
  - c. Local tax returns
  - d. Employment tax filings
  - e. Communications with IRS, State tax authorities
  - f. Tax liens
  
- V. Real and Physical Property
  - a. Schedule of all real property owned or leased
  - b. Title policies, deeds, mortgages, security agreements, guaranties
  - c. Leases
  - d. Surveys, zoning approvals, variances, use permits
  - e. Environmental reviews
  - f. Schedule of hazardous wastes used, disposal methods employed
  - g. UCC Filings
  - h. Equipment Leases

- VI. Legal
  - a. Permits, licenses
  - b. Communications with EPA and other regulatory agencies
  - c. Schedules of related litigation, investigations
  - d. Schedule of contingent environmental liabilities
  
- VII. Intellectual Property:
  - a. Schedule of significant IP, including trade secrets (e.g., donor lists, fundraising plans)
  - b. Registrations and applications
  - c. “Work for hire” and consulting agreements, nondisclosure agreements
  
- VIII. Financials
  - a. Financials, audited (if available) – 3 years
  - b. Budgets, projections, strategic plans
  - c. Analyses of debt and contingent liabilities
  - d. Analyses of A/R and A/P
  - e. Analyses of fixed and variable expenses
  - f. Depreciation/amortization methods
  - g. Internal controls
  
- IX. Contracts
  - a. Subsidiary, partnership, joint venture, affiliation agreements
  - b. Agreements with directors and officers
  - c. Loan agreements, lines of credit, promissory notes
  - d. Security agreements, mortgages, indentures, collateral pledges
  - e. Grant agreements, enforceable pledges
  - f. Restricted gift agreements
  - g. Sales and service agreements
  - h. Program-related agreements
  - i. Nondisclosure and noncompete agreements (applicable to the organization)
  - j. Letters of intent, memoranda of understanding
  
- X. Human Resources
  - a. Employee information – position, titles, compensation, benefits, years of service, contracts, background checks
  - b. Nondisclosure and noncompete agreements (applicable to the employees, contractors)
  - c. Key employee information – resumes
  - d. Workers’ compensation, unemployment, and other HR-related claims
  - e. Employment policies and handbooks
  - f. Retirement plans (qualified and nonqualified)
  - g. Collective bargaining agreements (if applicable)

- h. Description of significant employee problems, including alleged wrongful termination, harassment, discrimination
  - i. Insurance policies (H/R-related)
  - j. Employee-independent contractor categorization
- XI. Risk Management:
- a. Litigation – actual, pending, threatened
  - b. Settlement agreements
  - c. Injunctions, court orders, consent decrees
  - d. Unsatisfied judgments
  - e. Insurance policies
  - f. Schedule of claims
  - g. Risk management policies, practices, known violations
- XII. Other
- a. Licenses, permits, accreditations
  - b. Program-, service-, and product-related due diligence
  - c. Marketing research