

## **CONTRACT FOR CONSULTING SERVICES**

This Agreement made as of March 18<sup>th</sup>, 2024, by and between the **STATE BOARD OF ADMINISTRATION OF FLORIDA**, ("SBA") an agency of the State of Florida, acting on behalf of the Florida Retirement System Trust Fund, ("FRSTF"), 1801 Hermitage Blvd., Tallahassee, Florida, 32308 and **RCLCO FUND ADVISORS, LLC**, a Delaware Limited Liability Company ("Consultant"), located at 11601 Wilshire Boulevard, Suite 1650, Los Angeles, CA 90025.

### **W I T N E S S E T H**

The SBA hereby retains and employs the Consultant to act on the terms and conditions hereinafter set forth:

1. **Services Provided**

The Consultant will provide consulting services as described in Attachment A – Scope of Services. The Consultant will render other consulting services as requested and mutually agreed upon by the SBA and the Consultant. The Consultant will endeavor to attend any and all SBA meetings or other meetings upon the reasonable request of the SBA.

2. **Compensation**

(a) As compensation for the activities detailed in the Scope of Services the Consultant will be paid the fees set forth in Attachment A – Scope of Services-Consideration.

3. **Term**

The initial term of this Agreement shall be March 18, 2024, to March 18, 2029. Thereafter, the Agreement shall automatically renew for two successive one- year periods unless notice is given by either party as provided in Section 5, Termination, prior to the expiration of the initial or first renewal period, as applicable.

4. **Expenses**

When rendering consulting services pursuant to this Agreement, Consultant shall be entitled to reasonable expenses for travel, when authorized in advance by the Executive Director of the SBA or his designee, as provided in Section 112.061, Florida Statutes. The SBA will provide Consultant with a summary of per diem rates and other travel related requirements to assist Consultant in abiding with the State of Florida's requirements.

### Termination

The SBA may terminate this Agreement at any time upon 30 days advance written notice. The Consultant may resign upon 60 days advance written notice.

### 5. Initiative

The Consultant shall exercise initiative under any activities performed under Section 1 and through its actions actively assist the SBA to achieve superior performance in connection with its responsibilities for administering the Florida Retirement System (FRS) real estate assets, taking account of fiduciary standards, the SBA's goals and objectives, expenses and other relevant factors.

### 6. Fiduciary Responsibility

(a) Consultant acknowledges that it is providing service to the SBA with respect to actions taken by the SBA in the SBA's capacity as a fiduciary under its Florida constitutional and statutory investment duties. Consultant acknowledges that the SBA is the fiduciary of a tax-exempt public pension fund and recognizes the standard of care and performance which the SBA is required to observe in dealing with the fund's assets. Consultant hereby agrees and acknowledges that at all times during the term of this Agreement, Consultant shall constitute a "fiduciary" under the Investment Advisers Act of 1940, as amended (the "Act"), and Florida law, including Section 215.47, Florida Statutes with respect to providing the Services and fulfilling other obligations to the SBA. The Consultant agrees to discharge its duties under this Agreement solely in the interest of the SBA and the beneficiaries thereunder and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in the like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Consultant further agrees that it will continue at all times during the term of this Agreement to be a fiduciary as above described, and that it will comply with all laws, rules, and regulations of any governmental authority or agency having applicability to the transactions contemplated by this Agreement (including, without limitation, legal and compliance obligations imposed by the U.S. Treasury's Office of Foreign Assets Control) and that it will perform in accordance with the standards of care set forth in this section and this Agreement. The Consultant shall promptly notify the Board in writing of any proposed acquisition of an investment or disposition of an investment that, to the knowledge of the Consultant after inquiry, involves, directly or indirectly, any conflict of interest as contemplated by the standards applicable to a fiduciary as aforesaid, by this Agreement or otherwise.

(b) The Consultant agrees to make investment recommendations based

only on pecuniary factors. As used in this section, a “pecuniary factor” means a factor that the Consultant prudently determines is expected to have a material effect on the risk or return of an investment authorized under this Agreement. Pecuniary factors do not include the consideration of the furtherance of social, political, or ideological interests. The Consultant agrees not to subordinate the interests of the SBA or its beneficiaries to other objectives and may not sacrifice investment return or undertake additional investment risk to promote any non-pecuniary factor. The weight given to any pecuniary factor by the Consultant shall appropriately reflect a prudent assessment of its impact on risk and returns.

- (c) In the case of a conflict with subsection (b) and any other provision of Florida law, Florida law shall prevail.
- (d) Notwithstanding the above, the Consultant's role with the SBA is to act as a consultant to assist the SBA in obtaining the level of expertise it needs to fulfill prudently its fiduciary responsibilities. The SBA retains the fiduciary responsibility for making all decisions with respect to the assets of the FRSTF.
- (e) Federal and state securities or other laws may impose liabilities under certain circumstances on investment consultants or fiduciaries who act in good faith, and nothing herein shall constitute a waiver or limitation of any right the SBA may have under such laws.
- (f) The SBA shall use reasonable efforts to notify the Consultant of any developments or changes that may affect the services it is providing as outlined in this Agreement.

7. Confidentiality

- (a) Consultant, in the course of its duties, will have access to certain investment, financial, accounting and statistical and other non-public information pertaining to the FRSTF, its participants, the SBA or the State of Florida. All such information may be confidential, pursuant to the provisions of Sections 215.4401, 215.557, 121.4501(19), 815.045 and 688.002 Florida Statutes. Consultant shall, except to the extent otherwise required by any applicable federal or state law, or as requested by regulatory authority or as authorized in a prior writing or otherwise requested by the SBA, keep confidential, and shall not transmit or disclose to any person, organization or entity other than the SBA, including the Consultant's affiliates or divisions (other than its consulting division), any investment, financial, accounting and statistical or other non-public information concerning the SBA or its activities and offices, the actions of Consultant taken pursuant thereto, or the Services provided by Consultant hereunder, whether obtained under this Agreement, through interaction with the SBA or its vendors, or otherwise. Prior to making any disclosure of such

information as authorized by this Section 8(a), unless legally prohibited, Consultant shall promptly notify the SBA that it is required by federal or state law to make such disclosure or that a regulatory authority has made a request for disclosure, as applicable.

- (b) Public disclosure by the Consultant that they have been hired by SBA shall occur only with the express written consent of the SBA and with pre-approval of any material (e.g. print, audio, video, Internet) from the SBA. Such approval will not be unreasonably withheld.

8. Conflict of Interest

- (a) Consultant shall not directly or indirectly receive any benefit from recommendations made to the SBA and shall disclose to the SBA any actual or potential personal investment or economic interest of the Consultant or, to its knowledge, any officer, director or employee thereof which may be enhanced by the recommendations made to the SBA. Consultant acknowledges and understands that the SBA is subject to the provisions of Chapter 112, Part III, "Code of Ethics for Public Officers and Employees," Florida Statutes, and all rules adopted thereunder, and Consultant agrees to comply promptly with any requirements that may be applicable to it thereunder. Consultant represents that it and/or its parent organization currently has, and further covenants that it and/or its parent organization will have at all times during the term of this Agreement, a code of ethics, code of professional conduct or other policies and procedures that prohibit all officers, directors or employees thereof from engaging in any activity or conduct that would constitute an actual or perceived conflict of interest between such person and the Consultant's clients without the prior written approval of Consultant.
- (b) Consultant agrees that any relationship between Consultant or any of its divisions, subsidiaries or affiliates and any investment manager, or the lack thereof, shall not affect Consultant's decision to include or exclude such investment manager from any search or evaluation or otherwise affect Consultant's analysis or recommendations to the SBA regarding such investment manager.
- (c) Consultant shall promptly notify the SBA of any pending or threatened action by Consultant's clients regarding the retention of Consultant based on any allegation of an actual or perceived conflict of interest between such client and Consultant (including any divisions, subsidiaries or affiliates).



9. SBA Policies

- (a) The Consultant shall comply with, and shall execute all documents and take any and all actions that are necessary and appropriate to satisfy, the standards requirements applicable to the SBA's external managers under SBA Policy #10-004, Communications and External Affairs, SBA Policy #10-017, Investment Protection Principles and to the extent applicable, SBA Policy #10-015, Corporate Governance, as such policies may be amended from time to time, and all of which (together with any future amendments thereto) are incorporated into this Agreement by this reference. Consistent with the SBA's Equal Employment Opportunity (EEO) Policy, the Consultant shall not discriminate in its employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, disability, marital status, protected veteran status, genetic information, or on any other basis that would be in violation of any applicable federal or state law. Furthermore, the Consultant shall make reasonable accommodations for qualified individuals with known disabilities unless doing so would result in an undue hardship, safety, and/or health risk.

10. General Contract Terms

- (a) The parties agree to the General Terms Addendum incorporated herein as Attachment B.

11. Assignments

Consultant shall not assign or delegate its rights or responsibilities without the prior written consent of the SBA. No person or organization may succeed to or assume Consultant's rights and obligations under the Agreement by operation of law, whether by merger, consolidation, change in control, reorganization or otherwise without the SBA's prior written consent.

12. Personnel

Consultant shall determine which of its personnel shall be assigned to perform the Services under this Agreement and reserves the right to replace or reassign such personnel during the term hereof; provided, however, that Consultant shall, subject to scheduling and staffing considerations, use commercially reasonable efforts to honor SBA's request for specific individuals for performing the Services. In addition, during the term of this Agreement, Consultant shall provide the SBA promptly with written notification of material changes in the ownership structure. Notwithstanding the foregoing, in the event that Consultant experiences changes in its ownership structure which take effect less than two (2) weeks after the Consultant's President becomes aware that such change will occur, the Consultant shall notify the SBA of such changes within two (2) business days from the date on which the Consultant's President becomes aware of such change. In the event that such

notification is provided during such period, the terms of this Agreement shall be deemed to have been satisfied, notwithstanding that two (2) weeks notice was not provided. This Agreement may be terminated in accordance with Section 5 hereof upon written notice from the SBA to Consultant because of changes to the ownership structure not made in accordance with the immediately preceding two sentences or otherwise. SBA will also have full access to any personnel, that produce work product or recommendations under the terms of this Agreement; (e.g., policy or research committees and their members).

13. Insurance

Consultant represents and covenants that it currently has, and at all times during this Agreement will maintain, fiduciary or professional liability, or errors and omissions, or any other appropriate insurance that provides coverage in an amount not less than \$2,500,000 with respect to any loss or claim resulting from Consultant's breach of fiduciary duty or other professional duties as a consultant hereunder. Consultant shall provide to the SBA an officer's certificate annually, or more frequently if requested by the SBA, regarding the effectiveness of such coverage, together with a copy of documentation reflecting payment of such insurance coverage premium.

14. Information to be Provided

Consultant shall assume the information the SBA supplies (or which is supplied on its behalf) is accurate and complete. Consultant's responsibilities (and the associated project fees) do not include extensive independent verification of required information; provided, however, that Consultant shall be obligated to review minimally the information provided by the SBA for accuracy and applicability to the Services hereunder.

15. Compliance with Laws

Consultant hereby represents that it is currently, and covenants that at all times during the term of this Agreement it will continue to be, a registered investment adviser under the Act. In the event that at any time during the term of this Agreement Consultant ceases to be a registered investment adviser under the Act, Consultant shall promptly notify the SBA with respect thereto. Consultant further covenants and agrees that at all times during the term of this Agreement, Consultant shall comply with all laws, rules, regulations or other applicable legal requirements to which Consultant or any of the activities or transactions contemplated by this Agreement are subject.

16. Miscellaneous

(a) The Agreement, when executed and delivered by the Consultant, will be a valid and binding obligation of the SBA.

(b) The SBA and its affiliates are not acting, directly or indirectly, in

contravention of any anti-money laundering laws, regulations or conventions (U.S. or international), on behalf of terrorists or terrorist organizations, for a senior non-U.S. political figure (i.e., a senior official in the executive, legislative, administrative, military or judicial branches of a non-U.S. government (whether elected or not), a senior official of a major non-U.S. political party, a senior executive of a non-U.S. government-owned corporation or any entity formed or operated by, or for the benefit of, any of the foregoing), for any member of a senior non-U.S. political figure's immediate family or any close associate of a senior non-U.S. political figure or for a non-U.S. shell bank (i.e., a non-U.S. bank without a physical presence in any country). With respect to the matters set forth in this Agreement, the SBA is not acting on behalf of any undisclosed beneficial owner other than participants in the Florida Retirement System Trust Fund.

- (c) The SBA acknowledges that its real estate portfolio (the "Portfolio") represents only a portion of the assets managed by the SBA and that the Consultant has no responsibility under this Agreement for the SBA's overall investment policies or strategy, for the SBA's overall portfolio composition or for the overall diversification of the SBA's investments.
- (d) The SBA acknowledges that (i) the Consultant performs discretionary and non-discretionary advisory services for other clients in exchange for compensation, (ii) the Consultant, its affiliates and their respective officers, employees and other agents collectively, the "Consultant Group") may invest for their own accounts (subject to applicable law and the Consultant's Code of Ethics) and (iii) the advice provided by the Consultant to other clients and the actions taken by members of the Consultant Group may be similar or dissimilar to any advice provided to the SBA.
- (e) Upon request, the SBA will provide the Consultant with a completed Form W-9 (request for taxpayer identification number and certification.).
- (f) The SBA will notify the Consultant of any relevant restrictions governing the Portfolio and any changes to the SBA's tax status.
- (g) The SBA acknowledges that the Consultant has delivered to the SBA, at least 48 hours before the execution of this Agreement, Part II of the Consultant's most recent Form ADV.
- (h) Performance measurement reports will be generated with respect to certain investments and in part based on information provided by third-party managers of funds and other Portfolio investments through a system that is designed to ensure that certain figures are computed consistently across different funds and managers. The SBA acknowledges that the production of performance measurement

reports is dependent on timely reporting through this system by third-party managers. The SBA acknowledges that the Consultant considers certain information related to its investment databases, investment research, and investment process to be proprietary, confidential and trade secret. To the extent permitted by Chapter 119, Florida Statutes, the SBA agrees to take all reasonable steps to assist the Consultant in protecting the confidentiality of such information, including taking any reasonable and legally permissible steps to preserve the confidentiality of such information from disclosure to third parties via public records requests.

17. Counterparts

This Agreement may be executed in one or more counterparts, and when each party has executed at least one counterpart, this Agreement shall be deemed to be one and the same document.

18. Severability

If one or more provisions of this Agreement or the application of any such provisions to any set of circumstances shall be determined to be invalid or ineffective for any reason, such determination shall not affect the validity and enforceability of the remaining provisions or the application of the same provisions or any of the remaining provisions to other circumstances.

19. Remedies

All rights and remedies granted under this Agreement shall be cumulative and not exclusive of any other rights and remedies which the parties may have at law or in equity. The parties may exercise all or any of such rights and remedies at any one or more times without being deemed to have waived any or all other rights or remedies which they may have.

20. Survival

All representations, warranties, covenants and agreements set forth in Sections 8, 21 and 22 of this Agreement, and Sections 1.6, 1.7, 1.8, and 1.9 of Attachment B, General Terms Addendum, or in any instrument, document, agreement or writing delivered in connection therewith shall survive the completion of any of the Services provided hereunder or the termination of this Agreement.

21. Entire Agreement

The parties acknowledge that they have read this Agreement and that together with all written amendments, exhibits, schedules, and addenda hereto, which shall be incorporated by reference herein, this Agreement constitutes the entire and exclusive agreement between the SBA and Consultant with respect to the subject matter hereof, and no statement, agreement, or understanding not contained herein shall be enforced or recognized. THIS AGREEMENT CANNOT BE MODIFIED OR SUPPLEMENTED BY ORAL STATEMENTS MADE EITHER BEFORE OR AFTER EXECUTION OF THIS AGREEMENT AND ANY SUCH STATEMENTS DO NOT CONSTITUTE WARRANTIES. NO COLLATERAL OR PRIOR STATEMENTS, REPRESENTATIONS, UNDERSTANDINGS, AGREEMENTS, OR WARRANTIES (EXPRESS OR IMPLIED) ARE A PART OF THIS AGREEMENT.

22. Binding Effect

This Agreement shall be binding upon the parties, their successors, legal representatives, and assignees. Consultant and SBA intend this Agreement to be a valid legal instrument, and no provision of this Agreement which shall be deemed unenforceable shall in any way invalidate any other provision of this Agreement, all of which remain in full force and effect. No waiver, alteration, or modification of any of the provisions of this Agreement shall be effective or binding unless in writing and signed by authorized representatives of both parties.

23. Notices

All notices, requests, instructions, other advice, or documents required hereunder shall be in writing and delivered personally or via a recognized overnight delivery service mailed by first-class mail, postage prepaid, to the following:

If to the SBA:

if mailed:

State Board of Administration of Florida  
Post Office Box 13300  
Tallahassee, Florida 32317-3300  
Attention: Executive Director

if hand delivered:

State Board of Administration of Florida  
1801 Hermitage Boulevard  
Suite 100  
Tallahassee, Florida 32308  
Attention: Executive Director

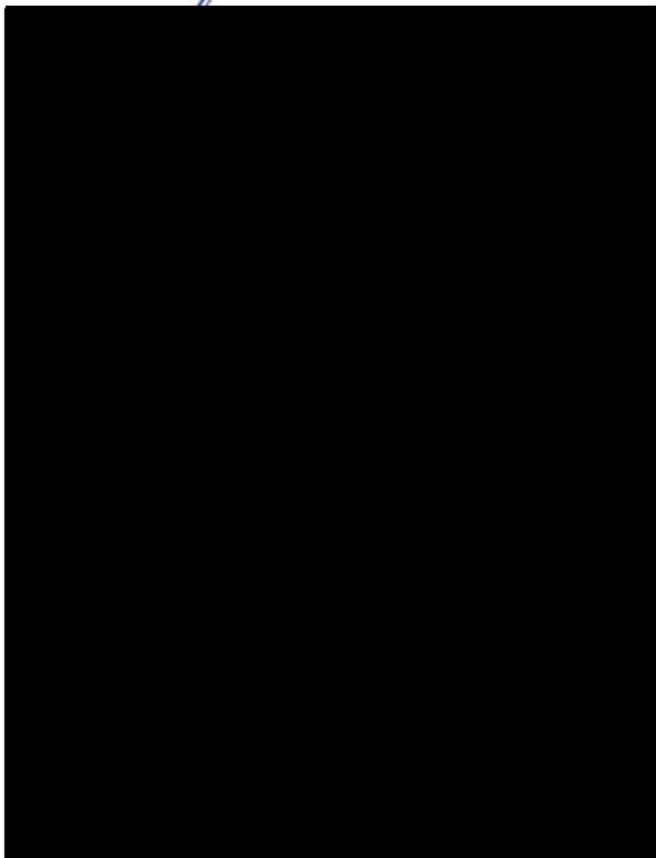
If to the Consultant:  
RCLCO Fund Advisors, LLC  
11601 Wilshire Boulevard, Suite 1650  
Los Angeles, CA 90025  
Attention: Taylor Mammen

[Signature Page Follows]



**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

**STATE BOARD OF ADMINISTRATION  
OF FLORIDA**, on behalf of the Florida Retirement  
System Trust Fund







Michael Fogliano  
Florida State Board of Administration  
1801 Hermitage Blvd, Suite 100  
Tallahassee, FL 32308

Sent via e-mail  
December 19, 2023  
11-13160.0002R

SUBJECT: Florida SBA Real Estate Co-investment Program, *Updated December 19, 2023*

Dear Mr. Fogliano:

Further to our recent discussions, we are pleased to present the following updated scope of work we propose to complete and professional fee estimate relative to the above subject. We appreciate your thinking of RCLCO Fund Advisors ("RFA" or "Consultant") as a resource, and pledge to do our best to help you in this endeavor.

## ASSIGNMENT BACKGROUND AND OBJECTIVES

The State Board of Administration of Florida ("SBA") is considering expanding its real estate investment program to invest in co-investment ("sidecar") opportunities, both alongside existing funds as well as potentially with new managers and funds. We understand that the SBA is interested in the following services:

- Relatively quick reviews/screenings of potential co-investment opportunities alongside SBA's existing funds ("Quick Screening")
- Relatively deeper co-investment underwriting and due diligence support for larger and/or more complex opportunities from either existing or potentially new relationships (which may require underwriting the sponsors, as well) ("Deeper Due Diligence")

The SBA would like an independent consultant to evaluate these opportunities and provide a recommendation as to whether the SBA should pursue the co-investment. RFA proposes to act as an outsourced, independent resource to the SBA and would undertake all of the tasks described in further detail in the following Proposed Scope of Work.

## SCOPE OF WORK

### QUICK SCREENING

RFA proposes to complete the following scope of work regarding potential co-investment opportunities arising from SBA's existing funds, generally within 10 business days.

1. Interview the potential manager and review available underwriting materials, including market overview information, revenue assumptions, cost assumptions, financing plan, competitive/comparable sales information, risks and mitigating factors, expected returns, etc.
2. As necessary and at a high level, independently verify and supplement sponsor information through our own data collection, analysis, and outreach to market participants. As market assumptions tend to be the most impactful, this likely includes a market assessment:
  - a. Market/submarket fundamental analysis, including absorption, new supply, vacancy and rent growth, etc.
  - b. Analysis of projected revenue underwriting assumptions, including whether they are feasible relative to comparable properties.
3. Where possible, review the sponsor's pro forma and evaluate the asset's financial performance over the projected hold period. Work with the sponsor to evaluate the composition of returns and key risks, and conduct sensitivity and scenario analyses to evaluate returns under alternative conditions and assumptions.
4. Analysis of the price/valuation, including whether it is reasonable relative to comparable sales.
5. An analysis of the financial metrics and whether they are consistent with market and the perceived risk.
6. A brief memorandum recommending whether to proceed.

## DEEPER DUE DILIGENCE

RFA proposes the following scope of services for due diligence on larger and/or more complex co-investments or potential club opportunities, including those arising outside of the SBA's existing funds. As these investments may be with new managers, our scope and fee includes a high level manager assessment in addition to due diligence on the merits of the investment. The timing of these assessments will be dependent on the deal parameters.

### Manager Evaluation/Due Diligence

Review and evaluate the sponsor on its ability to execute the strategy and mandate, including, but not limited to:

1. Interview the sponsor to understand the proposed strategy for the investment, the team that would be involved in oversight of the investment on a day-to-day basis, the pipeline of investments (if applicable), and to ask any questions that may have arisen during the document review.
2. Review the qualifications of the manager, including the following:
  - a. Firm history and organization
  - b. Performance track record
  - c. Operating structure and capacity, including size and skill level of the team as well as the organization's depth and breadth
  - d. Conflicts of interest posed within the sponsor and in terms of competing mandates
  - e. Ability to create and carry out the investment strategy.
3. Evaluate the terms negotiated to ensure that they are consistent with market and result in an alignment of interests for the SBA, including:
  - a. Asset management (and other contractual) fees;
  - b. Incentive compensation;
  - c. Manager co-investment amount (if any); and
  - d. Property-level fees including development, property management, leasing, financing, etc.
4. High-level operational due diligence (ODD): conduct an interview with key personnel in order to gain comfort that business operations are consistent with those of an institutional partner, including: accounting, internal controls, information technology infrastructure, risk management, general compliance, human resource oversight, legal capabilities, and reporting capabilities. Per SBA's request, we can also secure background and/or litigation checks on the company and its key personnel.
5. Identify any risks associated with the manager and strategy, and associated mitigants (if any) to each risk.

### Investment Level Diligence

1. Conduct a kick-off meeting/call with the sponsor and any relevant SBA team members to obtain a complete debriefing about the project(s) and any relevant information. In the event the SBA has an existing relationship with the proposed sponsor, the SBA will share past diligence materials to avoid redundancy and promote efficiency.
2. Review relevant documents, including historical operating performance, financial models, third-party studies, lease agreements, term sheets, etc.
3. Evaluate the long-term demand drivers in the local market(s) and submarket(s), the surrounding demographic and economic characteristics, as well as the pace and pipeline of new supply delivered in the market(s).
4. Evaluate revenue assumptions, cost assumptions, financing plan, competitive/comparable sales information, risks and mitigating factors, etc. As necessary, prepare our own high level financial model of the opportunity (should the manager's be insufficient or unavailable).
5. Visit and analyze the project(s) and key competing projects in the market in order to evaluate the market positioning.
6. Conduct an interview with the manager to verify that key diligence items have been completed and any issues addressed, including but not limited to:
  - a. Construction/cap ex scope and expenditures
  - b. Title and Escrow
  - c. Financial and Operating Data
  - d. Design Assessment
  - e. Tenancy Assessment
  - f. Service Providers & Contracts



- g. Confirmatory Diligence (key surveys and analyses including but not limited to a Physical Condition Assessment, environment/physical risk assessment, survey assessment, and zoning assessment)
7. Review the proposed debt on the project(s), as well as any term sheets negotiated by the sponsor.
8. Identify potential risks with the investment(s) as well as potential mitigants to such risks should they exist.
9. Form a recommendation regarding the project's merits within the SBA's respective investment program parameters. Prepare a written memorandum summarizing our analysis and recommendation regarding the above.
10. Prudent Man Letter. Provide a "prudent man" letter on each investment reviewed pursuant to the above. The "prudent man" letter shall include a statement as to whether in RFA's opinion it is prudent for the SBA to proceed with a proposed investment in a co-mingled fund managed by the investment manager or a co-investment, as the case may be. The "prudent man" letter is part of the scope of services of the Agreement and shall be issued by the Consultant at no additional cost to the SBA.

SCOPE ITEM	TIMING	PROPOSED FEE
Co-investment Quick Screening	<10 Business Days	\$10,000 (flat fee)
Co-Investment/Club Deeper Diligence	TBD – Depends on deal parameters	\$50,000* (flat fee)

## CONSIDERATION

The timing and professional fee to complete each scope item is outlined below. This fee excludes direct travel costs and any costs associated with commissioning third-party reports, which would be passed along at cost consistent with Section 112.061, Florida Statutes. Portfolio projects may result in an additional fee.

\* In the event the proposed co-investment negotiations are terminated by SBA prior to completion of RFA's Due Diligence Evaluation and Report, the SBA shall be charged a fee equivalent to the percentage of work completed as of the date of notification that work is to be stopped. Such notice shall be provided by email to the applicable RFA contact.

## ATTACHMENT B

**GENERAL TERMS****1. GENERAL TERMS****1.1 AGREEMENT TRANSPARENCY**

Consistent with the Florida Transparency in Contracting Initiative, the SBA posts certain operational Agreements on its website, and this Agreement will be one of the agreements posted. Consultant hereby agrees that the SBA is authorized to post this Agreement (including any amendments or addenda hereto) and a description of the content of the Agreement (including any amendments or addenda hereto) on the SBA's website. The posting of this Agreement on the SBA website shall be deemed an express written consent by the SBA to the disclosure that the SBA has hired the Consultant.

**1.2 CONFIDENTIAL INFORMATION**

Consultant agrees to keep confidential any and all SBA information it obtains in the course of providing the services set forth in this Agreement except to the extent otherwise required to be disclosed by any applicable federal or state law provided that prior to any such disclosure pursuant to applicable law Consultant shall give the SBA prompt written notice and Consultant shall use all reasonable efforts, in good faith, to provide the SBA the opportunity to quash or abate such legal process or seek a protective order.

**1.3 COUNTERPARTS**

This Agreement may be executed in one or more counterparts, and when each party has executed at least one counterpart, this Agreement shall be deemed to be one and the same document.

**1.4 FRAUD HOTLINE**

The SBA maintains a fraud hotline at (888) 876-7548 to encourage individuals to report suspected SBA-related fraud, theft, or financial misconduct on an anonymous basis. Within 30 days following the effective date of this Agreement, Consultant agrees to communicate this hotline information to those of its employees that are responsible for providing services under this contract. Consultant also agrees to re-communicate this hotline information at the request of the SBA.

**1.5 GOVERNING LAW; VENUE**

This Agreement shall be governed by, construed under and interpreted in accordance with laws of the State of Florida without regard to conflict of law principles. Any proceedings to resolve disputes regarding or arising out of this Agreement shall be conducted in the state courts located in Leon County, Florida, and the parties hereby consent to the jurisdiction and venue of those courts.

**1.6 INDEMNIFICATION**

Consultant agrees to protect, indemnify, defend and hold harmless the SBA, its trustees, officers and employees from and against any and all costs, claims, demands, damages, losses, liabilities and expenses (including reasonable counsel fees and expenses, and investigation, collection, settlement and litigation costs) resulting or arising from or in any way related to the Consultant's breach of data security, negligent acts or omissions, fraud, willful misconduct, violation of law, or breach of the Agreement.

**1.7 SUBCONTRACTOR/AGENTS**

Consultant shall not retain or use any subcontractor or other independent contractor to provide any of the services in this Agreement without the prior written approval of the SBA. Consultant shall be responsible and accountable for the acts or omissions of Consultant Representatives to the same extent it is responsible and accountable for its own actions or omissions under this Agreement. Consultant agrees to impose the requirements of this Agreement on all Consultant Representatives, which includes consultant's officers, directors, employees, agents, contractors, subcontractors and consultants, including affiliates thereof assisting in the performance of the Agreement, and Consultant shall execute a written agreement with each such Consultant Representative containing



equivalent terms to this Agreement.

## **1.8 RIGHT TO AUDIT**

- a. During the term of the Agreement and for a period of five (5) years after the expiration or termination of the Agreement, the SBA shall have the right to have any person or entity designated by the SBA, including an independent public accountant or auditor and/or any federal or state auditor, to inspect, review and/or audit, any books, records and supporting documents relating to the Agreement and/or the subject matter of the Agreement (the "Records"). In the event such right is exercised and upon no less than ten (10) business days' prior written notice by the SBA, Consultant agrees to permit reasonable access to its premises and the Records during Consultant's normal business hours unless such Records may be accessed virtually. The SBA shall have the right, in connection with any such inspection, review and/or audit, to have one or more members of its staff present at all times. During the term of the Agreement and for a period of five (5) years after the expiration or termination of the Agreement (or for any longer period of time that may be required by any applicable law relating to the retention of Records), Consultant shall maintain and retain the Records, at its sole expense. In the event the SBA and/or its designees are in the process of conducting such an inspection, review and/or audit upon the expiration of the five (5)-year access and/or retention periods described herein, then this Right to Audit section shall survive in its entirety until the conclusion of such inspection, review and/or audit. For the avoidance of doubt, the scope of any inspection, review and/or audit under this Right to Audit section may include, without limitation, Consultant's compliance with the terms of the Agreement, compliance with any applicable foreign, federal, state and/or local law or regulation, an assessment of risks and controls and/or the source and application of the SBA's funds.
- b. Consultant shall use commercially reasonable efforts to cooperate with the SBA and any person or entity designated by the SBA in connection with any inspection, review and/or audit under this Right to Audit Section including, without limitation, causing its relevant and knowledgeable current employees and/or representatives to be available to assist and to respond to reasonable inquiries and requests of the SBA and/or its designees. Subject to attorney client privilege, Consultant shall respond (including, if relevant and appropriate, with an action plan) within a reasonable time to any reports, findings and/or assessments provided to Consultant by the SBA and/or its designees, and Consultant shall provide a copy of all such responses to the SBA. Consultant acknowledges and agrees that any such report, finding and/or assessment is intended for the sole use and for the benefit of the SBA.
- c. Except as set forth herein, the SBA shall bear the costs of any inspection, review and/or audit described in this Right to Audit Section. However, in the event a bona-fide third party conducting the inspection the SBA and/or its designees conclude that Consultant materially overcharged the SBA or that Consultant engaged in or committed (including through acts or omissions) any fraud, misrepresentation and/or non-performance, then Consultant shall be obligated to reimburse the SBA for the reasonable costs of inspection, review and/or audit no later than ninety (90) days after the SBA's request for reimbursement thereof. Consultant's reimbursement obligation herein shall be in addition to all other rights, remedies and damages available to the SBA at law or in equity, which shall not be deemed waived or relinquished in any way because of Consultant's additional reimbursement obligation hereunder.

**1.9 PUBLIC RECORDS**

Notwithstanding any provision in this agreement between the parties, Consultant acknowledges and agrees that the SBA is bound by the provisions of Chapter 119 (Public Records), Florida Statutes, and in the event of any conflict between Chapter 119, Florida Statutes, and the terms of this Agreement between the parties, the provisions and procedures of Chapter 119, Florida Statutes will prevail. To the extent applicable, Consultant shall comply with Chapter 119, Florida Statutes. In particular, Consultant shall:

- a. Keep and maintain public records required by the SBA in order to perform the services under the Agreement;
- b. Upon request from the SBA's custodian of public records, provide the SBA with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by Florida law;
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of the Agreement and following completion of the Agreement if Consultant does not transfer the records to the SBA; and
- d. Upon completion of the Agreement, transfer, at no cost, to the SBA all public records in Consultant's possession (if so directed by the SBA) or keep and maintain public records required by the SBA to perform the service. If Consultant transfers all public records to the SBA upon completion of the Agreement, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of the Agreement, Consultant shall meet all applicable requirements for retaining public records. Consultant shall provide all records that are stored electronically to the SBA, upon request from the SBA's custodian of public records, in a format that is compatible with the information technology systems of the SBA.

**IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT:**

**STATE BOARD OF ADMINISTRATION OF FLORIDA  
POST OFFICE BOX 13300  
TALLAHASSEE, FL 32317-3300  
(850) 488-4406  
SBAAGREEMENTS\_DL@SBAFLA.COM**

All requests, including telephone requests, for inspection of public records shall be immediately forwarded to the SBA's Office of General Counsel at the address set forth in Section 1.9 of the Agreement.

**1.10 E-VERIFY**

Consultant shall register with and use, and shall cause any of its subcontractors to register with and use, the E-Verify system to verify the employment eligibility of newly hired employees performing services within the United States in accordance with Section 448.095, Florida Statutes.

Consultant acknowledges that SBA is subject to and Consultant agrees to comply with Section 448.095, Florida Statutes, as amended from time to time, to the extent applicable.

### **1.11 INDEMNIFICATION**

The SBA, as an entity of the State of Florida, is prohibited from entering into indemnification agreements unless expressly authorized by law. (See Florida Attorney General Opinion 99-56, dated September 17, 1999.) The SBA is also prohibited from entering into a limitation of remedies agreement unless otherwise authorized by law. (See Florida Attorney General Opinion 85-66, dated August 23, 1985.) The SBA agrees to any provisions herein regarding Indemnification and Limitation of Liability to the fullest extent allowable and enforceable under Florida law.

## **2. DATA SECURITY**

### **2.1 DATA SECURITY STANDARDS**

Consultant shall comply with either the provisions of applicable SBA policies (SBA Policy #20-404 Remote Access; SBA Policy #20-411 Anti-Virus; and SBA Policy #10-409 Confidential/Sensitive Electronic Data Handling), as amended from time to time, or NIST SP 800 Series, ISO/IEC 27000 Series, or a comparable similar industry standard. Consultant will provide immediate notice to the SBA of any known or suspected violation of any SBA policy or industry standard.

### **2.2 NONDISCLOSURE**

SBA Data shall be considered confidential and proprietary information to the extent permitted by Florida or other applicable law. Consultant shall hold SBA Data in confidence and shall not disclose SBA Data to any person or entity except as authorized by the SBA or as required by law. For purposes of this Section 2, Data Security, "SBA Data" means all data accessed, created, maintained, obtained, processed, stored, or transmitted by Consultant in the course of performing the Agreement and all information derived therefrom.

### **2.3 LOSS OR BREACH OF DATA**

Consultant shall provide immediate notice to the SBA in the event it becomes aware of any security breach or any unauthorized transmission or loss of any SBA Data. In the event of loss or destruction of any SBA Data where such loss or destruction is due to the fault or negligence of Consultant, Consultant shall be responsible for recreating such lost or destroyed data in the manner and on the schedule set by the SBA, at Consultant's sole expense, in addition to any other damages the SBA may be entitled to by law or this Agreement. In the event lost or damaged data is suspected, Consultant will perform due diligence, report findings to the SBA, and take all reasonable measures necessary to recover the data, all at Consultant's sole expense. If such data is unrecoverable, Consultant will pay all costs to remediate and correct the problems caused by or resulting from each loss or destruction of data (including, without limitation, the cost to notify third parties and to provide credit monitoring services to third parties), in addition to any other damages the SBA may be entitled to by law or this Agreement. Consultant acknowledges that failure to maintain security that results in a breach of data may subject this Agreement to the administrative sanctions for failure to comply with Section 501.171, Florida Statutes, together with liability for any costs to the SBA of such breach of security caused by Consultant.

### **2.4 SECURITY AUDITS**

If SBA Data will reside in Consultant's system, the SBA may conduct, or may request Consultant to conduct at Consultant's expense, an annual network penetration test or security audit of Consultant's system(s) on which SBA Data resides. If the term of the Agreement is less than a year long, the penetration test or security audit of Consultant's system(s) on which SBA Data resides, may be exercised at any time during the term of the Agreement.

### **2.5 DATA PROTECTION**

No SBA Data will be transmitted or shipped to entities outside of the United States of America, nor will it be stored or processed in systems located outside of the United States of America, regardless of the method or level of encryption employed unless authorized in advance in writing by the SBA. Access to SBA Data shall only be available to authorized Consultant Representatives that have a

legitimate business need. For purposes of this Addendum, "Consultant Representatives" means Consultant's officers, directors, employees, agents, contractors, subcontractors and consultants (including affiliates thereof). Requests for access to the SBA's information technology resources shall be submitted to the SBA's Support and Office Services ("Help Desk") staff. With the SBA's approval, Consultant Representatives may be granted access to SBA information technology resources as necessary for fulfillment of related responsibilities. Prior to the provision of access to SBA information technology resources, Consultant agrees to provide the Consultant Representative a written copy of the SBA's Systems Use Terms as defined in Section 3 (which may be amended by the SBA from time to time in the SBA's sole discretion upon providing notice to Consultant) (the "Systems Use Terms"). At such time as the SBA provides access to SBA technology resources, Consultant and any Consultant Representative who has access to SBA technology resources will be deemed to have agreed to the Systems Use Terms (as defined above). Further, Consultant agrees to be responsible in the event any Consultant Representatives breach any of the terms set forth in Section 3. Remote connections are subject to detailed monitoring as deemed appropriate by the SBA.

## **2.6 ENCRYPTION**

Consultant shall encrypt all SBA Data, in transmission and at rest, using an SBA approved encryption technology.

## **2.7 BACK-UPS**

Consultant shall maintain and secure adequate back-ups of all documentation and programs utilized to process or access SBA Data.

## **2.8 DATA SECURITY PROCEDURES**

Consultant has established administrative, technical, and physical safeguards to protect the confidentiality of, and to prevent the unauthorized use or access to, SBA Data. Consultant shall develop data security procedures to ensure only authorized access to data and databases by Consultant Representatives for purposes of performing the Agreement and to ensure no unauthorized access to data or databases by individuals or entities other than those authorized by the Agreement or the SBA. Consultant shall ensure that access to data and databases by Consultant Representatives will be provided on a need to know basis and will adhere to the principle of least privilege. (The principle of least privileged means giving a user account only those privileges which are essential to perform its intended function.)

## **2.9 OWNERSHIP OF DATA**

Consultant shall provide to the SBA, upon its request, SBA Data in the form and format reasonably requested by the SBA. Consultant will not sell, assign, lease, or otherwise transfer any SBA Data to third parties, or commercially exploit SBA Data, except as authorized by the SBA. Consultant will not possess or assert any lien or other right against or to any SBA Data in any circumstances. SBA Data is and shall remain the exclusive property of the SBA. Data created by Consultant, obtained by Consultant from a source other than the SBA, or derived from SBA Data pursuant to this Agreement will be perpetually licensed to the SBA as described in this section.

Consultant has created, acquired or otherwise has rights in, and may, in connection with the performance of Services hereunder, employ, provide, modify, create, acquire or otherwise obtain rights in, various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques (including, without limitation, function, process, system and data models), templates, software systems, user interfaces and screen designs, general purpose consulting and software tools, websites, data, documentation, and proprietary information and processes ("Consultant IP").

Except as provided below, upon full and final payment to Consultant, any reports, information and other deliverables to be provided to SBA in connection with the Services (the "Deliverables"), shall become the property of SBA. To the extent that any Consultant IP is contained in any of the Deliverables, Consultant hereby grants to SBA a perpetual, worldwide, paid-up, royalty-free, nonexclusive license to use such Consultant IP in connection with the Deliverables.

To the extent that Consultant utilizes any of its property, including, without limitation, the Consultant IP, in connection with the performance of Services, such property shall remain the property of Consultant and, except for the license expressly granted in the preceding paragraph,



Client shall acquire no right or interest in such property.

SBA will honor Consultant copyrights, patents, and trademarks relating to Services, Deliverables and Consultant IP, and will not use Consultant's patents or trademarks without Consultant's prior written consent.

Consultant acknowledges and agrees that all right, title and interest in and to any programs, systems, data, information and other materials furnished to Consultant by SBA hereunder are and shall remain SBA's sole and exclusive property.

## **2.10 BACKGROUND CHECKS**

Consultant shall confirm that their representatives (which includes Consultant's officers, directors, employees, agents, contractors, subcontractors and consultants, including affiliates thereof) assisting in the performance of the Agreement have passed appropriate, industry standard, background screening (include criminal background checks) and possess the qualifications and training to comply with the terms of the Agreement, before being provided access to SBA Data. Upon the SBA's request, Consultant shall provide to the SBA an attestation that the foregoing background checks on all representatives have been completed.

## **2.11 COMPLIANCE**

Consultant represents and warrants that it is in compliance with, and agrees and covenants that it will at all times during the term of the Contract continue to be compliant with, all applicable laws, regulations (including, without limitation, all applicable laws and regulations relating to cybersecurity or data collection, storage, security or privacy).

## **2.12 RETURN/DESTRUCTION OF SBA DATA**

Consultant shall not at any time destroy any SBA Data without the prior written consent of the SBA. If requested by the SBA, within 30 days of the completion, termination or expiration of the Agreement, Consultant will transfer SBA Data to the SBA (if so directed by the Agreement), or, unless otherwise required by any applicable law (including, for the avoidance of doubt, Florida's record retention laws), destroy all SBA Data possessed by Consultant. Consultant shall provide the SBA documentation affirming the completion of any SBA requested data transfer (including confirmation of receipt by the SBA) and the destruction of any SBA Data possessed by Consultant. Notwithstanding the foregoing, Consultant may, in accordance with applicable legal, disaster recovery and professional requirements, store copies of SBA Data in an archival format which may not be immediately returned or destroyed but which would remain subject to the confidentiality obligations set forth in the Agreement.

## **2.13 BUSINESS CONTINUITY PLAN/DISASTER RECOVERY**

Consultant has implemented and will maintain business continuity and disaster recovery plans designed to minimize interruptions of services and ensure recovery of systems and applications used to provide the services under this Agreement. Such plans cover the facilities, systems, data, applications and employees that are critical to the provision of the services, and will be tested at least annually to validate that the recovery strategies, requirements and protocols are viable and sustainable. Consultant shall provide an executive summary of such plans setting forth prioritized threats, time criticality of business functions, resources needed to successfully recover, employee training and communication, and potential costs of recovery, as well as, including an assessment of the plans' most recent test results, to the SBA upon request. In the event of a business disruption that materially impacts (or is reasonably expected to materially impact) Consultant's provision of services under this Agreement, Consultant will promptly notify the SBA of the disruption and the steps being taken in response.

## **3. SYSTEMS USE**

THE FOLLOWING ARE THE TERMS OF SYSTEMS USE DESCRIBED IN SECTION 2.5 ABOVE. THESE TERMS MUST BE PROVIDED TO USER PRIOR TO ACCESSING ANY SBA SYSTEM.

### **3.1 OWNERSHIP OF DATA**

SBA Data is and shall remain the exclusive property of the SBA. User shall use SBA Data solely for authorized purposes. For purposes of this Section 3, Systems Use, "SBA Data" means all information that is not Consultant IP accessed, created, maintained, obtained, processed, stored, or transmitted using any SBA Account or SBA Systems and all information derived therefrom. "SBA Systems" means any of the following:

- a. Any desktop, laptop, server, or other information technology resource (whether physical or virtual) under the administration or ownership of the SBA, wherever located;
- b. All business applications, including any related data, system services and functions provided by or under the administration or ownership of the SBA. "User" means any Consultant Representative that will have access to information technology Systems of the State Board of Administration of Florida.

### **3.2 NONDISCLOSURE**

SBA Data shall be considered confidential and proprietary information to the extent permitted by Florida or other applicable law. User shall hold SBA Data in confidence and shall not disclose SBA Data to any person or entity except as authorized by the SBA or as required by law.

### **3.3 PRIVACY**

User does not have a right to privacy regarding any activity conducted using the SBA Systems. The SBA can review, read, access or otherwise monitor all activities on the SBA Systems or on any other systems accessed by use of the SBA Systems, and purge any or all information on the SBA Systems. The use of a password does not create a right to privacy in the SBA Systems.

### **3.4 CREDENTIALS**

Only persons who are authorized by the SBA may use SBA Systems. User shall not share SBA Account credentials with any other person, including but not limited to sharing of credentials with other authorized users. User shall immediately change User's password should it become known by any other person. For purposes of this Section 3, Systems Use, "SBA Account" means any set of system access credentials (e.g., a user ID and password) provided by the SBA.

### **3.5 COPYRIGHT**

User shall not make copies of applications running on SBA Systems for use at home, on laptops, or for any other reason, without SBA authorization. User shall not import, download, copy or store SBA Data (including without limitation, emails) onto non-SBA owned devices without SBA authorization. User shall not import, download, copy, or store copyrighted material without permission from the copyright owner.



**3.6 ANTI-VIRUS**

If User accesses the SBA network remotely, User shall do so only on devices with industry standard, supported anti-virus software installed. This software must be active, be scheduled to perform virus checks at regular intervals, and have its virus definition files kept up to date.

**3.7 INSTALLATION**

User shall not install any applications, programs, applets, or snap-ins on any SBA equipment.

**3.8 AUTHORIZED ACCESS**

User shall not access (or attempt to gain access to) any SBA Account or SBA System other than that to which the User is authorized.

**3.9 AUTHORIZED USE**

User shall not use any SBA Account or SBA System to transmit, distribute, or store content or materials in a manner that violates SBA policies, U.S. state and federal laws, the laws of jurisdictions outside of the U.S., or the Systems Use Terms.

**3.10 DATA SECURITY STANDARDS**

User shall comply with either the provisions of applicable SBA policies (SBA Policy #20-404 Remote Access; SBA Policy #20-411 Anti-Virus; and SBA Policy #10-409 Confidential/Sensitive Electronic Data Handling), as amended from time to time, or NIST SP 800 Series, ISO/IEC 27000 Series, or a comparable similar industry standard. User will provide immediate notice to the SBA of any known or suspected violation of any SBA policy or industry standard.

**3.11 VIOLATION REPORTING**

If User becomes aware of (or suspects there may have been) any violation of the Systems Use Terms, User shall contact the SBA Support and Office Services ("Help Desk") at 850-413-1100 to report the situation.

**3.12 VIOLATION PENALTIES**

User understands the Systems Use Terms. User understands that violation of the Systems Use Terms may lead to penalties imposed by U.S. state and federal laws, and/or the laws of jurisdictions outside of the U.S.

**3.13 INDEMNIFICATION**

User agrees to protect, indemnify, defend and hold harmless the SBA, its trustees, officers and employees from and against any and all costs, claims, demands, damages, losses, liabilities and expenses (including reasonable counsel fees and expenses, and investigation, collection, settlement and litigation costs) resulting or arising from or in any way related to User's breach of data security, negligent acts or omissions, fraud, willful misconduct, violation of law, or breach of the Systems Use Terms.

**3.14 PUBLIC RECORDS COMPLIANCE**

User acknowledges that SBA Data will constitute "public records" which will be subject to public access and disclosure under Chapter 119, Florida Statutes unless such records are exempt from disclosure under Chapter 119, Florida Statutes. To the extent applicable, User shall comply with Chapter 119, Florida Statutes. In particular, User shall:

- a. Keep and maintain public records required by the SBA in order to perform the services under any applicable contract for services with the SBA ("Contract");
- b. Upon request from the SBA's custodian of public records, provide the SBA with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by Florida law;

- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of the Contract and following completion of the Contract if User does not transfer the records to the SBA; and
- d. Upon completion of the Contract, transfer, at no cost, to the SBA all public records in User's possession (if so directed by the SBA) or keep and maintain public records required by the SBA to perform the service. If User transfers all public records to the SBA upon completion of the Contract, User shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If User keeps and maintains public records upon completion of the Contract, User shall meet all applicable requirements for retaining public records. User shall provide all records that are stored electronically to the SBA, upon request from the SBA's custodian of public records, in a format that is compatible with the information technology systems of the SBA.

**IF USER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO USER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT:**

**STATE BOARD OF ADMINISTRATION OF FLORIDA  
POST OFFICE BOX 13300  
TALLAHASSEE, FLORIDA 32317-3300  
(850) 488-4406  
SBAContracts\_DL@SBAFLA.COM**

**3.15 GOVERNING LAW; VENUE**

The Systems Use Terms shall be construed and enforced in accordance with the laws of the State of Florida without regard to conflict of law principles. Any proceeding to resolve disputes regarding or arising out of the Systems Use Agreement shall be conducted in the state courts located in Leon County, Florida, and User hereby consents to the jurisdiction and venue of those courts.

**3.16 ENTIRE AGREEMENT**

The Systems Use Terms and any and all exhibits, schedules and enclosures attached hereto, which are incorporated into the Agreement by this reference, constitute and embody the entire agreement and understanding of User and the SBA with respect to the subject matter hereof, supersede any prior or contemporaneous agreements or understandings with respect to the subject matter hereof, and, unless otherwise provided herein, cannot be altered, amended, supplemented, or abridged or any provisions waived except by written agreement of User and the SBA.