

Cloud GIS Implementation and Managed Services

MASTER SERVICES AGREEMENT:

City of Delray Beach, FL
(05/01/2025 to 04/30/2028)

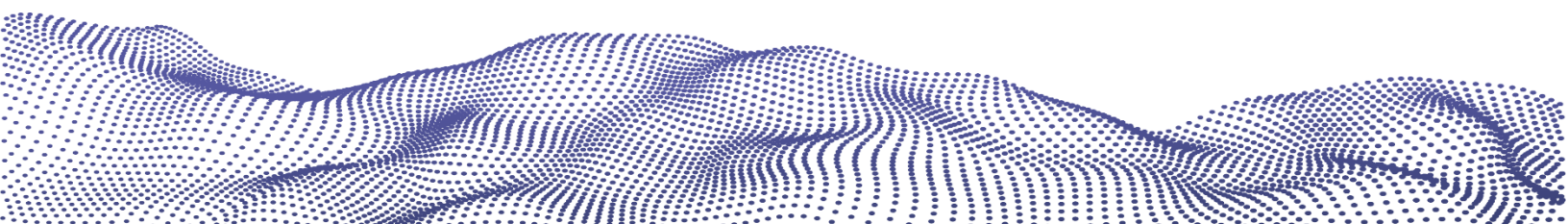


1501 Belle Isle Avenue

Suite 110 PMB1047

Mount Pleasant SC 29464

info@roktech.net



MASTER SERVICES AGREEMENT

This Master Services Agreement (the “**MSA**”) is effective as of the date executed by both parties (the “**Effective Date**”) by and between ROK Technologies, LLC (“**ROK**”) and Client. ROK and Client are each individually referred to herein as a “**Party**” and collectively as the “**Parties.**” This MSA shall govern the Parties’ relationship as more fully described in Statements of Work (each, an “**SOW**”) agreed upon between the Parties pursuant to the terms of this MSA. This MSA anticipates the execution of various written SOWs and the following terms shall apply to such SOWs. The MSA, SOW and all exhibits, addendums and/or amendments thereto are collectively referred to herein as the “**Agreement.**”

A. RECITALS

ROK is in the business of architecting, hosting and managing the infrastructure for geographical information system—or “GIS”—computing systems.

Client seeks to hire ROK to provide certain Services in relation to Client’s own GIS Platform, and ROK desires to provide the Services pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

B. SELECT DEFINITIONS

“**Client’s Platform**” or the “**Platform**” means the collection of Client’s data and applications managed by ROK pursuant to this Agreement.

“**Managed Services**” means the management of Client by ROK pursuant to a Statement of Work.

“**Non-Tenant**” means client when client owns the infrastructure supporting the Esri Enterprise software.

“**Tenant**” means Client if Client’s Platform is hosted by ROK on ROK’s cloud-based systems.

“**Professional Services**” means any and all Services rendered by ROK to Client pursuant to a SOW other than Managed Services, such as consultation, data assessment and recommendations, and so forth.

“**Services**” means any and all Services rendered by ROK to Client pursuant to a SOW, including all Managed Services and Professional Services.

C. SERVICES

Services will be provided by ROK pursuant to the terms and conditions of this Agreement and any applicable SOW.

ROK may use subcontractors (under separate contract to ROK) to perform the Services, or portion(s) thereof.

D. SOWS

1. **FORM OF SOW:** ROK will not proceed with performing Services until both Client and ROK have signed the applicable SOW. Each SOW, once signed by both Parties, will become a part of this Agreement. Each SOW must be in writing and should include, at a minimum:
 - a. Description of Services and deliverables in sufficient detail to gauge the successful progress and completion of the Services;
 - b. Period of duration expected date(s) of completion (by phase/milestone or entire project) or delivery of deliverables, and/or other performance timetable;
 - c. If applicable, designated means of performance, including identification of any particular roles or individuals required to participate in the Services;
 - d. Resources required from Client for performance of the Services, such as access to particular information, systems, or environments, involvement of specific personnel, and so forth;
 - e. If applicable, acceptance criteria and testing period, permissible reasons for rejection and ROK's duty to remedy the same, if any;
 - f. Fees owed to ROK for the Services, along with method of computation (e.g., fixed fee or hourly rate) and timing/conditions of payment (e.g., milestone-based);
 - g. Description and estimated amounts of any significant reimbursable expenses expected to be incurred; and
 - h. Identification of the Client department responsible for overseeing the project and Client's employee designated as project owner.

AMENDMENT: SOWs may only be amended by a written document signed by each Party's authorized representative, and per the change management procedures set forth therein.

GOVERNANCE: Each SOW will, upon execution by both of the Parties hereto, be incorporated into and become part of this Agreement. In the event of any conflict between this Agreement and any SOW, the terms and conditions of the applicable SOW shall control as to the specific deliverables and Services addressed in said SOW, and this Agreement shall control as to all other matters.

E. PRICING

PRICING: Prices for Services will be specified in one of the following, as applicable to the Services to be provided:

- a. Those specified in ROK's then-current price list;
- b. Those specified in a written price quotation submitted by ROK; or
- c. Those specified in the SOW; or
- d. Incidental extra fees agreed-upon by the Parties from time to time.

TAXES: All prices are exclusive of any taxes, fees, duties or other applicable amounts. Client shall pay the taxes related to Services purchased pursuant to this Agreement, or Client shall present an exemption certificate acceptable to the taxing authorities. Applicable taxes, if any, will be billed as a separate item on the invoice. ROK reserves the right to increase the fees for Services in the event Client determines any withholding tax obligation prevents ROK from receiving the specified prices for such Services.

F. PAYMENT AND INVOICING

PAYMENT

Unless otherwise indicated in a SOW, payment terms are net 30 days. Any sum not paid by Client within sixty (60) days from the date of the invoice will bear interest from the date of the invoice until paid at the maximum rate permitted by law.

All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes. Prices applicable to Client do not include applicable state and local sales, use and related taxes. The Client is exempt from state and local sales and use taxes and shall not be invoiced for the same. Upon request, Client will provide ROK with proof of tax-exempt status.

1. **INVOICING:** As set forth below, ROK will invoice Client depending on the type of Services:
 - a. For Managed Services, unless otherwise agreed by the Parties in the applicable SOW, ROK will invoice Client for such Services, and payment will be due, in advance of performance of the same.
 - b. For Professional Services, ROK will invoice Client per the SOW's invoicing schedule. Invoices may contain multiple milestones or a single invoice at the start or end of the project. Unless otherwise mutually agreed upon in writing or via a change management procedure, the total invoiced amounts for SOW milestones shall not exceed the total amount agreed upon in the SOW. If a SOW does not contain a milestone schedule, ROK will invoice Professional Services performed under such SOW as set forth in such SOW.
2. **DEPOSIT:** ROK reserves the right to charge Client a deposit for payment on any SOW.
3. **DISPUTED CHARGES:** Written notice of any disputed charge must be received by ROK within thirty (30) calendar days of the date of issuance of the invoice in question. This notice must include the invoice number in dispute, the item(s) and amount(s) disputed and a complete description of the basis for Client withholding payment. Notice of any disputed charge does not release Client from the obligation of paying any remaining balance of the invoice under the terms specified. Upon resolution of the disputed charge, ROK will issue a credit memo or Client will pay the total amount outstanding referenced by the dispute.
4. **COLLECTIONS:** If payment has not been received within the three-month period after the due date, ROK will have no other option but to undertake collection and enforcement efforts. If collection and

enforcement efforts are undertaken by ROK, Client shall be liable for all costs thereof, including reasonable attorneys' fees. If Client is in arrears on any invoice, ROK may, upon giving notice, apply any deposit thereto and suspend, withhold or terminate further performance of Services until all arrearages are brought current.

G. TERM, SCOPE, AND TERMINATION

1. **TERM:** The term of this Agreement will commence on the Effective Date and terminate on April 30, 2028.
2. **CHANGE OF SCOPE:** ROK reserves the right to change the scope and content of any of the Services upon client amendment approval.
3. **TERMINATION:** This Agreement, and any Services being performed hereunder, may be terminated immediately by either Party upon written notice:
 - a. If the other Party breaches any of the material provisions of this Agreement and the breach is not capable of being cured or after providing thirty (30) days written notice to the breaching Party if the breaching Party fails to cure such breach within such period;
 - b. If the other Party: ceases, or threatens to cease to carry on business as a going concern; or becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or a receiver or similar officer is appointed with respect to the whole or a substantial part of its assets; or an event similar to any of the foregoing occurs under applicable law;
 - c. If, except as provided below, either Party assigns (by operation of law or otherwise, including merger) or transfers any of the rights or responsibilities granted under this written agreement, any support agreement, or any SOW, without the prior written consent of the other Party, or in the event of a sale of all or substantially all of such Party's assets or transfer of a controlling interest in such Party to an unaffiliated third Party. Notwithstanding the foregoing: ROK reserves the right to subcontract Services to any affiliate or third-party organization to provide Services to Client, and ROK may assign this Agreement or all or any portion of its rights and obligations hereunder, to any affiliate of ROK; and/or
 - d. If fees are not paid when due and payment has not been received within thirty (30) days after notice from ROK to Client of such past due payment, ROK may suspend or withhold the provision of Services until all amounts past due are paid in full, and/or immediately terminate this Agreement or any Services provided hereunder.
 - e. Additionally, this Agreement may be terminated by Client for convenience, upon providing thirty (30) calendar days of written notice of such termination to ROK, in which event ROK shall be paid its compensation for services performed to termination date.
4. **EFFECT OF TERMINATION:**
 - a. If, following termination of this Agreement, the Parties execute an SOW, then any such SOW will be governed by the terms and conditions of this Agreement notwithstanding the earlier

termination of this Agreement, unless and until the Parties execute a new MSA to govern the SOW.

- b. Each of the Services provided hereunder will terminate immediately upon termination of this Agreement, unless otherwise agreed by the Parties. Notwithstanding the foregoing, the Parties' ongoing obligations under any non-terminated SOWs will continue through the end of their defined term, unless otherwise agreed by the Parties in writing.
- c. Upon termination of this Agreement or any Services, Client shall pay ROK for all work ROK has performed up to the Effective Date of termination at the agreed upon prices, fees and expense reimbursement rates.

H. BACKUPS; DATA LOSS OR CORRUPTION

DATA LOSS OR CORRUPTION: ROK is not responsible for any loss, alteration, destruction, damage, or corruption of data resulting from Client's introduction of a virus or other corrupting force (a "Virus"). Any warranty or service contract does not cover infection of any Client application or system with such as a Virus. Any virus not expressly introduced by ROK shall be deemed a Virus introduced by Client. ROK may, at its discretion, bill Client for the Professional Services required to remove a Virus and restore the system.

I. CLIENT RESPONSIBILITIES AND RESTRICTIONS

TENANT RESPONSIBILITY FOR CERTAIN FACTORS AFFECTING UPTIME: The service commitment and hourly or uptime commitment do not apply to any unavailability, suspension or termination of an included Service, or any other included Service performance issues: (i) caused by factors outside of ROK’s reasonable control, including any force majeure event or internet access or related problems beyond the demarcation point of the applicable included Service; (ii) that result from any actions or inactions of Client or any third party, including failure to acknowledge a recovery volume; (iii) that result from Client’s equipment, software or other technology and/or third party equipment obtained by Client, software or other technology (other than third-party equipment within ROK’s direct control); (iv) that result from Client or third-party (including Cloud provider) policies or protocols inherited by ROK; (v) relating to compliance with laws applicable to Client’s industry that are not generally applicable to information technology service providers; or (vi) arising from ROK’s suspension or termination of Client’s right to use the applicable included Service in accordance with the Agreement. If availability is impacted by factors other than those listed herein or used in ROK’s monthly uptime percentage calculation, then ROK may issue a service credit to Client at its exclusive discretion.

For each individual Virtual Machine Instance, ROK will use commercially reasonable efforts to make the Single Virtual Machine Instance available with an Instance-Level Uptime Percentage of at least 99.5%, in each case during any monthly billing cycle. In the event any Single Virtual Machine Instance does not meet the Instance-Level Uptime Percentage, Client will be eligible to receive a Service Credit as described below.

Instance Level Uptime Percentage	Service Credit Percentage
Less than 99.5% but equal to or greater than 99.0%	10%
Less than 99.0% but equal to or greater than 95.0%	30%
Less than 95.0%	100%

J. WARRANTY; DISCLAIMER AND LIMITATIONS

SERVICES WARRANTY: With respect to Services performed by ROK, ROK warrants to Client, unless otherwise specified in writing, that the Services as and when delivered or rendered, will conform to the standard of care exhibited by reasonably skilled contractors in the industry (network systems integration). Client shall notify ROK in writing within ninety (90) days after provision of the Services in question if any of the Services fail to conform to the standard of care set forth in this Agreement. The passage of the thirty (30) day period after provision of the Services without the notification described herein shall constitute Client’s final acceptance of the Services.

THIRD-PARTY PRODUCT WARRANTIES: With respect to particular products manufactured or supplied by third parties to ROK for resale to Client, ROK MAKES NO WARRANTIES OF ANY KIND IN ADDITION TO OR EXCEEDING THE WARRANTY SUPPLIED OR OFFERED BY THE RESPECTIVE MANUFACTURER OR SUPPLIER, which shall be transferred or assigned to Client, if possible, and Client’s recovery is limited to recovery against such manufacturer or supplier for breach of any applicable warranties of manufacturer or supplier. In the

event of a claim by Client for breach of product warranty, ROK must follow the warranty policy established by the manufacturer. This policy may require return of the warranted item to the manufacturer for repair. At Client's request, ROK agrees to take all actions reasonably necessary or appropriate to secure Client's rights and to protect its interests under such third-party warranties. Work performed by ROK, not covered by product warranty, will be billed to Client at the applicable ROK rate.

DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN ANY SOW, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS. USE AND RELIANCE ON THE SERVICES ARE AT CLIENT'S OWN RISK. EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN ANY SOW, ROK EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY RELATING TO THE SERVICES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABLE OR SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN ANY SOW, ROK EXPRESSLY DISCLAIMS ANY THAT USE OF OR ACCESS TO THE SERVICES WILL BE CONTINUOUS, UNINTERRUPTED, ERROR-FREE, FREE OF DEFECTS, OR FREE OF TECHNICAL PROBLEMS.

LIMITATION OF LIABILITY. ROK'S LIABILITY UNDER THIS AGREEMENT, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), UNDER ANY WARRANTY, OR OTHERWISE, IS ABSOLUTELY LIMITED TO CORRECTION OF ANY NONCONFORMITIES IN ANY SERVICES, OR REFUND OF THE PURCHASE PRICE, OR REFUND OF SPECIFIC AMOUNTS PAID FOR PRODUCTS OR SERVICES WHICH FAIL TO CONFORM, AT ROK'S SOLE OPTION AND THE AGGREGATE AMOUNT THEREOF FOR ALL CLAIMS RELATING TO ANY PARTICULAR PRODUCT OR SERVICE SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE FEES PAID TO ROK UNDER THIS AGREEMENT FOR THE PARTICULAR PRODUCT OR SERVICES WHICH GIVE RISE TO THE CLAIM. EXCEPT FOR THEIR INDEMNIFICATION OBLIGATIONS, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, GENERAL, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR OTHER DAMAGES (INCLUDING LOST PROFITS, LOST SAVINGS, LOSS OF DATA OR LOSS OF USE), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COULD HAVE REASONABLY FORESEEN SUCH DAMAGES, NOR FOR ANY CLAIMS ARISING FROM Client'S USE OR TRANSFER OF ANY SERVICES SOLD HEREUNDER. NO ACTION, REGARDLESS OF THE FORM, ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY Client MORE THAN ONE (1) YEAR AFTER THE OCCURRENCE OF THE EVENTS WHICH GAVE RISE TO THE CAUSE OF ACTION. THE PRICING OF ALL SERVICES AND THE TERMS AND CONDITIONS OF ALL SALES ARE BASED UPON THIS LIMITATION OF LIABILITY.

K. NON-SOLICITATION

During the term of this Agreement and for a period of one (1) year following the end of this Agreement, neither Party will (i) offer employment to any employee of the other Party; or (ii) attempt to directly or indirectly induce any employee of the other Party to terminate his or her employment. In the event of a breach of this section, money or damages may not be an adequate remedy, and, therefore, in addition to any other legal or equitable remedies, each Party shall be entitled to seek an injunction against such breach. The obligations set forth in this section are independent covenants and shall survive termination of this Agreement. Notwithstanding the foregoing, each Party shall be free to offer employment to any employee or subcontractor that directly contacts such Party in response to general public advertisement of employment opportunities (including the use of employment agencies and recruiters).

L. DISPUTE RESOLUTION

GOVERNING LAW: This Agreement, including without limitation this Agreement's interpretation, shall be treated as though this Agreement were executed and performed in the State of Florida, and shall be governed by and construed in accordance with the laws of the State of Florida without regard to its conflict of law principles. The language in this Agreement shall be interpreted in accordance with its fair meaning and not strictly for or against either Party.

1. **ELECTIVE ARBITRATION:** Except to the extent not preempted by the federal arbitration act, 9 U.S.C. §1 et seq. (1970), any claim or controversy arising out of, or relating to, any provision of this contract, or the breach thereof, shall upon written demand of any Party, and if consented to by official action by the City of

Delray Beach Commission be settled by three (3) arbitrators in accordance with the Commercial Arbitration Rules then in effect of the American Arbitration Association, to the extent consistent with the laws of the State of Florida. The location of the arbitration shall be the AAA facility in or nearest to Delray Beach, Florida, or such other venue as agreed upon in writing by the Parties. An election by any Party to arbitrate under this paragraph shall be binding on all other Parties and their heirs, successors, and assigns. The AAA fees shall be divided equally between the Parties unless otherwise determined by the arbitrators.

2. **VENUE:** Subject to and without waiving the arbitration agreement in the preceding paragraph, the proper and exclusive venue for any judicial action between the Parties—including any remedies in aid of arbitration, such as a petition to compel arbitration or confirm an arbitration award—shall be the state and federal courts located in or nearest to Palm Beach County, Florida. The Parties stipulate to and agree to waive any objection to the personal jurisdiction and venue of such courts, and further expressly submit to extraterritorial service of process.
3. **LEGAL FEES:** Each party will pay its own legal fees.

M. CONFIDENTIALITY

CONFIDENTIAL INFORMATION: "Confidential Information" shall mean and include all of the proprietary, non-public information of either Party disclosed pursuant to or in furtherance of this Agreement including but not limited to all Technical Information as defined herein, information related to ROK fees, and any information relating to markets, customers, products, patents, inventions, procedures, methods, designs, object code, data, programs, improvements, training materials, workflows, and works of authorship. Notwithstanding the foregoing, "Confidential Information" shall not include any information, that the recipient can demonstrate through its records (i) was in its knowledge or possession prior to disclosure by the discloser, (ii) was in the public domain at the time of disclosure or subsequently entered the public domain through no fault of recipient, (iii) was disclosed to recipient by a third party with the right to make such a disclosure, or (iv) is required to be produced pursuant to law or court order.

1. **DUTY OF NONDISCLOSURE:** It is expected that, appurtenant to this Agreement, each Party to this may disclose certain Confidential Information to the other Party. Each Party shall refrain from using or exploiting any Confidential Information of the other Party for any purposes or activities other than those specifically authorized in this Agreement or otherwise required by law, including Ch. 119, Florida Statutes. Each Party represents and warrants that it will hold Confidential Information in confidence and protect Confidential Information to the same extent and by the same means it uses to protect the confidentiality of its own proprietary or confidential information that it does not wish to

disclose. Neither Party shall disclose or facilitate disclosure of Confidential Information of the other Party to anyone except its employees, independent contractors, or legal or tax advisors who are authorized according to this Agreement and who have a “need to know such information.” Each Party shall ensure that the employees, independent contractors, or legal or tax advisors to whom the Confidential Information is disclosed comply with their obligations under this Agreement with respect to the Confidential Information.

2. **SURVIVAL:** Each Party’s duty of confidentiality with respect to all Confidential Information it receives hereunder will survive termination or expiration of this Agreement and will be binding upon each Party’s successors and assigns. Upon termination or expiration of this Agreement, all Confidential Information made available hereunder, including copies thereof, shall be returned to the disclosing Party or shall be certified as destroyed at the request of the disclosing Party. The Parties may disclose, or may have disclosed, to each other, both orally and in writing or in other tangible form, certain confidential information with respect to each Party’s business, as well as the Services provided under this Agreement. The Parties hereby agree to keep such information and the terms of this Agreement confidential. The Parties shall not disclose to any other person (except for legal, tax and financial advisors) any information relating to this Agreement or its subject matter and shall treat as confidential all information and documents relating hereto.
3. **DISCLOSURE TO SUBCONTRACTORS:** Notwithstanding any other provision of this Section, ROK shall be authorized to disclose Client’s Confidential Information to subcontractors, contractors or employees of a ROK entity who have a legitimate business need to have access to such information. ROK shall be responsible for any breach of this Agreement caused by any of its subcontractors, employees or agents.
4. **CONFIDENTIALITY OF AGREEMENT:** Neither Party may disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of the other Party. Any press release or publication regarding this Agreement is subject to prior review and written approval of the Parties.

N. INTELLECTUAL PROPERTY

PRE-EXISTING IP: Each Party will retain the exclusive ownership of all of its pre-existing intellectual property, Confidential Information and materials, including, without limitation, proprietary ideas, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology that are owned by a Party prior to commencement of any Services hereunder, or that are otherwise developed by or for such Party outside the scope of this Agreement.

1. **ROK IP:** Except as otherwise expressly set forth in this Agreement or an applicable SOW, ROK owns and will continue to own all right, title, and interest in and to the Services, products, deliverables, data collection tools, reports, scripts, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology provided or developed by ROK (or a third party acting on ROK’s behalf) pursuant to this Agreement, including modifications, enhancements, improvements or derivative works of any of the foregoing, regardless of who first conceives or reduces to practice, and all intellectual property in any of the foregoing (collectively “ROK IP”).
2. **CLIENT IP:** As between Client and ROK, Client at all times retains all right, title and interest in and to all of Client’s data and applications provided by Client to ROK hereunder, Client’s pre-existing

technology and all intellectual property that is developed by Client or by a third party on Client's behalf thereafter, other than ROK intellectual property.

3. **THIRD-PARTY PRODUCTS:** Third party products will always be owned by the applicable third party and will be subject to any applicable third Party license terms.

O. INDEMNIFICATION

1. **DUTY:** ROK, on its own behalf, and on behalf of its respective third-party partners, affiliates, owners, directors, employees, agents, successors, and assigns (collectively, the "Indemnitor") will defend, indemnify, and hold harmless the Client and its third-party partners, affiliates, owners, directors, employees, agents, successors, and assigns (collectively, the "Indemnitee") from and against all claims, actions, losses, liability, damages, costs, and expenses (including reasonable attorneys' fees and expenses) (collectively, "Claims") arising from or related to: (i) any gross negligence or willful misconduct by Indemnitor; (ii) any breach of this Agreement by the Indemnitor; (iii) any violation or alleged violation by Indemnitor of any applicable foreign or domestic, federal, state or local statutes, laws, ordinances, rules and regulations or industry standards; and (iv) any violation or alleged violation by Indemnitor of the rights of any third party, including without limitation, intellectual property rights.
2. **CLAIM PROCEDURE:** The Indemnitee will provide Indemnitor with prompt written notice of the Claim for which the Indemnitee intends to claim such indemnification, and Indemnitor shall have the right to participate in, and, to the extent the Indemnitor so desires, to assume sole control of the defense thereof with counsel selected by the Indemnitor; provided, however, and notwithstanding the foregoing, that the Indemnitee shall have the absolute right to retain their own counsel, with the fees and expenses to be paid by the Indemnitee. Indemnitor will have no authority to settle any Claim on the Indemnitee's behalf without the written consent of the Indemnitee. Nothing in this Section shall limit any other remedy of the parties. These obligations will survive any termination of the Agreement.
3. The Parties acknowledge that Client shall remain responsible for any liability resulting from its own actual or alleged negligence, willful misconduct, acts or omissions during performance of this Agreement, subject to the rights and immunities afforded to it under the common law and §768.28, Florida Statutes, as may be amended from time to time.
4. Nothing contained herein nor in any SOW is intended nor shall be construed to waive Client's rights and immunities under the common law or §768.28, Florida Statutes, as may be amended from time to time.

P. GENERAL PROVISIONS

ENTIRE UNDERSTANDING: This Agreement, along with all Exhibits and Appendices incorporated by reference herein, and all SOWs executed by the Parties pursuant to this Agreement, contains the entire understanding of the Parties with respect to the subject matter contained herein, and shall supersede all prior agreements and understandings, whether written or oral. There are no restrictions, promises, covenants, or understandings other than those expressly set forth herein, and no rights or duties on the part of either Party are to be implied or inferred beyond those expressly provided for. To the extent ROK is required to click to agree or accept any written terms of Client in order to provide the Services (e.g., accepting Client's website terms to access Client's designated environment), the Parties understand and

agree that such act is the result of a technological requirement and is of no binding effect upon the Parties.

1. **SEVERANCE:** If any provision of this Agreement is held unenforceable or in conflict with the law of any jurisdiction, the validity of the remaining provisions shall not be affected by such holding. The Parties agree to negotiate and amend in good faith such provision in a manner consistent with the intentions of the Parties as expressed in the Agreement, if any invalid or unenforceable provision affects the consideration of either Party.
2. **MODIFICATIONS AND ADDITIONS:** No modifications or additions to the terms and conditions of this Agreement shall be binding unless in writing and signed by both Parties.
3. **ASSIGNMENT:** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Neither Party may assign the terms or conditions of this Agreement to a third party, affiliated entity, or related division without the prior written consent of the other Party.
4. **NOTICES:** All notices provided in connection with this Agreement will be in writing and will be delivered by email and either (i) certified or registered mail, postage prepaid and return receipt requested or (ii) overnight delivery courier (e.g., FedEx) and will be deemed effective upon receipt by the authorized representative at the address set forth above in the preamble, or at such other addresses as the Parties may designate by written notice to each other at the addresses provided below:

FOR CLIENT:

CITY OF DELRAY BEACH

100 NW 1ST AVENUE

DELRAY BEACH, FLORIDA 33444

ATTN: CITY MANAGER

FOR ROK:

1501 BELLE ISLE AVE, SUITE 100

MT. PLEASANT, SC 29464

ATTN: ALEX COLEMAN, CEO

5. **FORCE MAJEURE:** ROK may, without liability, suspend or delay performance or cancel this Agreement on account of force majeure or other circumstances beyond its control, including, but not limited to, strikes, acts of God, political unrest, embargo, failure of source of supply, or casualty.
6. **WAIVER:** No waiver by either Party of any breach of this Agreement, no matter how long continuing or how often repeated, shall be deemed a waiver of any subsequent breach thereof, nor shall any delay or omission on the part of either Party to exercise any right, power, or privilege hereunder be deemed a waiver of such right, power, or privilege.
7. **COUNTERPARTS:** This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed an original and together shall constitute one and the same agreement. Execution and delivery of the Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.
8. **INSURANCE:**
 1. ROK expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by ROK shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Client or its officers, employees, agents and instrumentalities as herein required.
 2. ROK and all subcontractors shall not be allowed to commence work under this agreement until ROK has obtained all insurance required by this Insurance section, including the purchase of a

Policy of Insurance naming the Client as an Additional Named Insured, which insurance Policy and its terms must be agreed to and approved in writing by the Risk Manager for the Client, nor shall any subcontractor be allowed to commence work under this Agreement until the subcontractor complies with the insurance requirements required by this Insurance section, including the duty to purchase a Policy of Insurance which names the Client as an Additional Named Insured, which Insurance Policy and its terms are agreed to and approved in writing by the Risk Manager for the Client.

3. Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the Client's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.
4. Certificates of Insurance shall provide for thirty (30) calendar days' prior written notice to the Client in case of cancellation or material changes in the policy limits or coverage states. If the carrier cannot provide thirty (30) calendar days' notice of cancellation, either ROK or their Insurance Broker must agree to provide notice.
5. Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the Client. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, ROK shall furnish, at least forty-five (45) calendar days prior to the expiration date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. ROK shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. ROK shall be liable to Client for any lapses in service resulting from a gap in insurance coverage.
6. **REQUIRED INSURANCE:** ROK shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:
 1. Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:
 1. Each Occurrence Limit - \$1,000,000
 2. Personal & Advertising Injury Limit - \$1,000,000
 3. General Aggregate Limit - \$2,000,000
 4. Products & Completed Operations Aggregate Limit - \$2,000,000

Aggregate Reduction: ROK shall advise the Client in the event any aggregate limits are reduced below the required per-occurrence limit. At its own expense, ROK will reinstate the aggregate limits to comply with the minimum requirements and shall furnish the Client with a new certificate of insurance showing such coverage is in force.

Products & Completed Operations Coverage shall be maintained for the later of three (3) years after the delivery of goods or services or final payment under the Agreement. The

Client must be shown as an additional insured with respect to this coverage. The Client's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

2. Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of ROK engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, ROK shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by ROK. Coverage for ROK and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:
 1. Workers' Compensation: Coverage A – Statutory
 2. Employers Liability: Coverage B
 - \$500,000 Each Accident
 - \$500,000 Disease – Policy Limit
 - \$500,000 Disease – Each Employee
 3. Cyber Liability, including Network Security and Privacy Liability with a limit of liability no less than \$1,000,000 per loss. Coverage shall include liability arising from: theft, dissemination and/or use of confidential information stored or transmitted in electronic form, unauthorized access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to your services, including denial of service, and the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network, or similar computer-related property and the data, software and programs thereon. If vendor is collecting credit card information, it shall cover all PCI breach expenses. Coverage is to include the various state monitoring and state required remediation as well as meet the various state notification requirements. This coverage shall be maintained for a period of no less than the later of three (3) years after delivery of goods or services or final payment of the Agreement. Retroactive date, if any, to be no later than the first calendar day of service to the Client. The Client must be shown as an additional insured with respect to this coverage. The Client's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.
7. REQUIRED ENDORSEMENTS:
1. The Client shall be named as an Additional Insured on each of the Liability Policies required herein.
 2. Waiver of all Rights of Subrogation against the Client.
 3. Thirty (30) calendar day Notice of Cancellation or Non-Renewal to the Client.
 4. ROK's policies shall be Primary & Non-Contributory.
 5. All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the Client.
 6. The Client shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

8. Any and all insurance required of ROK pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the Client as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by ROK and provided proof of such coverage is provided to Client. ROK and any subcontractors shall maintain such policies during the term of this Agreement.
9. The Client reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this agreement.
10. The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability ROK has assumed in the indemnification/hold harmless section(s) of this Agreement.
9. **Non-Discrimination and Equal Opportunity Employment:** During the performance of the Agreement, neither ROK nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. ROK will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. ROK shall agree to post in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. ROK further agrees that ROK will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.
10. **Independent Contractor:** The Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that ROK is an independent contractor under the Agreement and not the Client's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. ROK shall retain sole and absolute discretion in the judgement of the manner and means of carrying out ROK's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under the Agreement shall be those of ROK, which policies of ROK shall not conflict with City, State, or Federal policies, rules or regulations relating to the use of ROK's funds provided for herein. ROK agrees that it is a separate and independent enterprise from the Client, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. The Agreement shall not be construed as creating any joint employment relationship between ROK and the Client and the Client will not be liable for any obligation incurred by ROK, including but not limited to unpaid minimum wages and/or overtime premiums.
11. **Public Records:**
 1. The Client is a public agency subject to Chapter 119, Florida Statutes. ROK shall comply with Florida's Public Records Law. Specifically, ROK shall:

1. Keep and maintain public records required by the Client to perform the service;
 2. Upon request from the Client's custodian of public records, provide the Client 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 law;
 3. Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, ROK shall destroy all copies of such confidential and exempt records remaining in its possession after ROK transfers the records in its possession to the Client; and
 4. Upon completion of the Agreement, ROK shall transfer to the Client, at no cost to the Client, all public records in ROK's possession. All records stored electronically by ROK must be provided to the Client, upon request from the Client's custodian of public records, in a format that is compatible with the information technology systems of the Client.
2. The failure of ROK to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement, for which, the Client may terminate the Agreement in accordance with the terms herein.
 3. **IF ROK HAS ANY QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ROK'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**
CITY CLERK
100 NW 1ST AVENUE
DELRAY BEACH, FLORIDA 33444
561-243-7053
GivingsA@mydelraybeach.com
12. **Scrutinized Companies:** ROK, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in Iran Terrorism Sectors List, or is engaged in business with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:
 1. Any amount if, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or
 2. One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:
 1. Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, created pursuant to Section 215.473, Florida Statutes; or
 2. Is engaged in business operations in Syria.

13. **Access to Records:** Upon request and reasonable notice, Client shall have access and the right to examine any books, documents, accounting records, data, logs, reports and other records directly pertinent to ROK's performance pursuant to the Agreement during the term of the Agreement during normal business hours, until the expiration of five (5) years after final payment hereunder unless all records are transferred to Client upon termination of Agreement. As required by Ch. 119, Florida Statutes, records related to the Agreement may be public records open for inspection unless an applicable exception applies and shall be retained pursuant to the State of Florida General Records Schedule GS1-SL.

14. **E-Verify:**

1. ROK certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

1. Definitions for this Section.

1. "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.
2. "Contractor" includes, but is not limited to, a vendor or consultant.
3. "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.
4. "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

2. Registration Requirement; Termination. Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-Verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

1. All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and
2. All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the Client. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the Client; and
3. The Contractor shall comply with the provisions of Section 448.095, Florida Statutes, "Employment Eligibility," as amended from time to time. This includes, but is not limited to, registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately.

Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

15. **Human Trafficking:** Pursuant to Section 787.06(13), Florida Statutes, nongovernmental agencies contracting with Client are required to provide an affidavit attesting that the nongovernmental agency does not use coercion for labor or services as defined within Section 787.06, Florida Statutes. By executing this Agreement and submitting the executed required affidavit, ROK represents and warrants that it does not use coercion for labor or services as provided by state law.
16. **Discriminatory Vendor List:** Pursuant to Section 287.134(2)(a), Florida Statutes, an entity or affiliate, as defined in Section 287.134(1), who has been placed on the discriminatory vendor list may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity. By executing this Agreement, ROK represents and warrants that neither it nor any of its affiliates is currently on the discriminatory vendor list.
17. **Scrutinized Companies that Boycott Israel:** Pursuant to Section 287.135, Contractor is ineligible to enter into, or renew, this Agreement if ROK is on the Scrutinized Companies that Boycott Israel List (as identified in Section 215.4725, Florida Statutes), or is engaged in a boycott of Israel.
 - a. By entering into this Agreement, ROK certifies that ROK is not on the Scrutinized Companies that Boycott Israel List, and that ROK is not engaged in a boycott of Israel.
 - b. ROK shall notify the Client if, at any time during the term of this Agreement, ROK is placed on the Scrutinized Companies that Boycott Israel List, or that ROK is engaged in a boycott of Israel. Such notification shall be in writing and provided by ROK to the Client within ten (10) days of the date of such occurrence.
 - c. In the event the Client determines, using credible information available to the public, that ROK has submitted a false certification or ROK is found to have been placed on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel, the Client may, in its sole discretion, terminate this Agreement and seek a civil penalty, and other damages and relief, against ROK, pursuant to Section 287.135, Florida Statutes. In addition, the Client may pursue any and all other legal remedies against ROK.
 - d. ROK shall not seek damages, fees, or costs against the Client in the event the Client terminates the Agreement pursuant to this provision.
18. **Compliance with all Federal, State, and Local Laws.** ROK and its services under this Agreement must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations. ROK agrees to provide to the Client all necessary certifications required by any federal, state, and local laws, ordinances, codes, rules and regulations. ROK's obligations under this Section shall survive termination, cancellation or expiration of this Agreement.

19. **Disclosure of Interests with any Country of Foreign Concern.** Pursuant to Fla. Stat. §286.101(3), where the amount of the Agreement is \$100,000.00 or more, ROK shall disclose any current or prior interest of, any contract with, or any grant or gift received from a country of foreign concern with a value of \$50,000 or more that was received or in force during the previous five (5) years. Definitions, disclosure requirements and exceptions are found in Fla. Stat. §268.101. ROK represents and warrants it has complied with Fla. Stat. §286.101, it has properly disclosed such interests, contracts, grants or gifts to the Client before execution of this Agreement, and it will remain in compliance with Fla. Stat. §286.101 for the duration of this Agreement.
20. **Personal Identifying Information.** Section 287.138, Florida Statutes, prohibits the Client from entering into a contract which would give access to an individual's personal identifying information with an entity with; a Controlling Interest (as that term is defined in sub-section 287.138(1)(a)), or full ownership, held by a Foreign Country of Concern (as that term is defined in sub-section 287.138(1)(c)), or with a principal place of business in a Foreign Country of Concern, unless the entity provides the Client with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in paragraphs (2)(a)-(c) of the statute. Upon submitting its Work Order, ROK shall certify compliance with section 287.138, Florida Statutes, by executing the Proposer Certification regarding Entities of Foreign Countries of Concern, which is included in Attachment 2. The Client reserves the right to terminate any agreement in which a CONTRACTOR provides a false certification or otherwise violates Section 287.138, Florida Statutes.
21. **Antitrust Violations:** Pursuant to Section 287.137, Florida Statutes, as may be amended, a person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity. By entering into this Agreement, ROK certifies neither it nor its affiliate(s) are on the antitrust violator vendor list at the time of entering this Agreement. False certification under this paragraph or being subsequently added to that list will result in termination of the Original Agreement, as amended, at the option of the Client consistent with Section 287.137, Florida Statutes, as amended.
22. **Public Entity Crimes:** Pursuant to Section 287.133(2)(a), Florida Statute, a person or affiliate, as defined in Section 287.1 33(1), Florida Statutes, who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of thirty-five thousand dollars (\$35,000.00) for a period of thirty-six (36) months following the date of being placed on the convicted vendor list. By executing this Agreement, ROK represents and warrants that neither it nor any of its affiliates is currently on the convicted vendor list.
23. **Compliance with Foreign Entity Laws:** ROK ("Entity") hereby attests under penalty of perjury the following:

1. Entity is not owned by the government of a foreign country of concern as defined in Section 287.138, Florida Statutes. (Source: §287.138(2)(a), Florida Statutes);
2. The government of a foreign country of concern does not have a controlling interest in Entity. (Source: §287.138(2)(b), Florida Statutes);
3. Entity is not owned or controlled by the government of a foreign country of concern, as defined in Section 692.201, Florida Statutes. (Source: §288.007(2), Florida Statutes);
4. Entity is not a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of concern, as defined in Section 692.201, Florida Statutes, or a subsidiary of such entity. (Source: §288.007(2), Florida Statutes);
5. Entity is not a foreign principal, as defined in Section 692.201, Florida Statutes. (Source: §692.202(5)(a)(1), Florida Statutes); and,
6. Entity is in compliance with all applicable requirements of Sections 692.202, 692.203, and 692.204, Florida Statutes.