

**AGREEMENT
BETWEEN
THE DEPARTMENT OF ECONOMIC OPPORTUNITY
AND
ENTERPRISE FLORIDA, INC.**

THIS FUNDING AND PROGRAM AGREEMENT (Agreement) Number SB18-001 is made and entered into in the City of Tallahassee, Leon County, Florida, as of July 1, 2017 (the "Effective Date") by and between the DEPARTMENT OF ECONOMIC OPPORTUNITY (DEO), located at 107 E. Madison Street, MSC 110, Caldwell Building, Tallahassee, Florida, 32399, and ENTERPRISE FLORIDA, INC. (EFI), located at 800 North Magnolia Avenue, Suite 1100, Orlando, FL 32803. DEO and EFI are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

Recitals

WHEREAS, the State of Florida Legislature mandates specific funds and programs be directed by DEO to EFI for program implementation, and requires DEO to include in each implementation agreement performance measures, standards, and sanctions. DEO is required to direct appropriated funds to EFI, and may direct certain other funds that were not specifically appropriated to EFI, through an agreement for the implementation of its core mission responsibilities and program implementation;

WHEREAS, the State of Florida Legislature (the "State") mandated in section 288.901, Florida Statutes (F.S.) that EFI shall act as the economic development organization for the State in collaboration with DEO;

WHEREAS, DEO and EFI desire to enter into this Agreement with regard to the implementation of the funding and programs described herein.

WHEREAS, DEO must include in each agreement directing appropriated funds certain requirements; and

WHEREAS, DEO enters into this Agreement to make the appropriated funds available to EFI pursuant to certain funding requirements and to appropriate oversight.

Agreement

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, the Parties agree as follows:

- 1. PERFORMANCE REQUIREMENTS:** EFI shall perform the services specified herein in accordance with the terms and conditions of this Agreement and all attachments and exhibits attached hereto and incorporated herein. EFI shall fully comply with the reporting requirements of this Agreement and all attachments and exhibits attached hereto and incorporated herein.

2. **TYPE OF AGREEMENT:** This Agreement is a fixed price agreement.

3. **TERM:** This Agreement shall begin on July 1, 2017 (the "Effective Date") and shall end on June 30, 2018 (Agreement Period), unless terminated earlier. DEO shall not pay EFI's costs related to this Agreement outside of the Agreement Period and not related to any unexpended state appropriations carried forward into succeeding fiscal years.

4. **AGREEMENT PAYMENT AND AVAILABILITY OF FUNDS:** DEO shall pay EFI up to, but not to exceed, sixteen million dollars (\$16,000,000.00) in consideration for EFI's performance and services pursuant to this Agreement. Pursuant to section 287.0582, F.S., the State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. DEO agrees to notify EFI, in writing, at the earliest possible time if and when funds are not appropriated or otherwise available. In the event of a State of Florida revenue shortfall, the total funding may be reduced accordingly.

5. **FINANCIAL CONTROLS:**

a. EFI shall comply with section 215.97, F.S.

b. EFI will expend funding under this Agreement in compliance with all laws, including section 215.971, F.S., rules and regulations applicable to expenditures of State funds including, but not limited to, the Reference Guide for State Expenditures (http://www.myfloridacfo.com/aadir/reference_guide/).

c. This Agreement may be charged only with allowable costs resulting from obligations incurred during the term of the Agreement or unexpended state appropriations carried forward into succeeding fiscal years.

6. **PAYMENT:**

a. Payments under this Agreement will be made to EFI pursuant to applicable Florida laws and the General Appropriations Act. EFI agrees that any funds appropriated to EFI shall be expended pursuant to this Agreement in accordance with the specified funding categories. All payments shall be made in accordance with and subject to the terms of this Agreement and any applicable law.

b. DEO will pay EFI quarterly, as specified herein, specifically in Attachment VI, *Payment Schedule*, upon DEO's receipt and approval of: (1) an original invoice specifying EFI's name, address, FEID number, the DEO Agreement Number, invoice number, invoice period, amount requested, and funding source; (2) documentation supporting the completed minimum level of service for each deliverable; and (3) any certifications and reports that may be due upon invoicing pursuant to the terms of this Agreement and any of its Attachments hereto. Payment does not become due under the Agreement until DEO determines that the invoice and supporting documentation is compliant with the terms of this Agreement and any Attachment hereto. DEO's determination that a given invoice and supporting documentation is compliant shall not be unreasonably withheld.

c. For the submission of all payment documentation as referenced directly above in Article 6, *Payment*, paragraph b., DEO shall review and communicate to EFI in writing any deficiencies in the payment

documentation. Any such deficiencies shall be resolved in accordance with Article 21, *Defaults, Sanctions and Remedies*, the terms of this Agreement and any of its Attachments hereto, and applicable law.

d. EFI shall submit the final invoice for payment to DEO no later than 60 calendar days after the Agreement ends or is terminated. If EFI fails to do so DEO may refuse to honor any requests submitted after this time period and may consider EFI to have forfeited any and all rights to payment under this Agreement.

7. REPORTS:

a. EFI shall submit to DEO all reports, documents, materials, and information, as required by law, this Agreement and any attachment hereto, or reasonably requested by DEO.

b. DEO shall review and communicate to EFI in writing any deficiencies in any requested or required reports, information or documentation required by law or this Agreement. Any such deficiencies shall be resolved in accordance with Article 21, *Defaults Sanctions and Remedies*, the terms of this Agreement and applicable law.

c. If this Agreement is extended beyond the original Agreement period, EFI shall submit to DEO all documents, reports, and provide all services to cover the extended agreement period as required by the terms of that extension and this Agreement.

8. DISSOLUTION OF CORPORATION: In the event of the dissolution EFI, the dissolved entity's assets, after all its legal liabilities and obligations have been paid or adequate provisions have been made, shall revert to the State of Florida.

9. TERMINATION: This Agreement may be terminated in accordance with the provisions of Article 21, *Defaults, Sanctions, and Remedies*.

10. MINORITY AND SERVICE-DISABLED VETERAN BUSINESS ENTERPRISES:

a. EFI is encouraged to use Florida's minority and service-disabled veteran businesses as contractors or vendors under this Agreement. The Certified Vendor Directory can be accessed from the website of DEO of Management Services, Office of Supplier Diversity located at:

http://www.dms.myflorida.com/other_programs/office_of_supplier_diversity_osd

b. EFI shall report on a quarterly basis, using a form provided by DEO, its expenditures with minority and service-disabled veteran businesses. The report shall contain the names and addresses of the minority and service-disabled veteran businesses; the aggregate dollar figure disbursed that quarter for each business; the time period; type of goods or services; and the applicable code. If no expenditures were made to minority and service-disabled veteran businesses, EFI shall submit the form marked "none." The quarterly report shall also include copies of invoices or a computer printout verifying the data reported. If no expenditures were made to such businesses, EFI shall submit the form marked "none." The quarterly report, and required backup documentation, shall be submitted to DEO within 10 working days following the end of the quarter.

11. SUBCONTRACTS:

- a. EFI may, as appropriate and in compliance with applicable law, including but not limited to section 288.904 (6), F.S., subcontract the performance of the services set forth in this Agreement, including entering into subcontracts with vendors for services and commodities; provided, however, that EFI shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract. EFI shall not enter into subcontracts in which DEO could be held liable to a subcontractor for any expenses or liabilities. EFI shall defend and hold DEO harmless of any liabilities incurred under any of the subcontracts entered into by EFI. EFI shall be liable for all work performed and all expenses incurred as a result of any subcontract.
- b. Any and all subcontracts that EFI executes with a recipient under which such person or organization receives State financial assistance, as defined in s. 215.97, F.S., and agrees to perform economic development services or similar business assistance services on behalf of EFI, shall include provisions requiring that such person or organization report on performance, and account for proper use of funds provided under the subcontract (including the provision of audit rights pursuant to Attachment III, *Special Audit and Monitoring Requirements*, when applicable). EFI agrees to coordinate with other components of State and local economic development systems, and avoid duplication of existing State and local services and activities.
- c. Any and all subcontracts that EFI executes with a person or organization shall include provisions whereby EFI and the subcontractors agree to abide by all federal, state, and local laws, including but not limited to, the requirements of s. 215.971, F.S., for agreements with subrecipients of state financial assistance as defined in s. 215.97, F.S.
- d. Upon prior written notice of same to EFI, EFI shall not object to any of the State of Florida's assignment or transfer of its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida. This Agreement shall bind the successors, assigns, and legal representatives of EFI and of any legal entity that succeeds to the obligations of the State of Florida.

12. INDEPENDENT CAPACITY OF CONTRACTOR:

- a. The Parties agree that EFI, its officers, agents, and employees, in performance of this Agreement and any attachment hereto, shall act in the capacity of an independent contractor. Neither EFI, nor any of its employees or agents, shall be entitled to receive any benefits of state employment, including retirement benefits or any other rights or privileges connected with employment in the State Career Service System. EFI agrees to take such steps as may be necessary to ensure that each subcontractor of EFI will be deemed to be an independent contractor and will not be considered or permitted to be an agent of the State of Florida.
- b. EFI shall not pledge the State of Florida's nor DEO's credit nor make the State of Florida or DEO a guarantor of payment or surety for any contract, debt, obligation, judgment lien, or any form of indebtedness.
- c. At all times during this Agreement, EFI shall comply with the reporting and Reemployment Assistance contribution payment requirements of chapter 443, F.S.

13. LIABILITY: To the fullest extent permitted by law, DEO shall not assume any liability for the acts, omissions to act, or negligence of EFI, its agents, contractors, subcontractors, grantees, subgrantees, servants, or employees. In all instances, EFI shall be responsible for any injury or property damage resulting from any activities conducted by EFI. No Party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records, even if the Party has been advised that such damages are possible. No Party shall be liable for lost profits, lost revenue, or lost institutional operating savings. To the fullest extent permitted by law, the State and DEO may, in addition to other remedies available to them at law or equity and upon written notice to EFI, retain such monies from amounts due EFI as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against the State or DEO.

14. INDEMNIFICATION:

a. To the fullest extent permitted by law, EFI, shall fully indemnify, defend, and hold harmless DEO from and against suits, actions, damages and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by EFI, its agents, employees, partners or subcontractors within the context of this Agreement; provided, however, that EFI shall not indemnify for that portion of any loss of damages proximately caused by the negligent act or omission of DEO. Without exception, EFI, shall indemnify and hold harmless the State of Florida and its employees and agents from liability of any nature or kind, including costs and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured by EFI.

b. At DEO's election and upon notification to EFI, EFI shall assume the defense or settlement of any third-party claim arising under this Agreement and any attachment hereto with counsel reasonably satisfactory to DEO; provided, however, that EFI shall not settle or compromise any such claim in an amount over \$10,000 without DEO's prior written consent. Notwithstanding the foregoing, (a) DEO shall have the right, but not the obligation, at DEO's option and expense, to participate fully in the defense or settlement of any third-party claim; and (b) if EFI does not continuously defend or settle any third-party claim within 30 days after it is notified of the assertion or commencement thereof, then (i) DEO shall have the right, but not the obligation, to undertake the defense or settlement of such claim for the account and at the risk of EFI, (ii) EFI shall be bound by any defense or settlement that DEO may make as to such claim, and (iii) EFI agrees to reimburse DEO with non-State funds for the reasonable attorney's fees and costs associated with any defense or settlement that DEO may undertake as to such claim described in (b). DEO shall also be entitled to join EFI in any third-party claim for the purpose of enforcing any right of indemnity hereunder.

15. PATENTS, COPYRIGHTS, AND ROYALTIES: If any patentable discovery or invention arises or is developed by EFI in the course or as a result of work or services performed under this Agreement, EFI shall provide written notification to DEO of the discovery or invention. The Parties agree that trademarked or copyrightable materials such as books, films, logos, music, art, or other artistic or intellectual property may be created, developed, licensed, owned, assigned, or transferred in the course of or as a result of work or services performed by EFI or EFI subcontractors under this Agreement without notification or consent of DEO.

16. RESPONSIBILITIES OF GOVERNING BOARD OR AUTHORITIES: The Parties agree that any information, including updates, reports, publications, studies, and any and all reasonably requested information, that is required by federal, State, or local law shall be approved by those persons having the authority to do so prior to submission, and shall be signed only by those persons having the legal authority to do so or appropriately ratified by such an authority.

17. AUDITS AND RECORDS:

- a. Representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability shall have access to any of EFI's books, documents, papers, and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.
- b. EFI shall retain and maintain for a period of five years all records and make such records available for an audit as may be requested. Records shall include independent auditor working papers, books, documents, and other evidence, including, but not limited to, vouchers, bills, invoices, requests for payment, and other supporting documentation, which, according to generally accepted accounting principles, procedures and practices, sufficiently and properly reflect all program costs expended in the performance of this Agreement. The records shall be subject at all times to inspection, review, or audit by State personnel of the Office of the Auditor General, Chief Financial Officer, Office of the Chief Inspector General, or other personnel authorized by DEO and copies of the records shall be delivered to DEO upon request.
- c. EFI agrees to reimburse the State with non-State funds, in an amount not to exceed the total for its disallowed costs, for the reasonable costs of investigation incurred by the Inspector General, State Auditor General or other authorized State official or agent for investigations of EFI's compliance with the terms of this or any other agreement between EFI and the State which results in disallowed costs. Such reasonable costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. EFI understands and will comply with the requirements of s. 20.055(5), F.S., including but not necessarily limited to, the duty of EFI and any of EFI's subcontractors to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to s. 20.055, F.S.
- d. EFI agrees to comply with all statutorily applicable audit requirements of sections 215.97 and 17.03, F.S., and those found in Attachment IV, *Special Audit and Monitoring Requirements*. The applicable rules of the Auditor General referenced in Attachment IV, *Audit Requirements*, shall include those set forth in chapter 10.700 (certain non-profit organizations), as amended.
- e. EFI shall include the record keeping requirements described above in all subcontracts and assignments with subrecipients of state funds according to s. 215.97, F.S. For purposes of this Agreement, "subrecipient" shall be defined in accordance with s. 215.97(2)(y), F. S.
- f. EFI shall maintain financial records related to funds paid by EFI to any parties for work on the matters that are the subject of this Agreement as required by law. As applicable, EFI shall submit a written

independent audit report to DEO specifically covering the period of Agreement expenditures pursuant to sections 288.904, 215.981, 215.97 and 11.45, F. S., and any other relevant laws.

g. Each Party agrees to provide copies of any audit referencing this Agreement, the audit transmittal letter, and any response to such audit to the other Party within 30 days of receipt.

h. Within 60 calendar days of the close of EFI's fiscal year, on an annual basis, EFI shall electronically submit a completed Audit Compliance Certification (a version of this certification is attached hereto as Attachment V) to audit@deo.myflorida.com. EFI's timely submittal of one completed Audit Compliance Certification for each applicable fiscal year will fulfill this requirement within all agreements (e.g., subcontracts, subgrants, memorandums of understanding, memorandums of agreement, economic incentive award agreements, etc.) between DEO and EFI.

i. EFI shall (i) maintain all funds EFI received pursuant to this Agreement in bank accounts separate from its other operating or other special purposes accounts, or (ii) expressly designate in EFI's business records and accounting system, maintained in good faith and in the regular course of business, that such funds originated from this Agreement. EFI shall not commingle the funds provided under this Agreement with any other funds, projects, or programs. DEO may, in its sole and absolute discretion, disallow costs that result from purchases made with commingled funds.

18. ACCESS TO RECORDS AND PUBLIC RECORDS REQUIREMENTS:

a. EFI shall keep and maintain public records required by DEO to perform EFI's responsibilities hereunder. EFI shall, upon request from DEO's custodian of public records, provide DEO with a copy of the requested records or allow the records to be inspected or copied within a reasonable time per the cost structure provided in chapter 119, F.S., and in accordance with all other requirements of chapter 119, F.S., or as otherwise provided by law. Should EFI cease operations or cease receiving State appropriations, EFI shall transfer, at no cost, to DEO all public records in possession of EFI or keep and maintain public records required by DEO to perform the service. If the EFI keeps and maintains public records upon completion of the Agreement, EFI shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to DEO, upon request from DEO's custodian of records, in a format that is compatible with the information technology systems of DEO.

b. If DEO does not possess a record requested through a public records request, DEO shall notify EFI of the request as soon as practicable, and EFI must provide the records to DEO or allow the records to be inspected or copied within a reasonable time. Subject to paragraph e. of this Article 18, if EFI does not comply with DEO's request for records, DEO shall enforce the provisions set forth in this Agreement. If EFI fails to provide public records to DEO within a reasonable time it may be subject to penalties under s. 119.10, F.S.

c. DEO does not endorse any EFI, commodity, or service.

d. EFI acknowledges that DEO is subject to the provisions of chapter 119, F.S., relating to public records and that reports, invoices, and other documents EFI submits to DEO under this Agreement may constitute

public records under F.S. EFI shall cooperate with DEO regarding DEO's efforts to comply with the requirements of chapter 119, F.S.

e. If EFI submits records to DEO that are confidential and exempt from public disclosure as trade secrets or proprietary confidential business information, such records should be identified as such by EFI prior to submittal to DEO. Failure to identify the legal basis for each exemption from the requirements of chapter 119, F.S., prior to submittal of the record to DEO serves as EFI's waiver of a claim of exemption. EFI shall 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 Agreement term and following completion of the Agreement if the EFI does not transfer the records to DEO upon termination of the Agreement.

f. EFI shall allow public access to all records made or received by EFI in conjunction with this Agreement, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1), F.S. For records made or received by EFI in conjunction with this Agreement, EFI shall respond to requests to inspect or copy such records in accordance with chapter 119, F.S. DEO may unilaterally cancel this Agreement if EFI refuses to allow public access to all documents, papers, letters, or other material made or received in conjunction with the Agreement, unless the records are exempt from section 24(a) of Art. I of the State Constitution and section 119.07(1), F.S.

g. IF EFI HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO EFI'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS by telephone at 850-245-7140, via e-mail at PRRequest@deo.myflorida.com, or by mail at Department of Economic Opportunity, Public Records Coordinator, 107 East Madison Street, Caldwell Building, Tallahassee, Florida 32399-4128.

h. In addition to EFI's responsibility to directly respond to each request it receives for records made or received by EFI in conjunction with this Agreement and to provide the applicable public records in response to such request, EFI shall notify DEO of the receipt and content of such request by sending an e-mail to PRRequest@deo.myflorida.com within three working days from receipt of such request.

i. EFI shall notify DEO verbally within 24 hours and in writing within 72 hours if any data in EFI's possession related to this Agreement is subpoenaed or improperly used, copied, or removed (except in the ordinary course of business) by anyone except an authorized representative of DEO. EFI shall cooperate with DEO in taking all steps as DEO deems advisable to prevent misuse, regain possession, and/or otherwise protect the state's rights and the data subject's privacy.

19. GOVERNING LAW: This Agreement is executed and entered into in the State of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws and rules of the State of Florida. Without limiting other provisions of this Agreement, including but without limitation, Article 22, *Dispute Resolution*, the exclusive venue of any legal or equitable action that arises out of or relates to the Agreement shall be the appropriate court in Leon County, Florida; in any such action, the Parties hereby

expressly waive any right to jury trial to the fullest extent permitted by law. Should any term of this Agreement conflict with any applicable law, rule, or regulation, the applicable law, rule, or regulation shall control over the provisions of this Agreement.

20. STRICT COMPLIANCE: EFI agrees that all acts to be performed by it in connection with this Agreement must be performed in strict conformity with all local, State and federal laws and regulations.

21. DEFAULTS, SANCTIONS AND REMEDIES:

a. If EFI fails to comply with any of the terms of this Agreement or accompanying attachments hereto, DEO may exercise any remedies available at law or in equity, including but without limitation, the right to (i) impose sanctions as Financial Consequences, as described Attachment III, Sanctions, (ii) impose Financial Consequences which withhold and pro-rate or reduce payments as provided in Attachment I, Scope of Work, (iii) withhold portions or all of Quarter 3 and Quarter 4 payments as described in Attachment VI, Payment Schedule, or (iii) terminate this Agreement in accordance with the terms hereof.

b. Except as otherwise provided herein, if EFI defaults in the performance of any duty, obligation, covenant, or agreement imposed on it or made by it in this Agreement, this Agreement's Attachments hereto, or by law, then DEO may provide a notice of the default to EFI. EFI shall have 30 calendar days following the date of the notice of default, either to cure the default, or to demonstrate to the satisfaction of DEO that corrective action has been taken and will likely result in curing the default within a period of time that DEO agrees is reasonable. If EFI fails to cure the default within the timeframe established above, whether immediately or otherwise or make such demonstration to the satisfaction of DEO, DEO may exercise any remedy available to it under the law or in equity, including, without limitation the right to terminate this Agreement, or withhold all or any portion of payment(s) to EFI until such time as DEO determines, in DEO's sole discretion, that the default has been cured. For avoidance of doubt, EFI's failure to comply with any applicable statutory or legal requirement, including but not limited to, the match requirement of section 288.904(2), F.S., the transparency requirements of sections 288.903(7), 288.904(6) F.S., the per diem and travel expense provisions of section 112.061, F.S., as more specifically set forth in sections 288.901, 288.903, 288.904, and 288.905, F.S., the prohibition against the creation or establishment of any unauthorized entity, corporation, or direct-support organization as outlined in section 288.903(8), F.S., the public compensation requirements of section 288.905(4), F.S., the lodging requirements of section 288.905(5), F.S., the salary restrictions of section 288.905, F.S., and use of funds requirements of section 288.905(6), F.S. as solely determined by DEO, is a default in the performance of this Agreement as contemplated by this Article.

c. Except as otherwise provided herein or required by law, following the termination of this Agreement, all funds which as of the date of termination DEO previously provided to EFI but are not yet expended by EFI, shall revert to the State of Florida General Revenue Fund. Except as otherwise provided herein or required by law, the requirement for the return of and method of repayment of any such unexpended funds shall be at the sole and absolute discretion of DEO.

d. EFI shall make any payments or refunds to DEO under this Agreement as follows: (a) when EFI, its independent auditor or agent, discovers an overpayment due to unearned or disallowed expenditures, EFI

shall automatically pay to DEO such any overpayment with non-State funds, no later than 40 calendar days after each such overpayment; or (b) when DEO first discovers an overpayment, imposes a sanction, financial consequence or other such financial remedy available pursuant to this Agreement or by law, DEO shall notify EFI in writing, and EFI shall pay to DEO each such payments with non-State funds no later than 40 calendar days after receiving DEO's notification. Payments should be sent to DEO's Agreement Manager, and made payable to the "Department of Economic Opportunity." Should payment not be made in a timely manner, DEO shall be entitled to charge interest at the lawful rate of interest on the outstanding balance beginning 40 calendar days after the date of notification or discovery.

e. EFI further agrees that any profit, proceeds, program income or similar additional monies received, created or earned by the EFI or its subrecipient, but not subcontractor vendor(s), from the use of State funds from this Agreement must be reported to DEO and used for activities allowable pursuant to this Agreement and State law as pre-authorized by DEO in writing.

22. DISPUTE RESOLUTION: The Parties agree they will seek to resolve any disputes between them regarding their responsibilities as soon as possible and at the lowest level reasonable, in order to conserve the resources of the Parties. The Parties further agree to use their best efforts to assure speedy and non-confrontational resolution of any and all disputes between them. If informal efforts are unsuccessful, the Parties agree to engage a mutually accepted Florida Supreme Court Certified Circuit Court volunteer mediator to assist them in resolving any outstanding issues. If, within a reasonable time after engaging a mutually accepted volunteer mediator, the Parties are unable to resolve any outstanding issues, the Parties agree that formal resolution, including but not limited to any remedies available at law or in equity may be sought. This Article is subject and subordinate to, and shall not be construed as a limitation on, any other provisions herein, including, but not limited to Article 14, *Indemnification*, or Article 21, *Defaults, Sanctions and Remedies*.

23. FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE: Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Agreement. If the delay is excusable under this Article, the delay will not result in any additional charge or cost under the Agreement to either Party. In the case of any delay EFI believes is excusable under this Article, EFI shall notify DEO in writing of the delay or potential delay and describe the cause of the delay either: (1) within 20 calendar days after the cause that creates or will create the delay first arose, if EFI could reasonably foresee that a delay could occur as a result; or (2) within five calendar days after the date EFI/Division of Tourism or EFI first had reason to believe tha a delay could result, if the delay is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE EFI'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this Article is a condition precedent to such remedy. DEO, in its sole discretion, will determine if the delay is excusable under this Article and will notify EFI of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against DEO. EFI shall

not be entitled to an increase in the Agreement price or payment of any kind from DEO for direct, indirect, consequential, impact, or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this Article, after the causes have ceased to exist, EFI shall perform at no increased cost, unless DEO determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to DEO or the state, in which case, DEO may do any or all of the following: (1) accept allocated performance or deliveries from EFI, provided that EFI grants preferential treatment to DEO with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by EFI for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate the Agreement in whole or in part.

24. SEVERABILITY: If any term or provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, then such term or provision shall be severed from this Agreement. This Agreement and the rights and obligations of the Parties shall be construed as if this Agreement did not contain such severed term or provision, and this Agreement otherwise shall remain in full force and effect.

25. PRESERVATION OF REMEDIES: No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default under this Agreement will impair any such right, power, or remedy of either Party, nor will such delay or omission be construed as a waiver of any such breach or default or any similar breach or default.

26. DISCRIMINATORY VENDOR: EFI shall disclose to DEO if it or any of its affiliates, as defined by section 287.134(1)(a.), F.S., appears on the discriminatory vendor list. An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134, F.S., may not: (1) submit a bid, proposal, or reply on a contract or agreement to provide any goods or services to a public entity; (2) submit a bid, proposal, or reply on a contract or agreement with a public entity for the construction or repair of a public building or public work; (3) submit bids, proposals, or replies on leases of real property to a public entity; (4) be awarded or perform work as a contractor, subcontractor, grantee, supplier, sub-grantee, or consultant under a contract or agreement with any public entity; or (5) transact business with any public entity. EFI affirms that it is aware of the provisions of section 287.134(2) (a), F.S., and that at no time has EFI or its affiliates been placed on the Discriminatory Vendor List. EFI further agrees that it shall not violate such law. EFI shall insert a provision in accordance with this Article, in all subcontracts for services in relation to this Agreement.

27. NON-DISCRIMINATION: EFI shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, race, sex, creed, color, handicap, national origin, or marital status. EFI shall insert a provision in accordance with this Article, in all subcontracts for services in relation to this Agreement.

28. HARASSMENT-FREE WORKPLACE: EFI shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. EFI shall insert a provision in accordance with this Article, in all subcontracts for services in relation to this Agreement.

29. PUBLIC ENTITY CRIMES AND CONVICTED VENDORS: EFI affirms that it is aware of the provisions of section 287.133(2) (a), F.S., and that at no time has EFI been convicted of a Public Entity Crime. EFI agrees that it shall not violate such law and further acknowledges and agrees that any conviction during the term of this Agreement may result in the termination of this Agreement in accordance with section 287.133(4), F.S. EFI shall disclose to DEO if or any of its affiliates, as defined in section 287.133(1)(a), F.S., is on the convicted vendor list. A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from performing under this Agreement for a period of 36 months from the date of being placed on the convicted vendor list. EFI shall insert a provision in accordance with this Article in all contracts for services in relation to this Agreement.

30. EMPLOYMENT ELIGIBILITY VERIFICATION:

a. Executive Order 11-116, signed May 27, 2011, by the Governor of Florida, requires DEO contracts in excess of nominal value to expressly require EFI to:

1. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by EFI during the Agreement term; and,
2. Include in all subcontracts under this Agreement, the requirement that subcontractors performing work or providing services pursuant to this Agreement utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the subcontract.

b. **E-Verify** is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States after the effective date of the required Memorandum of Understanding (MOU); the responsibilities and elections of federal contractors, however, may vary, as stated in Article II.D.1.c., of the MOU. There is no charge to employers to use E-Verify. DEO of Homeland Security's E-Verify system can be found at:

http://www.dhs.gov/files/programs/gc_1185221678150.shtm

c. If EFI does not have an E-Verify MOU in effect, EFI must enroll in the E-Verify system prior to hiring any new employee after the effective date of this Agreement.

31. LOBBYING:

a. EFI shall not use any State financial assistance, as defined in section 215.971, F.S., received pursuant to this Agreement, for lobbying the Legislature, the judicial branch, or any State agency unless such lobbying is conducted according to section 11.062(2), F.S.. This does not prohibit EFI from using funds pursuant to this Agreement to pay for salaries, travel expenses, and per diem of its full-time employees who may register as lobbyists and represent EFI before the state legislative or executive branches. Pursuant to section 11.062, F.S.,

EFI shall insert a provision in accordance with this Article in its subcontracts for services in relation to this Agreement, to the extent that State financial assistance is received by such contractors pursuant to those subcontracts, and only to the extent of such State financial assistance.

b. EFI will notify DEO in writing within 24 hours of any request for testimony or EFI's participation in Congressional, Legislative, and other State or federal hearings, committees, task forces, or the like.

c. Upon discovery, EFI shall report all known or suspected instances of EFI's, or EFI's agent's, contractor's or employee's, operational fraud or criminal activities to DEO in writing within 24 hours of EFI's discovery of such instance(s).

32. ATTORNEY FEES: Unless authorized by law and agreed to in writing by DEO, DEO shall not be liable to pay attorney fees, interest, or cost of collection in conjunction with this Agreement.

33. ASSIGNMENTS: Except as otherwise provided in this Agreement, neither party may assign, delegate, nor otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any assignment, delegation, or transfer in violation of this Article is void *ab initio*. EFI hereby agree that it shall remain responsible for all work performed and all expenses incurred in connection with this Agreement, regardless of an assignment, delegation, or transfer.

34. AGREEMENT MANAGERS: The following Agreement Managers are appointed by the Parties to facilitate the terms of this Agreement:

EFI's Agreement Manager:	DEO's Agreement Manager:
Eva Graham	Demetris Thomas
800 N. Magnolia Ave., Suite 1100	107 East Madison Street, MSC 80
Orlando, Florida 32803	Caldwell Building, Tallahassee, Florida 32399
(407) 956-5636	(850) 414-4770
Fax – (407) 956-5599	Fax – (850) 245-7470
Email: egraham@enterpriseflorida.com	Email: demetris.thomas@deo.myflorida.com

In the event that any of the information provided in above changes, including the designation of a new Agreement Manager, after the execution of this Agreement, the Party making such change will notify all other Parties in writing of such change. Such changes shall not require a formal amendment to the Agreement.

35. NOTICES: The contact information provided in accordance with Article 34, *Agreement Managers*, shall be used by the Parties for all communications under this Agreement. Where the term "written notice" is used to specify a notice requirement herein, said notice shall be effective when received by the other party's Agreement Manager. Written notice shall be deemed to have been given (i) when personally delivered; (ii) when transmitted via facsimile with confirmation of receipt or email with confirmation of receipt if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges

prepaid); (iii) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a recognized overnight delivery service; or (iv) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid, with return receipt.

If EFI becomes certain that it will be unable to make use of a material sum of the funds appropriated, EFI shall provide written notice of such to DEO within 10 working days of EFI's discovery of the shortfall.

36. AMENDMENT AND MODIFICATION:

a. This Agreement may not be altered, modified, amended, or changed in any manner, except pursuant to a written agreement executed and delivered by each of the Parties. Additionally, any such modification, amendment or change becomes effective as of the last date signed by the necessary Parties or such date as the Parties may agree therein.

b. This Agreement may not be renewed.

37. ATTACHMENTS: Attached to and made a part of this Agreement are the following Attachments; each of which are incorporated into and are an integral part of this Agreement:

Attachment I	Scope of Work
Attachment II	Reports
Attachment III	Sanctions
Attachment IV	Audit Requirements
Attachment V	Audit Compliance Certification
Attachment VI	Payment Schedule
Attachment VII	Transparency Measures

38. VENDORS ON SCRUTINIZED COMPANIES LISTS: By executing this Agreement, EFI certifies that it is not: (1) listed on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, F.S., (2) engaged in a boycott of Israel, (3) listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, F.S., or (4) engaged in business operations in Cuba or Syria. Pursuant to section 287.135(5), F.S., DEO may immediately terminate this Agreement for cause if EFI is found to have submitted a false certification as to the above or if EFI is placed on the Scrutinized Companies that Boycott Israel List, is engaged in a boycott of Israel, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, during the term of the Agreement. If DEO determines that EFI has submitted a false certification, DEO will provide written notice to EFI. Unless EFI demonstrates in writing, within 90 calendar days of receipt of the notice, that DEO's determination of false certification was made in error, DEO shall bring a civil action against EFI. If DEO's determination is upheld, a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed on EFI, and EFI will be ineligible to bid on any Agreement with a Florida agency or local governmental entity for three years after the date of DEO's determination of false certification

by EFI. In the event that federal law ceases to authorize the States to adopt and enforce the contracting prohibition identified herein, this provision shall be null and void. EFI shall insert a provision in accordance with this Article in all subcontracts for services in relation to this Agreement.

39. TIME IS OF THE ESSENCE: Time is of the essence regarding the performance obligations set forth in this Agreement. Deadlines for performance for EFI's obligation to timely complete deliverables and submit reports, information and documentation, contained in herein, specifically, Attachments I, and II, shall be strictly construed.

40. EXECUTION IN COUNTERPARTS: This Agreement may be executed in one or more counterparts, any one of which need not contain the signature of more than one Party, but all such counterparts taken together will constitute one and the same instrument.

41. AUTHORITY OF EFI'S SIGNATORY: Upon execution, EFI shall return the executed copies of this Agreement in accordance with the instructions DEO provided along with documentation confirming and certifying that the below signatory has authority to bind EFI to this Agreement as of the date of execution. Such documentation may be in the form of a legal opinion from EFI's attorney, EFI's Certificate of Status, EFI's resolutions or bylaws specifically authorizing the below signatory to execute this Agreement, EFI's certificates of incumbency, and any other reliable documentation demonstrating such authority, which shall be incorporated by reference into this Agreement. DEO may, at its sole and absolute discretion, request additional documentation related to the below signatory's authority to bind EFI to this Agreement.

42. ENTIRE AGREEMENT; WAIVER: This Agreement embodies the entire agreement of the Parties with respect to the subject matter hereof. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous communications, representations, negotiations, understandings or agreements, either verbal or written, between the Parties. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

43. Section 288.904(6)(b), Fla. Stat., Required Terms:

1) DEO and EFI are entering into this Agreement pursuant to sections 288.901(3) and 288.904, Florida Statutes, to make the appropriated funds available to EFI pursuant to certain funding requirements and to appropriate oversight.

- 2) The specific performance standards and responsibilities for the Parties under this Agreement are fully laid out in Attachment I Scope of Work.
- 3) Not applicable.
- 4) The value of the services provided can be found in Attachment VI to this Agreement.
- 5) All projected travel and entertainment expenses for employees and board members related to this Agreement will be made in accordance with section 112.061, Florida Statutes.

[REST OF PAGE LEFT INTENTIONALLY BLANK; SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth above and in the attachments hereto, the Parties have caused to be executed this Agreement by their undersigned duly authorized officials.

ENTERPRISE FLORIDA, INC.

DEPARTMENT OF ECONOMIC OPPORTUNITY

By

Signature

Peter A. Stanisci

By

Signature

John Perry

Title

President & CEO

Title

Chief of Staff

Date

11/30/17

Date

12/7/17

Approved as to form and legal sufficiency, subject only to full and proper execution by the Parties.

OFFICE OF THE GENERAL COUNSEL
DEPARTMENT OF ECONOMIC OPPORTUNITY

By:

Ross Marshman

Approved Date:

12-5-17

**ATTACHMENT I
SCOPE OF WORK**

1. Program Overview:

EFI, using public and private sector expertise and funding, shall: act as the economic development organization for the state (see section 288.901, Florida Statutes). EFI's mission is to expand and diversify the state's economy through job creation. Enterprise Florida recruits new business to the state, and works to retain and expand existing industry and business. EFI is the state's primary entity for trade and export development, is responsible for the marketing and promotion of Florida as a premier business destination, and ensures that Florida is in a militarily competitive position via the Florida Defense Alliance (FDA), an organization within EFI (section 288.980, Florida Statutes).

The funding for this 2017-2018 fiscal year Agreement is specified in section 27, Chapter 2017-233, Laws of Florida as follows: a total of \$9,400,000 from the State Economic Enhancement and Development Trust Fund and a total of \$6,600,000 from the Florida International Trade and Promotion Trust Fund for operational purposes and to maintain EFI's offices, but excluding expenditures on any incentive tools or programs. From the funds appropriated from the Florida International Trade and Promotion Trust Fund, EFI agrees to allocate \$3,550,000 for international programs, \$2,050,000 to maintain Florida's international offices, and \$1,000,000 to continue the Florida Export Diversification and Expansion Programs.

2. EFI's responsibilities:

A. EFI's core mission is to expand and diversify Florida's economy through job creation. In furtherance of this, EFI's specific tasks include:

- i. Recruit and hire staff for functions aligned with EFI's core mission.** Staff positions shall have written job descriptions which identify the unique characteristics and requirements of each particular position. Pursuant to section 288.905, Florida Statutes, no employee of EFI including an officer or agent, the president, or the chief executive officer, may receive public compensation for employment that exceeds the salary and benefits authorized to be paid to the Governor. Any public payments of performance bonuses or severance pay to employees are prohibited unless specifically authorized by law.
- ii. Work closely with the DEO and the DEO's partners in expanding economic opportunity in Florida.**
 - a. The President of EFI, or a senior level officer designee, shall participate in all strategy meetings convened by the DEO in order to increase the communication between the DEO, EFI and other partners, and to improve the efficiency of economic development projects.
 - b. EFI shall independently seek opportunities for joint undertaking of projects with one or more of the DEO's partners.
 - c. EFI shall assist the DEO with the development in updating the long-range strategic business blueprint (Statewide Strategic Plan) for economic development pursuant to section 20.60, Florida Statutes.

- d. EFI shall collaborate with the DEO in the creation of the annual reports required pursuant to sections 20.60 and 288.907, Florida Statutes, which summarize the conditions of the business climate and economic development in the state.
 - e. EFI shall provide for a third-party, independent evaluator to conduct customer satisfaction surveys of each of the businesses served by EFI during the fiscal year. The surveys will assess the businesses' satisfaction with EFI's efforts in implementing and supporting Florida's process for business expansion, retention and site location. EFI will contract for a survey methodology and instrumentation designed to produce products with response rates that minimize measurement error and provide for minimum substantively significant effect sizes.
- iii. **Joint EFI and DEO Business Development Incentive Programs.** EFI shall collaborate with the DEO in implementing the programs listed below.
- a. **Qualified Targeted Industry (QTI)** – EFI shall prepare current program information and make the information available to Florida businesses and communities; in cooperation with Florida communities, assist businesses requiring QTI inducement to create new Florida jobs by expanding existing or locating new businesses in the state; review and evaluate new QTI applications including independent financial reports, except as provided for in section 288.061, Florida Statutes. In addition, EFI shall review requests for Economic Stimulus Exemptions authorized in section 288.106, Florida Statutes, and make recommendations to the DEO concerning such requests, in accordance with the statutory requirements and guidelines agreed to between the DEO and EFI.
 - b. **Semiconductor, Defense, and Space Exemptions for Machinery and Equipment** - EFI shall prepare program information and make the information about the program available to appropriate businesses in the referenced sectors; assist businesses with the application process; review and evaluate new exemption applications pursuant to section 212.08(5)(j), Florida Statutes; and make recommendations to the DEO in accordance with section 288.1045, Florida Statutes, and the guidelines agreed to between the DEO and EFI, from time to time.
 - c. **High Impact Performance Incentives (HIPI)** - EFI shall initiate the process of selecting new high-impact sectors, prepare studies of proposed sectors, form sector business networks, and take such studies and the recommendations of the business networks to a meeting as required in section 288.108, Florida Statutes, and to the Board of Directors of EFI, and, if recommended by the Board of Directors, present the study and related information to the DEO in accordance with section 288.108(6)(c), Florida Statutes. In addition, EFI, in close consultation with the DEO, shall make current information about the program available to Florida businesses and to Florida communities; assist businesses with the application process; review and evaluate new HIPI applications pursuant to section 288.061, Florida Statutes.

- d. **Qualified Defense Contractor Program (QDC)** - EFI shall assist businesses with existing QDC tax refund agreements in accordance with each agreement's terms.
 - e. **Expedited Permitting (EP)** - EFI will make information about the EP program available to businesses and local economic development organizations and may recommend projects as provided in section 403.973, Florida Statutes.
 - f. **Capital Investment Tax Credit (CITC)** - EFI shall prepare current information for the DEO's approval and make information about the program available to Florida businesses and to Florida communities: in cooperation with Florida communities, assist businesses requiring CITC approval to make substantial capital investment and create jobs in Florida; review and evaluate new CITC applications pursuant to section 288.061, Florida Statutes; and make recommendations to the DEO in accordance with section 220.191, Florida Statutes, and the guidelines agreed to between the DEO and EFI.
 - g. **Rural Infrastructure Fund (RIF)** – In accordance with sections 288.0655 and 288.061, Florida Statutes, EFI shall consult in the review and evaluation of the RIF applications and, in doing so, shall consider the economic benefit of the project applications and their long-term viability consistent with program guidelines. After review and evaluation, EFI may make recommendations to the DEO as to which applications are optimal for funding. EFI shall, in conjunction with VISIT FLORIDA, prepare current information about the program and make the information available to eligible rural communities and organizations.
 - h. **Rural Community Development Revolving Loan Fund** – In accordance with section 288.065, Florida Statutes, EFI shall make information about this loan program available to eligible rural counties, cities, and organizations.
 - i. **Innovation Incentive Program (IIF)** – In accordance with section 288.1089, Florida Statutes, EFI shall prepare program information and make the information about the IIF program available to appropriate businesses, transmit initial recommendations for awards to the DEO, and work with the DEO to review and evaluate new IIF applications pursuant to section 288.061, Florida Statutes.
 - j. **Local Manufacturing Development Programs** – In accordance with section 288.111 Florida Statutes, EFI shall distribute materials, developed by the DEO that identify each local government that establishes a local manufacturing development program under section 163.3252, Florida Statutes, to prospective, new, expanding, and relocating businesses seeking to conduct business in this state.
- iv. **Florida Defense Alliance, Defense Infrastructure Grants, Defense Reinvestment Grants and Military Base Protection Support.** In its mission to further the Florida Defense Alliance, EFI shall maintain and enhance the position and reputation of Florida as the most military-friendly state in the nation and support local efforts to enhance the value of military installations by leading the Florida Defense

Alliance and assisting the DEO and grantees with all open Defense Infrastructure Grants (DIG), and Military Base Protection (MBP) as follows:

- a. EFI shall convene, administer, and report on the results of the meetings of the Florida Defense Alliance in its efforts to ensure that Florida, its resident military bases and missions, and its military host communities are in competitive positions as the United States continues its defense realignment and downsizing.
 - b. EFI shall support the DEO with continued administration, monitoring and oversight of all DIG and DRG grants that are still open and were opened prior to state fiscal year 2016-2017.
- v. **Return and Reporting of Interest Income.**
- a. EFI shall deposit and invest any and all funds advanced by the DEO for payments in an independent and separate interest bearing account(s), until funds advanced have been totally expended in accordance with the terms of this Agreement. EFI shall provide the DEO the account number(s) of all such accounts, and shall also provide all other information regarding the account(s) as the DEO requests. EFI shall return to the DEO all interest income derived from the interest bearing account, on a quarterly basis, based on fiscal year quarters less the bank analysis fees. EFI shall remit such amounts in the form of checks payable to the DEO of Economic Opportunity, and mailed to the DEO at the address provided in Article 1 of the Agreement, Attention: Division of Strategic Business Development. The payments shall be accompanied by (i) a statement that identifies this Agreement's number (identified above in the introduction to this Agreement), the amount of interest earned by the deposits, the name of the depository(ies), and interest rate(s) and (ii) copies of all bank or investment statements and computational worksheets. EFI shall also provide the DEO's Agreement Manager with copies of all correspondence, checks, reports, and other materials submitted to the DEO pursuant to this Paragraph.
 - b. **Quick Action Closing and Innovation Incentive Fund Escrow Accounts.** In order to comply with the provision under Line Item #2252 of chapter 2014-51, that states DEO must provide to the Governor's Office of Policy and Budget, the chair of the Senate Appropriations Committee, and the chair of the House Appropriations Committee regarding all escrow activity and the repayment of any interest to the appropriate fund in the state treasury, EFI shall provide monthly updates to such information to DEO within 8 business days after the end of each Month. Such report must include the anticipated payment date(s) of all funds held in escrow.
- B. EFI shall promote and market a state's business brand to attract investment in Florida's economy.**
- i. EFI shall continue to promote its business brand marketing to help attract, develop, and retain business in the state.
 - ii. EFI shall provide a professional and user-friendly website to continue to ensure effective marketing of the state advertising campaign, which relies on search engine optimization, internet search analytics, print, and public relations components.

- iii. EFI shall continue to market the state's information technology sector, and other key business sectors identified for targeting by EFI for sector-specific promotion.
- C. EFI shall advance international and domestic trade opportunities for Florida-based companies and actively promote foreign direct investment in the state.**
- i. EFI shall assist Florida-based businesses in the international trade market by offering counselling advice and support in export trade and international marketing.
 - ii. EFI shall organize and execute overseas trade missions and shows.
 - iii. EFI shall secure representation for, and maintain a network of offices in, key international markets.
- D. EFI shall contract with VISIT FLORIDA for VISIT FLORIDA'S staff support and supervision of the tourism promotion and marketing services, functions, and programs for the State, pursuant to section 288.923(3), F.S. The contract shall be known as the "Operating Agreement." Employees of VISIT FLORIDA, and not employees of any State agency, shall perform support and supervision.**
- E. EFI shall provide DEO with a copy of the Operating Agreement when amended, revised, extended or updated.**
- F. Pursuant to section 288.12265, F.S., EFI is responsible for the operation of all Welcome Centers. EFI shall enter into an Operating Agreement with VISIT FLORIDA to employ all welcome center staff. Pursuant to the Operating Agreement with VISIT FLORIDA, VISIT FLORIDA shall employ all Welcome Center staff and continue the selection, display, and distribution of tourism information through the Florida Welcome Centers, including the Capitol Welcome Center. EFI agrees and acknowledges that all funds received by VISIT FLORIDA, as the result of the staffing of Centers shall be separately accounted for, deposited in appropriate accounts for VISIT FLORIDA, and used exclusively for the Welcome Center functions and operations in accordance with the 4-year marketing plan.**
- G. EFI shall provide DEO with all materials provided to EFI's Board of Directors simultaneously with providing the information to the EFI Board members or the public, whichever occurs first. Examples of such material include but are not limited to: announcements, agendas, and board meetings materials in relation to Board of Directors, Executive Board of Directors, and Committee meetings. DEO's Agreement Manager will provide EFI with a list of DEO staff to whom all such materials must be provided.**
- H. EFI shall fully comply with all provisions of 288.904(6), F.S., including those requiring the posting of contracts and expenditure information online. EFI acknowledges that DEO has the right to monitor for compliance with these requirements and agrees to cooperate with DEO and respond to all reasonable requests for documentation evidencing such compliance. DEO reserves all rights herein, including but not limited to, Articles 21 and 22 in connection this requirement.**
- I. EFI shall publish external reports detailing public spending on EFI's website.**

- J. EFI shall publish all reports that include metrics and return on investment calculations on VISIT FLORIDA's website.
- K. EFI shall publish its organizational chart on EFI's website.
- L. EFI shall publish employee position and salary information on EFI's website.
- M. EFI shall publish relevant audits, tax returns, financial reports and summaries online.
- N. EFI shall publish all statutorily required reports on EFI's website.
- O. State appropriations provided herein for EFI operations must be matched 100 percent by private sector support, pursuant to section 288.904(2)(a), F.S. Pursuant to section 288.904 (2)(c), F.S., if EFI fails to meet the one-to-one match requirement of section 288.904, F.S., EFI shall revert all unmatched public contributions to the state treasury as of June 30 of the fiscal year.
- P. EFI shall ensure that an independent third party evaluates and validates the value of EFI's match contributions under section 288.904(2)(a), F.S., no less than every three years from July 1, 2017.
- Q. EFI agrees to update EFI's website with the information required by statute and herein at a minimum of at least once each fiscal quarter. EFI's website must comply with section 288.904(6)(e), F.S., and have sufficient standard industry security measures as to avoid public tampering with all information on the website.
- R. EFI understands and will comply with the requirements of sections 20.055(5), 288.906, F.S., including but not necessarily limited to, the duty of EFI and any of EFI's subcontractors to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to section 20.055, F.S.
- S. EFI agrees to comply with all applicable laws and regulations regarding State-owned property, as "property" is defined in section 273.02, F.S., including the proper accounting, inventorying and disposition of thereof.

3. DEO's Responsibilities:

- A. Monitor the ongoing activities of EFI via phone calls, quarterly desk reviews of the documentation submitted for payment requests, and site visits to verify that activities are being performed in accordance with the Agreement, to the extent required by law or deemed necessary by the DEO in its discretion.
- B. Perform contract management responsibilities pursuant to the Agreement.
- C. Review the EFI's invoices described herein, and process them on a timely basis.

- D. Maintain paper or electronic copies of all documents submitted pursuant to this Scope of Work in accordance with law.
- E. Reply to reasonable inquiries from EFI.

4. **Deliverables:** EFI shall perform the following services as specified in the tables below in accordance with Article 2 of this Attachment I, Scope of Work.

Deliverable 1 - Operations	Minimum Level of Service	Financial Consequences
<p>EFI shall be paid \$2,350,000 each Quarter to assist businesses for the purpose of economic development and job creation, foster relationships with and engage and support strategic business partnerships throughout the state, engage with Florida business leaders through its Board of Directors, and support and enhance Florida's Military and Defense enterprises in accordance with Article 2.A. & B. of this Attachment I, Scope of Work.</p>	<ul style="list-style-type: none"> a. Close five business development projects per quarter as evidenced by press release announcement of the project including proposed jobs created, or other documentation approved by DEO. b. Open 25 new business development projects per quarter as evidenced by a spreadsheet disclosure of non-confidential information or other documentation deemed appropriate by the DEO; c. Hold at least one meeting of EFI's Board of Directors per quarter (four meetings for the year), as evidenced by meeting agenda and draft minutes; d. Participate and collaborate in one economic development event that includes the participation of three primary economic development partners per quarter, as evidenced by an end of event summary that included event purpose, participation and results; e. Hold at least one meeting or working group meeting of the Florida Defense Alliance per quarter, either in person or via 	<p>Failure to meet the Minimum Level of Service for any of the criteria described in items a. – h., will reduce the deliverable payment by the following amount(s), for that Quarter:</p> <ul style="list-style-type: none"> a. A \$27,632 financial consequence shall be assessed for each project not closed per quarter b. A \$27,632 financial consequence shall be assessed for each project not opened per quarter c. A \$27,632 financial consequence shall be assessed if a board meeting is not held. d. A \$27,632 financial consequence shall be assessed for each networking and lead generation event not held per quarter e. A \$27,632 financial consequence shall be assessed for each Florida Defense Alliance meeting or working group meeting not held. f. A financial consequence of \$27,632 shall be assessed for failure to provide the

	<p>telephone, as evidenced by a copy of the Invitation, the meeting agenda and the meeting minutes, and documentation of attendees including call-ins;</p> <p>f. Return all income derived from the interest bearing accounts, less the bank analysis fees. In addition to the checks payable to DEO, EFI shall submit (i) a statement that identifies this agreement’s number, the amount of interest earned by the deposits, the name of the depository(ies), and interest rate(s) and (ii) copies of all bank or investment statements and computational worksheets;</p> <p>g. Provide an accounting of all escrow activity related to the Quick Action Closing and Innovation Incentive Funds including bank statements, via e-mail, to the contract manager upon EFI’s receipt of the monthly statement;</p> <p>h. Document accounting of at least 10 media buys made for the quarter showing total buys made, the state funds expended, and number of impressions;</p> <p>i. Provide at least one print, digital or broadcast execution of the business brand campaign as evidenced by a copy or proof of the execution.</p>	<p>interest income within 15-days of the close of each quarter</p> <p>g. A financial consequence of \$27,632 shall be assessed for each month that EFI failed to provide the escrow activity report within 8-business days of the close of each month.</p> <p>h. A \$27,632 financial consequence shall be assessed for each media buy not made for the quarter.</p> <p>i. A \$27,632 financial consequence shall be assessed is at least one print, digital or broadcast of the business brand campaign is not made for the quarter.</p>
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Deliverable 2 – International Trade and Development	Minimum Level of Service	Financial Consequences
<p>EFI shall be paid \$1,650,000 each Quarter to expand and strengthen Florida’s economy through international trade and business development, in accordance with Article 2.C., of this Attachment I, Scope of Work.</p>	<ul style="list-style-type: none"> a. EFI shall maintain and support at least five international trade offices in strategic global markets as evidenced by consultant agreements, including any new agreements executed during the quarter, and an office-specific performance report for each of the five offices. b. EFI shall award 10 international trade development grants to assist Florida businesses entering, expanding or diversifying into foreign markets as evidenced by the executed grant application. c. EFI shall participate in one international trade event (trade show or trade mission), as evidenced by an end of event report including a list of attendees; a summary of the purpose of the trip and the goals achieved, and an invoice for trade show space/booth, if applicable 	<p>Failure to meet the Minimum Level of Service for any of the criteria described in items a. – c., will reduce the deliverable payment by the following amount(s), for that Quarter:</p> <ul style="list-style-type: none"> a. A \$100,000 financial consequence shall be assessed for each trade office agreement not submitted b. A \$38,068 financial consequence shall be assessed for each trade show grant not executed. c. A \$38,068 financial consequence shall be assessed for failure to participate in and produce the report for the international event.

5. Invoice Submittal and Payment Schedule:

The DEO agrees to disburse funds under this Agreement in accordance with the following schedule in the amount identified per deliverable in Article 4 above. The Deliverable amount specified does not establish the value of the Deliverable. EFI may expend funds only for allowable costs resulting from obligations incurred during the term of this Agreement.

All invoices shall denote the cost being claimed and the time period for which those costs are being claimed. The invoice for Quarter 1 shall include a summary of what the costs are being requested for, and all other invoices shall include a summary of the accomplishments for the deliverables claimed on that invoice. However, the final invoice for payment must be received by the DEO by September 15, 2018.

The following documents shall be submitted with each invoice package:

Quarters 1 – 3 shall include a cover letter signed by EFI's Agreement Manager certifying that the costs being claimed in the invoice package are specifically for the projects represented to the state in the budget appropriations, including a certified statement for the projects that quarterly invoice package has been completed as specified in the Minimum Performance Standards column for that quarter under Article 4 of this agreement.

Quarter 4 shall include a cover letter signed by EFI's Agreement Manager certifying that the costs being claimed in the invoice package are specifically for the projects represented to the state in the budget appropriations, including a certified statement for the projects that quarterly invoice package has been completed as specified in the Minimum Level of Service column for that quarter under Article 4 of this Attachment, and a spreadsheet presenting the projected budget versus the actual budget.

The DEO may require any other information from EFI that the DEO deems necessary to verify that the services have been rendered under the Agreement.

6. Financial Consequences for Failure to Timely and Satisfactorily Perform:

Failure to complete all deliverables in accordance with the requirements of this Agreement, and in particular, as specified above in Article 4, Deliverables, shall result in assessment by the DEO of the specified financial consequences. If the Parties agree to a corrective action plan, the plan shall specify the applicable financial consequences to be applied after the effective date of the corrective action plan.

This provision for financial consequences shall in no manner affect the DEO's right to terminate the Agreement as provided elsewhere in the Agreement.

7. Notification of Instances of Fraud:

Instances of EFI operational fraud or criminal activities shall be reported to the DEO's Agreement Manager within 24 chronological hours.

8. EFI's Responsibilities upon Termination:

If the DEO issues a Notice of Termination to EFI, except as otherwise specified by the DEO in that notice, the EFI shall:

- a. Stop work under this Agreement on the date and to the extent specified in the notice.
- b. Complete performance of such part of the work as shall not have been terminated by the DEO.

- c. Take such action as may be necessary, or as the DEO may specify, to protect and preserve any property which is in the possession of EFI and in which the DEO has or may acquire an interest.
 - d. Upon the effective date of termination of this Agreement, EFI shall transfer, assign, and make available to the DEO all property and materials belonging to the DEO. No extra compensation shall be paid to EFI for its services in connection with such transfer or assignment.
9. **Non-Discrimination:** EFI shall not discriminate unlawfully against any individual employed in the performance of this Agreement because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in this work, national origin, ancestry, or age. EFI shall provide a harassment-free workplace, with any allegation of harassment to be given priority attention and action.

-End of Attachment I-

**ATTACHMENT II
REPORTS**

The following reports shall be submitted to the DEO as specified below. The submission of these reports shall not be the basis for payment under this Agreement except as otherwise specifically provided herein. Additionally, except as otherwise specifically provided herein, failure to submit the required reports shall result in financial sanctions as specified in Attachment III, *Sanctions*, of the Agreement.

1. Quarterly Reporting and Performance Tracking. EFI shall report quarterly on its obligations under this Agreement as outlined below.

- a. EFI shall monitor, track, and evaluate activities, accomplishments, and impacts of all responsibilities and programs it administers. All information shall be compiled and reported to the DEO on a quarterly basis.
- b. EFI shall provide quarterly reporting to the DEO pursuant to the following schedule:

	<u>Reporting Period:</u>	<u>Due Date:</u>
Quarter 1:	July 1 - September 30	October 31
Quarter 2:	October 1 – December 31	January 31
Quarter 3:	January 1 – March 31	April 30
Quarter 4:	April 1 – June 30	July 31

c. Quarterly Reports shall include:

- i. A list and copy of contracts entered into necessary to the performance of EFI's functions and duties related to their core mission, with a brief description of each contract.
- ii. Copies of all EFI Board Meeting Minutes for all meetings that have occurred since the last submitted report.
- iii. A current list of all member of EFI's Board of Directors.
- iv. A list of all committees, advisory groups, panels, and any other groups established to carry out EFI's core mission.
- v. Disclosure of Private Funds secured as directed by section 288.904, Florida Statutes.
- vi. A report detailing EFI's section 288.904(2)(c), F.S., match requirement methodology and the amount of such match contributions as of the end of reporting quarter
- vii. A report on expenditures with minority and service-disabled veteran's business enterprises. The report shall contain the names and addresses of the minority or service-disabled veteran owned businesses; the aggregate dollar figure disbursed that quarter for each minority or service-disabled veteran owned business; the time period; type of goods or services; and the applicable minority code. The

report shall also include copies of invoices or a computer printout verifying the data reported. If no expenditures were made with minority or service-disabled veteran owned businesses, EFI shall note on its submittal, "no applicable expenditures." The report and required backup documentation shall be submitted to the DEO within ten days following the end of each quarter.

- viii. A fiscal report comparison of the original budget, of state funds, submitted at the beginning of the fiscal year to the expenditures and obligations, by quarter and year-to-date, of the appropriated state funding relating to this Agreement.
- ix. A report of all business development projects announced during the quarter.
- x. Report on activities that support the development of the Minority and Small Business Development division, including:
 1. Analysis of small and minority enterprises (SME) business environments including access to capital and resources.
 2. Development and leverage of programs, in conjunction with state, federal and local leaders and resources that enable SME to gain economic strength.
- xi. Report on total amount (US dollar value) of export sales under contract by the companies directly participating in Enterprise Florida's International Trade activities.
- xii. A written certification, signed by an Officer of EFI, that all documentation submitted with the invoice package is true and correct and EFI is operating in conformity with all the requirements of this Agreement and all applicable laws and regulations.
- xiii. A report on EFI's support of Defense Infrastructure Grants, Defense Reinvestment Grants, and Military Base Protection Programs.
- xiv. A progress report and work plan on EFI's administrative support of the Florida Defense Support Task Force, and those of the Executive Director.
- xv. Any other information reasonably requested by DEO to ensure compliance with the Agreement.

2. **Annual Reporting Obligations** EFI shall report annually on its obligations under this Agreement as outlined below.

- a. **Annual Report.** By November 30 of each year, EFI shall prepare an annual report pursuant to section 288.906, Florida Statutes, and shall provide a copy to the Governor, President of the Senate, Speaker of the House of Representatives, the Senate Minority Leader, the House Minority Leader, and the Executive Director of DEO. The individual annual reports prepared by each of its Divisions, pursuant to section 288.92(3), Florida Statutes, as applicable, shall be included as addenda. The report shall also include:
 - i. The financial and compliance audit of accounts and records by an independent certified public accountant at the end of EFI's most recent fiscal year, performed in accordance with rules adopted by the Auditor General, as required by section 288.906((1)(h), F.S.

- ii. The results from a customer satisfaction survey of EFI and its applicable divisions as required by section 288.906, Florida Statutes.
 - iii. A report of the status of the Small Business Technology Growth Program and the Annual Report prepared by the Florida Export Finance Corporation.
 - iv. Annual reports of international offices as described in section 288.012, Florida Statutes.
 - v. Individual annual reports for each division of EFI as defined in section 288.92, Florida Statutes, as applicable. Each report should detail the division’s activities during the previous fiscal year, and include recommendations for improving current statutes related to the division’s area of responsibility.
- b. **Internal Operating Procedures.** EFI shall keep up-to-date internal operating procedures pertaining to fiscal, personnel, purchasing, and contracting policies. EFI shall provide the DEO with copies of its current procedures for the present fiscal year **on or before September 30th** of each year. EFI shall provide written certification that it is in compliance with those procedures **on or before June 30th** of each fiscal year.
- c. **2017-2018 detailed operating Budget of state funds under this Agreement.** EFI shall develop a budget for the fiscal year, prior to execution of this agreement, in sufficient detail to describe how the appropriations accounted for under this agreement are distributed according to their statutory purpose.
- d. On or before August 15, 2018, EFI shall provide a report of EFI’s integration of the *Florida Strategic Plan for Economic Development* for state fiscal year 2017-18, using a form provided by DEO; EFI shall list the specific strategies implemented; for each of the implemented strategies EFI shall provide specific examples of activities and programs accomplished.
- e. On or before June 25, 2018, EFI shall provide DEO with a prospective accounting of its 288.904(2), F.S., match contribution requirement, which may be supplemented until the full accounting and final summary is provided.. On or before August 31, 2018, EFI shall provide DEO with a full accounting and final summary of the 288.904(2), F.S. match contribution requirement.
- f. A report and final accounting detailing EFI’s s. 288.904(2), F.S. match requirement contributions as of the end of the fiscal year, updating the June 25, 2018 report as necessary.

Annual Measures Per Section 20.60(11) F. S.		FY 2017-2018 Standards
1.	BUSINESS DEVELOPMENT – Proposed Job Creation	
a.	Total number of proposed jobs to be created by businesses assisted by Enterprise Florida	20,000

Annual Measures Per Section 20.60(11) F. S.		FY 2017-2018 Standards
b.	Number of proposed jobs to be created by businesses assisted by Enterprise Florida in rural communities (partial subset of a.)	500
c.	Number of proposed jobs to be created by businesses assisted by Enterprise Florida by international businesses (partial subset of a.)	900
d.	Number of proposed jobs to be created by businesses assisted by Enterprise Florida with incentives (partial subset of 1.a.) Incentives: QTI, CLOSE, HIPI, IIF, CITC, BROWN and RIF	10,000
2.	INTERNATIONAL TRADE – International Trade Assistance	
a.	Number of Florida based businesses assisted by Enterprise Florida for international trade	2,250
b.	Number of companies with export sales attributable to activities conducted by Enterprise Florida (partial subset of 2.a.)	230
c.	Amount (US dollar value in millions) of projected export sales attributable to the activities conducted by Enterprises Florida	\$ 625
3.	MARKETING FLORIDA	
a.	Web traffic to EFI's website – enterpriseflorida.com – overall traffic in visits	250,000
b.	Positive media hits	700
c.	Total Social Media channel followers	21,000
d.	Total media impressions (print, digital, broadcast, out of home)	33,000,000
4.	MINORITY and/or SMALL BUSINESS, ENTREPRENEURSHIP, CAPITAL (MaSBEC)	
	Investment in Small and/or Minority Business through financial assistance, venture capital and grants.	6
a.	Number of businesses that received financial assistance	
5.	ENTERPRISE FLORIDA – GENERAL	
a.	Satisfaction of businesses served with investment or trade assistance provided by EFI.	95%
b.	Number of strategies in the Florida Statewide Strategic Plan for Economic Development being implemented by EFI.	11

Annual Measures Per Section 20.60(11) F. S.	FY 2017-2018 Standards
c. Response rate for Business Development/International Trade Development customer satisfaction survey.	25%

-End of Attachment II-

ATTACHMENT III

SANCTIONS

Pursuant to section 215.971, F.S., DEO shall impose the following sanctions as Financial Consequences upon the occurrence of the following:

Except as otherwise provided herein, should EFI fail to submit a report, documentation or information in its entirety by its due date as required by Attachment II of this Agreement, or should DEO reject a submittal as insufficient considering the clear requirements of Attachment II, upon written notice from DEO of the specific submittal failure, EFI shall submit the required report, information or documentation within 10 working days. DEO may, in its sole discretion, grant EFI a waiver or extension beyond the 10 working days for good cause shown. DEO shall have sole and absolute discretion over extensions and waivers of required reports.

Except as otherwise provided herein, if DEO does not receive the report, documentation or information in accordance with the above paragraph, DEO will assess a Financial Consequence in the amount of \$500.00 for each day after the new submittal date or after DEO provides written notice to EFI of the rejection, until such time as the report, documentation or information is satisfactorily completed, as determined by DEO considering the clear requirements of Attachment II. However, total Financial Consequence for non-submittal or insufficient submittal of any report, documentation or information shall not exceed \$25,000, provided that EFI is making a good faith effort to produce the relevant report, documentation or information, or production of said report, documentation or information becomes objectively impossible.

-End of Attachment III-

**ATTACHMENT IV
AUDIT REQUIREMENTS**

The administration of resources awarded by DEO to the recipient (EFI) may be subject to audits and/or monitoring by DEO as described in this Attachment.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR Part 200 and section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEO staff, limited scope audits as defined by 2 CFR Part 200, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by DEO. In the event DEO determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by DEO staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR Part 200, as revised.

1. In the event that the recipient expends \$750,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, as revised. EXHIBIT 1 to this agreement indicates Federal resources awarded through DEO by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from DEO. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200, as revised, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart F of 2 CFR Part 200, as revised.
3. If the recipient expends less than \$750,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR Part 200, as revised, is not required. In the event that the recipient expends less than \$750,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from the recipient resources obtained from other than Federal entities).

4. Title 2 CFR 200, entitled Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, also known as the Super Circular, supersedes and consolidates the requirements of OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102 and A-133 and is effective for Federal awards or increments of awards issued on or after December 26, 2014. Please refer to 2 CFR 200 for revised definitions, reporting requirements and auditing thresholds referenced in this attachment and agreement accordingly.

PART II: STATE FUNDED This part is applicable if the recipient is a non-State entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of State financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending September 30, 2004 or thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement indicates State financial assistance awarded through DEO by this agreement. In determining the State financial assistance expended in its fiscal year, the recipient shall consider all sources of State financial assistance, including State financial assistance received from DEO, other State agencies, and other non-State entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-State entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in State financial assistance in its fiscal year (for fiscal years ending September 30, 2004 or thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in State financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-State entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. Additional information regarding the Florida Single Audit Act can be found at:

<http://www.myflorida.com/audgen/pages/flsaa.htm>

PART III: OTHER AUDIT REQUIREMENTS

N/A

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, as revised, and required by Part I of this agreement shall be submitted, when required by Section 512, 2 CFR Part 200, as revised, by or on behalf of the recipient directly to each of the following:

A. DEO at each of the following addresses:

Electronic copies (preferred):	or	Paper (hard copy):
Audit@deo.myflorida.com		Department Economic Opportunity
		MSC # 130, Caldwell Building
		107 East Madison Street
		Tallahassee, FL 32399-4126

B. The Federal Audit Clearinghouse designated in 2 CFR Part 200, as revised (the number of copies required by Section .512, 2 CFR Part 200, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
 Bureau of the Census
 1201 East 10th Street
 Jeffersonville, IN 47132

C. Other Federal agencies and pass-through entities in accordance with Section .512, 2 CFR Part 200, as revised.

2. Pursuant to Section .512, 2 CFR Part 200, as revised, the recipient shall submit a copy of the reporting package described in Section .512, 2 CFR Part 200, as revised, and any management letter issued by the auditor, to DEO at each of the following addresses:

Electronic copies (preferred):	or	Paper (hard copy):
Audit@deo.myflorida.com		Department Economic Opportunity
		MSC # 130, Caldwell Building
		107 East Madison Street
		Tallahassee, FL. 32399-4126

3. Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:

A. DEO at each of the following addresses:

Electronic copies (preferred):	or	Paper (hard copy):
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Audit@deo.myflorida.com

Department Economic Opportunity
MSC # 130, Caldwell Building
107 East Madison Street
Tallahassee, FL 32399-4126

B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, FL 32399-1450

Email Address: flaudgen_localgovt@aud.State.fl.us

4. Copies of reports or the management letter required by Part III of this agreement shall be submitted by or on behalf of the recipient directly to:

A. DEO at each of the following addresses: N/A

5. Any reports, management letter, or other information required to be submitted to DEO pursuant to this agreement shall be submitted timely in accordance with 2 CFR Part 200, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
6. Recipients, when submitting financial reporting packages to DEO for audits done in accordance with 2 CFR Part 200 or Chapters 10.550 (local governmental entities) or 10.650 (non-profit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

1. The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of five (5) years from the date the audit report is issued, or five (5) State fiscal years after all reporting requirements are satisfied and final payments have been received, whichever period is longer, and shall allow DEO, or its designee, CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to DEO, or its designee, CFO, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by DEO. In addition, if any litigation, claim, negotiation, audit, or other action involving the records has been started prior to the expiration of the controlling period as identified above, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the controlling period as identified above, whichever is longer.

-End of Attachment IV-

EXHIBIT 1 to Attachment IV

FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING: None

COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS: N/A

Federal Program: N/A

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

MATCHING RESOURCES FOR FEDERAL PROGRAMS: N/A

SUBJECT TO Section 215.97, Florida Statutes:

State Project

EFI Funding and Program Agreement FY 2017-18					
CSFA #	Line Item	Fund	Amount	Fund	Amount
40.040	2017-233, L.O.F., Sec 27	SEED TF	\$9,400,000	SEED TF	\$9,400,000
40.040	2017-233, L.O.F., Sec 27	International Trade & Promotion (ITP) TF	\$6,600,000	International Trade & Promotion (ITP) TF	\$6,600,000
Total State Operating Investment					\$16,000,000

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

Compliance requirements are identified in the Agreement.

NOTE: Title 2 CFR section 200.331, as revised and Section 215.97(5), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the recipient.

-End of Exhibit 1-

ATTACHMENT V
Audit Compliance Certification

Recipient Name: _____

FEIN: _____ Recipient's Fiscal Year: _____

Contact Person Name and Phone Number: _____

Contact Person Email Address: _____

1. Did Recipient expend State financial assistance, during its fiscal year, that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between **Recipient** and DEO of Economic Opportunity (DEO)? Yes No

If the above answer is yes, also answer the following before proceeding to item 2:

Did Recipient expend \$750,000 or more of State financial assistance (from DEO and all other sources of State financial assistance combined) during its fiscal year? Yes No

If yes, Recipient certifies that it will timely comply with all applicable State single or project-specific audit requirements of section 215.97, F.S., and the applicable rules of the Department of Financial Services and the Auditor General.

2. Did Recipient expend federal awards, during its fiscal year that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between Recipient and DEO? Yes No

If the above answer is yes, also answer the following before proceeding to execution of this certification:

Did Recipient expend \$750,000 or more in federal awards (from DEO and all other sources of federal awards combined) during its fiscal year? Yes No

If yes, Recipient certifies that it will timely comply with all applicable single or program-specific audit requirements of 2 CFR Part 200, Subpart F, as revised.

[Rest of Page Intentionally Blank; Signature Page to Follow]

By signing below, I certify, on behalf of Recipient, that the above representations for items 1 and 2 are true and correct.

Signature of Authorized Representative

Date

Printed Name of Authorized Representative

Title of Authorized Representative

-End of Attachment V-

**ATTACHMENT VI
PAYMENT SCHEDULE**

Funding shall be distributed in amounts up to but not to exceed the amounts shown in the Payment Schedule below, subject to the terms of this Agreement and applicable laws.

EFI Funding and Program Agreement FY 2017-18					
CSFA #	Line Item	Fund	Amount	Fund	Amount
40.040	2017-233, L.O.F., Sec 27	SEED TF	\$9,400,000	SEED TF	\$9,400,000
40.040	2017-233, L.O.F., Sec 27	International Trade & Promotion (ITP) TF	\$6,600,000	International Trade & Promotion (ITP) TF	\$6,600,000
Total State Operating Investment					\$16,000,000

Payment Schedule FY 2017-18	
Quarter 1 SEED Trust Fund	\$2,350,000.00
Quarter 1 ITP Fund	\$1,650,000.00
Quarter 2 SEED Trust Fund	\$2,350,000.00
Quarter 2 ITP Fund	\$1,650,000.00
Quarter 3 SEED Trust Fund*	\$2,350,000.00
Quarter 3 ITP Fund*	\$1,650,000.00
Quarter 4 SEED Trust Fund**	\$2,350,000.00
Quarter 4 ITP Fund**	\$1,650,000.00
Total Payments	\$16,000,000.00

*DEO may, in DEO's sole discretion, withhold any amount of match shortfall in the amount of that shortfall from the Quarter 3 payment if EFI's quarterly match to date is less than the total amount of funds owed through the close of Quarter 3 and DEO determines that EFI is reasonably likely to fail to secure at least such required match as detailed in Attachment II, Reports; provided however, DEO may consider information EFI provides with the Quarter 3 invoice demonstrating anticipated Quarter 4 match (e.g., executed contracts for promotions that will take place in Quarter 4), but may withhold any amount DEO determines in DEO's sole discretion is justified given the requirements of section 288.904(2)(a), F.S.

** DEO may, in DEO's sole discretion, withhold any amount of match shortfall in the amount of that shortfall from the Quarter 4 payment if EFI's match to date is less than the total amount of funds owed through the close of Quarter 4 and DEO determines that EFI is reasonably likely to fail to secure at least such required match as detailed in Attachment II, Reports; provided however, DEO may consider information EFI provides demonstrating its prospective successful compliance with its match requirement, but may withhold any amount DEO determines in DEO's sole discretion is justified given the requirements of section 288.904(2)(a), F.S.

-End of Attachment VI-

ATTACHMENT VII
TRANSPARENCY MEASURES

Quarterly, with each invoice submittal, the President and CEO of EFI shall certify in writing that EFI has complied with the below Transparency Related Duties and Obligations, as required by sections 288.901, 288.903, 288.904, and 288.905, Florida Statutes ("F.S."). EFI shall provide the documentation specified in the Transparency Related Submittals. Any such deficiencies shall be resolved in accordance with Article 21, *Defaults, Sanctions and Remedies* of the Agreement, the terms of the Agreement, and applicable law.

1. Transparency Related Duties and Obligations:

A. Business Operations – Travel, Bans, and Other Requirements:

I. EFI must comply with following per diem and travel expense provisions, in keeping with section 112.061, F.S., as more specifically set forth in sections 288.901, 288.903, 288.904, and 288.905, F.S.:

- a. Board members are entitled to receive reimbursement for per diem and travel expenses pursuant to section 112.061, F.S. Such expenses must be paid out of funds of EFI.
- b. Lodging expenses for an employee of EFI may not exceed \$150 per day, excluding taxes, unless the corporation is participating in a negotiated group rate discount or the corporation provides documentation of at least three comparable alternatives demonstrating that such lodging at the required rate is not available. However, an employee of the corporation may expend his or her own funds for any lodging expenses more than \$150 per day.
- c. EFI shall ensure that travel and expense reimbursements made to vendors are in accordance with a policy established by EFI. EFI's travel and expense policy must ensure that vendor reimbursements are made at the lowest possible cost necessary to ensure a reasonable level of service, comfort and security.

II. Food, beverage, lodging, entertainment, or gift bans that EFI must comply with:

- a. Funds stemming from this Agreement may not be expended for food, beverages, lodging, entertainment, or gifts for employees of the corporation, board members of the corporation, or employees of a tourist or economic development entity that receives revenue from a tax imposed pursuant to sections 125.0104, 125.0108, or 212.0305, F.S., unless authorized pursuant to section 112.061, F.S., or this section.
- b. An employee or board member of EFI may not accept or receive food, beverages, lodging, entertainment, or gifts from a tourist or economic development entity that receives revenue from a tax imposed pursuant to sections 125.0104, 125.0108, or 212.0305, F.S., or from any person, vendor, or other entity, doing business with the corporation unless such food, beverage, lodging, entertainment, or gift is available to similarly situated members of the public.

- III. EFI shall ensure that it conducts annual public records training for its employees.
 - IV. EFI shall ensure that it adopts an employee ethics code modeled after the provisions of Chapter 112, F.S., and shall name a Chief Ethics Officer. The Officer shall be responsible for the periodic training of EFI staff and for maintaining the Ethics Code and for, which addresses:
 - a. The acceptance of gifts;
 - b. Self-dealing;
 - c. A prohibition on unauthorized compensation;
 - d. Conflicting employment or contractual relationships;
 - e. Appropriate disclosure and use of information; and
 - f. Nepotism.
 - V. EFI shall not create or establish any other entity, corporation, or direct-support organization, unless authorized by law.
- B. Contract Requirements:
- I. EFI must submit all proposed contracts with a total cost of \$750,000 or more in accordance with the notice and review procedures of section 216.177.
 - a. If the chair or vice chair of the Legislative Budget Commission, the President of the Senate, or the Speaker of the House of Representatives timely advises EFI in writing that such proposed contract is contrary to legislative policy and intent, EFI may not execute such proposed contract.
 - b. EFI may not enter multiple related contracts to avoid the requirements of this paragraph.
 - c. This requirement does not apply to contracts for the award of a statutorily authorized incentive program.
 - II. Any contract entered between EFI and any other public or private entity shall include:
 - a. The purpose of the contract;
 - b. The total cost of the contract;
 - c. The name and contact information of all the Contract's project managers;
 - d. When commercially reasonable, shall provide for payment only after EFI has verified that the deliverables were completed at the negotiated performance standard;
 - e. Commercially reasonable safeguards against nonperformance and cancellation provisions;
 - f. Specific performance standards and responsibilities for each entity;
 - g. A detailed project or contract budget, if applicable;
 - h. The value of any services provided; and

- b. Any agreement entered between EFI and any other entity, including a local government, private entity, or nonprofit entity, that receives public funds or funds from a tax imposed pursuant to sections 125.0104, 125.0108, or 212.0305;
- c. The contracts and the required information pursuant to paragraph (b) and the financial data submitted to EFI pursuant to paragraph (c);
- d. Video recordings of each board meeting;
- e. A detailed report of expenditures following each marketing or business recruitment event paid for with EFI funds. Such report must be posted within 10 business days after the event;
- f. An annual itemized accounting of the total amount of funds spent by any third party on behalf of EFI or any board member or employee of EFI;
- g. An annual itemized accounting of the total amount of travel and entertainment expenditures by EFI;
- h. All reports that include metrics and return on investment calculations for EFI contracts;
- i. Public versions of independent business evaluations reports highlighting project-specific performance;
- j. Employee positions and salary information for each EFI position (including any benefits and performance bonuses);
- k. An EFI organizational chart;
- l. EFI audits, tax returns, and financial reports and summaries; and
- m. All reports that EFI must generate pursuant to Florida law.

II. The EFI website must:

- a. Allow users to navigate to related sites to view supporting details;
- b. Enable a taxpayer to e-mail questions to EFI; and
- c. Make such questions and EFI responses publicly viewable.

F. Compensation Requirements:

- I. Board members shall serve without compensation.
- II. No employee of EFI, including an officer or agent, the president, or the chief executive officer, may receive public compensation for employment that exceeds the salary and benefits authorized to be paid to the Governor.
- III. Any public payments of performance bonuses or severance pay to employees are prohibited unless specifically authorized by law.
- IV. Should EFI use public payments for performance bonuses or severance pay, the legal authorization must be provided to the Agreement Manager via e-mail prior to any such payment.

G. Match Requirements:

- I. Contributions from a government entity or from an entity that received more than 50 percent of its revenue in the previous fiscal year from public sources, including revenue derived from taxes, fees, or other government revenues, are not considered private contributions for purposes of calculating the required match.
- II. If EFI fails to meet the one-to-one match requirements of this subsection, the corporation shall revert all unmatched public contributions to the state treasury as of June 30 of each fiscal year.

2. **Transparency Related Submittals.** EFI shall submit the following documents and a Cover Letter signed by EFI's Agreement Manager with each invoice package. If the policy, procedure, or code required by this section was submitted the previous quarter and has not changed, it is not required to be resubmitted, provided, however, that the Cover Letter required shall reflect this information:

- A. EFI shall provide dated screen shots of, and links to, all the categories that are listed under Website Posting Requirements. The DEPARTMENT reserves the right to request hard copy of any document that should be posted but that the DEPARTMENT is unable to locate.
- B. EFI shall provide Annual Public Records training.
- C. EFI shall provide a copy of its current, all-inclusive travel and expense policy (Employees, Board Members, Sub-Contractors, Vendors, etc.).
- D. EFI shall provide a copy of its current contracting procedure.
- E. EFI shall provide a copy of its current purchasing procedure.
- F. EFI shall provide a copy of its current Ethics Code

-End of Attachment VII-