405 Howard Street, Suite 550
San Francisco, CA 94105
Telephone: (877) 623-4997

CORPORATE WELLNESS DIRECT CLIENT STARTER AGREEMENT

This Corporate Wellness Direct Client Starter Agreement ("**Agreement**") is entered into by and between Fitbit, Inc., with a principal business address at 405 Howard Street, Suite 550, San Francisco, CA 94105 ("**Fitbit**", "**we**", "**us**" or "**our**") and City of Durham with a principal business address at 101 City Hall Plaza Suite 1600 Durham, NC 27701 ("**Client**", "**you**" or "**your**"), and is effective as of 03/01/2016 ("**Effective Date**").

This Agreement sets forth the methods by which you may order and make available certain Fitbit Products for your employees as part of your corporate wellness offerings, and lists the terms and conditions under which those Products will be delivered. This Agreement also sets forth the means by which you may receive access to Fitbit's online Program Management Dashboard, and the terms and conditions for such provision. This Agreement includes any Order Forms and any attached Exhibits.

The following are the components that make up this Agreement (please note that the below may include sections that do not apply to your particular package or offering):

- 1. Defined Terms
- 2. General Participation in Fitbit's Corporate Wellness Program, Product Ordering Methods and Pricing
- 3. Program Management Dashboard and User Data
- 4. Our Relationship with the End User
- 5. Your Obligations and Representations
- 6. Contract Term
- 7-8. Confidentiality and Intellectual Property Rights
- 9-16. Legal Terms

The parties agree as follows:

1. Definitions

"**Company Storefront**" means the Fitbit online storefront available at a custom URL.

"**End User**" means an employee of Client who is the user of a Product made available through this Agreement or who accesses the Program Management Dashboard.

"**End User Data**" means the data of End Users who access the Program Management Dashboard, to the extent that Fitbit handles such data pursuant to providing the services under this Agreement. End User Data does not include data collected, processed, stored, or presented pursuant to providing the Online Fitbit Service to customers.

"**Fitbit Corporate Wellness Program**" means the program offered by Fitbit to clients who wish to make Products available to their End Users as part of their corporate wellness programs as further described in this Agreement.

"Online Fitbit Service" means the service provided to customers of the Fitbit consumer product who register and create an account via fitbit.com, the Fitbit Connect client, or the Fitbit mobile applications.

"**Order Form**" means Fitbit's standard order form executed by Fitbit and Client or such other online provisioning document provided by Fitbit and agreed to by the parties which references a written agreement between the parties.

"**Products**" means the Fitbit products listed on Exhibit A to the Agreement.

"**Program Management Dashboard**" means the online dashboard made available by Fitbit for Client to manage its participation in the Fitbit Corporate Wellness Program.

"**Program Materials**" means Fitbit's written and online program materials containing guidelines, requirements, restrictions and other details about participation in the Fitbit Corporate Wellness Program.

"**Term**" has the meaning set forth in Section 6.1 (Term).

"**Territory**" has the meaning set forth on Exhibit A to the Agreement.

2. Right to Distribute Products, Ordering Methods, Price and Delivery

This Section 2 applies if you elect to order Products using any of the following order methods: (i) Bulk Order, (ii) to make Products available to End Users using a Company Storefront.

2.1 Right to Distribute. Subject to all of the terms and conditions of this Agreement, during the Term and in the Territory, Fitbit hereby appoints you as an authorized, non-exclusive distributor of the Products and grants you the non-exclusive, non-transferable, non-sublicensable right to market, resell and distribute the Products directly to End Users for their use without any right of redistribution, provided that such distribution must be as part of your corporate wellness program.

2.2 Minimum Order Quantity and Ordering Window. To be eligible to order any Products under this Agreement, you agree to purchase the Minimum Order Quantity during each Ordering Window (each as defined on Exhibit A to Agreement). In addition to orders made by you, purchases of Products by End Users through the Company Storefront shall count towards the Minimum Order Quantity. If the total number of Products purchased by you and End Users during the applicable Ordering Window is less than the Minimum Order Quantity, Fitbit will invoice and you must purchase the number of Products constituting the shortfall via bulk order by the end of the then-current Term. Once you have met your Minimum Order Quantity obligations, you may purchase additional Products at your option. Failure to purchase the Minimum Order Quantity during the applicable Ordering Window shall be deemed a material breach of this Agreement.

2.3 Ordering Methods. Subject to the limitations in this Section, the following ordering methods will be available to you at your request: Bulk Orders (via Order Form or Order Link) and Company Storefront ordering.

(a) *Bulk Orders*.

(i) *Via Order Form.* To place bulk orders for Products under this Agreement, you shall deliver an Order Form to Fitbit. No order shall be binding until accepted in writing by Fitbit. Any additional or different terms provided on any Client purchase order accompanying the Order Form shall have no force or effect. Bulk order quantities are subject to Fitbit's then-current order process and the terms set forth in Exhibit A to the Agreement.

(ii) *Via Order Link.* At your request, we may provide a custom URL ("**Order Link**") for the purpose of placing bulk orders via an online ordering cart. Order Link purchase availability is subject to Product stock limitations.

(iii) *Prior Orders.* If you have purchased Products from Fitbit through bulk order(s) prior to execution of this Agreement (each order a "**Prior Order**"), the parties may agree to include a Prior Order placed up to twelve (12) months prior to the Effective Date under this Agreement upon Fitbit's written confirmation of the serial numbers or device IDs of the units of Products to be included hereunder ("**Confirmed Products**"). Upon such written confirmation, Confirmed Products shall be deemed to be Products purchased under this Agreement, counting towards any applicable Minimum Order Quantity obligations for the initial Ordering Window, and the terms of this Agreement shall supersede and replace any other terms of sale or terms of purchase under which such Prior Order was made.

(b) *Company Storefront Orders*. At your request Fitbit will create a Company Storefront to allow End Users to purchase subsidized Products directly from Fitbit. Company Storefront implementation requires a minimum lead time of four (4) weeks from your request. All Company Storefront purchases must be validated by either (a) unique Client issued ID (8-20 digit alphanumeric characters) or (b) by End User using a validated corporate email domain of Client. All purchases by End Users through the Company Storefront are directly with Fitbit and shall be subject to Fitbit's standard applicable privacy policy and customer purchase and delivery terms. Fitbit will make the Company Storefront available during the Ordering Window and Fitbit may elect in its sole discretion to continue to make the Company Storefront available for a mutually agreed period of time after the Ordering Window if requested.

2.4 Price.

(a) *Price to Client*. For all direct orders from you to Fitbit, Fitbit shall sell the Products to you at the prices set forth on Exhibit A to the Agreement unless otherwise specified in an Order Form.

(b) *Price to End Users and Subsidy Requirement*. You shall be solely responsible for setting the price you charge to End Users for Products. Notwithstanding the foregoing, as a condition to the rights granted in Section 2.1, you must subsidize the price you charge to each End User for such Product. The subsidy you provide shall be no less than 25% of the lowest priced Product offered to your employees ("Subsidy Amount"). The Subsidy Amount shall be applied to all Products offered regardless of order method.

(c) *Company Storefront Subsidy True-Up*. Fitbit shall invoice you monthly for, and you agree to pay, the Subsidy Amount for Products purchased via the Company Storefront ("**Subsidy True-Up**").

2.5 Delivery. Bulk orders for Products will be marked for shipment to up to one (1) address per order. You shall designate the shipping address in the Order Form. Unless otherwise set forth in the Order Form, shipment will be FOB Fitbit's shipping point, with you responsible for all shipping costs, including any insurance or additional shipping expenses that may be incurred as a result of your specific instructions.

2.6 No Commitment to Manufacture. Fitbit does not represent that it will continue to manufacture any particular Product (or volume of Products) indefinitely or even for any specific period. Fitbit specifically reserves the right, upon at least twenty (20) days prior notice to you (unless exigent circumstances require shorter or no notice), to modify any of the specifications or characteristics of its Products, to remove any Product from the market, and/or to cease manufacturing or supporting any Product.

2.7 Program Materials. Fitbit may, from time to time, supply you with certain Program Materials.

3. Online Program Management Dashboard, Data Privacy and End User Authorization

This Section 3 applies if you pay the Subscription Fee to receive access to the Program Management Dashboard:

3.1 Access to Program Management Dashboard. You may access and use the Program Management Dashboard solely for your own benefit and in accordance with the terms and conditions of this Agreement during any period for which you have paid the applicable subscription fee set forth on Exhibit A to this Agreement (the "**Subscription Fee**").

3.2 Payment of Subscription Fees. You agree to pay the Subscription Fee, in accordance with the terms of Section 5.6 (Payment) below. Within seven (7) days of receipt of payment of the initial Subscription Fee, Fitbit will provide you with access to the Program Management Dashboard.

3.3 Data Privacy Generally. Fitbit takes End User privacy seriously. Your ability to receive and use any End User Data from Fitbit shall be subject to the terms and conditions of this Section 3. Any breach of your obligations under this Section 3 shall be deemed a material breach of this Agreement and, in any event, Fitbit may, at any time upon notice to you, suspend providing End User Data if Fitbit determines continued sharing may cause Fitbit to be non-compliant with its privacy policy, applicable law or self-regulatory principles or be materially detrimental to Fitbit or any third-party.

3.4 Available End User Data. Upon your request, Fitbit will seek consent from all of your End Users to share End User Data with you and other End Users ("**End User Authorization**"), using the process described in Section 3.5 below. Fitbit will only share End User Data with you if provided with End User Authorization for the particular End User. With respect to End User Data viewable from the Program Management Dashboard, you will have the option between two types of End User Data: (a) aggregate group data ("**Aggregate Data**"), or (b) a combination of Aggregate Data and user-specific data ("**Aggregate/Individual Data**").

3.5 End User Authorization.

(a) *Obtaining End User Authorization*. When an End User creates a Fitbit account (or logs into its existing Fitbit account) on the Fitbit website or application to register any Product acquired under this Agreement, Fitbit will present such End User with the opportunity to provide End User Authorization using its then-current End User authorization method. Fitbit reserves the right to modify the End User Authorization presented to the End Users in its sole discretion.

(b) *Lack of Consent*. If an End User does not provide or later withdraws End User Authorization, Fitbit will not share or will immediately cease sharing such applicable End User Data with Client. Furthermore, upon any notification from Fitbit that an End User has withdrawn End User Authorization, Client will immediately cease using such End User's End User Data.

3.6 Use of End User Data; Restrictions. You agree that the following terms apply with respect to your use of End User Data: (a) You may use such End User Data only in connection with your corporate wellness program (and in a manner consistent with your related documentation and privacy policies, as applicable) and only to the extent specified in the End User

Authorization, (b) you are solely responsible for ascertaining the adequacy and legality of the End User Authorization for your intended purposes, (c) you shall limit access to, and use of, End User Data as required by any applicable law or regulation and your privacy policy, (d) you shall not share, disclose, or resell the End User Data in any form (whether or not individually identifiable) to any third party, (e) you shall not seek to access any End User Data other than as expressly authorized under this Agreement, (f) you shall maintain reasonable security measures to protect End User Data downloaded or exported from the Program Management Dashboard from unauthorized access, disclosure, or use and (g) to the extent you select the provision of Aggregate Data, you shall not re-identify the Aggregate Data or make an attempt to link any such data to any End User. You acknowledge and agree that Fitbit is not a Business Associate or subcontractor of Client (as those terms are defined in the Health Insurance Portability and Accountability Act, as amended and supplemented ("**HIPAA**")) and that you will not share with Fitbit any patient, medical or other protected health information regulated by HIPAA or any similar federal or state laws, rules or regulations.

3.7 If you have reason to believe that End User Data may have been accessed, disclosed, or acquired without proper authorization and requires notice to End Users under applicable law, You must notify Fitbit by emailing soc@fitbit.com as soon as possible after you become aware of it. The notification will describe the nature of the breach or attempted breach, the status of your investigation, and the potential number of persons affected.

4. Our Relationship with the End User

4.1 General. In order to use the Products and the online Fitbit service, all End Users must register their Products with us and agree to our terms of service and privacy policy. Even if an End User has purchased the Product directly from you, that End User will be a direct customer of ours with respect to his or her use of the Product and the online Fitbit service. Each End User must create his or her own online account for the Fitbit service; you shall not (and shall not allow any third party to) create Fitbit accounts on behalf of any End User.

4.2 Warranty and Returns. Fitbit provides its standard limited warranty (currently set forth at http://www.fitbit.com/returns) directly to End Users for all Products purchased under this Agreement and not to you. Each End User must contact Fitbit directly in the event of any warranty issues; provided, however, that Fitbit may agree to implement a bulk RMA process under special circumstances. If Fitbit determines, in its sole discretion, that a refund is necessary to satisfy a warranty claim, upon return of the defective Product: (a) for Company Storefront orders, Fitbit shall refund the purchase price paid by the End User directly to the End User and the Subsidy True-Up paid by you directly to you; and (b) for all other orders, Fitbit shall refund the purchase price paid by you directly to you and you shall be responsible for refunding the End User. For refunds issued by you, you shall issue any such refund within thirty (30) days of receipt of such amounts from Fitbit. Notwithstanding the foregoing, Fitbit may issue any refund directly to the applicable End User (and in such case you will remit to such End User the difference between the amount refunded by Fitbit and any amounts previously received from such purchase by you, if applicable). In no event will Fitbit be liable for refunds exceeding the purchase price of the defective Product paid to Fitbit.

4.3 Fitbit End User Support Obligations. End Users will follow the standard customer support process with email support at http://contact.fitbit.com and FAQs at http://help.fitbit.com. Your program administrator may escalate issues affecting multiple End Users directly to Fitbit by email via the contact information on Exhibit A, and Fitbit will use reasonable efforts to promptly respond to such requests.

5. Your Obligations

5.1 Marketing. You shall promote and market the Products consistent with your standard marketing plans and strategies using the promotional materials supplied by Fitbit. All marketing and promotional materials developed by you will be subject to initial approval by Fitbit; provided, however, that you shall continue to be responsible for such materials and the content contained therein. Approval by Fitbit of your marketing materials shall be deemed to apply to all repeat uses of such marketing or promotional material by you in the same manner as initially approved by Fitbit unless otherwise notified by Fitbit. In marketing the Products to End Users, you shall disclose that Product pricing reflects a subsidy provided by you; you shall not imply that the subsidized price reflects a discount from Fitbit.

5.2 Representations. You shall not make any representations, guarantees or warranties of any type with respect to the specifications, features, capabilities or otherwise concerning the Products or Fitbit's services which are in addition to or inconsistent with those set forth in the product descriptions or promotional materials delivered by Fitbit to you hereunder. In no event shall you make any representation, warranty or guarantee by or on behalf of Fitbit. You shall represent Fitbit and its Products in a positive and professional manner at all times.

5.3 Technical Proficiency. In addition to technical information related to the Products and included in the Program Materials, Fitbit may, from time to time, provide its resellers and other clients with access to webinars or in-person

informational sessions designed to provide sales and technical training. You will be responsible for utilizing such training and materials in order to ensure that its staff has a reasonable level of technical proficiency with respect to the Products.

5.4 Business Practices. You agree not to engage in any deceptive, misleading, illegal or unethical practices that may be detrimental to Fitbit or its Products and agree to comply with all applicable federal, state and local laws and regulations (including, without limitation, data protection, privacy and import and export compliance laws and regulations) in connection with its performance under this Agreement.

5.5 Insurance. You are solely responsible for maintaining such adequate health, automobile, workers' compensation, unemployment compensation, disability, liability, and any other type of insurance required by law or as is common practice in your business. Upon request, you shall provide Fitbit with certificates of insurance or evidence of coverage before commencing performance under this Agreement.

5.6 Payment. If you have been approved for credit by Fitbit, payments shall be made in U.S. dollars within thirty (30) days of your receipt of the applicable invoice from Fitbit. For the Program Management Dashboard, Fitbit will invoice upon granting access to Client. For purchases of Products, Fitbit will invoice upon shipment. If you have not been approved for credit by Fitbit, all orders must be pre-paid. Any late payments shall be subject to a service charge equal to 1% per month of the amount due or the maximum amount allowed by law, whichever is less. All payments are non-refundable unless expressly set forth herein. Fitbit reserves the right, in its sole discretion, to change your credit terms and/or require cash in advance payment for shipment should you fail to pay invoices in a timely manner. Non-payment by End Users shall not relieve you of your obligation to pay fees to Fitbit. You shall be responsible for all taxes, withholdings, duties, shipping expenses and levies arising from your purchases under this Agreement (excluding taxes based on the net income of Fitbit).

6. Term and Termination

6.1 Term. This Agreement shall commence on the Effective Date and shall continue for a period of twelve (12) months (the "**Initial Term**") unless earlier terminated as provided for herein. Following the Initial Term, this Agreement shall automatically renew for successive twelve (12) month periods (each a "**Renewal Term**" and, together with the Initial Term, the "**Term**") unless either party provides written notice of cancellation at least thirty (30) days prior to expiration of the Initial Term or Renewal Term, as applicable. Fitbit reserves the right to increase the Subscription Fee, Product pricing and Minimum Order Quantities specified on Exhibit A to this Agreement for any Renewal Term.

6.2 Termination. Either party may terminate this Agreement (including all related Order Forms) if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days). You acknowledge and agree that if you are in material breach of this Agreement, Fitbit has no obligation to fulfill any outstanding orders until such breach has been cured.

6.3 Effect of Termination. Upon any expiration or termination of this Agreement, you shall cease to be an authorized reseller and have no right to market or distribute the Products. Any access to a Company Storefront, online Program Management Dashboard or Order Link will cease and you shall destroy any and all Confidential Information and End User Data in your possession at the time of expiration or termination. Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise. The terminating party shall have no liability to the other party of any type arising from termination of this Agreement in accordance with its terms.

6.4 Termination Accounting. All amounts payable to Fitbit hereunder shall survive termination or expiration of this Agreement and become immediately due and payable. Within ten (10) days following termination, you shall furnish Fitbit with an inventory of unsold Products and Fitbit shall have the right to repurchase any unsold Product. Within ten (10) days after receipt of such inventory, Fitbit shall notify Client in writing whether or not Fitbit intends to repurchase from Client all or part of such inventory at the original invoice price (less any discount or other credit previously granted). Fitbit shall pay all transportation and other costs associated with shipping the Products to Fitbit.

6.5 Survival. Sections 3.6 (Use of End User Data; Restrictions), 4.2 (Warranty and Returns), 5.6 (Payment) (with respect to any amounts outstanding), 6 (Term and Termination), 7 (Confidential Information), 8.1 (Intellectual Property Ownership), 8.2 (Trademarks) (as necessary to complete any final activities), 9 (Disclaimer of Warranties), 10 (Limitation of Remedies and Damages), 11 (Indemnification), 12 (Independent Contractor), 13 (Foreign Corrupt Practices Act), 14 (Government End-Users) and 16 (General) shall survive any termination or expiration of this Agreement.

7. Confidential Information. Each party agrees that all information relating to the disclosing party's ("**Disclosing Party's**") business, including, without limitation, product designs, product plans, software and technology, financial information, marketing plans, business opportunities, pricing information, discounts, inventions and know-how it obtains

("**Receiving Party**") from the Disclosing Party constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Confidential Information also includes the terms and conditions of this Agreement. Any Products, software, documentation or technical information provided by Fitbit and performance information relating to the foregoing shall be deemed Confidential Information of Fitbit without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

8. Intellectual Property Ownership

8.1 Intellectual Property Ownership. Fitbit retains all right, title and interest in all intellectual property rights (including, without limitation, all patent rights, copyrights, trade secret rights, trademarks, service marks, related goodwill, and confidential and proprietary information) in and relating to the Products, Program Management Dashboard, Fitbit Trademarks and any related services, technology or documentation. Any software in any Product is provided under license only. To the extent permitted by relevant law, Client shall not, nor allow any third party to copy, decompile, disassemble or otherwise reverse engineer the Products, or attempt to do so. Fitbit reserves all rights not specifically granted to Client hereunder.

8.2 Trademarks.

(a) *Fitbit Trademarks*. Fitbit hereby grants Client a nonexclusive, limited license to use Fitbit's name and the applicable Product trademarks ("**Fitbit Trademarks**") solely in its distribution, marketing and advertising of the Products in accordance with the terms of this Agreement. Client's use of Fitbit Trademarks shall conform to Fitbit's then-current trademark use policies. All use of Fitbit Trademarks shall be subject to the review and approval of Fitbit and Client will cease any problematic use within a reasonable period of being notified by Fitbit. Client shall not remove any trademarks or other proprietary notices incorporated in, marked on, or fixed to the Products. All goodwill arising from the use of Fitbit Trademarks shall be vested in and inure to the benefit of Fitbit. Client agrees that it will not register, or attempt to register, any domain name containing the word "Fitbit" or any product name of a Fitbit product, and if Client has, to immediately effect transfer of such domain name to Fitbit without charge. Client acknowledges that its promotion of Fitbit and the Products in a professional and positive manner consistent with the materials provided by Fitbit, is essential to Fitbit's goodwill in the Products, and agrees that its failure to do so shall be a material breach of this Agreement.

(b) *Client Trademarks*. You hereby grant Fitbit a nonexclusive, irrevocable, worldwide, royalty free limited license, during the Term, to use, copy, modify and display your name and the applicable trademarks provided by you ("**Client Trademarks**") on the instance of the Program Management Dashboard made available to you and the Company Storefront solely in its distribution, marketing, sale and advertising of the Products to your End Users in accordance with the terms of this Agreement and to disclose you as a client in Fitbit's marketing materials and on Fitbit's customer lists and website. All use of Client Trademarks shall be subject to review by you and Fitbit will cease any problematic use within a reasonable period of being notified by you. All goodwill arising from the use of the Client Trademarks shall be vested in and inure to your benefit.

9. Disclaimer of Warranties. EXCEPT FOR THE LIMITED WARRANTY EXTENDED DIRECTLY TO END USERS IN ACCORDANCE WITH SECTION 4.2, THE PRODUCTS, THE PROGRAM MANAGEMENT DASHBOARD AND ALL FITBIT SERVICES ARE PROVIDED "AS IS". NEITHER FITBIT NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, INCLUDING ANY WARRANTY THAT ANY COMPANY STOREFRONT, ORDER LINK, THE PROGRAM MANAGEMENT DASHBOARD, OR ANY OTHER SOFTWARE OR ONLINE SERVICES PROVIDED UNDER THIS AGREEMENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR CONTENT OR THE THIRD PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

10. Limitation of Remedies and Damages. EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE

FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. THE FOREGOING SENTENCE SHALL ALSO APPLY TO ANY THIRD-PARTY SUPPLIER OF EITHER PARTY. EXCEPT FOR EXCLUDED CLAIMS, NEITHER PARTY'S (NOR ITS THIRD-PARTY SUPPLIERS') ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL EXCEED THE AMOUNT PAID (OR WITH RESPECT TO FEES DUE, PAYABLE) BY CLIENT TO FITBIT DURING THE PRIOR TWELVE (12) MONTHS UNDER THIS AGREEMENT. "EXCLUDED CLAIMS" MEANS (I) ANY CLAIM ARISING FROM CLIENT'S BREACH OF SECTION 2.1 (RIGHT TO DISTRIBUTE), 3.6 (USE OF END USER DATA; RESTRICTIONS), 8.2(a) (FITBIT TRADEMARKS), SECTION 7 (CONFIDENTIAL INFORMATION), AND (II) AMOUNTS AWARDED TO THIRD PARTIES OR AGREED IN SETTLEMENT IN CONNECTION WITH CLIENT'S INDEMNFICATION OBLIGATIONS IN SECTION 11 (INDEMNIFICATION). The parties agree that the limitations specified in this Section 10 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

11. Indemnification.

11.1 Indemnification by Client. You will defend, indemnify and hold harmless Fitbit from and against any loss, cost, liability or damage, including attorneys' fees, for which Fitbit becomes liable arising from or relating to: (a) the issuance by you of any warranty or representation not authorized in writing by Fitbit; (b) any other act or omission by you in connection with the marketing or distribution of the Products under this Agreement or your corporate wellness program; or (c) your use of End User Data.

11.2 Indemnification by Fitbit. Fitbit will defend, indemnify and hold harmless Client from and against any loss, cost, liability or damage, including attorneys' fees, for which Client becomes liable arising from or relating to any third party claim asserted against Client by a third party that Client's distribution of the Products or use of the Program Management Dashboard in accordance with this Agreement infringes the U.S. patent, copyright or trademark rights of such third party. If Client's distribution of a Product and/or use of the Program Management Dashboard is (or in Fitbit's opinion is likely to be) enjoined or if Fitbit determines such actions are reasonably necessary to avoid material liability, Fitbit may, in its sole discretion: (a) substitute functionally similar products or services; (b) procure for Client the right to continue distributing such Product and/or use of the Program Management Dashboard, as appropriate; or if (a) and (b) are not commercially reasonable, (c) terminate the Agreement and refund to Client the unused portion of any fees prepaid by Client for the remainder of the Term.

The foregoing indemnification does not apply if the Product or Program Management Dashboard is modified or combined with products or processes not provided by Fitbit, or if distributed in violation of this Agreement; and represents the sole remedy provided to Client with respect to an intellectual property infringement claim.

11.3 Process. Each party's indemnification obligations are contingent upon receipt from the indemnified party of: (a) prompt notice of such claim (but in any event notice in sufficient time for the indemnifying party to respond without prejudice); (b) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (c) all reasonable necessary cooperation of the indemnified party. The indemnified party may participate in the defense and settlement of such claim with counsel at its own expense. The indemnified party shall not settle or make any admissions with respect to a claim without the indemnifying party's prior written consent. The indemnifying party shall not settle any claim without the indemnified party's consent if such settlement involves an admission of liability on the part of the indemnified party or requires the indemnified party to take or refrain from taking any action (except for settlements by Fitbit with respect to the distribution of the Products or the use or non-use of the Program Management Dashboard).

12. Independent Contractor. It is the express intention of the parties that each party is an independent contractor and not an employee, agent, joint venture or client of the other party. Nothing in this Agreement shall be read as creating the relationship of employer and employee between the parties. Neither party is entitled to participate in any benefits provided by the other party, including but not limited to its pension plans, bonus, stock or similar benefits that such other party makes available for its employees. Each party is responsible for all applicable taxes on remuneration received from the other party. This Agreement is non-exclusive and shall not in any way prohibit either party from entering into like arrangements with any other party.

13. Foreign Corrupt Practices Act. You represent and warrant that: (a) in connection with this Agreement, you have not and will not make any payments or gifts or any offers or promises of payments or gifts of any kind, directly or indirectly, (i) to any official of any government (foreign or domestic) or any agency or instrumentality thereof, (ii) to any person (other than an End User as defined herein) to induce or reward the person in connection with the performance of any act or failure to act or (iii) if such payment, gift, offer or promise would constitute extortion, kickbacks or other unlawful or improper means of obtaining business or any commercial advantage or acquiescence thereto; and (b) you will comply in all respects with the U.S. Foreign Corrupt Practices Act and similar domestic or foreign law.

14. Government End-Users. Elements of the Products contain or are provided with commercial computer software. If the user or licensee of the Products is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Products, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Products were developed fully at private expense. All other use is prohibited.

15. Changes to this Agreement. From time to time, Fitbit may modify this Agreement. If Fitbit makes such changes effective upon the next renewal of the Term, You may elect not to renew the Term if you do not agree to such changes (but continued participation in the Fitbit Corporate Wellness Program during the Renewal Term will constitute acceptance of the amended Agreement). If Fitbit makes such changes effective immediately or otherwise prior your next renewal, then you may either agree to such new terms or may terminate the Agreement and receive a pro-rata refund of your Subscription Fee for the terminated period. Fitbit will use reasonable efforts to notify you of the changes through communications via the Program Management Dashboard, email or other means. Except as specified in this Section 15, any changes, modifications or amendments to this Agreement must be in writing signed by both parties.

16. General. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Fitbit may assign this Agreement to any affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Fitbit's assets or voting securities. You may not assign or transfer this Agreement, in whole or in part, without Fitbit's prior written consent. Any attempt by you to transfer or assign this Agreement without such written consent will be null and void. This Agreement shall be governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. The jurisdiction and venue for actions related to the subject matter hereof shall be the California state and United States federal courts located in San Francisco, California, and both parties hereby submit to the personal jurisdiction of such courts. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action. Any notice under this Agreement shall be given in writing and shall be deemed effective to the party to be notified: (a) upon confirmed receipt by personal delivery or facsimile; (b) one (1) business day following deposit for delivery with Federal Express or any other internationally recognized overnight courier; or (c) three (3) business days after deposit with U.S. certified mail. Notice shall be addressed to each party at the location specified on the signature page to this Agreement (as may be updated be either party upon written notice to the other). A copy of such notice from Client to Fitbit for termination shall also be sent to wellness_specialist@fitbit.com. This Agreement, together with the Agreement and any Exhibits, constitutes the complete agreement between the parties to this Agreement and supersedes all previous agreements or representations, whether written or oral, with respect to the subject matter set forth herein. There are no third party beneficiaries under this Agreement. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

By signing below, both parties agree to be bound by all the terms and conditions of this Agreement. Each party expressly agrees that this Agreement is legally binding on it. Any employee or agent accepting this Agreement on behalf of a party must be authorized to sign for and bind that party in order to accept the terms of this Agreement. The rights granted herein are expressly conditioned upon such individual having legal authority to bind the party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

	City of Durham
FITBIT, INC. 405 Howard Street, Suite 550 San Francisco, CA 94105	**Client:**_____ 101 City Hall Plaza Suite 1600 Durham, NC 27701 **Address:** _____
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date:_____

Exhibit A

Key Terms Schedule

Fitbit Contact:

Email: wellness_specialist@fitbit.com

Territory: United States and Canada

Minimum Order Quantity:

Client agrees to purchase at least 1,000 units of Products during the Ordering Window Period.

Ordering Window:

Three hundred sixty-five (365) days from the Effective Date.

CLIENT SELECTIONS

1. Online Program Management Dashboard (if applicable)

Data Type:

- ○ **Aggregate Data**
- ◉ **Aggregate/Individual Data**

First Year Subscription Fee:

$ 10,000

Program Management Dashboard Renewals:

Fitbit will continue to make the online Program Management Dashboard available to Client provided that Client pays the Annual Subscription Fee for each Renewal Term.

2. Products and Distribution

Products:

- ☑ Fitbit One
- ☑ Fitbit Zip
- ☑ Fitbit Flex
- ☑ Fitbit Charge
- ☐ Aria
- ☑ Fitbit Charge HR
- ☑ Fitbit Surge
- ☑ Fitbit Alta
- ☑ Fitbit Blaze

Bulk Order & Order Link Pricing:

Applicable for all available shipping locations.

Pricing is exclusive of applicable tax/duties & shipping

Zip: $48.00; One/Flex: $77.50; Aria/Charge: $100.75; Alta: $101.00; Charge HR: $120.00; Blaze: $160.00; Surge: $197.00

*Fitbit Alta and Fitbit Blaze anticipated availability Q2 2016

Client's initial bulk order must include a minimum of one hundred (100) units of Product. Subsequent orders must be a minimum of ten (10) units for each SKU ordered

Company Storefront Pricing (Extended Price to Client):

Applicable for shipment to U.S. & Canadian locations only

Pricing is inclusive of shipping, but exclusive of applicable tax

Zip: $55.00; One/Flex: $84.50; Aria/Charge: $107.75; Alta: $108.00; Charge HR: $127.00; Blaze: $167.00; Surge: $204.00

*Fitbit Alta and Fitbit Blaze anticipated availability Q2 2016

E-Verify compliance under 143-133.3. The contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). This E-Verify compliance under 143-133.3 section is intended to apply to only the contracts to which NCGS 143-133.3(a) applies and shall be construed in accordance with that statute. Any clause in this contract included under the authority of NCGS 160A-20.1(b) shall be of no effect; provided, however, to the extent (if any) required to comply with NCGS 143-129(j), a clause in this contract requiring the contractor and its subcontractors to comply with the requirements of Article 2 of Chapter 64 shall remain in effect if this contract is subject to NCGS 143-129. This E-Verify compliance under 143-133.3 section is valid only if House Bill 318, which was ratified on 29 September 2015, is signed into law by the Governor of North Carolina.