

**COMPANY PERFORMANCE AGREEMENT**

**THE ONE NORTH CAROLINA FUND**

**STATE OF NORTH CAROLINA**

**COUNTY OF WAKE**

This Company Performance Agreement (the "CPA"), effective the 19<sup>th</sup> day of November, 2015 (the "Effective Date"), by and between WillowTree, Inc., a Virginia corporation authorized to do business in North Carolina (the "Company"), and the City of Durham, North Carolina (the "Local Government," and, together with the Company, the "Parties");

**WITNESSETH:**

**WHEREAS**, the Local Government has applied for a One North Carolina Fund grant from the North Carolina Department of Commerce (the "DOC"); and

**WHEREAS**, a One North Carolina Fund grant award in the amount of Seventy Three Thousand Five Hundred Dollars (\$73,500) (the "Grant") has been negotiated and agreed to by DOC and the Parties; and

**WHEREAS**, the Grant has been approved by DOC for disbursement to the Local Government pursuant to the terms of the One North Carolina Fund Local Government Grant Agreement between the Local Government and the DOC (the "LGGA"); and

**WHEREAS**, the Grant is to be used by the Company toward the goal of creating ninety eight (98) new jobs (the "Target New Jobs"), which shall be permanent full-time jobs (each, a "New Job"), and Two Hundred Forty Five Thousand Dollars (\$245,000) (the "Target Investment") in new investment in the State of North Carolina; and

**WHEREAS**, the Company has represented that the Grant is necessary to enable the investment and job creation by the Company to occur and go forward in North Carolina; and

**WHEREAS**, the Grant will enable retention of five (5) permanent full time jobs (the "Retained Jobs"), which is the total number of positions the Company maintained in North Carolina prior to the Effective Date;

**WHEREAS**, the Grant will stimulate economic activity and create new jobs for the citizens of the State of North Carolina; and

**WHEREAS**, the Grant is issued pursuant to and subject to the terms of N.C. Gen. Stat. § 143B-437.70 *et seq.* and the Guidelines and Procedures for Commitment of Funds from the One North Carolina Fund (the "Program Guidelines");

**WHEREAS**, pursuant to, *inter alia*, N.C. Gen. Stat. § 143B-437.07 and G.S. 143B-437.72(b), as these statutes may be amended from time to time, the DOC is required to submit regular reports to the

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North Carolina General Assembly regarding operation of the One North Carolina Fund and the performance and funding requirements for each One North Carolina Fund grant awarded;

**NOW, THEREFORE,** in consideration of the representations set forth above and the mutual covenants and promises set forth below, the Company and the Local Government hereby agree as follows:

## **1.0 PERFORMANCE CRITERIA**

In order to be eligible for the full amount of the Grant, the Company must fulfill the following requirements:

1.1 The Company shall undertake and operate in a timely manner the following project at the following location (the "**Project**"):

An expansion of a mobile software services plant (the "**Facility**") at which the company will perform software application research and development, mobile design, marketing, sales, customer support, and administrative activities, located in the City of Durham, Durham County, North Carolina.

1.2 The Company shall maintain its current operations at its facilities in North Carolina and a base level of the number of required Retained Jobs in North Carolina, in addition to any New Jobs to be created as part of this CPA.

1.3 The Company shall make good faith efforts to create and maintain the Target New Jobs as part of the Project, as described in the Company's application to DOC (the "**Company Application**"). The New Jobs must be filled by employees hired for the Project on or after the Effective Date who work for at least thirty-five (35) hours per week, and whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statute. Independent contractors, consultants, seasonal and temporary employees are not to be included as New Jobs. In order to be eligible for the full Grant, the Company must create eighty eight (88) New Jobs (the "**Required New Jobs**") (90% of the Target New Jobs), by November 19, 2018 (the "**Grant End Date**," which shall be three years from the date on which the Grant was formally awarded) (the period between November 19, 2015 and November 19, 2018, the "**Grant Period**").

The New Jobs will be new jobs and cannot be existing North Carolina positions or employees of the Company or any of its related members or affiliates that are transferred or shifted such that a previously existing North Carolina job, or a North Carolina job that was not previously part of the Project, is counted towards performance under this CPA.

1.4 The average weekly wage of the group of all permanent full-time jobs at the Facility, including the New Jobs, will equal or exceed One Thousand Four Hundred Forty Two Dollars (\$1,442.00) per week (the "**Wage Standard**").

1.5 The Company shall provide health insurance for all permanent full-time employees at the Facility, including the New Jobs, in at least the minimum amount required for eligibility for tax credits under Article 3J in N.C. Gen. Stat. § 105-129.83(d).

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- 1.6 The Company shall make good faith efforts to make the Target Investment in the form of privately funded investment in real property and/or machinery and equipment as part of the Project, and must invest at least Two Hundred Twenty Thousand Dollars (\$220,000) by the Grant End Date (the "**Required Investment**") (90% of the Target Investment).
- 1.7 The proceeds of the Grant may be used only to offset statutorily qualifying expenses as set out in N.C. Gen. Stat. § 143B-437.71(b) ("**Statutorily Qualifying Expenses**"). Those expenses are installation or purchase of equipment; structural repairs, improvements, or renovations to existing buildings to be used for expansion; construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines or equipment for existing buildings or for new or proposed buildings to be used for manufacturing and industrial operations; or such other expenses as specifically provided for by an act of the General Assembly.
- 1.8 Release of any Grant funds under this CPA is contingent on the Company providing verification that the Project has received all of its required environmental permits.

## 2.0 **DISBURSEMENT OF GRANT**

- 2.1 Proceeds of the Grant up to a total amount of Seventy Three Thousand Five Hundred Dollars (\$73,500) will be disbursed by DOC to the Local Government in four installments based on creation and maintenance of the New Jobs and satisfaction of other performance criteria set out in Section 1.0 above ("**Performance Criteria**"). The number of New Jobs to be counted shall be determined as provided in Paragraph 6.1 hereof. At the time of any requested disbursement, the Company must certify its performance by submitting a duly executed disbursement request and certification in the form of Exhibit A hereto (the "**Company Disbursement Request**"), and the Local Government must submit a duly executed disbursement request and certification in the form of Exhibit A to the LGGA (the "**Local Government Disbursement Request**"). Disbursement will occur on the following schedule and will be subject to any adjustments required by this CPA:
- a. The first twenty-five percent (25%) of the Grant will be disbursed to the Local Government upon proof that the Company has (i) maintained 100% of the Retained Jobs; (ii) created and retained not less than twenty-five percent (25%) of the Target New Jobs (i.e., 25 New Jobs), (iii) satisfied the Wage Standard and health insurance requirements, (iv) invested the amount to be disbursed in Statutorily Qualifying Expenses, and (v) obtained all required environmental permits.
  - b. The second twenty-five percent (25%) of the Grant will be disbursed to the Local Government upon proof that the Company has (i) maintained 100% of the Retained Jobs; (ii) created and retained not less than fifty percent (50%) of the Target New Jobs (i.e., 49 New Jobs), (iii) satisfied the Wage Standard and health insurance requirements, and (iv) invested the amount to be disbursed in Statutorily Qualifying Expenses.
  - c. The third twenty-five percent (25%) of the Grant will be disbursed to the Local Government upon proof that the Company has (i) maintained 100% of the Retained Jobs; (ii) created and retained not less than seventy-five percent (75%) of the Target New Jobs (i.e., 74 New Jobs), (iii) satisfied the Wage Standard and health insurance requirements, and (iv) invested the amount to be disbursed in Statutorily Qualifying Expenses.

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- d. The final twenty-five percent (25%) of the Grant will be disbursed to the Local Government upon proof that the Company has (i) maintained 100% of the Retained Jobs; (ii) created and retained the Required New Jobs, (iii) satisfied the Wage Standard and health insurance requirements, (iv) made the Required Investment, and (v) invested the amount to be disbursed in Statutorily Qualifying Expenses.

The Local Government will submit or cause to be submitted to DOC each Company Disbursement Request and Local Government Disbursement Request, upon proof of the creation of the required number of New Jobs and the satisfaction of all other Performance Criteria necessary for disbursement. Following receipt of Grant funds from DOC, the Local Government will disburse funds to the Company.

The Company may qualify for disbursement of multiple installments on a single date.

Should it become necessary for a job created after the Effective Date to be counted by the Company as a Retained Job for purposes of establishing the base level of jobs required to be maintained by this CPA, that job may not be double-counted as a New Job.

2.2. DOC will close out the Grant on the first to occur of:

- (i) The date as of which DOC shall have received and accepted proof reasonably satisfactory to it that the Project has been completed and the Performance Criteria satisfied.
  - (ii) The Grant End Date.
- (“Closeout”).

Following Closeout, to the extent any Grant proceeds may be due and upon submission of duly completed Company Disbursement Request and Local Government Disbursement Request, a final Grant payment will be disbursed. A request for final payment, if not made previously, must be made to DOC within thirty (30) days following the Grant End Date, provided, however, that if the Company has completed performance and become entitled to a final disbursement of funds under Paragraph 2.1d of this CPA, during any time earlier in the Grant Period, the Company must submit a completed Company Disbursement Request and Local Government Disbursement Request within one year from the date of completed performance (but in no event later than thirty (30) days following the Grant End Date) or forfeit the disbursement.

### 3.0 OBLIGATION TO REPAY GRANT

- 3.1 **Failure to Provide Health Insurance.** If, at any time during the Grant Period or during the period set forth in Section 5.0, the Company fails to provide health insurance to all permanent full-time employees at the Facility in the amount required for eligibility for tax credits under Article 3J in N.C. Gen. Stat. § 105-129.83(d), the Company will be in default of this CPA and will reimburse DOC the total amount of the Grant previously disbursed in accordance with this CPA.

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- 3.2 **Ceasing Project Operations.** If at any time during the Grant Period or during the period set forth in Section 5.0 hereof, the Company substantially ceases operations at the Facility, the Company shall immediately repay all Grant funds previously disbursed in accordance with this CPA.
- 3.3 **Failure to Achieve Wage Standard.** If at any time during the Grant Period or during the period set forth in Section 5.0 hereof, the average weekly wage of the group of all permanent full-time jobs at the Facility fails to equal or exceed the Wage Standard, the Company will be in default under this CPA, no further disbursement will be made, and the Company will reimburse DOC the total amount of the Grant previously disbursed in accordance with this CPA.
- 3.4 **Reserved.**
- 3.5 **Other Failures to Comply.** The Company may be required to reimburse Grant funds previously disbursed for failure to comply with Paragraphs 6.4 and 6.16 hereof, or as provided in Paragraphs 4.1 and 5.3 hereof.
- 3.6 **Recovery of Costs.** If the Company fails to reimburse any amount payable hereunder, on demand, the Local Government and DOC may recover the costs of collection to obtain recovery, from the Company, including reasonable attorneys' fees.

#### 4.0 **ADJUSTMENTS TO GRANT AT CLOSEOUT**

- 4.1 If Closeout occurs on the Grant End Date and the Company has failed to create and retain the Required New Jobs, has failed to make the Required Investment, or has failed to invest an amount equal to 100% of the Grant in Statutorily Qualifying Expenses, the amount of the Grant shall be reduced to the smallest of the following amounts (the "**Adjusted Grant**"):
  - a. The amount obtained by multiplying the Grant by a fraction the denominator of which is the Required New Jobs and the numerator of which is the number of New Jobs actually created and retained as of that date, as expressed in the following formula:
 
$$\text{Adjusted Grant} = \text{Original Grant Amount} \times \frac{\text{New Jobs Actually Created and Retained}}{\text{Required New Jobs}}$$
  - b. The amount obtained by multiplying the Grant by a fraction the denominator of which is the Required Investment and the numerator of which is the investment actually made as of that date, as expressed in the following formula:
 
$$\text{Adjusted Grant} = \text{Original Grant Amount} \times \frac{\text{Investment Actually Made}}{\text{Required Investment}}$$
  - c. The amount the Company has spent on Statutorily Qualifying Expenses
- 4.2 To the extent the amount of the Adjusted Grant is less than the amount that has been previously disbursed to the Company, the Company shall reimburse DOC for the difference between the Adjusted Grant and the amount previously disbursed.

## 5.0 OBLIGATIONS BEYOND CLOSEOUT

- 5.1 If Closeout occurs on or before the date that is exactly one year prior to the Grant End Date, the Company will maintain at least ninety percent (90%) of the number of New Jobs in place at Closeout for two (2) years after the date of Closeout.
- 5.2 If Closeout occurs after the date that is exactly one year prior to the Grant End Date, the Company will maintain at least ninety percent (90%) of the number of New Jobs in place at Closeout until the date that is the one year anniversary following the Grant End Date.
- 5.3 If the Company fails to maintain at least ninety percent (90%) of the number of New Jobs in place at Closeout for the required time period following Closeout, as specified in Paragraphs 5.1 and 5.2 hereof, the Company will be in default of this CPA and shall reimburse to DOC the total amount of the Grant funds previously disbursed in accordance with this CPA.

## 6.0 ADDITIONAL PROVISIONS

- 6.1 The Company shall provide to DOC and the Local Government all documentation deemed necessary by DOC or the Local Government to verify Retained Jobs, and creation and retention of New Jobs, salary levels, health insurance, investments, Statutorily Qualifying Expenses, environmental permits and other Performance Criteria specified in this CPA, including copies of the N.C. Department of Commerce Division of Employment Security Employer's Quarterly Tax and Wage Report ("NCUI 101"), a list of all positions used in accounting for the Grant and the names of the individuals filling those positions. The threshold numbers of New Jobs created for the Company to be eligible for disbursements under Paragraph 2.1 hereof, shall be measured by adding the three figures that represent the average number of New Jobs (calculated after deducting the Retained Jobs and any other position that does not qualify as a New Job) that have been created during the Grant Period and have been retained during each of the three months of the quarter reported in the Company's NCUI 101, and dividing that sum by three, or in such other manner determined by the DOC to reasonably reflect New Job creation. **The Company shall not include in such count, any temporary, seasonal, contract, or part-time employees, employees that were hired prior to the Effective Date, or employees that were hired from affiliates of the Company in North Carolina, even if those employees are included in the NCUI 101. The Company shall certify how many of the employees listed on the NCUI 101 in each month qualify under the definition of Retained Jobs and New Jobs. For verification of Required Investment, the Company shall provide a fixed asset report and any other documentation requested by DOC. The Company's compliance with the job creation and/or retention, investment, Statutorily Qualifying Expense, environmental permit and other Performance Criteria set out in this CPA shall be attested to under oath by an officer of the Company.**
- 6.2 By not later than February 1 of each year during the Grant Period (and with respect to Paragraph 6.2A, through the later of February 1 following the date established pursuant to Paragraph 5 hereof or the date on which the Local Government provides the final funds that would bring the local matching contribution to the level provided by the Grant), the Company must submit the following to the DOC, in the form of Exhibit B hereto:

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- A. a copy of the Company's fourth calendar quarter performance (ending December 31) NCUI 101 for the previous calendar year, containing all information required by Exhibit B (N.C. Gen.Stat. §143B-437.07).
- B. a statement indicating whether the Company expects to have completed Performance Criteria sufficient to request a disbursement during the upcoming state fiscal year (July 1 through June 30). Failure to identify the expected performance over the coming fiscal year may result in ineligibility for a disbursement during that period, or may limit the amount of disbursement available to the Company during the upcoming fiscal year. (N.C. Gen. Stat. §143B-437.72(b)(6b)).
- 6.3 If unforeseen calamity, an Act of God, or financial disaster is the cause of the Company's failure to satisfy or perform its obligations under this CPA, the Company and the Local Government may request an extraordinary modification of this CPA from the Secretary of DOC (the "Secretary"). The Parties agree that any decision to allow such modification shall be at the sole discretion of the Secretary, that such modifications are rarely, if ever, granted, and that the Secretary's decision regarding any extraordinary modification shall be final and not subject to review or appeal.
- 6.4 The Company shall keep and maintain books, records, and other documents relating to the receipt and disbursement of the Grant and fulfillment of this CPA, including, but not limited to, records to verify employment, salaries, health insurance, investment amounts, Statutorily Qualifying Expenses and environmental permits.
- Subject to any applicable federal or North Carolina laws or regulations respecting employee privacy, the Company agrees that any duly authorized representative of the Local Government or the State of North Carolina, including the DOC, the Office of the North Carolina State Auditor, and the Office of State Budget and Management shall, at all reasonable times and on reasonable notice, have access to and the right to inspect, copy, audit, and examine all of the relevant books, records, and other documents relating to the Grant and the fulfillment of this CPA throughout the Grant Performance Period and for a period of six years thereafter.
- If the Company fails to keep and maintain books and records necessary for verifying fulfillment of this CPA, including, but not limited to, adequate records for the verification of employment, salaries, investment amounts, Statutorily Qualifying Expenses and environmental permits, or if the Company fails to provide access and right of inspection sufficient to verify compliance with this CPA, the Local Government or the Secretary may in its or his discretion declare this CPA to be in default, withhold payments for or under this CPA or the LGGA, and/or require reimbursement of all or any portion of the Grant previously paid.
- The Company shall provide any information DOC requests in order to produce reports or compile data required by the General Assembly.
- 6.5 To the extent any information or documents gathered by or provided to the Local Government or the DOC would be regarded as confidential or not subject to disclosure under federal law or the North Carolina General Statutes (including, without limitation, N.C. Gen. Stat. §§ 132-1 *et seq.*, commonly referred to as the "Public Records Act"), the Company shall clearly identify and mark

them as such and that information will, to the extent allowed by law, be treated as confidential and not subject to disclosure by the Local Government and DOC and their authorized representatives.

The Company has read and understands North Carolina's laws regarding the treatment of public records and confidential information, including without limitation, those provisions set forth in Exhibit C.

The Company shall be responsible for any and all costs, expenses, fees, or losses that they or the Local Government or DOC or any other State entity may incur as a result of responding to or resisting any request, subpoena, legal complaint, court order, or other demand seeking to compel such party to release or disclose records, documents, or information pertaining to the Company, to the extent that the Company notified the State entity that it objects to such disclosure or release and the State defends against such release; and the Company shall indemnify the Local Government, DOC, and State entities and their authorized representatives for all costs associated therewith, provided that, no such indemnified party shall be obligated to take any such action.

- 6.6 Notwithstanding anything herein to the contrary, the Parties acknowledge the due execution of the LGGA and agree that any conflict between the provisions, requirements, duties, or obligations of this CPA and the LGGA shall be resolved in favor of the LGGA. The Parties further agree that any conflict between the provisions, requirements, duties, or obligations of this CPA and any program documentation for this Grant other than the LGGA shall be resolved in favor of this CPA.
- 6.7 The Company acknowledges that none of the North Carolina operations owned by the Company or a related entity or affiliate shall be curtailed as a result of the Project.
- 6.8 The Company shall perform and abide by all commitments it made in the Company Application, except as otherwise expressly stated herein. The Company affirms its commitments made in the Company Application, and the commitments contained therein are incorporated herein by reference, as if set out in full. The Parties agree that any conflict between the provisions of this CPA and any commitments made in the Company Application to DOC shall be resolved in favor of this CPA.
- 6.9 The Company indemnifies and holds harmless the Local Government, DOC, and State entities, and their respective members, officers, directors, employees, agents and attorneys (hereinafter collectively referred to as "Indemnified Parties"), from any claims of third parties arising out of or any act or omission of the Company in connection with the performance of this CPA, and for all losses arising from implementation of this CPA. Without limiting the generality of the foregoing, the Company releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties, and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with or on or about the Facility, or resulting from any defect in the fixtures, machinery, equipment, or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether or not arising out of acts, omissions, or negligence of the Company or any of its agents, contractors, servants, employees, licensees, lessees, or assignees). Each Indemnified Party is an express, third party beneficiary of the Company's obligations under this Paragraph.

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- 6.10 The representations made by the Company in the Company Application to DOC or as part of the application process are incorporated herein by reference and deemed by the Parties to be material to this CPA. The Company affirms these representations. The Parties agree that any conflict between any representations contained in this CPA and those representations contained in the Company Application to DOC or made as part of the One North Carolina Fund application process shall be resolved in favor of this CPA.
- 6.11 The recitals are an integral part of this CPA.
- 6.12 If the Company has an overdue tax debt owing to the State of North Carolina, as defined in N.C. Gen. Stat. § 105-243.1, no payments will be made under this CPA or the LGGA until that tax debt has been satisfied. If an overdue tax debt goes unsatisfied by the Company for more than one year, this CPA may be declared in default and terminated at the direction of DOC.
- 6.13 The Local Government's obligation to make disbursements to the Company under this CPA is contingent upon the Local Government's receipt under the LGGA of the necessary disbursements from DOC, which are, in turn, contingent on appropriation, allocation and availability of funds for the Grant to DOC.
- 6.14 This CPA constitutes a legally enforceable contract and shall be governed and construed in accordance with the laws of the State of North Carolina. The Parties agree and submit, solely for matters concerning this CPA, to the exclusive jurisdiction of the courts of North Carolina and agree, solely for such purpose, that the only venue for any legal proceedings shall be Wake County, North Carolina. The place of this CPA, and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation, and enforcement, shall be determined.
- 6.15 The Parties agree that the State of North Carolina Department of Commerce is a third party beneficiary of this CPA and may, at its option, enforce the terms of this CPA or appear as a party in any litigation concerning it or the Grant.
- 6.16 The Company shall comply with all applicable federal, state, and local laws and regulations. If the Company fails to comply with any law or regulation applicable to it, the Secretary may, in his sole discretion, terminate the Grant and declare that no future Grant disbursement shall be due and payable and/or require the Company to reimburse DOC all or part of any Grant funds previously disbursed following the date of any such violation. The Secretary may determine, in his sole discretion, that where the Company is under investigation for an act involving violation of federal, state, local law or regulation, including an unresolved environmental violation, Grant funds be withheld until such time as a determination of culpability or liability is made, and, if the Company is determined to be in violation, the Grant may be terminated and the Company may be required to reimburse the DOC for all or part of any Grant funds previously disbursed. If such investigation is not concluded within two (2) years of the Grant End Date, the DOC may terminate the Grant.
- 6.17 Failure of the Local Government or DOC at any time to require performance of any term or

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provision of this CPA shall in no manner affect the rights of the Local Government or DOC at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the Local Government or DOC of any condition or the breach of any term, provision or representation contained in this CPA, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.

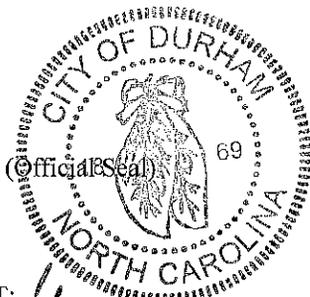
6.18 The Company is encouraged to utilize the services of North Carolina small businesses and minority, female, and disabled contractors, to offer positions in connection with the Project to North Carolina residents, and to use the North Carolina state ports when reasonable and commercially practicable.

6.19 In addition to any rights and remedies provided to the Local Government and DOC by law, DOC has the right, without prior notice to Company, any such notice being expressly waived by Company to the extent permitted by applicable law, upon the occurrence of any event herein which would result in the Company's obligation to repay some or all of Grant monies disbursed hereunder (including without limitation Section 3, 4 and 5 hereof), to set-off and apply against any amounts due hereunder, any amount owing from DOC or the State to the Company.

6.20 **This Grant award shall terminate and be null and void on February 28, 2016 if by that date the Company has not delivered back to the DOC, two originals of this CPA, duly executed by an authorized officer of the Company, and attested in the manner provided below. This Grant is also subject to the requirement that the Local Government deliver to the DOC, one original each of the LGGA and this CPA, duly executed by an authorized official of the Local Government, within sixty (60) calendar days following the date on which the DOC sends the LGGA and CPA to the Local Government, together with a copy of the agreement with the Company governing the local incentives to be provided for the Project.**

IN WITNESS WHEREOF, the Company and the Local Government have executed this Company Performance Agreement, effective as of the day and year first written above. This CPA is executed under seal for purposes of any statute of limitations.

Approved and Accepted:



ATTEST:  
*D. Ann Gray* Clerk

City of Durham  
(Local Government)

By: *Thomas J. Bonfield*  
Name: Thomas J. Bonfield  
Title: City Manager  
Date: 3/9/16

Signature Page Follows

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WillowTree, Inc.  
(Company)

(Corporate Seal)

By: [Signature]  
Name: Tobias Dengel  
Title: CEO  
Authorized Corporate Officer

Date: December 4, 2015

ATTEST:

\_\_\_\_\_, Secretary

STATE OF Virginia  
COUNTY OF Albemarle

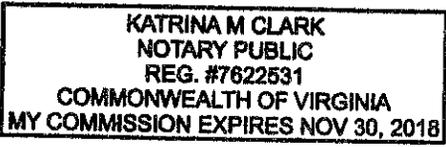
I, Katrina Clark, a Notary Public of said State and County, do hereby certify that Tobias Dengel (the "principal") personally appeared before me this day, and/or (i) I have personal knowledge of the identity of the principal, and/or (ii) I have seen satisfactory evidence of the principal's identity, by current State or Federal identification with the principal's photograph, and such principal acknowledged to me that he or she voluntarily signed the foregoing document for the purpose therein and in the capacity indicated.

[Signature]  
Notary Public Signature  
Katrina Clark  
Notary Printed or Typed Name

Witness my hand and official seal or stamp, this 4th day of December, 2015

(Official Seal or Stamp)

My Commission expires on November 30, 2018



**EXHIBIT A**  
**TO COMPANY PERFORMANCE AGREEMENT**

**COMPANY DISBURSEMENT REQUEST AND CERTIFICATION**

**Project No. 2015-17041**

WillowTree, Inc.(the “**Company**”) hereby requests that a disbursement in the amount of \_\_\_\_\_ [spell out dollar amount] (\$) \_\_\_\_\_ be made by the North Carolina Department of Commerce (the “**DOC**”) to City of Durham (the “**Local Government**”), pursuant to that certain Company Performance Agreement between the Company, and the Local Government, dated as of November 19, 2015 (the “**CPA**”) and that certain Local Government Grant Agreement between the Local Government and the DOC, dated as of November 19, 2015 (the “**LGGA**,” and, together with the CPA, the “**Agreements**”). All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Agreements.

The Company hereby certifies that:

- (i) attached hereto is a true and correct copy of the Company’s latest NCUI 101 form (or Multiple Worksite Report Form 3020, if applicable) filed with the State; and a copy of the NCUI 101 form (or Form 3020) filed with the State prior to the expansion;
- (ii) it has retained \_\_\_\_\_ Retained Jobs;
- (iii) it has created and retained \_\_\_\_\_ New Jobs,<sup>1</sup> which are net new positions for the Company’s operations in the state, and no New Job (or employee) has been transferred from any existing North Carolina operations of the Company or any of its affiliates;
- (iv) it has obtained all required environmental permits for the Project;

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<sup>1</sup> This is determined by obtaining the average number of new employees over the quarter reported. The company should add the three figures that represent NEW JOBS ONLY during each of the three months of the quarter reported in the NCUI 101, and divide that number by three. DO NOT INCLUDE PART-TIME, TEMPORARY OR SEASONAL JOBS, OR JOBS THAT EXISTED PRIOR TO THE GRANT AWARD. BE PREPARED TO SUPPORT THIS NUMBER WITH ADDITIONAL DOCUMENTATION, INCLUDING IDENTIFICATION OF INDIVIDUAL FULL-TIME EMPLOYEES AND THEIR WAGES. See Paragraph 6.1 of the CPA for guidance.

- (v) it makes available health insurance to all permanent full-time employees at the Facility in the amount required for eligibility for tax credits under the Article 3J (House Bill 2170 § 105-129.83);
- (vi) attached hereto is a true and correct copy of the Company's fixed asset report showing a description, acquisition date and cost for each asset acquired, disposed of, or transferred from the date of the Grant;
- (vii) it has made some or all of the Target Investment in the amount of \_\_\_\_\_;
- (viii) the proceeds of this disbursement shall be used only to offset statutorily qualifying expenses as set out in N.C. Gen. Stat. § 143B-437.71(b) which have already been incurred by the company in the form of \_\_\_\_\_, and evidence of such expenditures is attached;
- (ix) the average weekly wage of all employees in New Jobs, is \$ \_\_\_\_\_;<sup>2</sup>
- (x) it is in compliance with all of the terms and conditions of the CPA and affirms the representations, warranties and covenants contained therein;
- (xi) by not later than February 1 of each year during the Grant Period, and through the February 1 following the date established pursuant to Paragraph 5.0 of the CPA, it shall submit to the DOC an annual report in the form of Exhibit B to the CPA;
- (xii) it understands that if any of the certifications provided herein prove to be false or misleading in any respect, it shall reimburse the DOC in the amount of this disbursement, and the DOC may pursue such other legal action as it deems appropriate;
- (xiii) it has received \_\_\_\_\_ [*specify amount*] from the Local Government in the form of \_\_\_\_\_, representing the Local Government's Match required for this disbursement, under the Agreements;
- (xiv) it is not liable for any Overdue Tax Debt, as defined in N.C. Gen. Stat. §105-243.1 (a tax debt that remains unpaid 90 days or more after final assessment notice is sent); and

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<sup>2</sup> This is determined by dividing the gross wages paid during the quarter to employees in New Jobs, by the average number of full-time jobs (see footnote 1) and then converting that number to a per week average, which must equal or exceed the wage standard, if any, set in the CPA.

- (xv) there is no fact or circumstance or interest about which the Company has knowledge that would conflict in any manner or degree with the performance of its obligations under the CPA.

The Company represents, warrants, and certifies the truth and accuracy of the statements made herein. These certifications shall be deemed to be made a part of the CPA and are incorporated therein, and governed by its terms and conditions.

**WillowTree, Inc.**  
**(Company)**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Authorized Corporate Officer**

Date: \_\_\_\_\_

(Corporate Seal)

ATTEST:

\_\_\_\_\_, Secretary  
\_\_\_\_\_

**EXHIBIT B**  
**TO COMPANY PERFORMANCE AGREEMENT**

**FEBRUARY 1 COMPANY REPORT TO DOC**

**Project No. 2015-17041**

Date of Report: \_\_\_\_\_

Calendar Year Reported: 20\_\_\_\_\_

Fiscal Year Performance/Disbursement Projection: July 1, 20\_\_\_\_\_ through June 30, 20\_\_\_\_\_  
(the "Upcoming Fiscal Year")

WillowTree, Inc. (the "Company") hereby submits this report pursuant to that certain Company Performance Agreement between the Company, and the Local Government dated as of November 19, 2015 (the "CPA") and that certain Local Government Grant Agreement between the Local Government and the DOC, dated as of November 19, 2015 (the "LGGA," and, together with the CPA, the "Agreements"). All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Agreements.

The Company hereby certifies that:

- (i) attached hereto is a true and correct copy of the Company's NCUI 101 for the quarter ending December 31, 20\_\_ [prior year];
- (ii) the Company has created and retained \_\_\_\_\_ a total of New Jobs,<sup>1</sup> as of December 31, 20\_\_, which are net new positions for the Company's operations in the state, and no New Job (or employee) has been transferred from any existing North Carolina operations of the Company or any of its affiliates;
- (iii) the Company has made some or all of the Target Investment in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_);
- (iv) the average weekly wage of all permanent full-time jobs at the Facility, including the New Jobs, is \$ \_\_\_\_\_;<sup>2</sup>

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<sup>1</sup> This is determined by obtaining the average number of new employees over the quarter reported. The company should add the three figures that represent NEW JOBS ONLY during each of the three months of the quarter reported in the NCUI 101, and divide that number by three. DO NOT INCLUDE PART-TIME, TEMPORARY OR SEASONAL JOBS, OR JOBS THAT EXISTED PRIOR TO THE GRANT AWARD. BE PREPARED TO SUPPORT THIS NUMBER WITH ADDITIONAL DOCUMENTATION, INCLUDING IDENTIFICATION OF INDIVIDUAL FULL-TIME EMPLOYEES AND THEIR WAGES. Refer to Paragraph 6.1 of the CPA for guidance.

<sup>2</sup> This is determined by dividing the gross wages paid during the quarter to employees in New Jobs, by the average number of full-time jobs (see footnote 1) and then converting that number to a per week average, which must equal or exceed the wage standard, if any, set in the CPA.

- (v) the Company is in compliance with all of the terms and conditions of the CPA and affirms the representations, warranties and covenants contained therein;
- (vi) as of December 31, \_\_\_\_ it had received \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) [*specify amount*] from the Local Government in the form of \_\_\_\_\_, representing the Local Government's Match, which brings the total Local Government Match the Company has received as of December 31, \_\_\_\_, to \_\_\_\_\_ Dollars (\$ \_\_\_\_\_);
- (vii) during the Upcoming Fiscal Year, the Company expects to:
  - (a) make some or all of the Target Investment in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), which, together with prior qualifying Target Investment made, would bring the total Target Investment made to \_\_\_\_\_ Dollars (\$ \_\_\_\_\_);
  - (b) create and retain \_\_\_\_\_ New Jobs (which together with prior New Jobs created, would bring the total New Jobs created and retained, to \_\_\_\_\_ New Jobs;
  - (c) retain \_\_\_\_\_ Retained Jobs;
  - (d) be in compliance with the CPA;
  - (e) based on the foregoing, be eligible under the CPA, to request a disbursement(s) prior to June 30 of the Upcoming Fiscal Year, in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

The Company represents, warrants, and certifies the truth and accuracy of the statements made herein. These certifications shall be deemed to be made a part of the CPA and are incorporated therein, and governed by its terms and conditions.

**WillowTree, Inc.**  
**(Company)**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
**Authorized Corporate Officer**

Date: \_\_\_\_\_

(Corporate Seal)

ATTEST:

\_\_\_\_\_, Secretary

Exhibit C  
Provisions of North Carolina General Statutes Addressing Public Records,  
Confidential Information, and Economic Development Projects

**§ 132-1. "Public records" defined**

(a) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. . .

**§ 132-1.1. State tax information**

(b) **State and Local Tax Information.** – Tax information may not be disclosed except as provided in G.S. 105-259. As used in this subsection, "tax information" has the same meaning as in G.S. 105-259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in G.S. 153A-148.1 and G.S. 160A-208.1.

**§ 132-1.2. Confidential information.**

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

- (1) Meets all of the following conditions:
  - a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
  - b. Is the property of a private "person" as defined in G.S. 66-152(2).
  - c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
  - d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

**§ 66-152. Definitions (Trade Secrets Protection Act)**

As used in this Article, unless the context requires otherwise:

- . . .
- (2) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, joint venture, or any other legal or commercial entity.
  - (3) "Trade secret" means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:
    - a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
    - b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.

**§ 132-1.8. Economic development incentives**

(a) **Assumptions and Methodologies.** – Subject to the provisions of this Chapter regarding confidential information and the withholding of public records relating to the proposed expansion or location of specific business or industrial projects when the release of those records would frustrate the purpose for which they were created, whenever a public agency or its subdivision performs a cost-benefit analysis or similar assessment with respect to economic development incentives offered to a specific business or industrial project, the agency or its subdivision must describe in detail the assumptions and methodologies used in completing the analysis or assessment. This description is a public record and is subject to all provisions of this Chapter and other law regarding public records.

(b) **Disclosure of Public Records Requirements.** – Whenever an agency or its subdivision first proposes, negotiates, or accepts an application for economic development incentives with respect to a specific industrial or business project, the agency must disclose

**Provisions of North Carolina General Statutes Addressing Public Records,  
Confidential Information, and Economic Development Projects**

that any information obtained by the agency or subdivision is subject to laws regarding disclosure of public records. In addition, the agency or subdivision must fully and accurately describe the instances in which confidential information may be withheld from disclosure, the types of information that qualify as confidential information, and the methods for ensuring that confidential information is not disclosed."

**§ 132-6. Inspection and examination of records**

(a) Every custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law. . .

(c) No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation. . .

(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities. Once the State, a local government, or the specific business has announced a commitment by the business to expand or locate a specific project in this State or the business has made a final decision not to do so, of which the State or local government agency involved with the project knows or should know, the provisions of this subsection allowing public records to be withheld by the agency no longer apply. Once the provisions of this subsection no longer apply, the agency shall disclose as soon as practicable, and within 25 business days, public records requested for the announced project that are not otherwise made confidential by law. An announcement that a business or industrial project has committed to expand or locate in the State shall not require disclosure of local government records relating to the project if the business has not selected a specific location within the State for the project.

Once a specific location for the project has been determined, local government records must be disclosed, upon request, in accordance with the provisions of this section. For purposes of this section, "local government records" include records maintained by the State that relate to a local government's efforts to attract the project.

Records relating to the proposed expansion or location of specific business or industrial projects that are in the custody of the Department of Commerce or an entity with which the Department contracts pursuant to G.S. 143B-431A shall be treated as follows:

(1) Unless controlled by another subdivision of this subsection, the records may be withheld if their inspection, examination, or copying would frustrate the purpose for which the records were created.

(2) If no discretionary incentives pursuant to Chapter 143B of the General Statutes are requested for a project and if the specific business decides to expand or locate the project in the State, then the records relating to the project shall not be disclosed.

(3) If the specific business has requested discretionary incentives for a project pursuant to Chapter 143B of the General Statutes and if either the business decides not to expand or locate the project in the State or the project does not receive the discretionary incentives, then the only records relating to the project that may be disclosed are the requests for discretionary incentives pursuant to Chapter 143B of the General Statutes and any information submitted to the Department by the contracted entity.

(4) If the specific business receives a discretionary incentive for a project pursuant to Chapter 143B of the General Statutes and the State or the specific business announces a commitment to expand or locate the project in this State, all records requested for the announced project, not otherwise made confidential by law, shall be disclosed as soon as practicable and within 25 days from the date of announcement."

**§ 132-9. Access to records**

(b) In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project.

**§ 143B-43. Department of Commerce – functions**

(f) Financial statements submitted to the Department by a private company or an individual seeking assistance from the Department are not public records as defined in G.S. 132-1.