

INNOVATE DURHAM
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is dated, made, and entered into as of the **26th day of August, 2019**, (the “MOU Date”) by the City of Durham (“City”) [or County of Durham (“County”)], a N. C. municipal corporation, and [name of firm] (“Company”), [Indicate type of legal entity] (collectively, the “Parties”).

Sec. 1. Background and Purpose. The Company has been selected by the [City or County] into the third Innovate Durham program. The Innovate Durham program turns the [City or County] of Durham into a lab to test, scale and innovate new ideas and technology. For 12 weeks startups and entrepreneurs partner with the [City or County] to test out a product or service that helps the local government become more efficient and encourage a culture of innovation. The [City or County] will make available to the Company, resources and infrastructure to test and further develop innovative services and programs that may be used by the City, County and other government entities to improve technology and the delivery of services to residents. By way of this MOU, the Company will have access to designated personnel and infrastructure in order to achieve its project goal(s) during the 12 week pilot program.

Sec. 2. Scope of Project and Coordination. The Company has proposed the following project: [insert a description of the project and the goals that the Company would like to achieve during the 12 week pilot program. Insert a general description of the City or County departments and resources that may be required.]

(hereinafter referred to as the “Project”).

(a) Designated Champion -- The Parties have identified an employee that will be primarily responsible for coordinating the access the Company needs to [City or County] infrastructure and resources necessary to perform and complete the Project. This individual shall be referred to as the “Champion.” The Company representatives must work through the Champion or Innovate Durham program staff to obtain permission to access resources and facilities. The Company shall first seek permission from the Champion before (i) conducting any activity on [City or County] property, or (ii) using [City or County] resources or data. Innovate Durham program staff will act as project managers and assist the Company in providing access to resources as needed.

(b) Accessibility Required – Based upon initial meetings between the Company and the [City or County], the Parties have agreed that the Company shall have the following access to the following facilities during the following times:

Department and Physical Location	Resource, Data and Infrastructure Accessed	Frequency of access
TBD	TBD	TBD

(c) Definition of Work – In this MOU, “Work” means the activities necessary for the Company to complete the Project. Except as stated in this MOU, the [City or County] shall have no obligation to the Company. Unless the context requires

otherwise, if this MOU states that a task is to be performed, it shall be presumed that the task or duty is the obligation of the Company.

(d) Ownership of Information. Confidential Information. – All data or information obtained by the Company pursuant to the MOU (“Project Data”) shall belong to the [City or County] and treated as confidential unless it is considered a public record under the North Carolina Public Records Act, N.C.G.S. § 132-1 *et seq.* (the “Act”). The Company shall not retain any Project Data upon termination of the MOU, unless the Company requests permission to retain such Project Data from the [City or County] and it is determined to be public record under the Act. Written permission in this MOU is required for the Company to have permission to access, copy or retain any personal identifying information, records considered confidential, or records otherwise not considered as a public record under the Act.

Sec. 3. Term. 12-Week Pilot Program. The Company represents it can complete the Project within a 12-week period from the MOU Date, provided above. After 12 weeks from the MOU Date, the Company shall no longer have permission to access [City or County] property, facilities, resources or data to complete its Project unless the [City or County] grant an extension to this MOU. Any such extension shall be made in writing and signed by both Parties.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this MOU, the Company shall obtain and provide, without additional cost to the [City or County], all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Compensation. This MOU does not include any financial or monetary compensation. The [City or County] is providing consideration to the Company by allowing the Company access to their employees, resources and infrastructure in order to refine or demonstrate innovative products or services. In exchange for such access, the [City or County] is able to evaluate and consider new, innovative technologies that may improve the quality of services and functions. The [City or County] shall not be obligated to pay the Company any payments, fees, expenses, or compensation under this MOU. The Company shall be responsible for any and all damage it causes to [City or County] property and shall reimburse the [City or County] for the cost of replacement, repair or loss.

Sec. 6. Contact Information. Any communication related to the Project should be sent to both the City Champion and the Innovate Durham program staff.

Champion:

[NAME], [TITLE], [DEPARTMENT]

Email: [email address]

Phone: [phone number]

Innovate Durham:

Ben Kittelson: ben.kittelson@durhamnc.gov, 919-560-4111 ext. 20289

Toney Thompson: toney.thompson@durhamnc.gov, 919-560-4213 ext. 20282

Eric Marsh: emarsh@dconc.gov, 919-560-0018
Michael Davis: mdavis@dconc.gov, 919-560-0062

Company:

[NAME], [TITLE], [COMPANY]

Email: [email address]

Phone: [phone number]

Sec. 7. Indemnification. (a) To the maximum extent allowed by law, the Company shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this MOU as a result of acts or omissions of the Company or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Company shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City and County. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses. "Indemnitees" means City and County, and their respective officers, officials, independent contractors, agents, and employees, excluding the Company. (c) Survival. This section shall remain in force despite termination of this MOU (whether by expiration of the term or otherwise) and termination of the services of the Company under this MOU.

Sec. 8. Termination for Convenience ("TFC"). (a) *Procedure.* Without limiting any party's right to terminate for breach, the parties agree that the [City or County] may, without cause, and in its discretion, terminate this MOU for convenience by giving the Company written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this MOU titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Company shall give the [City or County] all Project related documents or information. (c) *Payment.* Within 20 days after TFC, the City shall pay the Company fifty dollars as a TFC fee. The Company shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 9. Miscellaneous

(a) Choice of Law and Forum; Service of Process. This MOU shall be deemed made in Durham County, North Carolina. This MOU shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this MOU shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court.

(b) Performance of Government Functions. Nothing contained in this MOU shall be deemed or construed so as to in any way estop, limit, or impair the [City or

County] from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(c) Compliance with Law. In performing all of the Work, the Company shall comply with all applicable law.

(d) Notice of Discrimination Policy. THE CITY AND COUNTY OPPOSE DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF THEIR CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CONTRACTS.

(e) No Third Party Rights Created. This MOU is intended for the benefit of the **[City or County]** and the Company and not any other person.

(f) Manager's Authority. To the extent, if any, the **[City or County]** have the power to suspend or terminate this MOU or the Company's services under this MOU, that power may be exercised by **[City Manager or County Manager]** or a deputy or assistant **[City Manager or County Manager]** without **[City Council or Board of Commissioners]** action.

SIGNED:

CITY OF DURHAM

Date: _____

OR

SIGNED:

DURHAM COUNTY

Date: _____

SIGNED:

[Insert Company Name]

Date: _____