

WAKE COUNTY

BUSINESS DEVELOPMENT GRANT AGREEMENT

This Business Development Grant Agreement (the “Agreement”) is made and entered into as of the ____ day of _____, 2019 by and between Pendo.io, Inc., a business corporation incorporated in the state of Delaware and authorized to transact business in the State of North Carolina (the “Company”) and WAKE COUNTY, North Carolina, a body politic and corporate and political subdivision of the State of North Carolina (the “County”). The County and Company may from time to time be referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, the Local Development Act of 1925, as amended, (Article 1 of Chapter 158 of the North Carolina General Statutes) grants counties the authority to make appropriations for the purposes of aiding and encouraging the location or expansion of certain business enterprises in the county or for other purposes which the county’s governing body finds, in its discretion, will increase the population, taxable property base and business prospects of the county; and

WHEREAS, N.C. Gen. Stat. § 158-7.1(b) lists specific economic development activities which a county may undertake, which list is not exclusive; and

WHEREAS, in 2018, the Company began discussions with the State of North Carolina (the “State”), and thereafter with the County, to explore the possibility of expanding the Company’s business operations in the County to include a corporate headquarters facility located in Wake County which will serve as a physical location for management and operations (the “Project”); and

WHEREAS, on September 17, 2018, the Board of Commissioners of the County met in closed session regarding the Company and its location possibilities and determined that (i) the Project would tend to increase the population, taxable property base and business prospects of the County, (ii) an incentive grant would encourage the Company to locate and provide jobs in the County, and (iii) it would be in the public interest to provide assistance as authorized by N.C. Gen. Stat. § 158-7.1 and approved the negotiation of a business development grant agreement for the Project; and

WHEREAS, the Company has decided to locate the Project within the County; and

WHEREAS, the Company has decided to hire no fewer than 531 new employees at average wages above 100% of the County average no later than December 31, 2023 and invest or cause to be invested no less than \$31,104,000 for acquisitions of tangible personal property and improvements to real estate related to the Project in Wake County no later than December 31, 2021.

WHEREAS, the State of North Carolina (the “State”) has awarded the Company a Job Development and Investment Grant (“JDIG”); and

WHEREAS, N.C. Gen. Stat. § 153A-449 authorizes the County to contract with and appropriate money to any person, association, or company in order to carry out the public purpose in which the County is authorized by law to engage; and

WHEREAS, the Board of Commissioners of the County found that the consideration that the County will receive, based on prospective tax revenues to be generated over a five-year period due to investment in the Project, will exceed the amount of the grant offered in this Agreement; and

WHEREAS, the Board of Commissioners of the County, following a public hearing on February 18, 2019 , approved the execution of a business development grant to the Company for the Project on the terms of this Agreement.

NOW, THEREFORE, in consideration of the reasons recited above, and the mutual covenants and obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Real Estate Improvements and Machinery, Equipment, Furniture and Fixture Acquisition. The Company shall purchase and/or make or cause to be made improvements at the site chosen for the Project in Wake County, North Carolina, (the “Property”) and shall produce documentation for improvements which have been made to the Property and receipts showing proof of construction upfit, acquisitions of machinery, equipment, furniture and fixtures by the Company for use at the site of the Project. The Property shall be improved in accordance with the following:

(a) All construction undertaken, or caused to be undertaken, shall be or has been designed, constructed, and completed in accordance with applicable standards established by federal, State, local, and County regulations and laws; and

(b) The County shall not be responsible for any aspect of the design or construction of the premises.

2. Performance by the Company. This Agreement and the expenditure of County funds under this Agreement is expressly contingent upon the Company achieving the performance requirements within the time periods set forth below:

(a) Investment in Real Estate Improvements and Tangible Personal Property. The Company shall make, or cause to be made, investments for improvements to real estate and for acquisitions of tangible personal property (collectively, the “Investments”) in the County in connection with the Project which shall total at least \$31,104,000 on or before December 31, 2021.

(b) Employment. By December 31, 2023, the Company shall have employed in Wake County no fewer than 531 new employees with 261 new employees in Year 1 (2021), 388 new employees in Year 2 (2022), and 531 new employees in Year 3 (2023). The average annual wage of the new jobs will be no less than \$56,244, which the Parties agree is 100% of the 2018 average annual wage for the County as determined by the North Carolina Department of Commerce’s Finance Center. The Company shall maintain employment of the new employees

for any years of the Grant Period beyond 2023. Telecommuting positions shall not be counted towards the employment requirement set forth in this section.

The Parties agree that for purposes of calculating the “annual wage” of an employee of the Company “wage” shall have the meaning it has for purposes of the North Carolina Department of Commerce’s Finance Center’s calculation of “average annual wage” and that such meaning is the gross wage subject to reporting to the Division of Employment Security of the North Carolina Department of Commerce.

The Parties agree that the term “new employee” as used in this Agreement means a full-time employee who represents a net increase in the aggregate number of employees employed by the Company in the County in connection with the Project. A full-time employee is a person who is employed by the Company for at least thirty-five (35) hours per week and whose wages are subject to withholding. The Company agrees to include residents of the County in recruiting for open positions associated with the Project.

(c) Use. The Investments shall be made to accommodate opening a new office facility within the County.

(d) Payment of Taxes by Company. The County must receive confirmation from the County tax assessor’s office that the Company has paid, in full, the annual ad valorem taxes based on the increased value resulting from Investments in the Project.

3. Documentation from the Company. In connection with each request for reimbursement, the Company shall deliver to the County Manager a performance letter in substantially the form of the attached Exhibit A (the “Performance Letter”), certifying that (1) the Company has taken the actions described in Section 2(a) and (b) of this Agreement, (2) as of the date of the Performance Letter, the Investments for which the request is made have been completed, and (3) the Company qualifies for Jobs Development Incentive Grant program monies in such Grant Year. If the Company does not meet all of the conditions required to be certified in the Performance Letter, the Company shall not qualify for a grant payment from Wake County for that calendar year. Upon the request of the County Manager, the Company shall present to the County such evidence as may be reasonably requested to confirm the facts in the Performance Letter. To the full extent allowed by law, such requested evidence shall be kept confidential by the County and shall remain the property of the Company to be returned after the County’s review.

It is agreed that the County, through its auditors, shall have the right upon reasonable notice and during normal business hours, to inspect and audit the Company’s records pertaining to Investments made with respect to the Project. All records revealed by the Company to the County’s auditors shall remain confidential and may be used by the County only for audit purposes to the full extent allowed by law.

The Company acknowledges that it has been informed by the County that the County is required by law, upon request, to disclose “Public Records” as that term is defined by N.C. Gen. Stat. §132-1. Notwithstanding the immediately preceding sentence, the County acknowledges that some or all of the information made available by the Company to the County pursuant to this Agreement may be exempt from disclosure as a “Public Record” pursuant to N.C. Gen. Stat. §§

132-1.2 and/or 132-6(d), and that all such information may be proprietary. Some or all of the information made available to the County pursuant to this Agreement may be designated by the Company as confidential and as a trade secret at the time of disclosure to the County. The County, to the fullest extent allowed by state law, will hold such designated information as confidential. The County shall, if it receives a request for disclosure of any such information, notify the Company of such request so that the Company may defend any claims or disputes arising from efforts of others to cause such trade secrets to be disclosed as a Public Record, and the County shall refrain from making any such disclosures unless or until it (i) receives the Company's written permission to do so; or (ii) is compelled to do so by the final order of a court of competent jurisdiction. The Company shall have the right to direct any litigation of such dispute and shall indemnify the County for any legal fees and expenses incurred by the County in opposing such request for disclosure. The Company acknowledges that the County has met the disclosure requirements set forth in N.C. Gen. Stat. § 132-1.11(b).

4. Payment of Grant.

(a) Upon the terms and conditions herein, the County agrees to partially reimburse the Company for the Investments that the Company makes in the Project in order to provide an incentive to the Company to make such Investments and create such jobs within the County. A cash grant will be paid to the Company in an amount equal to a percentage of the additional County property tax revenue attributable to the assessed value of the Investments, as determined by the County tax assessor as more specifically set forth in Section 4(c).

(b) Once the Company has met the performance requirements set forth in Section 2 of this Agreement for the Grant Year in question, and the Company has submitted the required documentation under Section 3, the Company shall be eligible to receive the grant payments described in this Agreement. The grant payments shall begin in the year after the taxable property base of the Investments attributable to the Project as determined by the County tax assessor first exceeds \$31,104,000. For clarity, the first payment is expected to be for tax year 2022, assuming the Company makes the Investments and meets or exceeds the Year 1 (2021) employment target, but could occur earlier or later depending on the timing of the Company's investment. The exact date of payments during each Grant Year shall be at the discretion of the County but shall be made during the period from January 1st through March 31st provided that all requirements have been met, including timely submission of documentation by Company.

(c) The amount of the grant payments to be paid by the County to the Company shall be thirty-five (35%) of the additional County property tax revenue attributable to the assessed value of the Investments as defined in 2(a) of this Agreement as of January 1 of the preceding calendar year, as verified by the County Manager. The grant payments shall be paid each year (each a "Grant Year") for a period of five (5) consecutive years (the "Grant Period"). In no event shall the grant amount paid by the County in any Grant Year exceed the amount of ad valorem taxes actually paid in the preceding year for Investments in connection with the Project. The Parties agree that any payment of ad valorem tax made before January 6 following the due date of the tax shall be deemed to have been paid in the year the tax was due. In no event shall a grant payment be made in any Grant Year if the Company has outstanding ad valorem tax liability to County for any preceding year.

(d) Grant payments are to be made directly to the Company and mailed directly to Pendo.io, Inc., P.O. Box 675082, Detroit, MI 48267-5082 Attn:Chief Financial Officer and Accounts Receivable or at such other address as shall be provided by the Company to the County in writing.

(e) Recapture Provision. In the event that all Grant requirements outlined in this Agreement are not met by Company for any year of the Grant Period, or the required documentation is not submitted by Company for the year in time to allow payment by March 31 of the following year, then the County shall have no responsibility for all or any part of Grant Funding for that Grant Year, and Company or its Affiliates shall have no interest in or entitlement to Grant Funding for that Grant Year. No cure periods shall be allowed for the purpose of qualification in any Grant Year.

5. State and Local Incentives. This Agreement is expressly contingent on the Company's ability to qualify for payments from the State of North Carolina's part of the JDIG program. Company shall not qualify for County Grant payments in any years of the Grant Period in the event that in such year the Company does not qualify for the JDIG program monies. This contingency only applies in those years when funds are available to the Company from the JDIG program.

6. AmendmentstoAgreement. This Agreement may be modified or amended only with the mutual written consent of the Parties.

7. Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their heirs and successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

8. Entire Agreement. This Agreement contains the entire agreement of the Parties and there are no other representations, inducements, or other provisions other than those expressed in this writing. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

It is specifically understood and agreed that the Company will be subject to applicable County ordinances, and other regulations.

9. Laws of North Carolina to Control This Agreement. The Parties agree that this Agreement is to be controlled by the laws of the State of North Carolina.

10. Jurisdiction and Venue. Any controversy or claim arising out of this Agreement shall be settled by an action initiated in the appropriate division of the General Court of Justice in Wake County, North Carolina.

11. Termination. Except as otherwise provided herein, this Agreement shall terminate on December 31st of the last year in which the County makes grant payments to the Company under this Agreement.

12. Assignment. With the approval of the County Board of Commissioners the Company may assign all or part of its rights, benefits, and/or obligations under this Agreement to one or

more Affiliates designated by the Company; provided that no such assignments shall relieve the Company of its obligations or Company specific performance requirements under this Agreement which are a condition of County Grant Funding. For the purpose of this section, an Affiliate means the Company or any other entity that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Company.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

ATTEST:

WAKE COUNTY

Denise Hogan
County Clerk

By: _____
Jessica Holmes, Chair
Wake County Board of Commissions

Approved As to Form:

Scott Warren
Wake County Attorney

Pendo.io, Inc.

By: _____
Jennifer Kaelin
Chief Financial Officer

Attested to:

By: _____
[NAME]
[TITLE]

Exhibit A

[Pendo.io, Inc.. Letterhead]

[date]

County Manager
Wake County
P. O. Box 550
Raleigh, NC 27602

Business Development Grant Agreement dated [], 2018: Performance Letter

Dear Sir/Madam:

Section 3 of the Business Development Grant Agreement between Wake County and Pendo.io, Inc. dated [_____] , (the “Agreement”) requires the Company to deliver a Performance Letter to the County Manager in connection with each request for reimbursement for the Investments that the Company makes in the Project described in the Agreement.

(Terms used in this letter have the meanings that such terms have in the Agreement.) The Company hereby certifies that:

1. The Company made investments for improvements to real estate and for acquisitions of tangible personal property in the County in connection with the Project totaling at least \$31,104,000 on or before December 31, 2021 in accordance with Section 2(a) of the Agreement;
2. The Company has paid in full its ad valorem taxes to the County for tax year _____;
3. As of December 31, [20__], the Company employed [__] new employees, in accordance with Section 2(b) of the Agreement;
4. The Company has maintained employment of [__] new employees since December 31, [20__];
5. The Investments for which this request is made have been completed; and
6. The Company qualifies for a JDIG payment for the Grant Year.

The Company respectfully requests reimbursement in the amount of \$_____ in accordance with Section 4 of the Agreement.

Sincerely yours,

[name] [title]

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