

Attachment 1 – CMS-2020-010

CONDITIONAL FLOW THROUGH GRANT AGREEMENT – SBEC
THIS AGREEMENT (referred to as the “SBEC Agreement”) is effective November 11, 2020

BETWEEN:

BUSINESS ADVISORY CENTRE DURHAM INC. with offices at 3000 Garden Street,
Suite 200, Whitby, Ontario, L1R 2G6
(hereinafter referred to as the “BACD”)

AND

[The Orangeville & Area Small Business Enterprise Centre, The Corporation of the Town of Orangeville] with offices at [87 Broadway, Orangeville ON L9W 1K1]
(hereinafter referred to as “Recipient” and “Recipient Offices” respectively)
(BACD and Recipient individually a Party or collectively the Parties)

RECITALS:

1. HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Economic Development, Job Creation and Trade (referred to as “Ontario”) has established the Ontario Together Fund (“OTF”) to support Ontario’s response to the COVID-19 pandemic.
2. Ontario has agreed to provide conditional funding to the BACD from the OTF through a Conditional Grant Agreement dated October 2, 2020 (the “Ontario Agreement”) so that BACD may provide the regional Ontario SBECs with monies or services so they are able to assist small businesses in responding to the COVID-19 pandemic for a limited term (until September 30, 2021).
3. Ontario requires that these flow through grants from BACD to the SBECs be set out in a SBEC Agreement.
4. BACD is flowing through a portion of the grant monies received from Ontario conditionally to the Recipient (the “Grant”) and Recipient is agreeing to only utilize those funds (or receive seconded personnel in lieu of the actual Grant monies) in strict accordance with provisions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration BACD and the Recipient agree as follows:

Article 1 - COOPERATION AND CONTACT AND TERM

- 1.1 Contact Person. Each party shall specify to the other an authorized contact person who is responsible for the administration of the provisions of this Agreement.
- 1.2 Term. This SBEC Agreement is effective from the date of signing of until September 30, 2021 (the “Term”) unless terminated earlier in accordance with the provisions of this SBEC Agreement or renewed by written agreement between the Parties which may include an exchange of emails addressing the issue.
- 1.3 Cooperation. The parties will cooperate in good faith to administer and carry out their respective rights and obligations under this SBEC Agreement.

Article 2 - CONFIDENTIALITY AND DATA PROTECTION

- 2.1 Confidentiality. A Party may disclose Confidential Information to other Party to facilitate work under this Agreement. Each Party agrees that such information will be safeguarded and only disclosed to persons with a need to know it within the receiving Party. All Parties will take such steps as a reasonably prudent commercial enterprise would take to protect such information from disclosure to third parties not bound by relevant nondisclosure agreements. The obligation to keep Confidential Information confidential will not apply to information which: a) is already known at the time of disclosure to the Party to whom it is disclosed and that Party can prove by written records that it is already known; b) is or becomes part of public domain without material breach of this Agreement by the Party seeking to rely on this exclusion ;c) is obtained from third parties which impose no related confidentiality obligations on the disclosing Party; d) is authorized for release by the disclosing Party; or e) is required to be disclosed by law or order of a court, governmental tribunal or governmental agency , but the Party subject to such requirement will promptly notify the disclosing Party and give the disclosing Party a reasonable opportunity to seek a confidentiality order or the like. These obligations of confidentiality and non-disclosure shall apply upon execution of this Agreement and continue for as long as confidential information remains confidential. Confidential Information includes “Confidential Information” means information belonging to BACD or the Recipient which is of value to such party and the disclosure of which could result in a competitive or other disadvantage to either party, including, without limitation, financial information, business practices and policies, know-how, trade secrets, market or sales information or plans, customer lists, business plans, employee and contractors, and all provisions of this SBEC Agreement.
- 2.2 Data Protection. Each Party shall handle and safeguard all personal data received from the other Party, including in connection with the utilization of any service providers, employees, contractors and subcontractors, in accordance with applicable Privacy Laws and the policies of BACD and of the Recipient, respectively. “Privacy Laws” means all national, federal, provincial, state, municipal or other applicable statutes, laws or regulations of any applicable jurisdiction governing the handling and/or processing of personal data or information about an identifiable individual.

ARTICLE 3 - CONDITIONAL FLOW THROUGH GRANT

- 3.1 Grant.** Subject to and in accordance with the terms and conditions of this SBEC Agreement, anin reliance on the representations and warranties of Recipient set out in Article 7, BACD agrees to i) either provide the Grant to the Recipient to assist the Recipient to engage personnel for the Purpose (see 3.2 definition) by way of a cash transfer less any initial Holdback or ii) in lieu of payment of the Grant, engage service provider personnel on behalf of the Recipient (by further agreement of the parties with respect to secondment terms as set out in Schedule “A” attached), or iii) by reimbursement of payroll expenses of Recipient used for the Purpose.

Recipient elects for (one or the three options - insert X in relevant checkbox):

- ☐ the Grant by way of transfer from BACD (money transfer).
- ☐ BACD to pay for service provider personnel for the Recipient by way of secondment using The Grant and its discretion any Holdback. (Recipient never actually receives the Grant monies just the services of service provider personnel - secondment).
- ☐ BACD to pay for service provider personnel for the Recipient by way of reimbursement of payroll expenses in arrears monthly after receipt of payroll documentation and Recipient request for disbursement.

In the case of election to receive the Grant by way of money, the Recipient’s bank account must reside in a Canadian financial institution and be in the name of the Recipient.

The Grant amount for Recipient under this Agreement, the total including the Holdback in the amount of [\$3,200.00] is [\$32,000.00]. The “Holdback” is the amount that BACD may withhold from the first disbursement and in its sole discretion, include in the second disbursement - set at 10% or such other percentage as BACD may in its sole discretion, determine.

If the Recipient elects for BACD to provide service provider personnel, then Schedule “A” Secondment of Personnel Provisions attached also applies to this SBEC Agreement.

If Recipient elects for money transfer of the Grant, it will provide BACD with wire transfer instructions on signing of this SBEC Agreement otherwise payment will be by cheque.

- 3.2 Use of Funds.** All Grant funds, including any interest earned on such funds, shall be used by the Recipient or by BACD on behalf of Recipient in the case where the Recipient has elected for the provision of service provider personnel by BACD, **solely** to enable the engagement of a service advisor(s) who will provide support and provide advice to small businesses virtually or in person on dealing with the impacts of COVID-19 (the “Purpose”) **AND FOR NO OTHER PURPOSES.**

Recipient shall ensure that in the engagement of any Non-Arm's length service providers using the Grant monies, that the engagement will be on terms that are fair and reasonable to the Recipient and that are no less favorable to the Recipient than those that could be obtained in a comparable transaction from an Arm's Length service provider. "Arm's Length" has the meaning as set out in the Income Tax Act (Canada) and "Non-Arm's Length" shall have the opposite meaning for the purposes of this SBEC Agreement.

ARTICLE 4 - REPAYMENT OF GRANT PROCEEDS IN CERTAIN CIRCUMSTANCES

- 4.1** Repayment of disbursed Grant Proceeds. BACD may require the Recipient to repay some or all of the disbursed Grant (including any Holdback paid out) proceeds a) in the event of early termination under 10.3, to the extent such Event of Default resulted from Grant funds being utilized by Recipient in violation of this SBEC Agreement, b) in the event of a material breach of this SBEC Agreement by the Recipient which has not been or is incapable of being remedied, c) in the event the Ontario Agreement between Her Majesty and BACD (which provides for the source of the funding monies for the Grant under this SBEC) is terminated and some or all of the grant monies BACD received under the Ontario Agreement have to be repaid by BACD, clause in the Ontario Agreement and some or all of the grant monies BACD received under the Ontario Agreement have to be repaid by BACD.
- 4.2** To the extent that the BACD exercises this option for repayment, BACD shall provide written notice to the Recipient stating the amount to be repaid, applicable interest calculated not to exceed five percent (5%) annually, and the schedule for such repayment. The Recipient may request that the BACD waive the interest, subject in all cases to BACD's sole discretion. In no event shall the Recipient retain Grant funds that have not been used by the Recipient for purposes for which the Grant was intended.

ARTICLE 5 - TERMS AND CONDITIONS OF DISBURSEMENT OF FLOW THROUGH GRANT

- 5.1** Disbursement of Grant. Subject to the provisions of the Agreement, the Grant is to be paid to the Recipient after execution of this SBEC Agreement by both parties and receipt by BACD of the items listed in section 5.2, less the Holdback total which shall be released upon satisfaction of the conditions contained in section 5.3 (and provided the holdback funds are received by BACD from Ontario under the Ontario Agreement) in BACD's sole discretion.
- 5.2** Disbursement Conditions. The following conditions precedent must be completed to the satisfaction of BACD prior to the disbursement of any amount of the Grant (with the release of the Holdback being subject to the additional requirements contained in section 5.3 below):
- (a) Initial Funding Received from Ontario by BACD. BACD shall have received all of the grant monies from Ontario pursuant to the Ontario Agreement less any initial holdback.
 - (b) Agreement Compliance. The Recipient shall provide confirmation in writing in a form satisfactory to BACD that is signed by a senior officer of the Recipient that such senior

office shall ensure compliance of the Recipient with respect to the use of the Grant for the “Purpose” and to all reporting requirements under this SBEC Agreement.

- (c) Disbursement Request. The Recipient shall have provided a Disbursement Request in the form set out as a Schedule “B” to this SBEC Agreement together with any relevant documentation.
- (d) GrowthWheel License. The Recipient shall be the licensee of the online advisor software known as GrowthWheel during the Term of this Agreement, for which BACD will cover the expense and facilitate signup.

5.3 Condition to Release of Holdback. BACD may, in its sole discretion, disburse to the Recipient an amount up to the Holdback upon the Recipient’s completion of the conditions precedent set out below to the satisfaction of BACD:

- (a) The Recipient shall provide BACD with a Request for Disbursement certifying, that to the date of such request, i) the Grant has been used solely for the Purpose; and ii) the Recipient has a valid license to use Growth Wheel on behalf of its business available for the Term and is using such software; and
- (b) If the Recipient submits a Request for Disbursement and has incurred and paid to Non-Arm’s Length service providers, the Recipient shall provide evidence that the payments were terms that are fair and reasonable to the Recipient and that are no less favorable to the Recipient than those that could be obtained in a comparable transaction from an Arm’s Length service provider.
- (c) If applicable, the Recipient shall provide BACD with invoices from relevant service providers and proof of payment of same by way of payroll data (and copies of engagement contracts if requested) in the case where the Recipient has elected for reimbursement of expenses paid directly by Recipient to service provider personnel.
- (d) The Recipient shall have dutifully provided BACD with the monthly reports and other items required under Article 6.

5.4 Conditions to the Grant.

- (a) BACD has received funds from Ontario (less any holdback) under the Ontario Agreement. If BACD does not receive the necessary grant or subsequent holdback from Ontario, BACD shall not be obligated to make any such payment.
- (b) The total Grant received by the Recipient cannot exceed the amount of 32,000 Cdn. Which is the maximum amount of the Grant inclusive of any HST that may be payable (Recipient to advise if HST is payable).
- (c) Without restricting the applicability of other remedies or provisions of this Agreement, BACD shall be entitled, in its sole and unfettered discretion, to refuse to make any Disbursements or any further Disbursements, if:

- (i) an Event of Default (Article 10) has occurred and is continuing.
- (ii) the occurrence of an Event of Default reasonably appears to be imminent; or
- (iii) the Disbursement will result in the occurrence of an Event of Default.

ARTICLE 6 - MONTHLY REPORTING AND MONITORING

6.1 Report on use of Grant. The Recipient shall provide BACD with a Grant Report each month on the 10th day of each new calendar month for the previous calendar month. The Grant Report shall provide information with respect to the engagement of service provider personnel (name, contact information, nature of engagement, terms of engagement), number of Businesses served, number of advisory hours, jobs retained and other information shall be in the form of the attached Schedule “C” attached (with timelines) and such other information as may be reasonably requested by the BACD.

6.2 Review and Audit.

- (a) The Recipient shall permit persons designated by BACD or Ontario as the case may be, to visit and inspect the Recipient Office at BACD or Ontario’s expense, to examine and copy the Recipient’s books and financial records, and to discuss its affairs, finances and accounts as they relate to the use of Grant proceeds all at such reasonable times as may be requested by BACD or Ontario. BACD and Ontario’s right of inspection includes the right to perform a full or partial audit at any time for purposes including confirming that Grant was used solely for Purpose and in accordance with the provisions of this Agreement; and
- (b) Without limiting the generality of the foregoing, the Recipient shall at BACD’s request meet with BACD or its duly authorized agent at least annually to review the Recipient’s compliance with the terms and conditions of the Agreement. As may be requested by BACD, invoices from service providers, contact information for service providers, evidence of arm’s length relationships and proof of engagement (copy of contracts), proof of payment to service provider personnel shall also be required.

ARTICLE 7 - REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties. The Recipient represents and warrants to and in favor of BACD that:

- (a) The Recipient is a corporation incorporated under the laws of the Province of Ontario and has the corporate power and authority to carry on its business as presently carried on, to hold property, and to enter into the Agreement. The execution, delivery and performance of the Agreement have been or will be duly and validly authorized by all necessary corporate action of the Recipient, and when executed and delivered will

constitute legal, valid and binding obligations of the Recipient enforceable in accordance with its respective terms.

- (b) The Recipient has established and shall maintain administrative practices and governance procedures to provide for the prudent and effective management of the flow through Grant in accordance with the terms of this Agreement to affect the Purpose.
- (c) The proceeds of the Grant will be used by the Recipient exclusively for the Purpose and for no other purpose.
- (d) There are no charges or criminal convictions under the *Criminal Code* (Canada) outstanding against the Recipient.
- (e) There are no actions, suits or proceedings pending or, to the knowledge of Recipient, threatened, which would reasonably be expected to affect the ability of the Recipient to perform its obligations under the Agreement.
- (f) There is no fact which the Recipient has not disclosed in writing to BACD which adversely affects or, so far as the Recipient can now reasonably foresee, will adversely affect the ability of the Recipient to perform its obligations under the Agreement, in any material respect.
- (g) No Event of Default has occurred and is continuing, nor has any event occurred which with the giving of notice, the passage of time, or both, will result in an Event of Default.

ARTICLE 8 - AFFIRMATIVE COVENANTS

- 8.1** Use of Proceeds. The Recipient will use the Grant solely for the Purpose.
- 8.2** Rights of Inspection and Inquiry. The Recipient shall keep and maintain all records, invoices and other documents relating to the Grant and the use of such proceeds in a manner consistent with GAAP, and keep them available for review by BACD and Ontario and its agents or authorized representatives, including the Auditor General of Ontario, during the Term and for a period of seven years thereafter.
- 8.3** Licensing of GrowthWheel. The Recipient shall obtain and maintain a license for GrowthWheel for its service provider personnel throughout the Term of this SBEC Agreement. (BACD to facilitate and pay for such costs of licensing.)
- 8.4** Compliance with Agreements. The Recipient will perform and satisfy all covenants and obligations to be performed by it under this SBEC Agreement.
- 8.5** Existence. The Recipient will preserve and maintain its existence, rights, powers, licenses, privileges, and goodwill, and exercise any rights of renewal or extensions of any leases,

licenses, or any other rights which are necessary or material to the conduct of its business at the Recipient Offices.

8.6 Compliance with Laws. The Recipient shall comply with all laws which could affect Recipient's obligations under the Agreement.

8.7 Indemnity. The Recipient shall indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including without limitation, legal, expert and consultant fees and disbursements), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of or in connection with the Grant or otherwise in connection with the SBEC Agreement, unless solely caused by the gross negligence or willful misconduct of the Indemnified Parties.

"Indemnified Parties" means Her Majesty the Queen in right of Ontario, Her Ministers, agents, appointees and the Business Advisory Centre Durham, and its employees, directors, officers and independent contractors.

8.8 Notice to BACD. The Recipient shall provide prompt notice of any representation or warranty made by the Recipient in the Agreement or any certificate delivered to BACD pursuant that has become or is likely to become untrue in any respect.

8.9 Procurement. The Recipient shall ensure that all contracts and subcontracts, including consultant and service provider personnel contracts, for work and services and for the purchase of services related to the Grant are obtained pursuant to a process that ensures best value or money, and comply with the *Broader Public Sector Accountability Act, 2010* (Ontario), including any procurement directive issued thereunder, to the extent applicable.

8.10 Reports. The Recipient shall ensure that all reports, certificates and other documents required to be delivered to BACD pursuant to the Agreement are completed to the satisfaction of BACD.

ARTICLE 9 - LIMITATION OF LIABILITY AND INDEMNITIES:

9.1 Limitation of Liability Notwithstanding any other terms, BACD shall not be liable to SBEC for any Losses (defined below) arising out of or connected with any use of or reliance upon the services provided by the Seconded Advisor(s) to SBEC or on behalf of SBEC to a third party in connection with the secondment, or any deficiency in any services (including a failure to provide such services) provided by the Seconded Advisor(s) to SBEC or on behalf of SBEC to a third party in connection with the secondment; and BACD shall have no liability whatsoever to SBEC for any breach of any provision of this Agreement. For the avoidance of doubt and not so as to limit the operation of this paragraph, nothing herein shall be construed to create any employer liability or vicarious liability on behalf of BACD for the provision of the Seconded Advisor(s) to the Recipient.

9.2 Indemnification. SBEC shall indemnify and hold harmless BACD and its directors, officers, employees and contractors from and against any cost, expense, damage or liability (collectively, “Losses”) arising out of or in connection with (i) claims against the BACD by any Seconded Advisors (see Schedule “A” definition) that accrued during the term of this Agreement, (ii) claims by any third party in connection with the services provided by any Seconded Advisors during the term of this Agreement, or (iii) any Seconded Advisor’s alleged acts or omissions with respect to activities performed for SBEC or its affiliate entities under this Agreement during such Seconded Advisors period of secondment with Recipient.

In addition, SBEC shall indemnify and hold harmless BACD and its directors, officer, employees and contractors from and again any cost, expense, damage or liability (the Losses) arising out of in connection with claims against the BACD in relation to a breach of this SBEC Agreement by SBEC.

ARTICLE 10 - DEFAULT AND ENFORCEMENT

10.1 Events of Default. Each of the following is an Event of Default:

- (a) failure by the Recipient to perform or comply with any covenant or other term of the Agreement required to be performed or complied with by the Recipient, including;
- (b) failure by the Recipient to repay any amount of the Grant within ten days after a request for repayment is made by BACD pursuant to Articles 4;
- (c) failure by the Recipient to make a Request for Disbursement in accordance with this Agreement.
- (d) if any representation or warranty made by the Recipient in the Agreement or any certificate delivered to BACD shall be or become materially untrue in any respect.
- (e) if the Recipient (i) is dissolved, liquidated or wound up or makes a proposal in writing to be dissolved; (ii) admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes a proceeding seeking a judgment of bankruptcy or a receiving order or an order adjudicating or declaring it to be bankrupt or insolvent or seeking liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debt under any law including the *Companies’ Creditors Arrangement Act* (Canada) or the *Bankruptcy and Insolvency Act* (Canada); (v) has a resolution passed for its winding-up, official management or liquidation; (vi) seeks or becomes subject to the appointment of an administrator, liquidator, receiver, receiver-manager, trustee or similar official for it or for all or substantially all its assets; (vii) has a secured party take possession of a substantial or material portion of its assets or has a distress, execution, attachment, sequestration or other legal process levied or enforced on or against a substantial or material part of its assets; (viii) ceases to carry on business; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts or events;

- (f) if any bankruptcy, reorganization, arrangement or insolvency proceedings for relief under any bankruptcy or similar laws for the relief of debtors, including, without limitation, any of the proceedings or petitions described in subparagraph (e) above are instituted against the Recipient and are consented to by the Recipient or, if contested by the Recipient, are not dismissed within 30 days;
- (g) default of any material obligations of the Recipient under the Agreement including a default of a term or condition, but for the giving of notice and/or the passage of time to remedy;
- (h) final judgment or decree for the payment of money due is obtained or entered against the Recipient, except in respect of a judgment which (i) was the subject of a *bona fide* dispute, (ii) is not material to the financial condition, business or operations of the Recipient (and without restricting the generality of the foregoing, a judgment of \$50,000 or more shall be deemed to be material), and (iii) is paid in full within 30 days after judgment;

10.2 BACD May Waive. BACD may, at any time, waive any Event of Default which may have occurred provided that no such waiver shall extend to, or be taken in any manner whatsoever to affect, any subsequent Event of Default or the right to remedies resulting therefrom, and that no such waiver shall be, or shall be deemed to constitute, a waiver of such Event of Default unless such waiver is explicit and in writing from BACD.

10.3 Remedies. In addition to any other rights which BACD may have under the Agreement, if any Event of Default shall occur and be continuing, BACD shall have the following rights and remedies provided that it has first given written notice of the Event of Default to the Recipient and the Recipient has failed for whatever reason, subject to Force Majeure, to remedy the Event of Default within 20 days of the receipt of such notice, or such longer period of time as BACD may consent to in writing:

- (a) BACD may, immediately, without further notice to the Recipient, without liability, penalty or costs to BACD, terminate the SBEC Agreement;
- (b) BACD shall be relieved of all obligations to make any Disbursements or any further Disbursements to the Recipient;
- (c) BACD shall be entitled to retain the Holdback;
- (d) BACD may avail itself of any of its legal remedies that are available to BACD at law or in equity and in its sole discretion, exercise any right or recourse and/or proceed by any action, suit, remedy, or proceeding against the Recipient authorized or permitted by law for the recovery of any and all amounts payable to BACD pursuant to the Agreement, and no such remedy for the enforcement of the rights of BACD shall be exclusive of, or dependent on, any other remedy, but any one or more of such remedies may from time to time be exercised independently or in combination, provided however, that subject to section 8.9, in no event shall the Recipient be required to pay to BACD any amount in excess

of the Grant actually received by Recipient together with the costs of collection pursuant to section 10.4 and interest pursuant to section 10.5.

Notwithstanding the foregoing, BACD shall not be required to provide any notice or a remedy period under this section 10.3 for any Event of Default arising under section 10.1 (b), (d), (e) or (f).

- 10.4 Costs of Collection.** All reasonable costs and expenses of collection, including legal fees and professional fees associated therewith, of BACD and its agents of all amounts owing hereunder shall be for the account of the Recipient and shall be immediately due and payable to BACD.
- 10.5 Interest after Default.** Interest at the then current rate, charged by the Province of BACD on accounts receivable shall apply, from the date of any default notice to the Recipient, to any and all amounts in the event that BACD exercises any of its remedies pursuant to this Article 10 until repayment in full. For greater certainty, during the course of any and all proceedings to collect such amounts such interest rate shall apply to and be eligible as additional damages in any award of damages made by a court of competent jurisdiction pursuant to any such action, all without the necessity of any further act or agreement or notification to the Recipient.

ARTICLE 11 GENERAL

- 11.1 No Conflict of Interest.** The Recipient use of the Grant funds shall be without an actual, potential, or perceived conflict of interest. A conflict of interest includes any circumstances where: (a) the Recipient or (b) any Person who has the capacity to influence the Recipient's decisions, has outside commitments, relationships, or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased, and impartial judgment relating to use of the proceeds of the Grant. The Recipient will disclose to BACD, without delay (at the latest in the monthly Grant Report), any situation that a reasonable person would interpret as an actual, potential, or perceived conflict of interest and comply with any terms and conditions that BACD may prescribe as a result of the disclosure.
- 11.2 Entire Agreement.** The Agreement contains the entire agreement between the Recipient and BACD and supersedes all prior agreements, obligations, statements, representations, understandings, warranties, communications and negotiations, whether oral or written, with respect to the subject matter of the Agreement.
- 11.3 Amendments.** The Agreement may be amended, altered or modified only by written documents signed by both BACD and the Recipient.
- 11.4 Survival.** Article 1.3 (Cooperation), Article 2 (Confidentiality and Data Protection) Article 4 (Repayment of Grant), sections 5.1, 5.2, and 5.3, section 5.4 (c), Article 6 (Reporting and Monitoring), Article 7 (Representations and Warranties), section 8.2 (Rights of Inspection and Inquiry), section 8.9 (Indemnity), section 8.10 (Reports), Article 10 (Default and Enforcement), section 11.2 (Entire Agreement), section 11.4 (Survival),

section 11.6 (Materiality and Merger), section 11.11 (Non-Agent), section 11.12 (Governing Law), section 11.15 (Severability), section 11.17 (Disclosure of the Agreement to the Public and Third Parties), and section 11.20 (Rights and Remedies Cumulative) and all applicable cross-referenced provisions and Schedules shall survive any expiry, termination or cancellation of the Agreement. Without limiting the foregoing, all representations and warranties of the Recipient contained herein or in any certificate or other writing delivered in connection herewith will survive the transactions contemplated hereby and are material and have been or will be relied upon by BACD notwithstanding any investigation made by or on behalf of BACD. For the purpose of the foregoing, all statements contained in any certificate or other writing delivered by or on behalf of the Recipient in connection with the transactions contemplated hereby shall be deemed to be representations and warranties of the Recipient.

- 11.5 Waiver.** No provision of the Agreement shall be deemed to be waived, and no breach excused, unless such waiver or consent excusing the breach is explicit and in writing. A waiver of any provision of the Agreement, or of any breach of any provision of the Agreement, is not to be deemed or construed to be a waiver of any other provision of the Agreement, or of any other breach, whether of the same or of any other provision, Nor shall any delay or omission on the part of any party to the Agreement to exercise or avail itself of any right it has or may have under the Agreement, operate as a waiver of any such breach or right, nor will any waiver or failure to enforce any of the provisions of the Agreement in any way affect the validity of the Agreement or any part of it.
- 11.6 Materiality and Merger.** All representations, warranties and covenants of the Recipient made in the Agreement or in any other document, certificate, expenditure statement, or writing delivered by or on behalf of the Recipient pursuant to the provisions of the Agreement, or otherwise with respect to the Project or the Agreement and the transactions contemplated in the Agreement, are material, are deemed to have been relied upon by BACD and survive the execution of the Agreement.
- 11.7 Time.** Time is of the essence of the Agreement.
- 11.8 Assignment.** The Agreement and all documents delivered pursuant to it inure to the benefit of BACD and the Recipient, their respective assigns and successors at law. The Agreement may not be assigned by the Recipient.
- 11.9 Further Assurances.** The Recipient agrees at any time and from time to time after the execution and delivery of the Agreement to perform and deliver such further acts and things as BACD may reasonably request in order to fully effect the purpose of the Agreement and the transactions contemplated.
- 11.10 Notices.** Any notice, request, demand, consent, approval, correspondence, report or other communication required pursuant to or permitted under the Agreement must be in writing and must be given by personal delivery, or transmitted by email, or be sent

by postage prepaid mail, and addressed to the party to whom it is intended at its address as set out below or addressed as either party may later designate to the other in writing:

To BACD:

Business Advisory Centre Durham Inc.
3000 Garden Street - Suite 200 Whitby,
ON L1R 2G6
Attention: Executive Director
Email: tshaver@bacd.ca

To the Recipient:

The Orangeville & Area Small Business Enterprise Centre
The Corporation of the Town of Orangeville
87 Broadway, Orangeville ON L9W 1K1
Attention: Ruth Phillips, Manager, Economic Development & Culture/SBEC
rphillips@orangeville.ca

Any such notice shall be deemed to be received, if personally delivered or sent by fax or other electronic message on the day it is sent and if such notice is sent by postage prepaid mail it shall be deemed to have been received on the date that is five days after the date of mailing.

- 11.11 Non-Agent.** The Recipient and BACD agree and declare that nothing in the Agreement shall be construed as creating a partnership, joint venture, or agency relationship between the Recipient and BACD.
- 11.12 Governing Law.** The Agreement and the rights of the parties shall be governed in all respects by and construed in accordance with the laws of the Province of BACD and the laws of Canada applicable and each party irrevocably attorns to the exclusive jurisdiction of the courts of the Province of BACD for any dispute, action or proceeding arising out of or in connection with the Agreement.
- 11.13 Force Majeure.** In the Agreement, “Force Majeure” includes civil commotions, acts of God, weather, fires, floods, explosions, natural catastrophes, pandemics, sabotages, accidents, failures of power, riots, invasion, insurrection and any additional peril or occurrence which is, in the opinion of BACD a Force Majeure. Upon the occurrence, if any, of an event which is a Force Majeure, the party whose performance is affected, whether BACD or the Recipient, shall to the extent reasonably possible, minimize its adverse impact. Neither BACD nor the Recipient shall be in breach of the Agreement, if, upon the occurrence of a Force Majeure and after delay minimization, either BACD or the Recipient delays performance of its obligations hereunder for such reasonable period of time so as to enable the harmed party to overcome the effects of the Force Majeure.

11.14 Counterparts. The Agreement may be signed in counterparts, and/or by facsimile or e-mail (PDF or other image format), each of which shall constitute an original and all of which, when taken together, shall constitute an original Agreement.

11.15 Severability. Any provision of the Agreement prohibited by law or otherwise ineffective will be ineffective only to the extent of such prohibition or ineffectiveness and will be severable without invalidating or otherwise affecting the remaining provisions of the Agreement.

11.17 Disclosure of the Agreement to the Public and Third Parties.

(a) *Freedom of Information and Protection of Privacy Act*.

The Recipient acknowledges that BACD and Ontario is bound by the *Freedom of Information and Protection of Privacy Act* (BACD) and that BACD or Ontario may be required to disclose information contained in the Agreement or the entire Agreement itself pursuant to the provisions of that act.

(b) *Public Disclosure*. The Recipient irrevocably consents to BACD or Ontario making all or a portion of the Agreement available to the public in a form BACD or Ontario deems appropriate in BACD's sole discretion.

11.18 Publications, Press Releases, Media Events, Communiqués. The Recipient shall:

(a) not make any announcement with respect to the Grant or the Agreement, except as may be required by law, without the prior written approval of BACD; and

(b) if requested by BACD, participate in a public event announcing Ontario and BACD's funding to the Recipient as may be agreed between the parties.

Ontario and BACD may make such announcements with respect to the Grant and this Agreement as they shall see fit in their sole discretion

11.19 Economic Program. The Recipient acknowledges and agrees that the Grant provided under the Agreement is for the purpose of the administration of economic programs and/or the provision of direct or indirect support to members of the public in connection with economic policy, and as such section 16 of the *Limitations Act, 2002* (BACD) shall apply.

11.20 Third Party Beneficiary. The Parties acknowledge that Ontario (Her Majesty the Queen in Right of Ontario) is a third party beneficiary of this Agreement and that Ontario shall have the full right to sue upon and enforce this SBEC Agreement in accordance with its terms as if it were a signatory hereto.

11.21 Rights and Remedies Cumulative. The rights and remedies of BACD under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

The parties hereby execute the Agreement in the Province of Ontario.

[The Corporation of the Town of Orangeville]

Date of Signature

Per: _____
Name:
Title:

I have the authority to bind the Recipient:

BUSINESS ADVISORY CENTRE DURHAM INC.

Date of Signature

Per: _____
Name:
Title:

I have the authority to bind the BACD:

Schedule “A” Secondment of Personnel Provisions

SCHEDULE “A” SECONDMENT OF PERSONNEL PROVISIONS

Grant Recipient	[Name of SBEC]
Recipient Offices	As per Notice Section.
Effective Date of Agreement	Date of Signing
Seconded Individual(s) Name(s) and Positions (Advisors)	[Insert name of relevant individuals]
Latest Completion Date	September 30, 2021
Maximum Amount of Grant	\$32,000.00 (including any relevant HST paid to Seconded Advisor)
Rate of Pay for Seconded Individual(s)	[insert pay rate Per hour for each Seconded Individual]

1. The parties must agree on the engagement of a particular service provider personnel (the “Seconded Advisor”) by BACD for SBEC and the rates and length of term in service may be limited by the amount of the Grant. (i.e. services may not be provided for the full Term).
2. BACD has the option of engaging the Seconded Advisor through an independent contractor agreement or individual employment agreement, at its option and in its sole discretion.
3. the Seconded Advisor shall be assigned by BACD to perform work for the Recipient, it being understood that the BACD shall procure any necessary consent or approval from Seconded Advisor before any such assignment.
4. Subject to the terms of any agreements between the BACD and the Seconded Advisor, it is understood that the Seconded Advisor will perform such services and have the duties and

responsibilities as SBEC shall reasonably request and in a manner consistent with the policies and standards of BACD, and to the extent applicable, SBEC.

5. Each Seconded Advisor shall devote all of his or her business time to the business of the Recipient. Seconded Advisors shall be instructed by BACD to comply with the instructions and directions of the governance bodies and management of the Recipient. In respect of such Recipient duties, no Seconded Advisor shall be represented as or allowed to represent himself or herself as an employee or contractor of BACD. Seconded Advisors will, in respect of their activities for or on behalf of SBEC, only hold themselves out in their respective Recipient capacities.
6. it is understood that the Seconded Advisors will perform such services and have the duties and responsibilities as the Recipient shall reasonably request and in a manner consistent with the policies and standards of the Recipient.
7. The service by Seconded Advisors as officers, authorized signatories, nominees, independent contractors, or in other similar individual capacities in the business of Recipient shall not give, or be deemed to give, BACD any responsibility or authority to supervise or control any Seconded Advisor and nothing shall make, or be deemed to make, BACD liable for the acts or omissions of any Seconded Advisor with respect to the activities to be performed for or on behalf of the Recipient. (No responsibility for vicarious liability).
8. The costs of replacing a Seconded Advisor at the request of the Recipient is be deducted from proceeds available through the Grant.
9. Recipient shall be responsible for all health and safety issues for Recipient Offices at the Seconded Advisor.
10. Renewal past Term - at the agreement of the parties at the end of term and with the consent of the Seconded Advisor.

**SCHEDULE “B”
REQUEST FOR DISBURSEMENT OF GRANT**

Date: •

Fiscal Year: •

To:

Business Advisory Centre Durham Inc.
3000 Garden Street - Suite 200 Whitby,
ON L1R 2G6
Attention: Executive Director
Email: tshaver@bacd.ca
Attention: Teresa Shaver

From: [name of SBEC] ***** (the “Recipient”)

Re: SBEC Agreement between BACD and the Recipient effective October ***, 2020

Except as otherwise defined herein, all capitalized terms shall have the meanings given to them in the SBEC Agreement.

1. I, [insert name and title of senior officer] of the Recipient, on behalf of the Recipient, hereby certify without personal liability as follows:
 - (a) On and as of the date hereof, all representations and warranties contained in Article 7 of the SBEC Agreement are true and correct.
 - (b) On and as of the date of signing, no Event of Default, whether or not BACD has been given notice, has occurred and is continuing.
 - (c) The amounts disbursed from the Grant have not included any amounts paid to Non-Arm’s Length service providers. [Note: In the event that there are expenditures paid to Non-Arm’s Length service providers include the certificate or invoices required by section 5.3(b)* of the Agreement.]

- (d) ***[NTD: include the following for the second Disbursement - the Holdback]*** I certify that all monies received from the Grant have been to date and will be (if all have not been spent) used solely for the Purpose and the amount of \$● as been paid to relevant service provider personnel from funds from the first Disbursement.
2. I certify that the Disbursement will be used strictly in accordance with the Agreement and only for the Purpose.
 3. I certify that the information provided herein is accurate and is being relied upon to disburse funds in respect of the Grant.
 4. The Recipient hereby requests a Disbursement of \$● the amount of the Grant (less Holdback) ***OR*** the Holdback ***OR*** reimbursement of payroll expenses for service provider personnel for the previous month (supporting documentation to be included).

The undersigned has signed this certificate on this ● day of ● 2020●.

Per:

[insert name and title of senior officer]
I have authority to bind the organization.

[Name of SBEC Recipient]

**SCHEDULE “C”
MONTHLY REPORTING AND ACTION REQUIREMENTS**

Growth Wheel Training Name of Advisor	Completed: Mar 31, 2021

Monthly Grant Report information required:

# Marketing Outreach on the website portal by each SBEC. 3 email/promotions by each to SBEC clients over the period	Sep 30, 2021 Submit update
50,000 small business reached through the web portal - N/A to individual SBEC's	Submit monthly with finals due Sep 30, 2021
25,000 small businesses utilized a search, attended webinar, or asked for experts etc. Data supplied by each centre advisor and web portal	Submit monthly with finals due Sep 30, 2021
#of outreach activities with industry partners	Submit monthly with finals due Sep 30, 2021
#of industry partners engage in the project	Submit monthly with finals due Sep 30, 2021
# of businesses served by Virtual Service Advisor	Submit monthly
# of advisory hours by Virtual Service Advisor	Submit monthly
# of jobs impacted by Virtual Service Advisor	Submit monthly
Business Industries	Submit monthly