

ECONOMIC OPPORTUNITY FUND PERFORMANCE AGREEMENT

This Performance Agreement made and entered into on October __, 2021, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (hereinafter the "County"), a political subdivision of the Commonwealth of Virginia, **BONUMOSE, INC.**, (hereinafter the "Company") a corporation organized under the law of the State of Delaware and authorized to transact business in the Commonwealth of Virginia, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA**, (hereinafter the "Authority"), a political subdivision of the Commonwealth of Virginia.

WITNESSETH:

WHEREAS, the Commonwealth of Virginia has agreed to provide the Company a Commonwealth Opportunity Fund Grant of two-hundred, fifty-six thousand dollars (\$256,000.00) contingent upon the County providing a sum equal to the Commonwealth's grant; and

WHEREAS, the County is willing to provide funds to the Authority as its local match from its Economic Opportunity Fund to the Commonwealth Opportunity Fund Grant with the expectation that the Authority will provide the monies to the Company (the "EOF Grant"); provided that the Company meets its lease obligation and workforce location commitment pursuant to this Agreement; and

WHEREAS, the County, the Authority, and the Company desire to set forth their understanding and agreement as to the payout of the EOF Grant, the lease obligation and the workforce location commitment of the Company, and the termination of all or part of the EOF Grant under certain circumstances; and

WHEREAS, the stimulation of the additional tax revenue, job creation, and economic activity to be generated by the Company's location and expansion in the County constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the EOF Grant.

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

Section 1. Lease Obligation and Workforce Location Commitment.

Lease Obligation. The Company will lease and occupy at least thirty-~~six~~^{two} thousand (36~~32~~,000) square feet of real property at 1500 State Farm Boulevard, Albemarle County Tax Map Parcel 07800-00-00-020Fo, located in Albemarle County, Virginia (hereinafter the "Property"), beginning for a period of at least five (5) continuous years after the issuance date of the certificate of occupancy for the

Property. For purposes of this Agreement, this leasing arrangement shall be referred to as the "Lease Obligation."

Workforce Location Commitment. The Company agrees that one hundred percent (100%) of its Virginia employees shall be assigned to work at or report to the Property at all times for at least five (5) years after the issuance date of the certificate of occupancy for the Property. For purposes of this Agreement, a full-time employee shall be defined as an employee that is employed by the Company at least i) 35 hours per week for at least 48 weeks per year, or ii) one thousand, six hundred and eighty (1,680) hours in a calendar year. This workforce arrangement shall be known as the "Workforce Location Commitment."

Section 2. Economic Opportunity Fund Grant.

The County agrees to appropriate from its Economic Opportunity Fund to the Authority \$256,000.00 in three equal, annual installments (\$85,333.33). This obligation commences when both the Lease Obligation and Workforce Location Commitment start running after issuance of the certificate of occupancy.

The County agrees to appropriate the first installment within thirty days after the Lease Obligation and Workforce Location Commitment start running after issuance of the certificate of occupancy. The Parties anticipate the first installment will occur in FY22. The County agrees to appropriate the subsequent installments in FY23 and FY24.

The Authority agrees to disburse each annual installment of the EOF Grant to the Company within thirty (30) days of being satisfied the Company has reached the following benchmarks:

- a. Year 1: The Company satisfies the Lease Obligation for twelve continuous months and fulfills the Workforce Location for at least 12 full-time jobs for twelve continuous months;
- b. Year 2: The Company satisfies the Lease Obligation and Workforce Location Commitment for twelve additional continuous months, has invested at least \$8,000,000.00 total into capital expenditures from Year 1 through Year 2, and maintains 30 full-time jobs in total; and
- c. Year 3: The Company satisfies the Lease Obligation and Workforce Location Commitment for twelve additional continuous months, has invested at least \$27,000,000.00 total into capital expenditures from Year 1 through Year 3, and maintains 64 full time jobs in total.

In no event shall the annual total of the EOF Grant exceed \$85,333.33. In no event shall the total sum of this EOF Grant exceed \$256,000.00.

The Authority agrees it will disburse each annual grant installment payment to the Company within thirty (30) days after the Company verifies to the Authority's satisfaction that the Company has met each benchmark.

Section 3. Termination.

If, at any time during the term of this Agreement, the Company fails to meet the Lease Obligation, the Workforce Location Commitment, any Annual Benchmark, or any combination thereof, this Agreement shall automatically terminate. Upon termination, the Company shall not receive or be entitled to any unpaid EOF Grant funds.

The Company agrees to notify the County within seven (7) calendar days of its inability to meet the *Lease Obligation*, the *Workforce Location Commitment*, or any Annual Benchmark.

If, at any time during the term of this Agreement, the Company fails to pay any taxes due to the County, the County shall notify the Company of its overdue tax liability. The County shall provide the Company thirty (30) days from receipt of the notice to pay any overdue taxes to the County. If the Company does not pay the overdue taxes to the County at the expiration of the 30-day curative period, this Agreement shall automatically terminate.

Upon termination for any reason prior to expiration, the Company shall refund to the EDA a pro rata share of the County EOF Grant. Proration shall be based on a sixty (60) month term, the termination date, and the total amount of EOF Grant monies paid to the Company. For example, if the Company meets the *Lease Obligation*, the *Workforce Location Commitment*, and all benchmarks for three and a half years (42 months), whereupon it fails to meet one or both obligations and the Agreement terminates, the Company must pay the EDA \$76,800.00 (30% of \$256,000.00) within thirty days of demand. The EDA must pay all funds collected hereunder to the County within thirty days of receipt.

Section 4. Company Reporting.

The County's Chief Finance Officer or designee will submit requests for information to the Company concerning its lease status, the geographic location of the Company's employees, capital expenditures, and satisfaction of the annual benchmarks. The Company must provide, at the Company's expense, detailed verification reasonably satisfactory to the County and the Authority that the Company is fulfilling its Workforce Location Commitment, its Lease Obligation, Capital Expenditures, and satisfaction of the annual benchmarks. Upon submission of the County's request for information, the Company shall respond to the request within thirty (30) days. These requests for information will be submitted to the

Company at such times as the County or Authority may require. To the extent such information constitutes proprietary information or trade secrets, the County and Authority will receive it under a promise of confidentiality.

Section 5. Notices.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return or certified mail or overnight courier package not accepted by the addressee):

If to the Company, to:

Bonumose, Inc.
1500 State Farm Boulevard
Charlottesville, Virginia 22909
Attention: Ed Rogers, CEO

With a copy to:

~~Charlottesville, Virginia 22902~~
~~Attention:~~

If to the County, to:

Albemarle County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Jeff Richardson

With a copy to:

Finance & Budget Department
401 McIntire Road
Charlottesville, Virginia 22902
Nelsie Birch, CFO

If to the EDA, to:

Economic Development Authority
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Donald Long, Chair

With a copy to:

Economic Development Office
401 McIntire Road
Charlottesville, Virginia 22902
Roger Johnson, Director.

Section 6. Miscellaneous.

1. *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the EOF Grant and may not be amended or modified, except in writing, signed by each of the parties. This Agreement shall be binding upon and inure to the benefits of the parties and their respective successors and assigns. The Company may not assign its rights and obligations pursuant to this Agreement without the prior written consent of the County and the Authority.

2. *Non-appropriation:* The obligation of the County to contribute the Grant as provided in this Agreement is subject to and dependent upon appropriations being made from time to time by the Board. Therefore:
 - a. Obligations in the Event of Non-appropriation. If the Board of Supervisors does not appropriate funds for the EOF Grant and the Company is otherwise in compliance in all respects, then this Agreement terminates and the Company shall have no further obligation under this Agreement.
 - b. This Agreement does not Establish an Irrevocable Obligation. Under no circumstances shall this Agreement be construed to establish an irrevocable obligation on the County to fund the EOF Grant as provided in this Agreement.
3. *No Goods or Services Received by the County or EDA:* The Grant funds transferred by the EDA to the Company pursuant to this Agreement are solely to facilitate the location of the Company at the Property and to incentivize the creation of jobs and employment opportunities in Albemarle County. The Company's efforts will support the EOF Grant's public and economic development purposes and are not a procurement of any goods or services by the EDA or the County.
4. *Relationship of Parties:* This Agreement is intended solely to establish the relative rights and obligations of the parties and does not create any type of partnership, joint venture, purchaser-vendor, or employer-employee relationship.
5. *No Third-Party Beneficiaries:* This Agreement does not confer any rights on any person or entity who is not a party, whether as a third-party beneficiary or otherwise.
6. *No Waiver of Sovereign Immunity or Other Immunities:* This Agreement and any action taken by the County, the EDA, or their respective Boards pursuant to this Agreement are not, and shall not be construed to be, a waiver of either sovereign immunity or any other governmental immunity that applies to the County, the County's Board of Supervisors, the EDA, or the EDA's Board of Directors.
7. *Non-liability of County and EDA Officers and Employees:* No County Supervisor or other County officer or employee, and no EDA Director or other EDA officer or employee, shall be personally liable to the Company if there is any default or breach by the County, the Board, the EDA, or the EDA's Board of Directors pursuant to this Agreement.
8. *Indemnification and Hold Harmless:* The Company agrees to indemnify, hold harmless, and defend the County, the EDA, and their supervisors, officers, directors, agents, and employees from any and all liability, loss, damage, claims, causes of action, and expenses (including without limitation reasonable attorneys' fees), caused or asserted to have been caused, directly or indirectly, by the

Company in connection with the performance of this Agreement. This includes any act or omission of an officer, director, agent, employee, or representative of the Company, its successors and assigns, to the extent that such liability or damage is caused in whole or in part by such party's default or breach, negligence, or intentional misconduct. The provisions of this section shall survive termination of this Agreement as to acts or omissions occurring prior to the effective date of termination.

9. *Force Majeure:* If any Party's timely performance of any obligation in this Agreement is interrupted or delayed by any occurrence that is not caused by the conduct of the officers or employees of either the County, the EDA, or the Company, whether the occurrence is an "Act of God" such as lightning, earthquakes, floods, epidemic, pandemic, or other similar causes; a common enemy; the result of war, riot, strike, lockout, civil commotion, sovereign conduct, explosion, fire, or the act or conduct of any person or persons not a party to or under the direction or control of the County, the EDA, or the Company, then performance is excused for a period of time that is reasonably necessary after the occurrence to remedy the effects thereof.
10. *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of Albemarle County, and such litigation shall be brought only in that court.
11. *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be the same instrument.
12. *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid, or illegal, then the enforceability, validity, and legality of the remaining provisions will not in any way be affected or impaired, and the unenforceable provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.
13. *Interpretation of this Agreement:* This Agreement shall be interpreted in accord with how any terms are defined in this Agreement and otherwise by applying the plain and natural meaning of the words used, and not for or against any party by reason of authorship.
14. *Term:* This agreement shall run for a period of five calendar years from the issuance date of a certificate of occupancy for the Property.

[SIGNATURE PAGE FOLLOWS]

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

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Jeffrey Richardson, County Executive

Approved as to form only:

Greg Kamptner, County Attorney

ECONOMIC DEVELOPMENT
AUTHORITY OF ALBEMARLE COUNTY

By: _____
Donald D. Long, Chair

BONUMOSE, INC.

By: _____
Edwin Rogers, CEO