



## **HUSTLE 12-Month Incubator**

### **Participation Agreement**

- 1) **Program.** Teams wishing to compete for HUSTLE prize funding must first be accepted into the HUSTLE Defense Accelerator. During this business accelerator program, entrepreneurs will develop their business in preparation for the HUSTLE Demo Day, which will be the culmination of each HUSTLE Defense Accelerator cohort. The accelerator program is followed immediately by incubation for the balance of 12-months, termed the HUSTLE 12-Month Incubator. During the HUSTLE Defense Accelerator, each team shall:
  - a. Assure at least one C-level member participates in the on-site curricula unless exceptions are agreed by Griffiss Institute HUSTLE Instructors for such things as health, business responsibilities, etc.; and
  - b. Prepare a "pitch" to the Demo Day judges. This pitch shall include a plan of proposed expenses that will be made in the event that the Team is a Prize winner at Demo Day.
- 2) **Prizes.** Teams that successfully complete the HUSTLE Defense Accelerator and prepare a "pitch" may be invited to Demo Day. This event is the opportunity for teams to compete for cash investment prizes:
  - a. Each team that is awarded a Prize at Demo Day will be automatically invited to participate in the HUSTLE 12-Month Incubator, hosted by the Griffiss Institute Business Incubator. This program will endure for one year, starting within three months of Demo Day. Upon acceptance into the HUSTLE 12-Month Incubator, Teams will:
    - i. Become a participant of Griffiss Institute Business Incubator
    - ii. If your business is not presently located in New York State, locate their business within the Mohawk Valley Region, defined in Paragraph 4 (a), for at least one year. New York State requires that the Company's that accept prize money must have their primary office, where the Principal/Founder and at least 50% of all staff conducts daily work functions, be located in the Mohawk Valley region.
- 3) **Conditions to Receipt of Prizes.** As a condition to receipt of Prizes, each Team agrees to each of the following conditions:
  - a. The Team shall be in compliance with the rules of the Incubator established by the Griffiss Institute, as amended from time to time, to the extent such rules are not inconsistent with the terms and condition hereof (the "**HUSTLE Rules**")
  - b. All statements contained in the Team's HUSTLE Defense Accelerator application shall be true and correct in all respects, unless otherwise disclosed in writing to the Griffiss Institute.

- c. The Team shall (i) be incorporated or be a limited liability company (the "**Company**") under the laws of one of the fifty (50) states of the United States of America and (ii) furnish to the Griffiss Institute a copy of its incorporation/formation documents, together with all amendments, and a copy of its Bylaws, Shareholders Agreement, Operating Agreement, as the case may be, and such other similar documents, all in form and substance reasonably satisfactory to the Griffiss Institute.
- d. The Team shall have furnished such bills of sale of other documents as the Griffiss Institute shall reasonably require showing that the Company has good, marketable, and valid title to all of its operating assets, subject only to those liens and encumbrances which are reasonably acceptable to the Griffiss Institute.
- e. The Team shall have furnished a certificate, affidavit or other statement affirming that there are no actions, suits, proceedings or investigations pending or threatened against the Company to the best of its knowledge.
- f. The Team shall have furnished agreements from key personnel of the Company providing for the confidentiality of all Company property and key personnel's agreement not to compete with the business of the Company or solicit its customers or employees, all in form reasonably satisfactory to the Griffiss Institute.
- g. The HUSTLE administrator will review in advance of prize money being transferred to the Team, a 2-year spending plan to review and approve proposed expenditures of the prize money.
- h. Each Team participating in HUSTLE 12-Month Incubator will be awarded up to 100% of its prize at the beginning of the HUSTLE Incubator ("up front"), and shall outline planned expenses in compliance with 3(l and m) below, and provide evidence of corporate/company residency in the Mohawk Valley in compliance with 2(a)(ii.) above.
- i. Any subsequent distribution of Prize money to teams shall be distributed upon the submission of a progress report, and upon approval by the HUSTLE 12-Month Incubator administrator.
- j. Teams shall be required to consult with the HUSTLE 12-Month Incubator administrator at a minimum on a quarterly basis to review spending plans and upcoming business building activities and priorities.
- k. Teams shall be allowed to spend Prize money during the HUSTLE 12-Month Incubator on the following basis.
- l. Cost of Workspace – Team workspace shall be an allowable expense, and teams shall submit documentation of workspace expenses in the form of lease/rent agreement, etc.
- m. Capital expenses – Teams may use Prize money for the purchase of capital assets, including computers and other technical equipment that will be essential in the process of building a marketable product or service. The HUSTLE 12-Month Incubator administrator shall approve any such proposed expenses.
  - i. Consultant services – Teams may use Prize money to procure the services of consultants and other service providers that are essential in the process of building a marketable product or service. The HUSTLE 12-Month Incubator administrator shall approve any such proposed expenses.
  - ii. Trade Shows/Conferences – Teams may use Prize money for the purpose of attending

conferences, trade shows, and other events where business may be conducted. The HUSTLE 12-Month Incubator administrator shall approve any such proposed expenses.

- iii. Working Capital – Teams may use Prize money for the purpose of on-going expenses, such as salaries and general business expenses, used prudently to advance their company into a growing concern delivering solutions to markets.
- n. The teams will be required to periodically submit at a minimum a quarterly progress report. Due date will be determined by New York State and the Griffiss Institute, consisting of the following information required for each quarter:
  - i. Have you started generating sales revenue in this quarter?
  - ii. What are your proposed upcoming business-building activities?
  - iii. Based on the proposed business-building activities last quarter, what successes have you achieved?
  - iv. How much money have you spent within the Mohawk Valley and New York State?
  - v. New Jobs created: Management, Scientist/Engineer, Manufacturing, Other?
  - vi. Jobs Retained: Management, Scientist/Engineer, Manufacturing, Other?
  - vii. Federal Grants Acquired: (SBIR, STTR, DOD, NIH, NSF, or other federal sources)?  
Non-Government Funds Acquired (angel, venture capital, other private investment)?
  - viii. Increased Company Revenues (product sales or contracts)?
  - ix. Cost Savings (production process improvements, value of accessing specialized equipment at UB, expertise or analytical testing vs. performed in-house or outsourced)?
  - x. Capital Expenditures (infrastructure improvements, new purchases & construction)?

**4) Other Agreements.** The Team agrees that it will:

- a. Maintain its business and operations within the counties of Fulton, Herkimer, Montgomery, Oneida, Otsego, or Schoharie, (the "**Mohawk Valley Region**") during the term of the HUSTLE 12-Month Incubator.
- b. Prepare and deliver a presentation at one future Demo Day competition, outlining its progress and upcoming activities, if requested by the Griffiss Institute.
- c. Complete and submit a final report of Team activity and progress to the HUSTLE 12-Month Incubator administrator at the conclusion of the program.
- d. Comply with all laws applicable to its business, properties, or assets and the HUSTLE 12-Month Incubator rules.
- e. Not transfer, assign or encumber any of the Company assets, other than in the ordinary

course of business, during the term of the Incubator without the consent of the Griffiss Institute.

- f. Not enter into a line of business which is substantially different from the business set forth in the HUSTLE Defense Accelerator application or otherwise approved in writing by the Griffiss Institute as a result of Business Plan modifications.
  - g. Not adopt any plan of merger, consolidation or reorganization or file a petition under the Federal or State Bankruptcy Laws without the consent of the Griffiss Institute
  - h. Maintain such customary insurance with a reputable insurance company, covering risks and hazards of such types and in such amounts as are customary for adequately- insured companies of similar size engaged in similar industries and lines of business and such insurance policies shall be made to available to the Griffiss Institute upon its written request. Any Teams conducting business operations within the Griffiss Institute and/or Innovare Advancement Center facility shall ensure the latter are named as additional insureds on such policies.
  - i. Ensure that the minute books and stock record books of the Company shall be complete and correct and have been maintained in accordance with sound business practices. The Company shall keep adequate books, accounts and records in accordance with past custom and practice as used in the preparation of the financial statements, which books, accounts and records shall fairly present the financial condition and results of operations of the Company. All such minute books, stock record books, and accounts and records of the financial statements shall be made available to the Griffiss Institute upon its written request at reasonable intervals and upon sufficient notice.
  - j. Intellectual Property Ownership. All intellectual property, including but not limited to inventions, discoveries, designs, software, data, trade secrets, and know-how, developed, conceived, or reduced to practice by the Company or its personnel, whether prior to or during its participation in the Program, shall remain the sole and exclusive property of the Company. Nothing in this Agreement shall be construed to grant Griffiss Institute any ownership interest in the Company's intellectual property.
  - k. Publicity Rights. The Company grants to Griffiss Institute, its affiliates, and their respective representatives a perpetual, worldwide, royalty-free, non-exclusive license to use, reproduce, publish, and display the Company's name, logos, trademarks, pictures, voices, videos, and general descriptions of its participation in the HUSTLE Accelerator and/or Incubator programs (collectively, the "Publicity Materials"). This license is for the purpose of promoting the HUSTLE programs, the Griffiss Institute, and related educational and marketing efforts across various print and digital platforms, including public affairs releases, recruitment materials, social media, and websites. The Company understands that Griffiss Institute cannot control how this information will be used once it is publicly disclosed.
  - l. Company acknowledges agrees to abide by GI's anti-harassment and Code of Conduct policies while at the Innovare Advancement Center and program events.
- 5) **Withdrawal.** The Company may at any time elect to withdraw from the Incubator, and in doing so must present a letter to the HUSTLE 12-Month Incubator administrator stating the reason for withdrawing.

- a. In the event of withdrawal:
  - i. the Company shall have no further obligation to comply with its Business Plan.
  - ii. the Griffiss Institute shall have no further obligation to award the Prize funding to the Company.
  - iii. the Company shall refund to the Griffiss Institute all Prize money awarded hereunder, less authorized expenses actually incurred to date, unless otherwise determined by the Griffiss Institute;
  - iv. the Warrant and obligations under paragraphs 6 and 7 hereof shall remain in full force and effect; and
  - v. all other obligations of the Company and the Griffiss Institute hereunder shall terminate.

**6) Expulsion.** The Griffiss Institute may expel the Company from the Incubator in the event that the Company, after ten (10) days' notice and failure to cure:

- a. A failure to meet any of the conditions or other failure to perform any of its obligations set forth in these terms and conditions or the HUSTLE 12-Month Incubator rules; or
- b. Any act that that adversely affects the reputation of the Griffiss Institute, Griffiss Institute Business Incubator, and any respective subsidiaries or affiliates thereof, or is convicted of, or pleads no contest to, a crime or misdemeanor involving acts of moral turpitude.
- c. In the event of expulsion:
  - i. The Griffiss Institute shall have no further obligation to award the Prize funding to the Company;
  - ii. the Company shall refund to the Griffiss Institute its Prize awarded hereunder, less authorized expenses actually incurred to date, unless otherwise determined by the Griffiss Institute;
  - iii. the Warrant and obligations under paragraphs 6 and 7 hereof shall remain in full force and effect; and
  - iv. all other obligations of the Company and the Griffiss Institute hereunder shall terminate.

**7) Non-Recourse State Funding.** The Griffiss Institute's obligations to make any payments, including Prizes, is contingent upon receipt of HUSTLE 12-Month Incubator funding from Empire State Development Corporation, wherein said obligation is limited to the extent of funding received.

**8) Indemnification.** Subject to the other terms and conditions of paragraph 6, the Company shall indemnify and defend the Griffiss Institute and its affiliates and their respective representatives (collectively, the "**Griffiss Institute Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all losses incurred or sustained by, or imposed upon, the Griffiss Institute Indemnitees based upon, arising out of, with respect to or by reason of:

- a. any inaccuracy in or breach of any of the representations or warranties of the Company contained in these terms and conditions, the HUSTLE Defense Accelerator application, or in any certificate or instrument delivered by or on behalf of the Company pursuant hereto;

or

- b. any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by the Company pursuant to these terms and conditions.

9) **Expenses.** Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with these terms and conditions, and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Company remains in the HUSTLE Incubator.

10) **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given when: a) delivered by hand (with written confirmation of receipt); b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); c) on the date an e-mail of a PDF document is sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses specified in the HUSTLE Defense Accelerator application, or such other address as may be communicated in writing to the Griffiss Institute.

11) **Headings.** The headings in these terms and conditions are for reference only and shall not affect the interpretation of these terms and conditions.

12) **Entire Agreement.** These terms and conditions and together with the documents incorporated herein by reference, constitute the sole and entire agreement of the parties with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

13) **Successors and Assigns.** These terms and conditions shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors (including any entity formed by the Company hereafter) and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

14) **Amendment and Modification; Waiver.** These terms and conditions may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these terms and conditions shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15) **Governing Law; Submission of Jurisdiction.**

- a. These terms and conditions shall be governed by and construed in accordance with the laws of the State of New York without giving effect to any choice or conflict of law provision or

rule (whether of the State of New York or any other jurisdiction).

- b. Any legal suit, action or proceeding arising out of or based upon these terms and conditions, the transaction documents or the transactions contemplated hereby or thereby may be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in the County of Oneida, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such. suit, action or proceeding.

**16) Success Benchmarks.** HUSTLE 12-Month Incubator is funded in part by New York State's Empire State Development. As such, it will be evaluated on several criteria. Companies that participate in the HUSTLE 12-Month Incubator will be evaluated in part on how they will enable HUSTLE 12-Month Incubator to meet its metrics of success. The following is the criteria the HUSTLE 12-Month Incubator will be evaluated on:

- a. the number of new tech start-ups within the Mohawk Valley.
- b. the number of participating companies that remain in business after three years.
- c. the number of investable companies that have graduated from the HUSTLE 12-Month Incubator (i.e., companies that have received outside investment).
- d. the number of companies that are generating revenue within one year of graduating from the HUSTLE 12-Month Incubator.
- e. the number of dollars spent by HUSTLE 12-Month Incubator companies within the Mohawk Valley and within New York State.

(Attestation page follows, then signature page.)

### ATTESTATIONS PAGE:

\_\_\_\_\_ *I verify my team's eligibility to the HUSTLE 12-Month Incubator*

HUSTLE 12-Month Incubator is aimed at helping emerging, pre-seed, early companies attempting to tackle nationally relevant defense technology commercialization.

- Teams can be pre-formation but will be required to legally form if selected for prize money.
- Teams are not required to have a minimum viable product or sales.
- Total revenue from customers preferred to be below \$500,000.
- Total investment from equity/diluted funding preferred to be less than \$500,000.

\_\_\_\_\_ *I verify I am accepting entry to the HUSTLE 12-Month Incubator:*

- \$7,500 per founder, for one or two founders (minimum team presence), with at least one being a C-level executive, in residence at the Innovare Advancement Center in Rome, NY for the duration of the cohort.
- \$24,500 value of support programming during the HUSTLE Accelerator
- A competitively selected Demo Day prize investment from a total pool of \$600,000.

\_\_\_\_\_ *I verify our team will be sending, with a regular presence in the HUSTLE 12- Month Incubator, the following count of team members, and thus set the amount of the initial investment:*

\$24,500 program value (in-kind)

+

\$7,500 per attending (up to 2) cash investment

\_\_\_\_\_ Company Count 1 = \$7,500

\_\_\_\_\_ Company Count 2 - \$15,000

I, \_\_\_\_\_, as owner and/or chief executive officer of the undersigned business, hereby agree to the above stated terms and conditions of the HUSTLE 12-Month Incubator. I understand that failure to comply with the above stated terms and conditions may result in expulsion from HUSTLE 12-Month Incubator and/or the forfeiture or refund of HUSTLE 12-Month Incubator Prize funding.

Signature of Owner/CEO: \_\_\_\_\_

Company Name: \_\_\_\_\_

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