

Genius NY 2019 Competition (the "Competition")
Final Round
Terms and Conditions

1. **Final Round.** The Final Round will consist of two (2) phases:

(a) During Phase 1 (approximately three (3) months), each Team shall:

(i) Create a document that explains Company goals and how it plans to accomplish such goals; specifically, a written proposal outlining the business idea and includes financial, marketing, and operational plans, as amended from time to time (the "**Business Plan**") containing prioritized tasks associated with an outline of necessary expenditures which marks a stage in the development of the Team ("**Milestones**"); and

(ii) Prepare a "pitch" to the Competition judges.

(b) Upon completion of Phase 1, an independent judging panel shall rank the Teams 1 through 5. CenterState shall award the following prizes (each an "**Prize**" and collectively, the "**Prizes**"):

<u>Ranked</u>	<u>Amount of Prize</u>
Rank 1	Up to \$1,000,000
Rank 2, 3, 4 and 5	Up to \$500,000

(c) During Phase 2 (approximately nine (9) months), CenterState shall disburse the full amount of the applicable Prize to the Company, in accordance with the Milestones set forth in the Business Plan of the particular Company, subject to Section 5 hereof.

(d) If selected for the Final Round, the Company shall be entitled to a stipend of Ten Thousand Dollars and 00/100 (\$10,000) per month for living expenses during Phase 1.

2. **Conditions to Receipt of Prizes.** As a condition to receipt of the Prize, each Team shall be required to satisfy each of the following conditions:

(a) The Team shall have achieved its Milestones and otherwise be in compliance with the Company Business Plan.

(b) The Team shall be in compliance with the rules of the Competition established by CenterState, as amended from time to time, to the extent such rules are not inconsistent with the terms and conditions hereof (the "**Genius NY Rules**"). Click here for a link to the Genius NY Rules: www.geniusny.com.

(c) All statements contained in the Team's Genius NY application submitted to participate in the Genius NY Competition ("**Genius Application**") shall be true and correct in all respects, unless otherwise disclosed in writing to CenterState.

(d) The Team shall have (i) incorporated as a corporation or a limited liability company (the "**Company**") under the laws of one of the fifty (50) states of the United States of America and (ii) furnished to CenterState 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 CenterState.

(e) The Team shall have furnished CenterState with a (i) capitalization chart current as of the date hereof listing all persons holding stock, membership interests or other equity in the Company and the amounts and/or percentages held by such persons, and (ii) the names and addresses of the directors, managers, officers and key persons of the Company.

(f) The Team shall have furnished such bills of sale of other documents as CenterState 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 CenterState.

(g) The Team shall have furnished proof that all intellectual property necessary to operate the Company's business is owned or has been assigned or transferred to, or licensed by, the Company.

(h) The Team shall have furnished a certificate, affidavit or other statement stating that there are no actions, suits, proceedings or investigations pending or threatened against the Company to the best of its knowledge.

(i) 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 CenterState.

(j) The Company shall execute and deliver to CenterState a warrant granting CenterState the right to purchase (i) eight percent (8%) of the stock or other equity of the Company if ranked 1; and (ii) five percent (5%) of the stock or other equity of the Company if ranked 2, 3, 4 and 5 (the, "**Warrant**"). The Warrant shall be substantially in the form set forth in this link http://www.geniusny.com/uploads/8/0/1/6/80165488/form_warrant_llc__h3092462x7a869_.pdf modified, as necessary, to fit the Company's equity structure.

(k) The Team shall have furnished to CenterState a certificate evidencing proof of insurance, as more particularly described below in Section 3(f) hereof.

3. **Other Agreements.** The Team and the Company each agree that it will:

(a) Maintain its business and operations within the counties of Cayuga County, Cortland County, Herkimer County, Jefferson County, Lewis County, Madison County, Oneida County, Onondaga County, Oswego County, Seneca County, St. Lawrence County and Tompkins County (the "**Twelve County Region**") during the term of the Final Round.

(b) Comply with all laws applicable to it and its business properties or assets, the rules of operation in effect from time to time at The Tech Garden, the Genius NY Rules and the terms and conditions of the Warrant.

(c) Not transfer, assign or encumber any of the Company assets, including intellectual property, other than in the ordinary course of business without the prior written consent of CenterState, which consent shall not be unreasonably withheld.

(d) Not enter into a line of business which is substantially different from the business set forth in the Genius Application or otherwise approved in writing by CenterState as a result of Business Plan modification.

(e) Not adopt any plan of merger, consolidation or reorganization or file a petition under the Federal or State Bankruptcy Laws without prior written consent of CenterState, which consent shall not be unreasonably withheld.

(f) 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.

(g) 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 CenterState upon its written request.

(h) Maintain under the laws of the state of its formation, its valid corporate existence and good standing and all Permits necessary to the conduct of its business;

(i) Comply with all contractual obligations and pay and discharge all (1) taxes due and owing by the Company and (2) all claims for labor, material and supplies;

(j) (1) own, exclusively all right, title and interest in and to, or have a valid license for, and maintain all intellectual property necessary to the conduct of its business, free and clear of encumbrances; (2) enter into and maintain in full force and effect binding, written agreements with every employee and independent contractor, whereby such employees and independent contractors (A) assign to the Company any ownership interest and right they may have in the intellectual property and (B) acknowledge the Company's exclusive ownership of all intellectual property; and (C) remain in full compliance with all legal requirements applicable to the intellectual property and the Company's ownership and use thereof;

(k) Not grant any license or sublicense of any intellectual property used or necessary of the conduct of the business of the Company, without the prior written consent of CenterState;

(l) Ensure each member of the Team takes all action necessary to vest title to all intellectual property in the Company (including, without limitation, all patent, copyright, trade secret and other intellectual property rights);

(l) Deliver to CenterState, upon its written request, copies of all federal, state, local and foreign income, franchise and similar tax returns, for tax periods ending after December 2018;

(m) Provide CenterState quarterly financial statements, including statements of income and cash flow and the financial position and balance sheet of the Company;

(n) Allow CenterState to disclose and/or reproduce (1) the Team name, pictures, voices, videos and participation in the Competition, (2) any written and/or visual materials and works of art that were created by the Team and/or that represent the Team and its work or likeness, including, but not limited to, pictures, photographs, audio and video recordings and digital images in all print and electronic form which may pertain to the Team and its activities with or regarding the Competition (collectively, the "Materials") for this same purpose. The Team understands and agrees that the Materials may be used in various print and digital publications, press releases, recruitment materials, social media platforms, and for other similar educational and marketing efforts on behalf of CenterState, and that CenterState cannot control how this information will be used once it is disclosed.

4. **Withdrawal; Expulsion.**

(a) The Company may at any time elect to withdraw from the Competition. CenterState may expel the Company from the Competition in the event the Company after thirty (30) days' notice and failure to cure:

(i) Fails to meet any of its obligations hereunder or otherwise breaches the Genius NY Rules; or

(iii) Acts in any manner that in the sole opinion of CenterState adversely affects the reputation of CenterState, Greater Syracuse Chamber of Commerce Economic Development Association (d/b/a The Technology Garden), 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.

(b) In the event of either withdrawal or expulsion, pursuant to paragraph 4(a):

(i) the Company shall have no further obligation to comply with its Business Plan nor perform the Milestones, and CenterState shall have no further obligation to award or disburse the Prize to the Company or pay stipends;

(ii) the Company shall refund to CenterState the Prize awarded hereunder;

(iii) the Warrant and obligations under paragraphs 7 and 8 hereof shall remain in full force and effect; and

(iv) all other obligations of the Company and CenterState hereunder shall terminate.

5. **Non-Recourse State Funding.** CenterState's obligations to make the Prize is contingent upon receipt of Genius NY 2019 program monies from Empire State Development Corporation in an amount sufficient to fund the Prizes.

6. **Disclaimer of Tax Treatment.** CenterState makes no representation or warranty of and disclaims the tax treatment of the Prize. The Company has been advised by CenterState to seek advice from its attorneys and accountants on the tax treatment of the Prize.

7. **Indemnification.** Subject to the other terms and conditions of this paragraph 6, the Company shall indemnify and defend CenterState and its affiliates and their respective representatives (collectively, the "**CenterState 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 CenterState 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 Team contained in these terms and conditions, the Genius 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 Team pursuant to these terms and conditions.

8. **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 Competition.

9. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when 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 sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if 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 Genius NY application, or such other address as may be communicated in writing to CenterState.

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

11. **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.

12. **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 Team 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.

13. **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.

14. **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 City of Syracuse and County of Onondaga, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.