

TERMS AND CONDITIONS FOR GROW-NY COMPETITION FOR 2019

Last Updated: 5/30/2019

The Grow-NY Competition is an unparalleled competition focused on growing entrepreneurs and attracting resources from the U.S. and around the world to build innovative high growth food and agriculture businesses (the “**Competition**” or “**Grow-NY**”) and create jobs in New York’s Central, Finger Lakes, and Southern Tier regions (collectively, the “**Grow-NY Region**”). The Competition is administered by Cornell University (the “**University**”).

By submitting an application to compete in the Competition, the applicant agrees to and shall be bound by these terms and conditions (“**Terms and Conditions**”). These Terms and Conditions were last updated on the date identified above. All previous versions of these terms and conditions are deemed null and void.

Purpose

The purpose of the Competition is to be part of an overall program aimed at developing innovative food and agriculture enterprises in the Grow-NY Region. The Competition will award a total of up to \$3 million in prizes for the 2019 Competition, with a single top award of \$1 million. Its goal is to attract entrepreneurs from around the world to compete for prizes that will turn innovative food and agriculture ideas into funded enterprises with high growth potential in the Grow-NY Region.

The key driver of Grow-NY is that the award money is to be used in support of developing innovative food and agriculture businesses, with a goal of growing a thriving food and agriculture start-up cluster in the Grow-NY Region. Milestones will be used to assure award money is used to develop and grow the innovative food and agriculture businesses. Prizes will target scalable business models versus more localized service businesses, and with an emphasis on job creation and innovation.

Competition Timeline

Each year, the Grow-NY competition cycle will consist of an application, an online semifinalist selection, and a live pitch. Business support and development work in the Grow-NY Region is included for all finalists. Business support will continue to run after the Competition for as long as companies have an obligation to maintain a presence in the Grow-NY Region.

Date*	Event
May 31, 2019	Launch of the Competition and Application
July 15, 2019	Close of Application
Late July 2019	Semifinal Round of Judging <ul style="list-style-type: none">○ Group of judges will review and score applications
August, 2019	All applicants notified of their status
Fall 2019	Finalist Mentoring and Business Development <ul style="list-style-type: none">○ Finalists conduct business development trips throughout the Grow-NY Region

	<ul style="list-style-type: none"> ○ Finalists work with their assigned mentor to plan and refine their pitch
November 12-13, 2019	<p>Pitch Competition & Grow-NY Summit</p> <ul style="list-style-type: none"> ○ A 3-day pitch event in the region featuring a live pitch to the Grow-NY judging panel ○ Grow-NY Food and Agriculture Summit ○ Prize winners announced

*All dates are tentative and remain subject to change by the Administrator.

Eligibility

The Competition is limited to applicants that are early-stage companies in the Food and Agriculture Field. As used in these Terms and Conditions, the term “**Food and Agriculture Field**” is defined as follows:

- Physical products, hardware technologies, software technologies, services, or processes that relate to or impact products that are derived from cultivating plants or enhance human life, such as:
- Food, including but not limited to fruits, vegetables, grains and cereal crops, meats and dairy products, honey and farmed fish, packaged and prepared food products for distribution;
- Fuels, including but not limited to ethanol, produced from corn, sugarcane, or sorghum, and agricultural byproducts like straw sugarcane;
- Fibers, including but not limited to fiber crops such as cotton, wool, silk, hemp, flax and bamboo;
- Raw materials, including but not limited to livestock feed; and
- Processes or systems that improve the development, growth, production, distribution, delivery, or processing of the above.

The term “**Food and Agriculture Field**” also includes hardware technologies, software technologies, services, or processes that are new, novel, or otherwise benefit agriculture, food, or their related industries.

To be eligible for the Competition, an applicant must be an established business entity that meets two or more of the following criteria, consistent with New York State’s definition of a “business in the formative stage,” which is defined as a “company in the start-up or early stage of development with a product, service, software, or research that is not yet in the commercial marketplace, but which can show continued and steady maturity towards commercialization and profitability either by product development, external funding or product sales.”

- Less than seven years from date of formal organization
- Has its first product or service in testing or pilot production
- Pre-revenue or early revenue
- Has a leadership team and investors working towards commercialization and profitability. If the business is a spin-off from an existing business that does not meet the above criteria, the new entity must be pursuing a substantially new technology or business model.

The following businesses are not eligible for the Competition: investment vehicles that invest in the securities of other entities, residential real property and retail businesses, sports venues, gaming and gambling businesses, places of overnight accommodation, entertainment-related establishments, and such other types of business as the University's Grow-NY Administration Team (the "**Administrator**") may reasonably determine from time to time to be inconsistent with the purposes of the Competition. For this purpose, "**retail business**" means a business that is primarily engaged in making retail sales of goods or services to customers who personally visit such facilities to obtain goods or services. In addition, generally excluded are the following: buy-outs, roll-ups, real estate syndications, tax shelters, and franchise-based outlets. Also excluded are any businesses that do not fit within the definition of "Food and Agriculture Field" above.

Awards, Benefits, and Conditions

Applicants that are accepted for participation in the Competition will be eligible to compete to receive one of the following seven prize awards:

- one award of \$1 million,
- two awards of \$500,000, and
- four awards of \$250,000 (each, an "**Award**" and collectively, the "**Awards**").

The number of Awards made is subject to change in the discretion of the Administrator based on the number of applicants, quality of applications received, involvement and commitment by selected finalists, and other factors.

All recipients of an Award (each, a "**Recipient**") will receive mentorship from experienced entrepreneurs and access to business acceleration and incubation support during the period of the Award.

Awards are contingent upon the availability of funds, and also contingent upon and only issued subject to execution of an Award Agreement in the form provided by the Administrator, which will include, but not be limited to, the following provisions:

Staged Payment. Recipients will receive Award money in staged payments, payable upon achievement of certain milestones as defined in the Award Agreement.

Entity Formation. Applicants need to have formed a business organization and be either a corporation or limited liability company in order to complete and submit an application. Award Agreements will be entered into with winning business entities. Each winning business entity must have authority to do business in New York and be in good standing both in New York and its jurisdiction of organization.

Grow-NY "Pay It Forward Investment". Winners will be required to enter into a definitive investment agreement in the form of a [Warrant Agreement](#) or [Simple Agreement for Future Equity](#) (SAFE) with the University (the "**Investment Agreement**"), the forms of which are attached to the Award Agreement, for an amount up to 3% of the fully-diluted capitalization of the Recipient for an Award of \$1 million and up to 2% of the fully-diluted capitalization of the Recipient for Awards up to \$500,000 and \$250,000. The Administrator will reinvest any future proceeds derived from the Pay It Forward Investment consistent with the general purposes of the Competition. The applicant may choose whether the Investment Agreement will be a Warrant Agreement or SAFE.

Location Requirement. As a condition of any Award, Recipients must materially locate and maintain a presence on an on-going basis within the Grow-NY Region for at least twelve (12)

consecutive months, commencing within three (3) months of the date of the Award. For purposes of this condition, the obligation to materially locate and maintain a presence in the Grow-NY Region may be met in one of the following ways:

- the applicant shall establish its principal place of business in the Grow-NY Region, identify its primary headquarters as its address in the Grow-NY Region, and have its key officers reside in New York State within commuting distance to this location; or
- the applicant shall establish its primary manufacturing facility within the Grow-NY Region; or
- the applicant shall establish its primary research and development facility within the Grow-NY Region; or
- the applicant shall make substantial capital investments in property, plant and equipment in its Grow-NY Region.

If a Recipient already has its primary offices in New York State, upon receiving an Award it may fulfill its obligation to materially locate and maintain a presence in the Grow-NY Region in one of the ways stated above. In the alternative, such a Recipient may fulfill these obligations by committing to quantified job creation targets in its Grow-NY application and presentations, and documenting achievement of these targets. These job creation targets may include jobs created directly by the company or include those created by the establishment of a Grow-NY Region-based supply chain or other strategic relationships with Grow-NY Region entities. The Administrator shall have the discretion to determine whether an applicant's job creation targets, both in terms of number and quality of jobs, are acceptable to meet the Location Requirements.

If, during the term of the Location Requirement, the Recipient should stop meeting this Location Requirement, whether by moving outside of New York State or otherwise, the Award Agreement may be terminated and the Recipient shall forfeit all unpaid Award amounts and be obligated to immediately repay all disbursed Award amounts.

The Grow-NY Region consists of the following counties:

- Central NY (Cayuga, Cortland, Madison, Onondaga, and Oswego counties),
- Finger Lakes (Genesee, Livingston, Monroe, Orleans, Ontario, Seneca, Wayne, Wyoming, and Yates counties), and
- Southern Tier (Broome, Chemung, Chenango, Delaware, Schuyler, Steuben, Tioga, and Tompkins counties).

Applications

Applications should be submitted via the Grow-NY website: www.grow-ny.com - following all protocols described on the website. All applications must be submitted in English. Instructions for filing a paper application in lieu of an online application are described on the website for applicants needing special accommodations.

Non-U.S. Applicants

Both domestic and non-United States based applicants are encouraged to apply. Non-United States applicants are responsible for obtaining any necessary visas and related immigration papers to attend final events of the Competition and to satisfy the appearance requirements of the final round of judging (as described below) and to meet the Location Requirements necessary

to receive and continue to receive an Award.

Review of Applications

The application period will close July 15, 2019, 5:00 P.M. EDT, unless the deadline is extended (at the sole discretion of the Administrator). A panel of judges approved by the Administrator (the “**Committee**”) will review the applications. The Administrator shall have no obligation to confirm or acknowledge receipt of any application or to notify applicants if their submissions are incomplete.

The Committee may contact applicants to make inquiries or request additional information if it deems necessary to properly evaluate an application. The Committee will select certain applications to progress in the Competition as finalists. Such selections shall be made in the discretion of the Committee, subject to review by the Administrator.

Such finalists will receive (and must actively participate in) business training and mentoring support, including networking in the Grow-NY Region. Those finalists that choose to continue in the Competition will be invited to present to a Finals Judging Panel, selected by the Administrator, which will culminate in the Finals Judging Panel selecting the winners. Not all finalists will be selected to receive an Award.

Judging Criteria – Applicants will be judged based on:

- Viability of Commercialization and Business Model - Generation of revenue and maintenance of a cost structure that allows for a competitive and sustainable business; demonstrated readiness of the applicant’s technology or innovation to fulfill its needed value proposition.
- Customer Value - Provision of significant value for customers for which they are willing to pay; addressing a substantial market.
- Agriculture and Food Innovation – Pushing the state of the art in food and agriculture and contributing to making Upstate NY a global leader in agriculture and food innovation.
- Regional Job Creation - Potential for creation of high-quality jobs in the Grow-NY Region.
- Team – Quality and completeness of the team and its readiness to deliver.

Confidentiality and Intellectual Property – By submitting an application, the applicant agrees to the terms of the Grow-NY privacy policy, which is available on the Grow-NY website at www.grow-ny.com. Access to the applications is granted to the Administrator and its designees (including, but not limited to, the Committee and Finals Judging Panel) for the purposes of review and judging (collectively, the “**Reviewing Parties**”). **The Administrator, for itself and on behalf of the Reviewing Parties, offers and makes no guarantee of confidentiality, either explicit or implicit, in connection with any data or information presented or discussed by applicants, whether in the application or otherwise throughout the Competition.**

Applicants should confirm with appropriate advisors and legal counsel that any intellectual property described or disclosed in an application is held by the applicant and appropriately protected before the application is submitted. Applicants should be prepared to provide reasonable back-up documentation for these statements, if requested by the Administrator.

The authors of each applicant submission will retain all copyrights to the contents of their submission, provided that the Reviewing Parties may make photocopies, photographs, and video and/or audio recordings of any data or information divulged, presented, or discussed by any applicant throughout that applicant’s participation in the Competition. By submitting an application for the Competition, applicants agrees to and hereby grants a license to the Administrator and the

Reviewing Parties to use and reproduce such materials without restriction and without compensation and to conduct such due diligence as the Reviewing Parties determine is necessary or desirable for purposes of evaluating the application and carrying out the Competition as described herein.

In addition, applicant agrees, for itself and each of its principals and officers, that the Administrator and its assigns will have the perpetual right to publicly post and reproduce certain information about finalists and winners of Awards, including, but not limited to names of participating individuals, photographs, videos, category of business, logo and other marks, and an abstract (collectively, "**Materials**") on the public areas of the Reviewing Parties' websites, media sites and through other means, all without compensation. The Administrator and its assigns will also have the perpetual right to use the Materials for research, educational, advertising, promotional, not-for-profit and other similar purposes.

Other Conditions

1. Only one application per entity may be selected for evaluation and judging. An individual who submits an application on behalf of a business entity represents and warrants he or she has requisite authority to act on behalf of such entity.
2. All applications must be the original work of the applicant making the submission.
3. Partially completed applications will not be accepted. **Applications for the Competition are due by 5:00 P.M. EDT on July 15, 2019.**
4. Existing businesses may propose a new business that would have operations within the Grow-NY Region so long as the new business qualifies as a "business in the formative stage" under applicable New York law.
5. Applicants risk disqualification if they or someone on their behalf communicates with the Reviewing Parties, beyond submitting applications and providing further data or information as requested, in an attempt to influence the Competition.
6. All questions regarding the interpretation of these Terms and Conditions and all issues or disputes which arise under these Terms and Conditions shall be conclusively determined by the Administrator, with the Administrator's decision being final and binding, and not subject to appeal.
7. Each applicant shall protect, indemnify, defend and hold harmless the Administrator, the University and its affiliates, and their trustees, officers, agents, employees, contractors and representatives and the State of New York (collectively, the "**Indemnified Parties**") from and against any and all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs, and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against the Indemnified Parties resulting from, arising out of or relating to the applicant's participation in the Competition.
8. The Administrator shall have no responsibility or liability for agreements between applicants and third parties.
9. Application materials become the property of the Administrator.
10. Applicants (or their principals or affiliates) that engage in (a) immoral, illegal, or other activity

that may adversely affect the reputation or image of the Administrator, the University or its affiliates, or other applicants, or (b) conduct which is inconsistent with the purpose of the Competition or which affects the administration, fairness, or proper conduct of the Competition, may be disqualified from the Competition at any time.

11. All applicants and Recipients must comply with these Terms and Conditions and the terms of the Award Agreement. Any breach or violation of these Terms and Conditions may disqualify an applicant from the Competition and result in forfeiture of any Award the applicant received in connection with the Competition.

12. Applicants may rescind their applications after submission up until the application intake closing date.

13. Recipients will be required to provide certified, written reports to the Administrator as set forth in the Award Agreement and as otherwise required by the Administrator. Recipients will also be required to preserve records relating to their operations and permit the University and its designees access to review and inspect such records for a period of six (6) years following the later of the making of the Award or termination of the Award Agreement.

14. There is no limit to the number of applications for which an individual person may be a part; except that no individual person can be part of more than one applicant team that receives an Award. Accordingly, if an individual person is part of more than one application in any capacity, this must be fully disclosed at the time of application.

15. The Indemnified Parties shall not be liable for any claims, losses, harm, injuries, damages or expenses relating to or resulting from any applicant's participation in the Competition.

Applicant Representations, Warranties and Covenants

By submitting an application, each applicant represents, warrants and covenants that:

1. The information in the application is and will be complete, true and accurate and not misleading in any respect, and if any information at any time after submission becomes untrue, inaccurate or misleading in any respect, applicant will promptly notify the Administrator of the same.

2. Applicant is not bound by any contractual or other commitments or any court orders, injunctions or other restrictions which would prohibit or limit the applicant and/or its principals and officers from participating in the Competition and agreeing to these Terms and Conditions and the Award Agreement (including the Investment Agreement).

3. The ideas and other content contained in the application will not infringe upon the rights, including, but not limited to, privacy and intellectual property rights, of any third party.

4. The applicant has a reasonable basis for holding the intellectual property that forms the basis or is integral to the applicant's business or the proposed business submitted in the Competition.

5. The applicant has and will have the right and authority to submit the content in its application to the Grow-NY Competition.

6. The applicant will obtain permission or a license, as appropriate, for any third-party materials, information or other intellectual property contained in its application.

7. The applicant is in compliance with and will at all times comply with all applicable laws, rules and regulations in connection with its activities relating to the Competition. The applicant has in place and/or will procure and maintain in good standing at all times, and shall comply with the terms of, all permits, licenses, consents and other approvals as are necessary in the operation of its business.

8. The applicant will not hold or attempt to hold the Indemnified Parties responsible or liable for any third-party violation of its intellectual property rights as a result of participation in the Competition.

9. No member, officer, director, employee, or principal of the applicant has a close family relationship (e.g., parent, sibling, spouse, partner, or significant other) with any officer, member, director, or senior management person of the Administrator or the University. Applicants shall immediately report to the Administrator any conflicts of interest regarding their participation in the Competition, including, but not limited to, as it relates to the composition of the Committee and Finals Judging Panel.

10. The applicant consents to the Administrator performing a background check with respect to the applicant and its principals, officers, and directors.

11. Where an applicant's business exists in any form other than a limited liability company or corporation, the applicant will take the necessary steps to complete the conversion of its business to a limited liability company or corporation before submission of its application.

12. Neither the applicant, nor any of its directors, officers, members or principals is subject to any of the "Bad Actor" disqualification events described in Rule 506 promulgated under the Securities Act of 1933, as amended.

13. The applicant has no reason to believe it will be prohibited or otherwise unable to comply with these Terms and Conditions, including full compliance with the Location Requirements, the terms of the Award Agreement, and the terms of the Investment Agreement (including the issuance of up to 3% of equity securities).

14. Applicants shall not publicly disparage the Administrator, the University or its trustees, officers, and employees, members of the Committee or Finals Judging Panel, or any public officials or agencies of the State of New York who play a role in the funding, administration or operation of Grow-NY.

Non-Discrimination

The Administrator does not discriminate against any applicant on the basis of race, color, creed, ethnicity, gender, disability, age, sexual orientation, gender expression, military status, or marital status.

Amendment

The Administrator reserves the right to modify these Terms and Conditions in its sole discretion. In the event of a modification prior to the close of the period of time during which an application may be submitted, all applicants will be notified.

Administrator's Discretion

The Administrator reserves all rights with respect to the Competition and shall have the exclusive

right, at its sole discretion, to make all decisions and resolve all issues and disputes with regard to the application process and the Competition, all without liability. The Administrator's decisions shall be final and binding, and not subject to appeal. Examples of the Administrator's rights and discretion include, but are not limited to, the right to (a) cancel, terminate, modify or suspend the Competition at any time, (b) make no Awards, (c) make less Awards than anticipated, (d) determine whether an applicant or Recipient has breached these Terms and Conditions, including the Location Requirements, (e) determine the eligibility criteria for applicants, (f) determine the number of individuals and the specific individuals selected to serve as members of the Committee and Finals Judging Panel, and (g) interpret these Terms and Conditions.

Waiver and Severability

The Administrator may waive any term or condition herein at its sole discretion. Such waiver will not be deemed a waiver of any other term or condition, whether similar or different, or for any other applicant. If any term or condition herein is determined to be invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions will remain in full force and effect.

Governing Law

These terms and conditions shall be governed and construed in accordance with the laws of the United States of America and the State of New York, without regard to conflicts of law provisions. Exclusive venue for any litigation arising from the Competition or these Terms and Conditions shall be the State or Federal courts located in and for Tompkins County, New York.

Survival

These Terms and Conditions will be binding on applicant and survive the completion of the Competition. These Terms and Conditions will be incorporated by reference into the Award Agreement.