

**VIRGINIA HIGHLANDS SMALL BUSINESS INCUBATOR, INC.
AFFILIATE PROGRAM AGREEMENT**

This Agreement is made this _____ day of _____ 20__ by and between Virginia Highlands Small Business Incubator, Inc., a Virginia not-for-profit corporation (hereinafter referred to as “VHSBI”), and _____ (hereinafter referred to as “Affiliate”).

WHEREAS, VHSBI operates a business incubator for the purpose of facilitating the development and growth of small business; and

WHEREAS, VHSBI facilitates the development of small business through a tenant program and through an affiliate program; and

WHEREAS, Affiliate desires to utilize VHSBI’s affiliate program under the terms of this Agreement;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

1. **TERM.** This Agreement shall be for a term of one (1) year beginning with the effective date set forth hereinabove, unless sooner terminated as set forth in Section 7 below. This lease shall renew annually for one year periods unless terminated, by either party, 30 days in advance of the annual renewal date.

2. **PROGRAM SERVICES.** The services provided by VHSBI under this program are those as set forth on the schedule of services attached hereto as Exhibit 1 and incorporated herein by this reference. Affiliate shall pay the standard monthly fee described in Section 3 A.

3. AFFILIATE PROGRAM CHARGES.

A. **Standard Monthly Fee.** Affiliate shall pay the amount shown on Exhibit 1. The monthly fee shall be paid by Affiliate in advance on the same day of the month each month which shall be the same day as first set forth above.

B. **Late Fees.** A late fee equal to 5% of the total amount owing by Affiliate shall be charged on any outstanding amount owed which has not been paid within five (5) days of its due date.

C. **Security Deposit and Initial Payment.** Upon execution of this Agreement, Affiliate shall pay to VHSBI a security deposit equal to one month’s charges which shall be held by VHSBI during the term of this Agreement. The security deposit shall be used for payment of any damages to the facilities, exclusive of normal wear and tear, which occur during the term of this Agreement and which are caused by Affiliate. However, Affiliate’s liability for any damage is not limited by the amount of the security deposit. The balance of the security deposit, if any, will be returned to Affiliate at the mailing address provided by the Affiliate within thirty (30) days of the termination of this Agreement. Additionally, upon execution of this Agreement, Affiliate shall also pay the first month’s charges.

D. **Place of Payment.** Any payment due from Affiliate to VHSBI shall be made to: Virginia Highlands Small Business Incubator, Inc., Suite 200, Abingdon, VA 24210

4. **POLICIES AND PROCEDURES.** Affiliate shall be required to abide by VHSBI's policies and procedures, as promulgated from time to time, relating to the use of its building and facilities. Failure to do so may result in termination of this Agreement as provided in Section 7 A below.

5. **BUSINESS HOURS.** VHSBI business hours are 8:30 a.m. until 5:00 p.m. Monday through Friday. Affiliate members needing to use the facility either before or after these hours must receive prior authorization from the Executive Director and a current Liability Insurance Certificate naming VHSBI as an additional insured must be on file at the VHSBI.

6. **PRIORITY OF USE.** VHSBI will make every effort to accommodate Affiliate's scheduling needs in the use of its facilities. However, in the event of a conflict arising between Affiliate and a tenant of VHSBI in the use of its facilities, priority of use will be given to VHSBI's tenant. Affiliate will not be entitled to any recourse or damages of any kind whatsoever against VHSBI or its tenants in the event Affiliate is unable to use VHSBI's facilities at the date and time desired.

7. **TERMINATION.** This Agreement may be terminated for cause or without cause in the manner set forth herein. Upon termination, Affiliate shall no longer be entitled to utilize any services of VHSBI relating to the use of its facility.

A. **For Cause.** This Agreement may be terminated by VHSBI immediately in the event there is a breach of this Agreement by Affiliate, a failure by Affiliate to follow VHSBI's policies and procedures relating to the use of its building and facilities, or any conduct by Affiliate that, in the sole discretion of VHSBI, is deleterious or damaging to VHSBI or any of its tenants.

B. **Without Cause.** Either party may terminate this Agreement at any time upon giving the other party notice of its intent to terminate no less than thirty (30) days in advance of the date of termination.

8. **INDEMNIFICATION.** Affiliate will indemnify and hold harmless and assume the defense of VHSBI, its agents, employees and officials from any and all claims, liabilities, judgments, costs, damages and expenses of any nature whatsoever, including the cost of defending such claims, which may accrue against, be charged to, be recovered from or sought to be recovered from VHSBI, its agents, employees and officials by reason of or on account of any personal injury, sickness, or death of any person or damage to property arising from Affiliate's use of the premises. Affiliate shall also be responsible for any damage it, its employees, agents, representatives or invitees may cause to the premises or to any personal or other property belonging to VHSBI or its tenants that may be on such premises.

9. **RELEASE.** Affiliate hereby releases VHSBI, its agents, employees and officials from any liability or responsibility to Affiliate or any other person, claiming through it by way of subrogation or otherwise, for any loss or damage to the Affiliate's property or the property of any of its agents, employees, representatives or invitees which is brought onto the premises, regardless of how such loss or damage may occur, even if such damage or loss may have been caused by flood or other casualty or by the negligence of VHSBI, its agents, employees or officials. It is expressly agreed and understood that Affiliate, its agents, employees, representatives or invitees, in bringing property in and onto the premises do so at their own risk. It is further agreed and understood that VHSBI, its agents, employees and officials will not be liable to Affiliate for any business losses or damages to the property of Affiliate, its employees, representatives, agents or invitees, occasioned by the acts or omissions of other businesses or persons which may occupy the premises.

10. **INTELLECTUAL PROPERTY.** Affiliate shall not use any trademark, service mark, logo or trade name of VHSBI, nor shall Affiliate represent itself as having any business affiliation with VHSBI, without the express permission of VHSBI.

11. **APPLICABLE LAW.** The laws of the Commonwealth of Virginia shall govern the validity, interpretation, performance and enforcement of this Agreement and any suit brought to enforce the terms of this Agreement shall be brought only in the state courts of Washington County, Virginia or the federal court in Abingdon, Virginia.

12. **TITLE AND HEADINGS.** The titles and headings of this Agreement are used only for convenience and are not to be construed as part of the Lease.

13. **ENTIRE AGREEMENT.** This Agreement and its attachments, including Exhibit 1 and the Guarantee, shall be considered to contain the entire agreement between the parties hereto pertaining to the use of VHSBI facilities, and all negotiations and all agreements acceptable to both parties are included herein. This Agreement may be modified only by an amendment in writing signed by both parties hereto.

14. **ATTORNEYS FEES.** In the event VHSBI is required to file suit to enforce any provision of this Agreement, should it prevail, it shall be entitled to recover its reasonable costs and attorneys fees incurred in prosecuting the action, in addition to all other damages to which it might be entitled.

In WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

Virginia Highlands Small Business Incubator, Inc.
a Virginia not-for-profit

By: _____

Its: _____

Affiliate

Address: _____

Telephone: _____

GUARANTY OF AGREEMENT

FOR VALUE RECEIVED, and in consideration for, and as an inducement to VIRGINIA HIGHLANDS SMALL BUSINESS INCUBATOR, INC. (hereinafter referred to as "VHSBI"), to enter into an Affiliate Program Agreement (the "Agreement") with _____, (hereinafter referred to as "Affiliate") which Agreement, of even date herewith, is incorporated herein by reference, the undersigned absolutely, unconditionally and irrevocably guarantees to VHSBI the full and prompt payment of all fees and all other charges to be paid by Affiliate under the Agreement and the full and timely performance and observance of all covenants, conditions, and agreements therein provided to be performed and observed by Affiliate.

The undersigned expressly agrees that the validity of the Guaranty of Agreement and the obligations of the undersigned hereunder shall in no way be terminated, affected, or impaired by reason of (i) any forbearances, releases, settlements or compromises between VHSBI and Affiliate or any other guarantor, by reason of any waiver of or failure to enforce any of the rights and remedies reserved to VHSBI in the Agreement or otherwise, or (ii) the invalidity, illegality or unenforceability of the Agreement for any reason whatsoever, or (iii) as a result of the relief or release of Affiliate or any other guarantor from any of their obligations under the Agreement by operation of law or otherwise, including, without limitation of the generality of the foregoing, the insolvency, bankruptcy, liquidation or dissolution of Affiliate or any other guarantor or the rejection of or assignment of the Agreement in connection with proceedings under any bankruptcy laws now in effect or hereafter enacted, or (iv) the release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including without limitation, negligent, willful, unreasonable or unjustifiable impairment) of any collateral securing the Agreement, or (v) any other act or omission of VHSBI or Affiliate which would otherwise constitute or create a legal or equitable defense in favor of the undersigned.

The undersigned represents and warrants that the undersigned has a material economic interest in Affiliate and that the execution of this Agreement will be of direct benefit to the undersigned, whether or not the undersigned shall ever use any portion of the premises. In the event of any termination of the Agreement by VHSBI, the undersigned's liability hereunder shall not be terminated, but the undersigned shall be and remain liable for all damages, costs, expenses and other claims which may arise under the Agreement including reasonable attorney's fees.

If the undersigned shall, directly or indirectly, advance any sums to the Affiliate, such sums and indebtedness shall be subordinate in all respects to the amounts then and thereafter due and owing by the Affiliate under the Agreement. Payment by the undersigned of any amount pursuant to this Guaranty of Agreement shall not in any way entitle the undersigned to any right, title or interest (whether by way of subrogation or otherwise) in and to any of the rights or remedies VHSBI may have against Affiliate, unless and until the full amount owing to VHSBI under the Agreement has been fully paid.

Wherever reference is made to the liability of Affiliate in the Agreement, such reference shall be deemed likewise to refer to the undersigned, jointly and severally, with Affiliate. The liability of the undersigned for the obligations of the Agreement shall be primary; in any right of action which shall accrue to VHSBI under the Agreement, VHSBI, may, at VHSBI's option, proceed against the undersigned and/or Affiliate, jointly or severally, and may proceed against the undersigned without having demanded performance of, commenced any action against, exhausted any remedy against or obtained any judgment against Affiliate. This a guaranty of payment and not of collection, and the undersigned hereby waives any obligation on the part of VHSBI to enforce the terms of the Agreement against Affiliate as a condition to VHSBI's right to proceed against the undersigned hereunder.

The undersigned hereby expressly waives: (i) notice of acceptance of this Guaranty of Agreement and of presentment, demand and protest; (ii) notice of any default hereunder or under the Agreement and of all indulgences; (iii) demand for observance or performance of, or enforcement of, any terms or provisions of this Guaranty of Agreement or the Agreement; and (iv) all other notices and demands otherwise required by law which the undersigned may lawfully waive. The undersigned agrees that in the event this Guaranty of Agreement shall be enforced by suit or otherwise, the undersigned will reimburse VHSBI, upon demand, for all expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees.

The undersigned hereby waives, to the maximum extent permitted by law, all defenses available to a surety, whether the waiver is specifically herein enumerated or not.

It is further agreed that all of the terms and provisions hereof shall inure to the benefit of the successors and assigns of VHSBI, and shall be binding upon the respective heirs, executors, administrators, successors and assigns of the undersigned.

In the event more than one person or entity executes this Guaranty of Agreement, or counterpart thereof, the liability of such signatories hereunder shall be joint and several.

A determination that any provision of this Guaranty of Agreement is unenforceable or invalid shall not affect the enforceability or validity or any other provision and any determination that the application of any provision of this Guaranty of Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to or any other persons or circumstances.

No modification or amendment of this Guaranty of Agreement shall be effective unless executed by the undersigned and consented to by VHSBI in writing, and no cancellation hereof shall be valid unless executed by VHSBI in writing.

In the event it shall be asserted that Affiliate's obligations are void and voidable due to illegal or unauthorized acts by Affiliate in the execution of the Agreement, the undersigned shall nevertheless be liable hereunder to the same extent as the undersigned would have been if the obligations of the Affiliate had been enforceable against the Affiliate.

This Guaranty of Agreement shall be governed by the laws of the Commonwealth of Virginia and may be enforced by action in any court of competent jurisdiction in the state courts of Washington County, Virginia or the federal court in Abingdon, Virginia.

EXECUTED as of the _____ day of _____, 20__.

EXHIBIT ONE (1)

Program for Entrepreneurs!

Virginia Highlands Small Business Incubator Affiliate Program

| <u>Item</u> | <u>Program Fee - \$50.00 per month</u> |
|--|--|
| Office – Desk w/chair & Internet Access. | Includes – 10 hours per month (or a total of 19 hours per month including your conference room hours) \$30.00 for each additional 10 - hour block. |
| Business Hours | Monday through Friday 8:30 a.m. to 5:00 p.m. |
| Copy Machine | \$0.07 per B&W copy & \$0.15 per color copy/billed monthly |
| Postage Machine | Actual cost of postage used/billed monthly |
| Fax Machine | Includes incoming & outgoing service |
| Office/Clerical Assistance | Available @ \$20.00 per hour/billed monthly (Based on availability & tenant use) |
| Conference Rooms | 3 uses per month – up to 3 - hour blocks per use (note these 9 hours can be used to reserve the Affiliate room) \$7.00 per hour for additional time. |
| Incubator Mailbox | No charge (Based on availability & tenant use); however, a \$50.00 deposit will be collected for a Mailbox key. Once affiliate incubates out of VHSBI and key is returned, the deposit will be refunded within 30 business days. |
| Workshops – offered periodically throughout the year. | No charge |
| Press Release as Affiliate | No Charge. |
| Monthly Meeting with Director | Optional |

Note: All Office & Conference Room space MUST be scheduled in advance.

For More information please contact: Cathy Lowe at (276) 492-2060 or clowe@vhsbi.com.

Virginia Highlands Small Business Incubator, Inc.
Facility Guidelines for Affiliate Members
Conference Room and Events

Reservations

- The conference room(s) can be reserved by contacting, receptionist@vhsbi.com. VHSBI requires the completed Facility Events application. Once the application is submitted, your request will be confirmed by email. All special requests should be submitted on the Facility Events application.
- Business hours of the facility are 8:30 a.m. until 5:00 p.m. Monday through Friday. The facility is available for rent after hours with proper authorization by the Executive Director and proof of a current Liability insurance certificate naming VHSBI as an additional insured.
- The doors are to be securely locked upon your departure.
- Tablecloths are available for rent upon request and in writing on the Facility Events application.
- Copies can be purchased from the receptionist at a cost of .07 per black and white copy and .15 per color copy.

Food and Beverages

- The caterer's name and contact information are to be provided on the Facility Events application. The Caterer must submit a meals tax form to the Town of Abingdon.
- All caterers/food providers are to use the back entrance.
- Affiliates are responsible for cleaning up after the event.

Audio/Visual

- Customers must provide their own audio/visual equipment; however, we provide the use of an overhead projector in the Jack C Phelps, Jr. (large) conference room and have a TV monitor and a manual projector available for use in the French H Moore, Jr. (small) conference room. We ask that you ensure the settings are left in working order. If you will be using any technical equipment, we recommend that you test your equipment before the meeting time to ensure equipment compatibility.

Publications

- Please use the correct title of the facility, "Virginia Highlands Small Business Incubator, Inc.," in advertising, press releases, or notices.
- Virginia Highlands Small Business Incubator agrees to display, upon request, flyers, brochures, posters, or other publications advertising your event. Please provide them as early as possible.

Liability

- Damage to the facility will be the responsibility of the organization hosting the event.
- Material should not be attached to the walls. We have flip chart holders to display posters, charts, etc. It is the leasees responsibility to provide flip chart paper.

Restrictions

- Hallways and exit doors must not be blocked or cluttered.
- There is no smoking in the building. Smoking is permitted only at the back of the facility on the loading dock where the bud boxes are located.
- Littering is subject to a \$50.00 per occurrence fine. Cigarette butts are considered littering.
- Alcohol products can be served upon the affiliate member receiving the proper event permits from the ABC office located in Abingdon and providing VHSBI with proof of alcohol coverage insurance.
- Only Service Animals are allowed in the facility unless special permission is granted by the Executive Director.
- Power strips with surge protection are to be used in the facility.
- Set up the day before the event is permitted after 3 P.M. only if the room is available. Prior authorization is required.
- Affiliate benefits are not transferrable.

Departure

- Rooms should be left clean and orderly. Plastic bags are available at the Information Desk, for use in disposing of trash. Dumpster is located at the back of the building.
- Affiliate members should return furnishings to their original configuration, clean the tabletops and dispose of their trash in the dumpster provided by VHSBI.

Cancellations

- Reservations made 1-30 days in advance require a 24-hour cancellation notice.
- Reservations made 31 or more days in advance require a 30-day advance cancellation notice.

Virginia Highlands Small Business Incubator, Inc.
851 French Moore Jr. Blvd. , Abingdon, VA 24210
Fax: 276-698-3070
Phone: 276-492-2060 or 276-492-2062
receptionist@vhsbi.com

Facility Conference Room and Event Application

I hereby agree to abide by the guidelines outlined in the Virginia Highlands Small Business Incubator Facility Guidelines Application. I accept responsibility for charges incurred by my organization/event. Please review the cancellation policy on the previous page.

Organization _____

Name of Event _____

Date of Event _____ Time of Event - Start: _____ End: _____

Organizer's Name (print) _____ Estimated # of attendees _____

Organizer's email address _____ Phone # _____

Signature _____ Date _____

Food will be served ☐ YES ☐ NO ☐ SNACKS ONLY (please check the applicable box). If catered:

Name of Caterer _____ Telephone Number _____

***Payment is due on receipt of the invoice. If paid by credit card an ADDITIONAL Convenience fee is charged to the total invoice. *Each pot of Coffee is \$3.50.
* Additional \$25.00 Disinfecting/Cleaning Fee applies.**

| Amenity | For profit enterprises | Non-profit enterprises | Affiliate member |
|--|------------------------|------------------------|------------------|
| Jack C Phelps, Jr. (Large) Conference Room – (60 Maximum) | \$100/day * | \$50/day * | No Charge |
| French H Moore, Jr. (Small) Conference Room – (35 Maximum) | \$50/day * | \$25/day * | No Charge |

Please check all that apply:

☐ Jack C Phelps, Jr. (Large) Training Room ☐ French H Moore, Jr. (Small) Training Room
☐ Affiliate Room

I NEED: ☐ a projector ☐ a laptop computer ☐ TV (Small Conf. room only) for ZOOM

*In the event your organization needs to use any equipment listed above, we suggest you come early to set up your device. VHSBI does not offer IT services. We offer a laptop, HDMI cable and phone.

☐ I verify that my organization/business is covered with liability insurance. ☐ Non-profit enterprise

Special Instructions _____