

DUNKWORKS
Facility Use Agreement

This Facility Use Agreement (“Agreement”) is between the Woods Hole Oceanographic Institution (“WHOI”) and the facility User/Member (“USER”) regarding the USER’s shared use of the WHOI Center for Marine Robotics rapid prototyping and additive manufacturing facility named DunkWorks.

WHEREAS, DunkWorks is a facility open to those that sign-up for and pay for a membership and includes individuals and companies and internal and external parties. DunkWorks is an open environment for innovation and technology advancement in the ocean sciences with a particular focus on rapid improvements to the field of marine robotics. DunkWorks provides access to a wide variety of tools and equipment for prototyping, as well as studio space for individuals and teams to create and share projects. DunkWorks is intended to be community-centered and diverse; a social place for people with different skills and common interests to collaborate and learn from each other.

Member Obligations:

1. USER shall only use the DunkWorks facilities in accordance with the terms and conditions of this Agreement and all attachments hereto.
2. USER agrees to keep DunkWorks’ shared spaces in a neat, clean and attractive condition and USER shall not store any personal or other possessions in areas of the DunkWorks accessible to all other USERS overnight or reserved for use by any other USERS, unless otherwise permitted by the DunkWorks Coach. USER shall refrain from accumulating materials that cause overflow within any studio or storage space and shall remove any such materials upon the request of a DunkWorks employee or representative.
3. USER shall not cause any damage to any equipment owned by DunkWorks, including unallowed, unreasonable or inappropriate use of such equipment. USER shall not disturb the use and enjoyment of DunkWorks by any other members.
4. USER agrees to respect the privacy and property of others, and to the physical security of other members’ possessions, materials, and space.
5. USER acknowledges and agrees to be bound and comply with the and conditions of the *General Policies and Procedures, Membership Addendum* and the *Waiver and Release of Liability (“General Policies”)*. The General Policies are attached to this Agreement as an exhibit and incorporated by reference as if fully set out within this document.
6. USER shall only access DunkWorks with their membership access card and shall NOT allow any non-members access unless accompanied by the USER and, provided, such visit is for consultation purposes only.
7. USER agrees to use DunkWorks for their benefit only and not to provide access to or services for any other third party who is not a dues-paying member of the DunkWorks program. Violation of this policy will result in immediate termination of membership without financial recourse.

2. Safety and Security: DunkWorks will provide to USER and all members accessing the Facility some general safety training, as well as training on the safe and proper use of specific equipment, however, the USER shall assume

responsibility for his/her own personal safety as well as the safety of others during the USER's access to the Facility. Safety glasses are required for all equipment and tools. USER shall not use equipment if USER is not trained, certified and comfortable with that piece of equipment. The operation of machinery is at USER's own risk. For any questions regarding how to use DunkWorks' equipment, USER should contact a DunkWorks Coach for assistance. USER is required to show proof certification for all equipment used while accessing the DunkWorks' facility. User shall report any malfunctioning equipment to the DunkWorks Coach immediately and User shall not use any equipment that is not functioning properly. Equipment may not be removed from DunkWorks property. User shall not use any piece of equipment tagged "Out Of Service (OOS)".

3. In Case of Emergency: First aid kits and fire extinguishers are found throughout the WHOI facility. If any injury occurs, USER shall notify WHOI staff immediately. USER must submit a complete Accident Report within 24 hours of the incident. Accident reports are located at the Smith front desk as well as from the DunkWorks Coach.

4. Shared Safety: USER agrees to be on the lookout for unsafe behavior and shall notify DunkWorks' staff immediately to report any such unsafe behavior or if USER believes any piece of equipment or infrastructure is unsafe. All members must comply immediately with instructions given by staff and volunteer shop leads. Failure to comply may result in disciplinary procedures and could end in termination of the membership agreement.

5. Lost or Stolen Items: WHOI is not responsible for any lost or stolen items.

6. Intellectual Property Rights: DunkWorks's facilities are intended to be used as a space for collaboration and innovation by the different members and the use of such facilities will not interfere or create any intellectual property obligations for the USER. Intellectual Property (IP) obligations from an employment agreement or employer policy, whether that employer is WHOI or a private company, may apply to what a user develops while accessing the DunkWorks's facilities if such development is related to their work for that employer. Further detail for WHOI employees and students regarding existing general IP obligations to WHOI can be found by clicking [HERE](#). As such, any IP that is solely created or developed by a USER while accessing the facility will be solely owned by USER or USER's employer as the case may be. Any IP created jointly by USER and WHOI employees or students shall be jointly owned by the parties that contributed to the creation and development of such IP.

7. StartUps: DunkWorks is a place for experimentation and it is a non-profit resource for inventors and makers throughout the community. DunkWorks is willing to serve as the home base for the very early stages of USER's start-up, however, once USER is able to afford to pay for rent in a commercial space, DunkWorks reserves the absolute and unrestricted right to terminate USER's access to the facility and terminate this Agreement; however, DunkWorks will continue to encourage USER's ongoing involvement with WHOI, CMR and DunkWorks. USER's membership will not entitle USER to sell access to or resources in DunkWorks to non-DunkWorks entities or customers.

8. Acknowledgement of Risk and Consent for Treatment: In offering the DunkWorks's facilities, WHOI takes responsibility for informing users of the health risks involved in the space and helping them mitigate those risks. However, WHOI shall not assume responsibility for damage to or loss of property, personal illness, injury, or death of a user, or emergency response related to any facility activities. We require that each USER initial the following statement as an indication that this position is understood and accepted:

- USER understands and acknowledges that USER's activities in accessing DunkWorks' facilities may expose USER to risks including discomfort, inconvenience, serious and permanent injury or disability, death, and/or loss of or damage to personal property as a result of, but not limited to, traumatic injury from equipment and tools; exposure to heat, flame, electrical current, or fumes; tripping on cords, materials or other obstacles; or emergency first aid treatment on-site.
- USER acknowledges that there are certain risks inherent in using this WHOI facility, including but not limited to those indicated in this section. USER acknowledges that not all risks can be prevented and assumes those risks beyond the control of the University staff. USER represents that they are able, with or without accommodation, to use DunkWorks and to use the equipment and/or supplies required.
- Should USER require emergency medical treatment as a result of accident or illness arising from using the facility, USER consents to such treatment. External USERS acknowledge that WHOI does not purchase health and accident insurance for external users. These external USERS agree to be financially responsible for any medical bills incurred as a result of using the facility. External USERS acknowledge that they have been advised to purchase medical insurance. USER acknowledges that they have been advised to discuss this activity with their medical provider and has the option to provide the Facility Coach with written information regarding medical conditions that could affect USER's safe use of equipment, or about which emergency medical personnel should be informed.
- DunkWorks and WHOI and their respective employees, officers or agents will not be liable to USER for any incidental, consequential, special or punitive damages of any kind or nature arising out of this Agreement or its performance hereunder, whether such liability is asserted on the basis of contract, tort (including the possibility of negligence or strict liability), or otherwise, even if USER had been warned of the possibility of any such loss or damage, and even if any of the limited remedies in this Agreement fail of their essential purpose. In no event will WHOI's or DunkWorks' aggregate liability with respect to all claims arising out of this Agreement exceed the total amount paid by USER in fees under this Agreement (and the existence of more than one claim will not enlarge the limit)

- USER, its officers, employees, volunteers, agents, permitted invitees and contractors expressly waive all rights, claims and demands and forever releases, discharges and holds harmless WHOI from any and all demands, claims, actions and causes of action arising from any cause whatsoever and arising directly or indirectly out of USER's use of the facilities and services, whether caused by the USER's action or negligence or the action or negligence of the WHOI personnel, the USER's employees, agents, contractors or permitted invitees or any third parties in connection with this Agreement. WHOI reserves the right, in its sole discretion, to require USER's officers, employees, volunteers, agents, participants, contractors, vendors, permitted invitees or other third parties participating, assisting or using the facilities or services in connection with this Agreement to execute a separate written waiver and release in a form to be provided by WHOI

9. Warranties and Representations. USER accepts the use of the facilities and services on an "as is" basis and WHOI makes no representations or warranties about their condition or fitness or use for a particular purpose. USER hereby represents and warrants that its use of the facilities and services as set forth herein will not be obscene, defamatory, violate any copyright or infringe upon the literary or any other rights of any person, firm, or corporation, including but not limited to, the right of privacy. USER also represents and warrants that its use will not violate any governmental law, resolution, ordinance or regulatory act, and that it has obtained all necessary licenses, permissions and clearances.

10. Independent Contractors. No act of the parties hereto shall be construed as creating or establishing a partnership, or joint venture, of any type between WHOI and USER and neither party shall be authorized to commit or to obligate the other party without such other parties' prior written consent.

11. Publicity: By making use of DunkWorks' facilities, USER agrees that WHOI has the unrestricted right to publish images of our members and projects ongoing at our facilities, both in print and digitally.

12. Termination: WHOI reserves the right to terminate memberships for convenience, at any time and without written notice to USER.

13. Fees: USER agrees to pay the monthly fees, in advance, in the amount, form and manner detailed in the Membership Addendum (the "Fees"). In addition, USER shall pay all reasonable third party fees (attorney's fees, debt collection fee, fees for repair of damage to DunkWorks tools, equipment or materials caused by USER's negligent or improper usage of such tools, equipment or materials and other costs incurred by DunkWorks in connection with any late payments or past due amounts. USER shall be responsible for all costs of repair or replacement of any non-routine breakage or damage to any equipment or other part of the DunkWorks facility that is caused by USER's negligent or improper usage.

14. Waiver: No delay or omission on the part of WHOI or DunkWorks in exercising any right under this Agreement shall operate as a waiver of such right or of any other right of WHOI, nor shall any waiver of such right or rights on any one occasion be deemed a bar to, or waiver of, the same right or rights on any future occasion. The acceptance by WHOI of any payment, or of a sum less than is due, shall not be construed as a waiver of any of WHOI's rights unless such waiver is in writing.

15. Amendments: WHOI reserves the right to amend the terms of this Agreement from time to time and at its sole discretion, without the consent of USER. WHOI will promptly notify USER of any amendments in writing, prior to such amendments taking effect.

16. Conflict of Provisions: In the event of a conflict between the provisions of this Agreement and the *Membership Addendum*, the *General Policies and Procedures* or the *Waiver and Release of Liability*, this Agreement shall control.

17. No Assignment: USER shall not have the right to assign its rights and obligations under this Agreement to any party. Any such purported assignment by USER shall be null and void.

18. Entire Agreement: This Agreement and all exhibits, schedules and attachments, supersede all prior agreements, whether written or oral, between the parties with respect to its subject matter, and there are no covenants, promises, agreements, conditions or understandings, written or oral, except as herein set forth.

19. Governing Law: This Agreement and all exhibits, schedules and attachments, shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to principles of conflict of laws that would require the application of any other law.**20. Contact Information and Emergency Contact:** For USER's safety, USER must notify DunkWorks of any changes to USER's contact information, including any emergency contact person and that person's contact information. As a condition to USER's access to DunkWorks, USER agrees to keep your contact information (including emergency contact information) current at all times.

Questions? Please contact: dunkworks@whoi.edu

. Acknowledgment of Receipt:

Member Signature: _____

Member Name (print): _____

Date: _____