

Membership Agreement and Waiver of Liability



In consideration of the loan by the ToolBank USA, Inc., and the Affiliate (“Lender”), to the Applying Agency (“Borrower”), of the tools and equipment (the “Equipment”) and/or the donation of supplies and materials (the “Materials”), Borrower, intending to be legally bound, agrees to the following terms and conditions of this Membership Agreement and Waiver of Liability (this “Agreement”) in favor of the Lender:

- (1) Borrower acknowledges that its execution of this Agreement is a condition precedent to (a) Lender’s acceptance of Borrower as a member agency of Lender (each, a “Member Agency”), and (b) receipt of the Equipment or Materials from Lender.
- (2) Borrower accepts the Equipment and Materials in “as is” condition. Borrower agrees to notify Lender immediately if a tool becomes inoperable. Borrower agrees to not attempt to repair any Lender tool.
- (3) Borrower agrees to return the Equipment to Lender’s warehouse, at the return time and date agreed upon at the time of pick-up Equipment. Borrower agrees to comply with Lender’s appointment-only schedule.
- (4) Borrower agrees to pay, by cash, check, or credit/debit card to Lender, tool handling fees (percent of retail value set by Lender, not to exceed 6%) multiplied by the number of weeks that Borrower intends to borrow such Equipment (the aggregate of such weeks, as may be extended from time to time, at the written request of Borrower, to be granted in Lender’s sole discretion.
- (5) For any piece of Equipment that Lender, deems lost, stolen, or damaged outside the scope of normal wear and tear during the borrowing period, Borrower agrees to, within 14 days of Borrower’s receipt of such notice, pay to Lender the Replacement Fee for such lost or damaged Equipment.
- (6) Borrower hereby acknowledges and agrees to comply with all terms of this Agreement, the Service Policy for ToolBank Member Agencies, attached hereto as Exhibit A (the “Service Policy”), and the Diversity, Inclusion, and Equity Policy for ToolBank Member Agencies, attached hereto as Exhibit B (together with the Service Policy, collectively, the “Policies” and each, a “Policy”), as each may be amended from time to time, including but not limited to the provisions regarding release and indemnification set forth in this Agreement.
- (7) Lender’s discretion in lending any tool, including but not limited to the Equipment or Materials, to Borrower is solely and completely in the discretion of Lender. Lender may, at any time, for any reason or no reason, refuse tool lend to Borrower for a specific project and/or deny service to Member Agency for lack of compliance with Lender’s oral and written vision, mission statement, or any other oral or written policy of Lender, including, but not limited to, the Policies.
- (8) *Release and indemnification.* To the fullest extent permitted by law, Borrower agrees to indemnify, release, and hold Lender, its directors, officers, employees, and volunteers, and ToolBank USA, its directors, officers, employees, agents, and volunteers (collectively, the “Indemnified Parties”) harmless and at Lender’s request, defend the Indemnified Parties from and against all liabilities, claims, losses, damages, and expenses (including Attorney’s fees and expenses) however arising or incurred, related to any incident, damage to property, injury to, or

death of, any person or contamination or alleged contamination, or violation of law or regulation caused by or connected with (a) the use, possession or control of the Equipment or Materials during the borrowing period, and (b) breach of this Agreement, whether or not caused in part by the active or passive negligence or other fault of any Indemnified Party, and any of the foregoing arising or imposed in accordance with the doctrine of strict or absolute liability. Borrower hereby waives its workers' compensation immunity, to the extent applicable. Borrower's indemnity obligations shall survive the expiration or termination of this Agreement.

(9) Borrower hereby acknowledges (a) that its use of the Materials and Equipment is and will be (i) without instruction or supervision, and (ii) at Borrower's own risk or the risk of Borrower's officers and directors, employees, agents and volunteers, and (b) that Lender shall not be held responsible for any such use or events or actions arising therefrom. Lender hereby expressly disclaims any warranty regarding the condition or fitness for particular use of any of the Equipment or Materials provided hereunder.

(10) Borrower attests that its use of the Materials and Equipment are and will be strictly for charitable purposes, that no services or materials are being provided to any recipient for any charge of cost outside of the scope of Borrower's mission, and that no services or materials are being resold or returned to any retailer, vendor or manufacturer for refund, or being used in any manner inconsistent with this Agreement or Lender's status as a 501(c)(3) tax deductible charitable organization.

(11) The undersigned acknowledges that the undersigned has read and understood the foregoing terms and conditions of this Agreement, including but not limited to the provisions regarding waiver of liability, and affirms that the undersigned is a duly authorized officer of Borrower and has all requisite power and authority to enter into this Agreement on behalf of Borrower.

(12) *Miscellaneous Provisions.*

- a. *Termination; Amendment.* Lender reserves the right to terminate or suspend Borrower's access to and use of the Equipment and Materials at any time, immediately and without notice, if Borrower fails to comply with any provision of this Agreement or any Policy, as determined in Lender's sole discretion. Lender reserves the right to amend the Policies from time-to-time and at its sole discretion. Lender will notify Borrower of any changes to said rules and regulations in writing prior to such rule changes taking effect.
- b. *Non-Disparagement.* Without limiting anything in this Agreement or any Policy, Borrower and its directors, officers, employees, agents and volunteers shall refrain from directly or indirectly making written or oral statements to any person or entity with whom Lender [or ToolBank USA] has had or has a business relationship, as well as the press and the community at large, by any means, including but not limited to internet postings, blog entries, and social media, which may reasonably be expected to impugn or disparage the character, integrity or ethics, or damage the business, image or reputation, of Lender, its staff, clients, volunteers, subcontractors, and vendors[, and ToolBank USA, its staff, clients, volunteers, subcontractors, and vendors].
- c. *Entire Agreement; Waiver.* This Agreement (including the Policies and any other exhibits hereto) represents the entire understanding and agreement between Borrower and Lender with respect to the subject matter hereof. This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered on behalf of Lender. No waiver of any provision of this Agreement shall be valid unless in writing and signed by Lender.
- d. *Successors and Assigns.* This Agreement and all of its provisions shall be binding upon the

successors and assigns of Borrower and shall inure solely to the benefit of the successors and assigns Borrower.

- e. *Severability*. Each provision of this Agreement shall be considered severable, and if for any reason any provision or provisions in this Agreement are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement that are valid, enforceable and legal.
- f. *Governing Law*. This Agreement will be governed by the laws of the State of Georgia without giving effect to any choice or conflict of law principles of any jurisdiction.
- g. *Notice*. All notices to Lender under this Agreement shall be sent to [each of] the following address[es]:
 - [Local ToolBank]
 - [with a copy to:
 - ToolBank USA
 - 410 Englewood Avenue SE
 - Atlanta, GA 30315
 - Attn: Trey Bearden]
- h. *Headings*. The headings contained in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.
- i. *Electronic Signature*. A signed copy of this Agreement delivered by electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Name of Agency/Organization (Borrower)

*Name of Executive Staff Person
or Authorized Representative*

Signature

Date