



## **ORIGINLABS PARTICIPATION AGREEMENT**

**THIS ORIGINLABS PARTICIPATION AGREEMENT** (the “Agreement”) is effective as of the day of signature by Participant (the “Effective Date”) by and between the signing person or entity binding themselves hereto , (referred to herein as the “Participant”) and **THE PENNSYLVANIA STATE UNIVERSITY**, a state-related institution and instrumentality of the Commonwealth of Pennsylvania subject to the Pennsylvania nonprofit corporation laws, with an address at 208 Old Main, University Park, Pennsylvania 16802 (the “University”), on behalf of its OriginLabs (The parties to this Agreement being sometimes referred to herein as a “Party,” and collectively as the “Parties”).

**WHEREAS**, the goal of OriginLabs is to provide makerspace technology-related facilities, equipment, services, and resources to the local community to foster technology-based innovation;

**WHEREAS**, the University, through OriginLabs, owns or controls certain facility space on the first, mezzanine, and second floors of the Eric J. Barron Innovation Hub Building at 123 S. Burrows St., State College, PA 16801 (such building being referred to herein as the “Building”, and the facility space on the first, mezzanine, and second floors being referred to herein as the “Premises”);

**WHEREAS**, the University desires to grant to the Participant a license to occupy, enter and use certain areas of the Premises, equipment, services and resources as described herein in accordance with the terms and conditions of this Agreement (the “Program”);

**WHEREAS**, the Participant desires to accept the license and to enter into this Agreement in order to participate in the Program.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and for other good and valuable consideration described herein, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

- 1. License.** University hereby grants to the Participant a non-exclusive license and permission to (1) occupy, enter upon, and use, in common with other participants in the Program, the areas of the Premises, including any common areas, as described in Exhibit A attached hereto; (the “Licensed Space”), and; (2) utilize makerspace equipment, supplies or other resources on Premises provided by OriginLabs as described in Exhibit A attached hereto (the “Materials”). Participant’s exercise and use of such licenses hereinafter considered Participant’s participation in the Program.

2. Restrictions on Licensed Space and Materials. Participant's access and use of the Licensed Space and Materials will be limited to normal business hours of the University, or such other hours as may be approved by the University from time to time. The Parties expressly acknowledge and agree that this Agreement is not a lease, that the rights granted to the Participant hereby shall constitute a non-exclusive, revocable license, and that this Agreement does not create or convey to the Participant any other interest in the Materials, Licensed Space or the Premises. The Participant will be entitled to occupy, enter and use the Licensed Space solely for the purposes of participation in the Program as herein provided, and for no other purpose. While using or occupying the Licensed Space, the Participant agrees to keep and maintain all areas within the Licensed Space in a clean, safe and healthy condition. University retains all right, title, and ownership in and to any Materials. Participant shall utilize all Materials in a safe, non-wasteful and responsible manner. Participant acknowledges that access to and use of the Licensed Space and Materials are shared with other participants, and as such, Participant's license to use the Licensed Space and Materials is limited to the extent they are available. While this Agreement is in effect, the Participant agrees to follow, and to cause its employees, contractors or agents to follow, the rules and regulations applicable to the use of the Licensed Space and Materials that are set forth in Exhibit B attached to this Agreement. While on Premises or using Materials, Participant agrees to follow any and all instructions that may be provided by University personnel and agents, and University reserves the right to remove Participant from Premises in the event that Participant does not comply with University instructions, or the rules and restrictions set forth herein.

3. License Fee. Participant agrees to pay University a license fee of \$0, \$40, or \$65 per month, depending on "membership" plan chosen, first payment due upon signing, and further payments payable in advance on or before the first day of each calendar month during the term of this Agreement (the "License Fee"). Payments shall be made automatically, via credit card, through OriginLabs' online membership and payment system, Satellite Deskworks.

4. Utilities. During the Term of this Agreement, the University shall be responsible, at no additional cost to Participant, to provide electricity, sewer, water and gas services to the Licensed Space customary in service and amount for general office use. The University will provide Participant and its employees general access to the University's guest Wi-Fi internet network at the Licensed Space. In the event that Participant desires to have additional internet access for its use at the Licensed Space, the Participant shall pay all costs and expenses related thereto, and any such additional access shall be subject to the prior written approval of the University.

5. Furnishings and Maintenance. Participant may use any office furniture, office equipment and audio-visual equipment the University has provided on the Licensed Space. Such items remain the property of the University. The Participant may not reconfigure or

otherwise modify or change any modular and/or cubicle furniture provided for use within Licensed Space without the express written consent of the University.

**6. Supplies.** Any and all supplies, office equipment or other materials incidental to the Participant's participation in the Program at the Licensed Space that are not specifically identified as Materials provided by the University shall be the sole responsibility of the Participant and at the Participant's sole cost and expense.

**7. No Alterations.** The Participant shall make no alterations, improvements or additions to the Licensed Space, the Premises, the Building, or any Materials without the prior written consent of the University, which consent can be granted or withheld for any reason in the University's sole and complete discretion. For purposes of this Agreement, alterations include the painting of any surface, as well as the placement of any nails, screws or tacks in walls.

**8. Term and Termination.** The term of this Agreement is one (1) month, and shall automatically renew upon the first day of each calendar month. This Agreement may be terminated by either Party upon written notice. Sections 10, 11, 12, and 14, and any obligation to pay a past due License Fee shall survive termination or expiration of this Agreement.

**9. DISCLAIMER.** EXCEPT AS EXPLICITLY PROVIDED OTHERWISE HEREIN, UNIVERSITY MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE LICENSED SPACE OR MATERIALS, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS.

**10. ASSUMPTION OF RISK AND RELEASE.** PARTICIPANT IS AWARE AND ACKNOWLEDGES THAT THE USE OF CERTAIN MAKERSPACE AND/OR WORKSHOP MATERIALS PRESENTS INHERENT RISKS OF PHYSICAL INJURY, INCLUDING BUT NOT LIMITED TO THOSE PRESENTED DURING TRAINING, DEMONSTRATION, AND IN STANDARD OPERATING PROCEDURE (SOP) AND SAFETY DOCUMENTS PROVIDED ON THE ORIGINLABS WEBSITE AND/OR PRESENTED BY ORIGINLABS STAFF. PARTICIPANT UNDERSTANDS THAT UTILIZING SUCH MATERIALS SUBJECTS PARTICIPANT TO SUCH RISKS, AND PARTICIPANT HEREBY ASSUMES, AND HEREBY RELEASES UNIVERSITY ITS AGENTS, EMPLOYEES, OFFICERS, TRUSTEES, TENANTS, LICENSEES, AND INVITEES FROM, ALL RISK ASSOCIATED WITH SUCH ACTIVITIES.

**11. Indemnification.** Participant shall indemnify, defend and hold harmless the University, and its agents, employees, officers, trustees, tenants, licensees, and invitees, from and

against any and all claims, demands, liabilities, damages, judgments, suits, costs, and expenses, including, without limitation, court costs and reasonable attorney's fees (a "Loss" or collectively, "Losses"), arising out of or resulting from (i) a breach or failure to perform any covenant, obligation or agreement of Participant under this Agreement; (ii) any bodily injury, death of any person, or damage to real or tangible personal property caused by the willful or negligent acts or omissions of Participant, or any of its employees, contractors, agents or invitees, in connection with the use or occupancy of the Licensed Space or Materials or otherwise in connection with this Agreement; (iii) any manufacture, use, distribution, sale, license, or commercialization by Participant, its agents, licensees, or contractors of any product or service developed or prototyped in whole or in part through Participant's use of the Licensed Space or Materials, including but not limited to any claims of infringement or products liability. Without limiting the foregoing, Participant shall be responsible to pay for any and all repairs for damage to the Licensed Space and/or Materials caused by the Participant, or its employees, contractors, agents or invitees.

12. Compliance with Laws. Participant shall at all times conduct its activities at the Licensed Space in compliance with all applicable federal, state, and local laws, rules and regulations, including, without limitation, those applicable to storage, use, and disposal of hazardous materials and hazardous substances. Participant shall not cause or permit any chemical, biological or radiological hazardous substances or Hazardous Material (as that term is defined below) to be generated, brought upon, kept, stored, or used in or about the Licensed Space by Participant, its agents, employees, contractors, or invitees without the express written consent of the University. As used herein, the term "Hazardous Material" means (1) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder; (2) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder; (3) any oil, petroleum products, and their by-products; and (4) any substance that is or becomes regulated by any local governmental authority, the Commonwealth of Pennsylvania or the United States Government.

13. Governing Law. This Agreement (and any other documents referred to herein), and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement, shall be governed by and be construed in accordance with, the laws of the Commonwealth of Pennsylvania, without regard to its conflicts of law provisions, as to all matters, including, but not limited to, matters of validity, construction, effect or performance. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY CONSENT AND SUBMIT TO THE PERSONAL JURISDICTION OF THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA, OR, IF SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH MATTER, THE FEDERAL DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA, AND IRREVOCABLY AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR

RELATING TO THIS AGREEMENT SHALL BE LITIGATED IN ANY SUCH COURT. THE PARTIES AGREE NOT TO BRING ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY IN ANY OTHER COURT. EACH PARTY TO THIS AGREEMENT ACCEPTS FOR ITSELF, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION AND VENUE OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NONCONVENIENCE OR ANY SIMILAR DEFENSE, AND IRREVOCABLY AGREES TO BE BOUND BY ANY NON-APPEALABLE JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT.

14. Force Majeure. The Parties agree that, except for the obligation of the Participant to pay the License Fee when due hereunder, any interruption or delay in a Party's performance of this Agreement which results from conditions beyond the Party's reasonable control (e.g., acts of God, war, pandemic, major labor dispute or the like) (a "Force Majeure Event") will not be deemed a breach of this Agreement and will not result in liability of the Party so delayed, so long as such interruption or delay is not caused by the negligence or intentional acts of the Party declaring a force majeure. Notwithstanding the foregoing, as a condition to the effectiveness of a Party's ability to claim that a Force Majeure Event has occurred or is continuing, such Party shall (i) promptly provide written notice to the other Party of the occurrence of the Force Majeure Event describing the full particulars of the event and (ii) use commercially reasonable efforts to overcome such Force Majeure Event for the pendency of such Force Majeure Event.

15. Relationship of the Parties. The Parties are independent contractors, and nothing in this Agreement shall be construed or interpreted to deem a Party as the agent, employee, partner or joint venturer of the other Party, or impose any liability as such on any of them. Nothing contained herein is intended or shall create an "employer-employee" relationship, at common law or otherwise, between the Parties, or their respective employees, contractors and agents. All persons furnished by a Party in the performance of its duties and obligations under this Agreement shall be considered solely that Party's employees, contractors or agents, and as such, except as specifically provided in this Agreement, such Party shall pay all salaries, costs and other expenses of such persons, and be responsible for compliance with all applicable laws with respect to such Persons.

16. Entire Agreement. This Agreement (including, the exhibits attached hereto) constitutes the entire agreement of the Parties with regard to the subject matter hereof, and supersedes all prior agreements, discussions, representations and understandings, both written and oral, among the Parties with respect to the subject matter hereof.

17. Assignment. Participant may not assign all or any part of this Agreement without the prior written consent of the University. The interest of the University in this Agreement and in the Licensed Space may be assigned in whole or in one or more parts without the consent of Participant. Subject to the preceding sentences, this Agreement shall

be binding upon and inure to the benefit of the Parties and their permitted successors and permitted assigns. Any purported assignment of this Agreement in violation of this section shall be void.

18. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person, other than the Parties, any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

19. Severability. Each Party agrees that, should any court or other competent authority hold any provision of this Agreement or part hereof to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such other term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions be consummated as originally contemplated to the greatest extent possible.

20. Amendments. This Agreement, including the License Fees may be amended by University upon thirty (30) days prior notice to Participant. In the event of such amendment, Participant may terminate this Agreement upon written notice to University within such thirty (30) day period; otherwise, Participant shall be bound by such amendment.

21. No Waiver. No failure by a Party to insist upon strict performance of any provision herein shall be deemed a waiver by such Party of its rights or remedies, or a waiver by it of any subsequent default of the other Party, and no waiver by any Party of any right or remedy under this Agreement shall be effective unless made in writing, and each such written waiver shall be limited to the specific instance referred to in such writing.

22. Headings. The headings used in this Agreement are inserted for reference and convenience only, as not a part of this Agreement, and shall not be used in any way to affect the meaning or interpretation of this Agreement.

*[Remainder of page intentionally left blank. Signature page follows.]*

**IN WITNESS WHEREOF**, the Participant(s) have caused this Agreement to be executed by its duly authorized representatives on the date set forth below.

**PARTICIPANT:**

Entity name: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Penn State University Representative: \_\_\_\_\_

Date: \_\_\_\_\_

## **Exhibit A**

### LICENSED SPACE AND MATERIALS

This document refers to all spaces, facilities, and equipment in the Eric J Barron Innovation Hub operated as “OriginLabs.” This includes the Benchworking Lab, Woodworking Lab, Metalworking Lab, Welding Lab, and Surfacing Lab on the 1<sup>st</sup> floor; the Rapid Prototyping and Design Lab, Additive Manufacturing Lab, and The Cave on the Mezzanine level; and The Store on the 2<sup>nd</sup> floor. All other rooms, spaces, facilities, and equipment in the Eric J Barron Innovation Hub are not covered by this document.

*Due to increased risk for damage or bodily harm, some OriginLabs equipment and tools have been designated as “staff-run” and will not be operated by participants, regardless of “license” or “membership” status. These tools include all CNC (Computer Numerical Control) machines, except the laser engravers, and all 3D printing/Additive Manufacturing equipment.*

Participants licensed with a “Service Bureau Membership” are entitled to a la carte usage of design services, and may have OriginLabs staff fabricate prototypes on their behalf using the full suite of OriginLabs tools and equipment.

Participants licensed with a “Makerspace Membership” have the same access to services as those outlined above in the “Service Bureau Membership,” but may also access and operate all OriginLabs tools and equipment on which they have successfully completed training (except those outlined as “staff-run,” above.)



## **Exhibit B**

### **RULES, REGULATIONS, AND ETIQUETTE**

All “licensed” participants of OriginLabs are required to follow the below rules, regulations, and etiquette. Participants found to be non-compliant may be barred from using all or some of the lab facilities for a duration dictated by the OriginLabs’ staff, up to and including a lifetime ban.

These rules and regulations are put in place to ensure the safety of all users, and to keep the labs a highly functional, accessible, and enjoyable facility for all.

-No discrimination. Any actions or words deemed discriminatory by OriginLabs staff will result in an immediate lifetime ban from OriginLabs.

-Aggression and hostility toward other participants or OriginLabs staff will not be tolerated.

-Participants must:

- Use all tools and equipment safely and as directed by OriginLabs staff
- Wear appropriate clothing and Personal Protective Equipment (PPE)
- Immediately alert staff to any dysfunctional or damaged tools and equipment
- Store all personal materials and projects in designated locations
- Thoroughly clean work areas, equipment, and tools after use

-Participants MAY NOT:

- Use lab spaces, tools, or equipment while under the influence of drugs or alcohol
- Attempt to repair or otherwise alter any tools, equipment, or furnishings
- Produce any objects resembling weapons or components of weapons
- Bring food or drink into lab spaces, except in areas expressly indicated by staff
- Use any tools or equipment without supervision of OriginLabs staff