

D'WORKS MARINE TECHNOLOGY INITIATIVE
Participation Agreement
July 2020

This Participation Agreement (“Agreement”) is between the Woods Hole Oceanographic Institution (“WHOI”) and the D’Works Innovation Fund Recipient (“Awardee”) as part of the D’Works Marine Technology Initiative. It is applicable to all activities at WHOI by this Awardee as a condition of receiving access to WHOI facilities and associated funding accounts.

WHEREAS, the D’Works Marine Technology Initiative makes funding available to young and growing Massachusetts companies to address/solve technical or testing challenges in or with a new product or technology. Funded by the Massachusetts Technology Collaborative in partnership with WHOI’s Center for Marine Robotics, the purpose of this initiative is to advance the state of high technology in the ocean in order to improve the ability to observe and work throughout the world’s varied marine environments. It will pursue this goal by allocating specialized resources and expertise to promising entrepreneurs and young companies so they can attract the next stage of funding and business resources to reach success. This effort will seek to advance multiple categories of technology, including sensors, robotics research, platforms and vehicles. Each company participating in the Initiative will be **provided access to a dedicated innovation funding account** at WHOI’s Center for Marine Robotics against which it can charge specific costs.

I. Awardee Obligations:

1. Awardee shall only use the WHOI facilities in accordance with the terms and conditions of this Agreement and all attachments hereto.
2. Awardee agrees to keep WHOI shared spaces in a neat, clean and attractive condition, and Awardee shall not store any personal or other possessions in areas of the WHOI shared space.
3. Awardees 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 WHOI employee or representative.
4. Awardee shall not cause any damage to any equipment owned by WHOI, including unallowed, unreasonable or inappropriate use of such equipment. Awardee shall not disturb the use and enjoyment of WHOI facilities by any other Awardee or WHOI staff.
5. Awardee agrees to respect the privacy and property of others, and to the physical security of other members’ possessions, materials, and space.
6. Awardee acknowledges and agrees to be bound and comply with the terms and conditions of the *General Policies and Procedures*, 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.
7. Awardee shall only access WHOI in accordance with the terms of the Funding and Access Plan and shall NOT allow anyone else access unless specifically approved by the Center for Marine Robotics and, provided, such visit is for consultation purposes only.

8. Awardee agrees to use WHOI facilities for their benefit only and not to provide access to or services for any other third party. Violation of this policy will result in immediate termination of funding and access without financial recourse.

II. Safety and Security: WHOI will provide to Awardee accessing the Facilities some general safety training, as well as training on the safe and proper use of specific equipment, however, the Awardee shall assume responsibility for his/her own personal safety as well as the safety of others during the Awardee's access to the Facility. Safety glasses are required for all equipment and tools. Awardee shall not use equipment if Awardee is not trained, certified and comfortable with that piece of equipment. The operation of machinery is at Awardee's own risk. Awardee is required to show proof of certification for all equipment used while accessing the specialized WHOI facilities. Awardee shall report any malfunctioning equipment immediately and Awardee shall not use any equipment that is not functioning properly. Equipment may not be removed from WHOI property. Awardee shall not use any piece of equipment tagged "Out Of Service (OOS)".

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

IV. Shared Safety: Awardee agrees to be on the lookout for unsafe behavior and shall notify WHOI staff immediately to report any such unsafe behavior or if Awardee 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 funding and access agreement.

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

VI. Intellectual Property Rights: WHOI'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 Awardee. 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 Awardee develops while accessing the WHOI 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 Awardee while accessing the facility will be solely owned by Awardee or Awardee's employer as the case may be. Any IP created jointly by Awardee and WHOI employees or students shall be jointly owned by the parties that contributed to the creation and development of such IP.

VII. 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 Awardee's start-up, however, once Awardee is able to afford to pay for rent in a commercial space, DunkWorks reserves the absolute and unrestricted right to terminate Awardee's access to the facility and terminate this Agreement; however,

DunkWorks will continue to encourage Awardee's ongoing involvement with WHOI, CMR and DunkWorks. Awardee's membership will not entitle Awardee to sell access to or resources in DunkWorks to non-DunkWorks entities or customers.

VIII. Acknowledgement of Risk and Consent for Treatment: In offering the WHOI facilities, WHOI takes responsibility for informing Awardees 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 Awardee, or emergency response related to any facility activities. WHOI requires that each Awardee initial the following statement as an indication that this position is understood and accepted:

1. Awardee understands and acknowledges that Awardee's activities in accessing WHOI facilities may expose Awardee 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.
2. Awardee acknowledges that there are certain risks inherent in using this WHOI facility, including but not limited to those indicated in this section. Awardee acknowledges that not all risks can be prevented and assumes those risks beyond the control of WHOI or WHOI staff. Awardee represents that they are able, with or without accommodation, to use WHOI and to use the equipment and/or supplies required.
3. Should Awardee require emergency medical treatment as a result of accident or illness arising from using the facility, Awardee consents to such treatment. Awardees acknowledge that WHOI does not purchase health and accident insurance for external Awardees. These external Awardees agree to be financially responsible for any medical bills incurred as a result of using the facility. External Awardees acknowledge that they have been advised to purchase medical insurance. Awardee 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 Awardee's safe use of equipment, or about which emergency medical personnel should be informed.
4. WHOI and their respective employees, officers or agents will not be liable to Awardee 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 Awardee had warned WHOI 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 aggregate liability with respect to all claims arising out of this Agreement exceed the total amount paid by Awardee in fees under this Agreement (and the existence of more than one claim will not enlarge the limit)
5. Awardee, 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 Awardee's use of the facilities and services, whether caused by the Awardee's action or negligence or the action or negligence of WHOI personnel, the Awardee's employees, agents, contractors or permitted invitees or any third parties in connection with this Agreement.

6. WHOI reserves the right, in its sole discretion, to require Awardee's officers, employees, volunteers, agents, Awardees, 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

IX. Warranties and Representations. Awardee 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. Awardee 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. Awardee also represents and warrants that its use will not violate any governmental law, resolution, statute, ordinance or regulatory act, and that it has obtained all necessary licenses, permissions and clearances.

X. 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 Awardee, and neither party shall be authorized to commit or to obligate the other party without such other parties' prior written consent.

XI. Publicity: By making use of WHOI facilities, Awardee agrees that WHOI has the unrestricted right to publish images of activities and projects ongoing at our facilities, both in print and digitally.

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

XIII. Fees: Awardee shall pay all reasonable third party fees (attorney's fees, debt collection fee, fees for repair of damage to WHOI tools, equipment or materials caused by Awardee's negligent or improper usage of such tools, equipment or materials and other costs incurred by WHOI in connection with any late payments or past due amounts. Awardee shall be responsible for all costs of repair or replacement of any non-routine breakage or damage to any equipment or other part of WHOI facility that is caused by Awardee's negligent or improper usage.

XIV. Waiver: No delay or omission on the part of WHOI 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.

XV. 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 Awardee. WHOI will promptly notify Awardee of any amendments in writing, prior to such amendments taking effect.

XVI. 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.

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

XVIII. 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.

XIX. 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.

XX. Contact Information and Emergency Contact: For Awardee's safety, Awardee must notify WHOI CMR of any changes to Awardee's contact information, including any emergency contact person and that person's contact information. As a condition to Awardee's access to WHOI, Awardee agrees to keep your contact information (including emergency contact information) current at all times.