

# Waiver of Liability Membership Agreement



In consideration of the loan by the ToolBank USA, Inc. Affiliate, (Lender) to the Applying Agency (Borrower), of the tools and equipment (the “Equipment”) and/or the donation of supplies and materials (the “Materials”) listed on the attached, Borrower agrees to borrow the Equipment and use the Materials in accordance with the following terms and conditions:

- (1) 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 ToolBank tool.
- (2) Borrower agrees to return the Equipment to Lender’s warehouse before or on the due date. Borrower agrees to comply with the ToolBank’s appointment-only schedule (two days in advance for pickups and one day in advance for returns).
- (3) Borrower agrees to pay 3% of the tool’s retail value for each week of borrowing at the time of pickup by money order, check, or credit/debit card.
- (4) Borrower agrees to pay the replacement fee, or provide the equivalent, for any tool the Lender deems as lost or damaged outside the scope of normal wear and tear. This is at the Lender’s sole discretion.
- (5) Tool lending is at the discretion of the Lender. Lender may refuse tool lending for a specific project and/or a specific member agency at will.
- (6) Borrower agrees to comply with all terms of this Membership Agreement and the ToolBank Service Policy, as each of them may be amended from time to time, including but not limited to the provisions regarding release and indemnification set forth in the membership agreement. Lender will notify Borrower of any changes to said policies.
- (7) **RELEASE AND INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AGREES TO INDEMNIFY, RELEASE, HOLD TOOLBANK, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, VOLUNTEERS AND TOOLBANK USA, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND VOLUNTEERS (COLLECTIVELY, THE “INDEMNIFIED PARTIES”) HARMLESS AND AT TOOLBANK’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 (i) THE USE, POSSESSION OR CONTROL OF THE EQUIPMENT OR MATERIALS DURING THE RENTAL PERIOD AND (ii) BREACH OF THIS CONTRACT, WHETHER OR NOT CAUSED IN PART BY THE ACTIVE OR PASSIVE NEGLIGENCE OR OTHER FAULT OF ANY PARTY INDEMNIFIED HEREIN AND ANY OF THE FOREGOING ARISING OR IMPOSED IN ACCORDANCE WITH THE DOCTRINE OF STRICT OR ABSOLUTE LIABILITY. BORROWER AGREES TO WAIVE ITS WORKERS’ COMPENSATION IMMUNITY, TO THE EXTENT APPLICABLE. BORROWER’S INDEMNITY OBLIGATIONS SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT. ALL OF BORROWER’S INDEMNIFICATION OBLIGATIONS SHALL BE JOINT AND SEVERAL. IF ANY PART OF THIS SECTION IS DETERMINED INVALID BY A COURT OF COMPETENT JURISDICTION, BORROWER AGREES THAT THIS CLAUSE SHALL BE ENFORCEABLE TO THE FULLEST EXTENT PERMITTED BY LAW.**
- (8) Borrower hereby acknowledges that its use of the Materials and Equipment are (i) without instruction or supervision, (ii) at Borrower’s own risk or the risk of Borrower’s officers and directors, employees, agents and volunteers, and (iii) that Lender expressly disclaims any warranty regarding the condition or fitness for particular use of any of the Equipment or Materials provided hereunder.

(9) Borrower attests that its use of the Materials and Equipment are 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 the Borrowers mission, and that no services or materials are being re-sold or returned to any retailer, vendor or manufacturer for refund, or being used in any manner inconsistent with this Member Agreement or Lender’s status as a 501(c)(3) tax deductible charitable organization.

(10) Borrower acknowledges receipt of the Equipment and Materials listed above, and is in agreement with, both the Membership Agreement the ToolBank Service Policy.

(11) Borrower acknowledges that it has read and understood the foregoing terms and conditions of this Waiver of Liability, and the undersigned affirms he/she has all requisite power and authority to enter into this Agreement on behalf of Borrower.

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*Name of Agency/Organization*

\_\_\_\_\_  
*Name of Executive Staff Person*      \_\_\_\_\_  
*Signature*      \_\_\_\_\_  
*Date*