

# DIYcave Annex Terms and Conditions

Here are some of the benefits you will receive as a Member of DIYcave Annex:

## All Memberships Include:

- Access to wireless internet service
- 24/7 access to the space
- Part of the biggest Maker community in Bend
- Utilities Included
- Food & Beverage Carts nearby
- Bathroom on site
- 25% discount on DIYcave membership
- Access to DIYcave during normal business hours
- Access to DIYcave classroom and advanced booking
- Classroom available to rent

## Terms of use

The following Terms of Use may be somewhat lengthy, but we want to be careful to ensure that everyone is properly protected. Please feel free to contact us at [info@diycave.com](mailto:info@diycave.com) with any questions regarding these terms.

1. **Acceptance of Terms.** The services DIYcave Studios provides to you, the undersigned (including but not limited to use of office space and access to Internet), are subject to the following Terms of Use ("TOU"). DIYcave Studios reserves the right to update the terms of use at any time. DIYcave Studios will attempt to contact you to notify you of any updates within 30 days of their enactment using the contact information provided in the Membership Agreement.

2. **Invoicing and Payment.** All fees will be due on the first of each month and be considered late if received after the 5th of each month. DIYcave Studios reserves the right to charge late fees and/or withhold services if payments are not received on time. First month will be prorated. All variable charges, such as classroom usage, etc., that may have been incurred during the previous period are due at end of each month. DIYcave Studios will accept electronic funds transfer or cash/check for monthly payments. Credit card must be on file to use variable charged amenities.

3. **Deposit:** All studios require a refundable deposit upon move in date. Each deposit will equal the amount of one month's rent.

4. **Description of Services.** DIYcave Studios may provide you with access to studio space, internet access and other services as DIYcave Studios may provide from time to time (collectively, "Services"). The Services at all times are subject to the terms of use.

5. **No Unlawful or Prohibited Use.** As a condition of your use of the Services, you will not use the Services for any purpose that is unlawful or prohibited by these terms, conditions and notices. You may

not use the Services in any manner that could damage, disable, overburden, or impair any server, or the network(s) connected to any DIYcave Studios server, or interfere with any other party's use and enjoyment of any Services. You may not attempt to gain unauthorized access to any Services, or accounts, computer systems or networks connected to any DIYcave Studios server or to any of the Services, through hacking, password mining or any other means. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the Services. You hereby represent and warrant that you have all requisite legal power and authority to enter into and abide by the terms and conditions of this TOU and no further authorization or approval is necessary. You further represent and warrant that your participation or use of the Services will not conflict with or result in any breach of any license, contract, agreement or other instrument or obligation to which you are a party.

**6. Use of services.** You agree that when participating in or using the Services, you will not:

- a. Use the Services in connection with contests, pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited message (commercial or otherwise);
- b. Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others
- c. Publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, obscene, indecent or unlawful topic, name, material or information on or through DIYcave Studios Services;
- d. Upload, or otherwise make available, files that contain images, photographs, software or other material protected by intellectual property laws, including, by way of example, and not as limitation, copyright or trademark laws (or by rights of privacy or publicity) unless you own or control the rights thereto or have received all necessary consent to do the same;
- e. Use any material or information, including images or photographs, which are made available through the Services in any manner that infringes any copyright, trademark, patent, trade secret, or other proprietary right of any party;
- f. Upload files that contain viruses, Trojan Horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of another's computer or property of another;
- g. Download any file(s) that you know, or reasonably should know, cannot be legally reproduced, displayed, performed, and/or distributed in such manner;
- h. Restrict or inhibit any other user from using and enjoying the Services;
- i. Violate any code of conduct of other guidelines which may be applicable for any particular Service
- j. Harvest or otherwise collect information about others, including email addresses, without the authorization or consent of the disclosing party;
- k. Violate any applicable laws or regulations; and
- l. Create a false identity for the purpose of misleading others.

**7. Privacy.** DIYcave Studios reserves the right at all times to disclose any information about you, your participation in and use of the Services as DIYcave Studios deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in DIYcave Studios sole discretion.

**8. Confidentiality.** a. You acknowledge and agree that during your participation in and use of the Services you may be exposed to Confidential Information. "Confidential Information" shall mean all information, in whole or in part, that is disclosed by DIYcave Studios or any participant or user of the Services or any employee, affiliate, or agent thereof, that is non-public, confidential or proprietary in

nature. Confidential Information also includes, without limitation, information about business, sales, operations, know-how, trade secrets, technology, products, employees, customers, marketing plans, financial information, services, business affairs, any knowledge gained through examination or observation of or access to the facilities, computer systems and/or books and records of DIYcave Studios or , any analyses, compilations, studies or other documents prepared by DIYcave Studios or or otherwise derived in any manner from the Confidential Information and any information that you are obligated to keep confidential or know or has reason to know should be treated as confidential. b. Your participation in and/or use of the Services obligates you to I. maintain all Confidential Information in strict confidence; II. not to disclose Confidential Information to any third parties; DIYcave Studios, III. not to use the Confidential Information in any way directly or indirectly detrimental to DIYcave Studios, or any participant or user of the Services. c. All Confidential Information remains the sole and exclusive property of DIYcave Studios or the respective disclosing party. You acknowledge and agree that nothing in this TOU or your participation or use of the Services will be construed as granting any rights to you, by license or otherwise, in or to any Confidential Information or any patent, copyright or other intellectual property or proprietary rights of DIYcave Studios, or any participant or user of the Services.

**9. Participation In or Use of Services.** You acknowledge that you are participating in or using the Services at your own free will and decision. You acknowledge that DIYcave Studios does not have any liability with respect to your access, participation in, use of the Services, or any loss of information resulting from such participation or use.

**10. Disclaimer of Warranties.** To the maximum extent permitted by applicable law, DIYcave Studios provides the services “as is” and with all faults, and hereby disclaim with respect to the services all warranties and conditions, whether express, implied or statutory, including, but not limited to, any (if any) warranties, duties or conditions of or related to: merchantability, fitness for a particular purpose, lack of viruses, accuracy or completeness of responses, results, workmanlike effort and lack of negligence. Also, there is no warranty, duty or condition of title, quiet enjoyment, quiet possession, correspondence to description or non-infringement. The entire risk as to the quality, or arising out of participation in or the use of the services, remains with you.

**11. Exclusion of Incidental, Consequential and Certain Other Damages.** To the maximum extent permitted by applicable law, in no event shall DIYcave Studios or its subsidiaries (whether or not wholly-owned), affiliates, divisions, and their past, present and future officers, agents, shareholders, members, representatives, employees, successors and assigns, jointly or individually be liable for any direct, special, incidental, indirect, punitive, consequential or other damages whatsoever (including, but not limited to, damages for: loss of profits, loss of confidential or other information, business interruption, personal injury, loss of privacy, failure to meet any duty (including of good faith or of reasonable care), negligence, and any other pecuniary or other loss whatsoever) arising out of or in any way related to the participation in or inability to participate in or use of the services, the provision of or failure to provide services, or otherwise under or in connection with any provision of this agreement, even in the event of the fault, tort (including negligence), strict liability, breach of contract or breach of warranty of DIYcave Studios, and even if DIYcave Studios has been advised of the possibility of such damages. Because some states/jurisdictions do not allow the exclusion or limitation of liability, for consequential or incidental damages, the above limitation may not apply to you.

**12. Limitation of Liability and Remedies.** Notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct or general damages), the entire liability of DIYcave Studios or its subsidiaries (whether or not wholly-owned),

affiliates, divisions, and their past, present and future officers, agents, shareholders, members, representatives, employees, successors and assigns under any provision of this terms of use and your exclusive remedy for all of the DIYcave Studios foregoing shall be limited to actual damages incurred by you based on reasonable reliance up to ten dollars (USD \$10.00). The foregoing limitations, exclusions and disclaimers (including sections 8 and 9 above) shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

13. **Termination.** DIYcave Studios reserves the right to terminate any service at any time. DIYcave Studios further reserves the right to terminate your participation in and use of any services, immediately and without notice, if you fail to comply with the terms of use.

14. **Indemnification.** You release, and hereby agree to indemnify, defend and save harmless DIYcave Studios (whether or not wholly-owned), affiliates, divisions, and their past, present and future officers, agents, shareholders, members, representatives, employees, successors and assigns, jointly and individually, from and against all claims, liabilities, losses, damages, costs, expenses, judgments, fines and penalties based upon or arising out of your negligent actions, errors and omissions, consumption of drugs and or alcohol, willful misconduct and fraud in connection with the participation in or use of the Services. You further agree in the event that you bring a claim or lawsuit in violation of this agreement, you shall be liable for any attorneys' fees and costs incurred by DIYcave Studios or its respective officers and agents in connection with the defense of such claim or lawsuit.

15. **Severability.** In the event that any provision or portion of this terms of use is determined to be invalid, illegal or unenforceable for any reason, in whole or in part, the remaining provisions of this terms of use shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by applicable law.

16. **Insurance.** DIYcave Studios will carry Liability and Business Personal Property insurance. As a user, it is strongly suggested that you carry a Renters Insurance policy to cover your own equipment while using our space. That policy may cover your current residence/office, as well as the premises of DIYcave Studios. You agree to exclude liability for any claim or damages which would be covered by a renters insurance policy as part of an "anti-subrogation clause".

17. **Pets.** No dogs in DIYcave at all, dogs allowed out back under awning (on leash). Dogs allowed in DIYStudios contained within personal studio, on leash when transferring from studio to vehicle. Dogs are the liability of the dog owners. Owners may be asked at any time to discontinue dog presence at DIYcave's discretion.

#### 18. **UTILITIES.**

There is no CAMS policy at the time of the writing of this lease, however it is in development and may be added at any time in the future. At that time the tenant will have the right to accept or decline the new agreement.

One of the following:

( ) Utilities are included in the terms of this lease, with reasonable useage. If usage is deemed to be in excess of what is considered reasonable by Landlord, the Tenant will be notified in writing with violations noted and solutions proposed. If not rectified in a 30 day time period the

tenant will be notified of an additional utility fee for the duration of the time that usage is violated, and such fee will be collected along with monthly lease payments.

( ) Tenant shall pay promptly for all gas and electrical services, including heat and light, garbage collection, and all other facilities and utility Services used by Tenant or provided to the Premises during the Term. If the heating and air-conditioning systems, or other utilities are not on Separate meters. Tenant shall pay its proportionate share of such charges based upon the actual use of the utility by Tenant and by the other tenants of the building in which the Premises are situated within ten days after billings therefore. Tenant shall arrange for regular and prompt pickup of trash and garbage and shall store such trash and garbage in only those areas designated by Landlord. However, if Landlord elects to arrange for garbage collection on a cooperative basis for Tenant and other tenants, Tenant shall pay its proportionate share of the garbage collection charges, within ten days after billings therefore. Gas, Electric, Water and sewer are separately metered. Shared utilities include garbage, outside lights, landscaping and watering. Other shared expenses include lot sweeping, and repairs to building, grounds or HVAC equipment

**19. EARLY TERMINATION:** The Tenant(s):

Shall have the right to terminate this Agreement at anytime by providing at least 30 days' written notice to the Landlord along with an early termination fee of \$1000.00. During the notice period for termination the Tenant(s) will remain responsible for the payment of rent.

**Initials** \_\_\_\_\_