

SERVICES AGREEMENT

No.

This is a services agreement (“Agreement”) by and between the **WOODS HOLE OCEANOGRAPHIC INSTITUTION (WHOI)**, a corporation with its principal place of business in Woods Hole, Massachusetts, and **< BUSINESS NAME >** with its principal place of business at **< BUSINESS ADDRESS >** (the “Subcontractor”). WHOI and the Subcontractor (“the parties”) agree as follows:

1. SERVICES Subcontractor agrees to perform for WHOI the services (“Services”) described in the Statement of Work (“SOW”), which is attached to and incorporated by reference in this Agreement as Schedule A, and in accordance with the terms and conditions set forth in this Agreement. If the SOW provides for assignment of work on the basis of separate Task Orders, the Subcontractor agrees to perform the Services described in each Task Order upon receipt of the Task Order from WHOI. Each Task Order shall be in writing, shall be signed by the Subcontractor and an authorized representative of WHOI, and shall be deemed an amendment to the Statement of Work.

2. TERM This Agreement is effective on **< DATE >** (the “Effective Date”) and shall continue through **< END DATE >**, unless otherwise extended or terminated by the parties in accordance with the provisions of this Agreement (the “Term”).

3. PAYMENT AND INVOICES WHOI agrees to pay Subcontractor for Services rendered to and accepted by WHOI during the Term of this Agreement in accordance with the Payment and Rates section in the Statement of Work. The Subcontractor shall submit an invoice, not more than once a month, for each payment, and WHOI shall pay the invoice, subject to approval by WHOI of the Services rendered, within thirty (30) days after receipt of a complete and accurate invoice. The invoice shall be in a form and contain sufficient content that is acceptable to WHOI. The Subcontractor has a federal tax identification number (“TIN”) that is not used as an individual’s social security number. The Subcontractor’s TIN is **< >**.

4. EXPENSES If specifically authorized in the SOW, WHOI shall reimburse Subcontractor for expenses reasonably incurred in connection with the rendering of Services under this Subcontract. Specific types of expenses that will be reimbursed by WHOI are listed in the Statement of Work and are subject to any limits set forth in the SOW. The Subcontractor shall bear sole responsibility for all other expenses incurred by Subcontractor in connection with performance of the Services. Expenses shall be separately listed in each invoice. The Subcontractor shall provide itemized receipts or other documentation acceptable to WHOI to support all expenses (except per diem allowances). Subcontractor shall use the most economic method of travel available subject to project timing and other constraints. Allowability of travel costs shall be in accordance with the Subcontractor’s published travel policy or the Federal Travel Regulations (41 CFR 300-304)(www.gsa.gov/federaltravelregulation), whichever is less.

4. PROPRIETARY INFORMATION Subcontractor acknowledges that, in the course of performing the Services, the Subcontractor will have access to proprietary and confidential information of WHOI. Therefore, Subcontractor agrees that it will sign contemporaneous with this Agreement and be bound by the standard WHOI Nondisclosure Agreement. The Nondisclosure Agreement is incorporated in this Agreement by reference.

5. PERFORMANCE WARRANTIES Subcontractor warrants that: (a) performance of the Services will not violate any agreement or obligation between Subcontractor and any third party; (b) the Services performed for or delivered to WHOI will not infringe on any copyright, patent, trade secret, or other proprietary rights of any third party; and (c) the Services shall be performed in a professional and workmanlike manner.

6. WORK PRODUCT OWNERSHIP AND RIGHTS For purposes of this Agreement, the term “Work Product” means (collectively and individually) technical information, computer or other apparatus programs, specifications, drawings, records, documentation, reports, materials, concepts, plans, inventions, data, discoveries or adaptations, creative works, trade names or trade marks, and works of authorship or other creative works (written, oral, or otherwise expressed) that are developed, conceived, or acquired by Subcontractor or by Subcontractor’s authorized subcontractors or agents in connection with the Services, including derivative works. Ownership of and all right, title, and interest in the Work Product shall vest solely in WHOI.

Subcontractor (and, if applicable, Subcontractor’s lower-tier subcontractors and agents) shall promptly disclose and furnish to WHOI any and all Work Product arising in connection with the Services. The Subcontractor shall keep the Work Product in confidence, shall treat the Work Product as the Proprietary Information of WHOI under the Nondisclosure Agreement, and shall use the Work Product only for the purposes of this Agreement, except with the prior written permission of WHOI.

7. WORK FOR HIRE All Work Product shall be considered a “work for hire” under United States intellectual property laws. To the extent Work Product is deemed not to be a “work for hire,” Subcontractor hereby transfers (and shall be deemed to have assigned) in perpetuity all rights, title, and interest in and to the Work Product to WHOI, including all copyright, trademark, trade secret, patent, and other proprietary rights, and the right to sublicense or transfer any and all rights assigned under this Agreement to third parties.

Subcontractor shall cooperate with WHOI and shall execute all appropriate documents necessary or convenient to perfect the rights of WHOI in the Work Product in order to ensure that WHOI receives the rights provided for in this Section. If Subcontractor uses employees of Subcontractor or lower-tier subcontractors to perform any Services, Subcontractor shall enter into written agreements (reasonably acceptable to WHOI) with each employee or lower-tier subcontractor to acquire those rights from that employee or lower-tier subcontractor. The Subcontractor shall furnish copies of those agreements to WHOI, upon request.

8. WORK PRODUCT REPRESENTATIONS The Subcontractor represents and warrants that the Work Product delivered to WHOI shall be original and that the Subcontractor possesses all rights necessary to effectuate the transfer of rights in accordance with Paragraph 7 of this Agreement. However, to the extent that the Work Product includes material previously developed or copyrighted by Subcontractor or a third party and not originated in connection with the Services, Subcontractor shall notify WHOI and grant to or obtain for WHOI a perpetual, unrestricted, royalty-free license to use that material, including the rights to practice, copy, create derivatives of, create products embodying any ideas incorporated in, and grant sublicenses for that material. The licenses granted under this Section shall include the right of WHOI to grant sublicenses for those materials. The provisions of this Section shall survive termination of this Agreement.

9. OWNERSHIP, USE AND RETURN OF MATERIALS All information, records, documents, files, data, and other items relating to the business of WHOI or its customers, whether prepared by Subcontractor or otherwise coming into Subcontractor's possession in connection with performing the Services or otherwise during the term of this Agreement (including Proprietary Information) shall remain the exclusive property of WHOI (or its customers) and shall not be removed from the premises of WHOI or its customers' sites under any circumstances without the prior written consent of WHOI, except when appropriate in the ordinary course of business during Subcontractor's active service under this Agreement. All WHOI materials and all copies in possession of the Subcontractor shall be promptly returned to WHOI upon termination of this Agreement.

10. ASSIGNMENT AND SUBCONTRACTING This Agreement shall be binding on the parties and each party's successors and assigns. Nevertheless, Subcontractor may not assign or otherwise transfer this Agreement or any rights, duties, or obligations under this Agreement without the prior written consent of WHOI. The Subcontractor shall not subcontract any portion of the Services without prior written approval of WHOI.

11. INDEMNIFICATION FOR TORT, PROPERTY DAMAGE, AND WORKERS' COMPENSATION CLAIMS Each party shall defend, indemnify, and hold harmless the other party (including the successors, officers, directors, and employees) from any and all liability, claims, and expenses of whatever kind and nature for injury to or death of any person or persons and for loss of or damage to any real or tangible personal property occurring in connection with or in any way incident to or arising under this Agreement, resulting in whole or in part from the acts or omissions of the indemnifying party. The indemnified party shall promptly notify the indemnifying party, in writing, of any claim and shall reasonably cooperate with the indemnifying party in the defense and settlement of the claim. This Section shall survive termination of this Agreement. Subcontractor also agrees to indemnify and hold WHOI harmless for any claim, including workers' compensation claims, incurred by Subcontractor and Subcontractor's lower-tier subcontractors and agents for injury sustained on WHOI's premises.

12. INSURANCE Subcontractor shall maintain for itself and Subcontractor's lower-tier subcontractors and agents all insurance coverages as required by law, including workers' compensation insurance.

13. VERIFICATION OF SELLER PERSONNEL The Subcontractor shall be responsible for verifying the citizenship, right to work status, education and work experience of any Subcontractor employee, lower-tier subcontractor, agent or representative ("Personnel") assigned to perform work under this Subcontract and shall provide WHOI with written proof of such verification upon request.

14. WHOI APPROVAL OF SUBCONTRACTOR PERSONNEL WHOI reserves the right to disapprove the assignment of or to effect the immediate removal of any Subcontractor personnel assigned to perform work under this Subcontract. This right may only be used at the reasonable discretion of WHOI and is not subject to the "Disputes" clause herein.

15. INTELLECTUAL PROPERTY INDEMNITY The Subcontractor agrees to indemnify, defend, and hold WHOI (and its successors, officers, directors, and employees) harmless from any and all actions, claims, demands, costs, liabilities, expenses, and damages (including attorney fees) arising out of, or in conjunction with, any claim that the Services or Work Product furnished by the Subcontractor under this Agreement constitutes an infringement or misappropriation of any confidential information, trade secret, patent, copyright, trademark, trade name, or other legal intellectual property right of any third party. This Section shall survive termination of this Agreement.

16. LIMITATION OF LIABILITY Except as otherwise provided under Sections 12 and 13 of this Agreement (applicable to tort claims resulting in bodily injury or real or tangible personal property damage and intellectual property rights infringement), **NEITHER PARTY SHALL BE LIABLE, UNDER ANY CIRCUMSTANCES FOR ANY ANTICIPATORY OR LOST PROFIT, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS UNDER THIS AGREEMENT EVEN IF THOSE DAMAGES ARE ATTRIBUTED TO BREACH OF THIS AGREEMENT, TORT, NEGLIGENCE, OR OTHER CAUSE OF ACTION. THE PARTIES AGREE THAT THIS LIMITATION SHALL APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF NON-DIRECT DAMAGES OR IF, UNDER APPLICABLE LAW, NON-DIRECT DAMAGES ARE CONSIDERED TO BE DIRECT DAMAGES.**

17. VIOLATION OF LAWS AND REGULATIONS Subcontractor acknowledges that certain local, state, and federal laws and regulations apply to Subcontractor as an independent contractor. In addition, Subcontractor acknowledges that federal or state procurement and conflict of interest laws and regulations may apply to the Subcontractor. Subcontractor agrees to comply with all applicable federal, state, and local laws. Further, Subcontractor agrees to defend, indemnify, and hold WHOI harmless (including affiliates, subsidiaries, agents, directors, officers, and employees of WHOI) against all claims, damages, losses, causes of action, liabilities, and expenses of any kind or nature, including reasonable attorney fees, which arise out of or relate to the failure of Subcontractor to comply with all applicable local, state, and federal laws and regulations in the performance of the Subcontractor's obligations under this Agreement.

18. RELATIONSHIP OF THE PARTIES This Agreement shall not constitute, create, give effect to, or otherwise imply a joint venture, partnership, or business organization of any kind. WHOI and Subcontractor are independent parties, and neither party shall act as an agent for or partner of the other for any purpose. Nothing in this Agreement shall grant to either party any right to make any commitments of any kind for or on behalf of the other without the prior written consent of the other party. Subcontractor is an independent contractor and it is the expressed intent of the parties that nothing in this Agreement shall establish an employer-employee relationship between WHOI and the Subcontractor. To that end, the Subcontractor shall not act under the direct supervision of any WHOI employee and shall not supervise any WHOI employee(s). Except for procedures or processes explicitly set forth in the SOW or specific criteria for acceptance of deliverables, WHOI shall not control or determine the manner in which Services are performed or set hours of work for the Subcontractor. Subcontractor shall not be restricted from performing services for others and shall not be bound to WHOI except as provided under this Agreement. Subcontractor shall not be eligible for any fringe benefits (including health insurance, paid vacation, sick leave, retirement plans, or other employment benefits) that may be provided to employees of WHOI and will not be a participant in any WHOI qualified benefits plan. Subcontractor shall be solely responsible for payment of all taxes, insurance, and other expenses of doing business except for expenses explicitly agreed to by WHOI and set forth under "Expenses" in the attached SOW.

19. EMPLOYEES OF SUBCONTRACTOR If Subcontractor engages any person or firm to perform work for Subcontractor in connection with the Services, either as an employee of Subcontractor or a lower-tier subcontractor, Subcontractor shall be solely responsible for payment to that person or firm, including payment of any taxes related to employment and workers' compensation insurance. Subcontractor's employees are not eligible for any WHOI fringe benefits (including health insurance, paid vacation, sick leave, retirement plans, or other employment benefits) that may be provided to employees of WHOI and will not be a participant in any WHOI qualified benefit plan. Subcontractor shall not, without the prior written consent of WHOI, solicit, recruit, hire, or otherwise employ or retain any employee of WHOI to perform any of the Services.

20. STANDARD OF CONDUCT Subcontractor and its personnel shall, whenever on WHOI's premises, comply with all WHOI policies, reasonable instructions, and directions issued by WHOI with respect to its own employees.

21. TERMINATION FOR INSOLVENCY If either party becomes or is declared insolvent or bankrupt; is the subject of any proceedings related to its liquidation, insolvency, or for the appointment of a receiver or similar officer for it; makes an assignment for the benefit of all or substantially all of its creditors; or enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, then the other party may, by giving written notice, terminate this Agreement effective on the date specified in the notice of termination.

22. TERMINATION FOR DEFAULT If either party materially breaches any of the terms and conditions set forth in this Agreement and fails to cure the failure within ten (10) calendar days (or other reasonable period stated in the notice) of receipt of notice from the other party of the breach, the notifying party may, by written notice, terminate this Agreement for default.

23. TERMINATION WITH NOTICE Notwithstanding any other provision or requirement of this Agreement, WHOI may terminate this Agreement, in whole or in part (including all or part of any Task Order), at any time without cause by giving ten (10) days prior written notice to the Subcontractor.

24. DISPUTES Any dispute arising out of this Agreement shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. Pending the final disposition of a dispute other than a dispute arising out of the termination of this Agreement by WHOI, the parties shall, at all times, proceed diligently with the performance of this Agreement.

25. NOTICE OF DELIVERY OR PERFORMANCE PROBLEMS If the Subcontractor encounters or anticipates difficulty in meeting any deadlines, providing any deliverables, performing any of the Services under the SOW, or meeting any other performance obligation under this Agreement or in complying with the terms or conditions of this Agreement, or has knowledge that any actual or potential situation or event will or is reasonably likely to cause interference with or delay the timely performance of the Agreement, Subcontractor shall notify WHOI as soon as is practicable (and confirm the notification in writing), identifying the problem(s) and the corrective action(s) that will be taken. The receipt and acceptance of the notification by WHOI shall not constitute a waiver by WHOI of any time limits or other obligations of the Subcontractor under this Agreement and shall not operate to waive any rights or remedies provided by law or the terms of this Agreement.

26. SEVERABILITY If all or part of any term or condition of this Agreement, or the application of any term or condition of this Agreement, is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of the terms and conditions of this Agreement (other than those portions determined to be invalid or unenforceable) shall not be affected, and the remaining terms and conditions (or portions of terms or conditions) shall be valid and enforceable to the fullest extent permitted by law. If a judicial determination prevents the accomplishment of the purpose of this Agreement, the invalid term or condition (or portions of terms or conditions) shall be restated to conform with applicable law and to reflect as nearly as possible the original intention of the parties.

27. WAIVER OR FOREBEARANCE Any delay or failure of either party to insist upon strict performance of any obligation under this Agreement or to exercise any right or remedy provided under this Agreement shall not be a waiver of that party's right to demand strict compliance, irrespective of the number or duration of any delay(s) or failure(s). No term or condition imposed on either party under this Agreement shall be waived and no breach by either party shall be excused unless that waiver or excuse of a breach has been put in writing and signed by both parties. No waiver in any instance of any right or remedy shall constitute waiver of any other right or remedy under this Agreement. No consent to or forbearance of any breach or substandard performance of any obligation under this Agreement shall constitute consent to modification or reduction of the other obligations or forbearance of any other breach.

28. INJUNCTIVE RELIEF The parties recognize that a remedy at law for a breach of the provisions of this Agreement relating to the Non-Disclosure Agreement; use of any trademark, copyright; or, other intellectual property rights of WHOI will not be adequate to protect WHOI, and accordingly WHOI shall have the right to injunctive relief to enforce the provisions of this Agreement, in addition to any other relief and remedies available.

29. CUMULATIVE REMEDIES All remedies available to either party for breach of this Agreement by the other party are and shall be deemed cumulative and may be exercised separately or concurrently. The exercise of a remedy shall not be an election of that remedy to the exclusion of other remedies available at law or in equity.

30. HEADINGS The **HEADINGS** used in this Agreement are merely for reference. The **HEADINGS** have no independent legal meaning and impose no obligations or conditions on the parties.

31. NOTICES TO PARTIES Unless otherwise specified in this Agreement, all notices, requests, or consents required under this Agreement to be given in writing shall be transmitted by facsimile, hand delivered, or mailed (first class postage prepaid) to the person indicated below. Each party shall notify the other, in writing, of any change in the designated addressee.

To WHOI:

Woods Hole Oceanographic Institution
Director of Procurement, MS#1
Woods Hole, MA 02543

To Subcontractor:

< BUSINESS NAME >
< BUSINESS ADDRESS >
< CITY, STATE, ZIP >

32. GOVERNING LAW This Agreement shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of Massachusetts, without reference to the principles of conflict of laws. Suits solely for injunctive relief may be brought in any court of competent jurisdiction. All other suits brought by either party under this Agreement shall only be brought in a court of competent jurisdiction in the State of Massachusetts.

33. ENTIRE AGREEMENT The contents of this Agreement (including the Statement of Work, the Nondisclosure Agreement, and any other schedules or attachments to this Agreement that are referred to and incorporated in this Agreement by reference) constitute the entire understanding and agreement between the Parties and supersede any prior agreements, written or oral, that are not specifically referenced and incorporated in this Agreement. The terms and conditions of this Agreement shall not be amended except by written agreement signed by both parties.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement.

WOODS HOLE OCEANOGRAPHIC INSTITUTION (WHOI)

< BUSINESS NAME of Subcontractor >

By:

By:

Printed Name:

Printed Name:

Title:

Title:

Date:

Date:

**SCHEDULE A
STATEMENT OF WORK**

< CONTRACT NUMBER >

This Statement of Work is incorporated in the Services Agreement (“Agreement”) by and between WHOI, and **<BUSINESS NAME>** (“Subcontractor”).

SCOPE OF SERVICES

The Services to be provided by Subcontractor, including activities, milestones, and performance time frames or deadlines, as well as other requirements in sufficient detail to provide a basis for performance evaluation. If Task Orders will be used, the overall scope of Services is described with the process for issuing Task Orders.

Subcontractor shall perform services for WHOI, including (but not limited to) the following:

DELIVERABLES

Deliverables and the due dates for each deliverable. The originals of all deliverable documents must be submitted to the appropriate WHOI project manager. If an initial Task Order is included in this SOW, the specific requirements for that Task Order will be included in this SOW as a deliverable.

ACCEPTANCE AND TESTING

Special requirements, procedures, and criteria for testing or acceptance of deliverables, including the WHOI representative who is authorized to accept the Services.

PAYMENT AND RATES

The basis for payment and the type of contract. If appropriate, this will include hourly, daily, weekly, or monthly rates. Any limitations on hours or budgetary constraints are stated.

EXPENSES

All types of expenses that will be reimbursed (such as travel, per diem, supplies, copying, or other charges in connection with the performance of the Services) and any applicable restrictions or limits on expenses. Unless an amount and kind of expense is specified below, there shall be no reimbursement of expenses. Incidental expenses shall be considered a component of the labor rate or firm fixed price amount.

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