Article VII Confidential Information

9. Article IX Copyright, Data and Patent Rights

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7. Article VII Compliance with Clean Air Act and Federal Water Pollution Control Act

6. Article VI Choice of Law

5. Article V Changes to Order/Cancellation

4. Article IV Audit

3. Article III Assignment

2. Article II Anti-Lobbying

1. Article I Acceptance

The parties hereby agree as follows:

WHEREAS, WHOI may disclose to Seller certain of WHOI’s proprietary scientific, technical or business data or information relating to the material or its use in connection with this Agreement (the "Confidential Information"). All such Confidential Information is and shall remain the sole property of WHOI. Seller shall have the limited right to use the Confidential Information solely as necessary in performance of this Agreement. During the term of this Agreement and for a period of three (3) years after its expiration or earlier termination, Seller shall not disclose, use or disclose Confidential Information to any third party, and shall not use the Confidential Information for any purpose other than as expressly set forth above, without WHOI’s prior written authorization; provided that such restrictions shall not apply to the extent that the information: (i) is, at the date of disclosure, or thereafter become, public or available to the general public other than through the act or default of Seller; (ii) thereafter becomes, public or available to the general public other than through the act or default of Seller; or (iii) is obtained from a third party who is lawfully in possession of such information and not under any obligation of confidentiality; (iii) is already in Seller’s possession at the time of receipt from WHOI and such information was not acquired in any manner by Seller without the aid, application, use or disclosure of Confidential Information, and such independent development can be properly documented by Seller; or (v) is disclosed by Seller under a legal obligation or in response to a governmental investigation or subpoena. Seller may request a written notice and the opportunity to protect such Confidential Information through a protective order, injunction, or other means.

WHEREAS, WHOI may disclose to Seller certain of its proprietary scientific, technical or business data or information relating to the material or its use in connection with this Agreement (the "Confidential Information"). All such Confidential Information is and shall remain the sole property of WHOI. Seller shall have the limited right to use the Confidential Information solely as necessary in performance of this Agreement. During the term of this Agreement and for a period of three (3) years after its expiration or earlier termination, Seller shall not disclose, use or disclose Confidential Information to any third party, and shall not use the Confidential Information for any purpose other than as expressly set forth above, without WHOI’s prior written authorization; provided that such restrictions shall not apply to the extent that the information: (i) is, at the date of disclosure, or thereafter become, public or available to the general public other than through the act or default of Seller; (ii) thereafter becomes, public or available to the general public other than through the act or default of Seller; or (iii) is obtained from a third party who is lawfully in possession of such information and not under any obligation of confidentiality; (iii) is already in Seller’s possession at the time of receipt from WHOI and such information was not acquired in any manner by Seller without the aid, application, use or disclosure of Confidential Information, and such independent development can be properly documented by Seller; or (v) is disclosed by Seller under a legal obligation or in response to a governmental investigation or subpoena. Seller may request a written notice and the opportunity to protect such Confidential Information through a protective order, injunction, or other means.

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communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits to the laborers or mechanics employed under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the results and wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; and Labor Services, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary apprentices. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will not be paid the rate determined by § 5.5(a) or § 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in its own contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. All overtime shall be paid in addition to the wages required by § 5.6(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(d) Appointments and its successor site. The prime contractor is responsible for the submission of any payroll by the contractor or subcontractor. Contractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (the same as the name of the appropriate federal agency) if the agency is the party to the contract. If the agency is the lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(3) That each payroll is correct or verifiable in accordance with the prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(8) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 6, 7, and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

11. Article 30 – Declared Value of Shipment

Except as otherwise provided on the face of the applicable Order, all shipments by Seller under this Agreement for WHOI account shall be made at the maximum declared value applicable to lowest transportation rate of classification and the bill of lading shall so state.
12. Article XII Delivery/Shipping
Except to the extent specifically prohibited by law, Seller shall indemnify, defend, and hold harmless WHOI and its respective officers, directors, employees, agents, and assets (the "WHOI Indemnitees") against any and all losses, liabilities, damages, and expenses (including reasonable attorneys' fees and costs) that they may suffer as a result of or in connection with any claim, suit, proceeding, action or cause of action that is brought, instituted or brought by or on behalf of a third party as a result of any act or omission of Seller, on or in connection with this Agreement, including any proceeding relating to any alleged breach of a representation or warranty of Seller made in this Agreement.

13. Article XIII Indemnity
A. WHOI shall be solely liable for any and all losses, liabilities, damages, and expenses, including reasonable attorneys' fees and costs, resulting from breach of any representation or warranty of WHOI contained in this Agreement, including any proceeding relating to any alleged breach of a representation or warranty of WHOI made in this Agreement.

B. The provisions of this Article shall survive the termination or expiration of this Agreement.

14. Article XIV Equal Opportunity
Seller shall not exclude, or otherwise discriminate against, any employee or applicant for employment, on account of race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, disability, or veteran status.

15. Article XV Excluded Parties List System
Seller represents and warrants that it is not listed in the worldwide excluded parties list maintained by the System for Award Management (SAM), in accordance with the OMB Guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." Seller shall not maintain or provide racially segregated facilities for employees at any establishment under his control. Seller agrees that it is familiar with and will abide by the anti-bribery laws in the countries in which it does business (which may include, among others, laws promulgated under the Organization for Economic Cooperation and Development, the UN Convention Against Corruption, the FCAP, and the UK Bribery Act). Seller also agrees it will not take any action that would cause WHOI to be in violation of the FCAP, the UK Bribery Act, or other anti-bribery laws.

Woods Hole Oceanographic Institution
Terms and Conditions of Purchase

SGR/15942961.1
The contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which it elects to retain protection. Subject inventions means any invention of the contractor conceived or first actually reduced to practice by the contractor under contract in order that the contractor can comply with the disclosure provisions of paragraph (c), above. Of course, the contractor will specify in writing to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in those subject inventions to which the contractor elects to retain title.

(b) Conditions When the Government May Obtain Title

(1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any variety of plant which is protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), as amended.

(2) Subject invention means any invention of the contractor conceived or first actually reduced to practice by the contractor under contract in order that the contractor can comply with the disclosure provisions of paragraph (c), above.

(3) The contractor will file its initial patent application on a subject invention to which it elects to retain protection throughout the world. The contractor will file such application within the time specified in (c), above. The contractor’s license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant such licenses to such corporate affiliates and any assignee of the contractor’s subject inventions.

(4) Requests for extension of the time for disclosure, election, and filing has been prohibited by a Secrecy Order.

(5) The contractor’s license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant such licenses to such corporate affiliates and any assignee of the contractor’s subject inventions.

(6) Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(c)(3)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) Allocation of Patent Rights

The contractor may retain the entire title, right, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on or behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by Contractor

(1) The contractor will disclose each subject invention to the Federal Agency within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contractor under which the invention was made. The report shall be of sufficient detail to enable the contractor personnel responsible for patent matters to understand the extent to which the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify the person or persons responsible for the filing of the patent application.

(2) The contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period within which valid patent protection can be obtained in the United States.

(3) The contractor will file its initial patent application on a subject invention to which it elects to retain title within four months after the evidence required for filing a patent application has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the contractor will promptly notify the agency of the filing of a provisional patent application, the description of the invention for publication or of any on sale or public use planned by the contractor.

(4) Requests for extension of the time for disclosure, election, and filing has been prohibited by a Secrecy Order.

(5) The contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period within which valid patent protection can be obtained in the United States after a publication, on sale or public use. The contractor will file its initial patent application in one or more countries or international applications within ten months of the corresponding initial patent application or six months from the date permitted is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been permitted by the contractor.

(6) Rights in Subject Inventions

The contractor shall not grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the contractor may reasonably allow for the manufacture substantially in the United States of products embodying the subject invention.

(d) Reporting on Utilization of Subject Inventions

The contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of subject inventions or on efforts at obtaining such utilization that are being made by the contractor, the contractor’s assigns, or the contractor’s subcontractors. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and other data and information as the agency may reasonably specify. The contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(2)(c), the agency will agree in writing to disclose such information to persons outside the government before the expiration of the period required by the agency for the march-in proceeding, to the extent the contractor, assignee or licensee is reasonably certain that the march-in will benefit the public.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the contractor agrees that neither it nor any assignee will agree to sell, license or use any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the contractor may reasonably allow for the manufacture substantially in the United States of products embodying the subject invention.

(j) March-In Rights

The contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the contractor to grant, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or to the Federal agency to the extent the contractor reasonably believes that no other entity can be reasonably satisfied by the Federal agency (or an assignee or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

(1) Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor’s or assignee’s efforts.

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensee;
(4) Such action is necessary because the agreement required by paragraph (3)(b) of this clause has not been obtained or because the delivered advance, if any, for the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(b) Special Provisions for Contracts with Nonprofit Organizations

If the contractor is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the commercialization of inventions, provided that such assignee will be subject to the same provisions as the contractor;

(2) The contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with this paragraph. The royalty sharing rates provided herein do not apply to Federal employee inventions.

(3) The balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be shared with the Federal agency for use in support of scientific research and development.

(4) It will make efforts that are reasonable under the circumstances to attract licensees subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the contractor determines that the small business firm is either a small business firm doing business as a small business firm for purposes of the Office of Small Business and Government Contracts and marketing the invention which, if executed, is equally likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the contractor agrees that the Secretary may review the contractor’s licensing program and decisions regarding small business applicants, and the contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary’s review discloses that the contractor could take reasonable steps to implement more effectively the requirements of this paragraph.

(12) Communication

(Complete According to Instructions at 401.5(b))

(b) When the Department of Energy (DOE) determines to use alternative provisions under 4(c)(3)(i) of the standard clause at § 401.144(a), of this section, shall be used with the following modifications or unless a substitute clause is drafted by DOE:

(1) The title of the clause shall be changed to read as follows: Patent Rights to Nonprofit DOE Facility Operators.

(2) Add an “(a)” after “(1)” in paragraph (c)(1) and add subparagraphs (B) and (C) to paragraph (c)(1) as follows:

(3) If the subject invention occurred under activities funded by the naval nuclear propulsion or weapons related programs of DOE, then the provisions of this subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). In such cases the contractor agrees to assign the government the entire right, title, and interest thereto throughout the world to the subject invention except to the extent that rights are retained by the contractor through a greater rights determination or under paragraph (e), below. The contractor, or an employee-employee, with authorization of the contractor, may submit a request for greater rights at the time the invention is disclosed or within a reasonable time thereafter. DOE will process such a request in accordance with procedures at 37 CFR 401.45. Each determination of greater rights will be subject to paragraphs (h)-(k) of this clause and such additional conditions, if any, deemed to be appropriate by DOE.

(4) At the time invention is disclosed in accordance with (c)(1)(A) above, or within 90 days thereafter, the contractor will submit a written statement as to whether or not the invention occurred under a naval nuclear propulsion or weapons-related program of the Department of Energy. If this statement is not filed within this time, subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3).

(5) Paragraph (k)(3) of the clause will be modified as prescribed at § 401.5(g). When the Department of Energy decides that the government has a greater rights determination, the contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(6) If the contractor performs services at a Government owned and operated laboratory or at a Government owned and contractor operated laboratory directed by the Government to fulfill the Government’s obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710(a), the Government may require the contractor to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the contractor makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the contractor undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the contractor agrees to grant the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

26. Article XXVI Severability

If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force and effect so long as the essential terms and conditions of this Agreement reflect the original intent of the parties and remain valid, legal and enforceable.

27. Article XXVII Solid Waste Disposal Act Compliance

If Seller is identified in this Agreement for compliance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Recovery and Conservation Act. The requirements of Section 6002 include procuring only items designated for use in a nuclear propulsion or weapons-related program of the Department of Energy. If this statement is not filed within this time, subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). In such cases the contractor agrees to assign the government the entire right, title, and interest thereto throughout the world to the subject invention except to the extent that rights are retained by the contractor through a greater rights determination or under paragraph (e), below. The contractor, or an employee-employee, with authorization of the contractor, may submit a request for greater rights at the time the invention is disclosed or within a reasonable time thereafter. DOE will process such a request in accordance with procedures at 37 CFR 401.45. Each determination of greater rights will be subject to paragraphs (h)-(k) of this clause and such additional conditions, if any, deemed to be appropriate by DOE.

28. Article XXVIII Term

The parties’ obligations under this Agreement shall continue for two (2) years after the date of final performance by WHOI for the date of completion of the phase or portion of the work required to do so. WHOI may, by written notice, at any time during or after the effective date of this Agreement, request the Contractor to make any reasonable adjustment or change in the work performed under this Agreement.

29. Article XXIX Termination

(a) WHOI may, by written notice, requesting the Contractor to make any adjustment or change in the work performed under this Agreement.

(b) WHOI may, by written notice, terminate the Agreement for Seller’s default, in whole or in part, if Seller fails or refuses to comply with the provisions of this Agreement or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of the materials or supplies or perform the services within the time specified or any written extension thereof. In such event, WHOI may purchase from or on behalf of the United States the subject invention, or any part thereof, at the lower of cost or fair market value, subject to the right of the nonbreaching party to receive indemnity, confidence, warranty, and limitation on liability, which shall survive indefatigably or until extinguished by their own terms.

30. Article XXX Waiver

This Agreement may be amended, supplemented, or otherwise modified only by means of a written instrument signed by both parties. Any waiver of any rights or failure to act in a specific instance shall relate only to such instance and shall not be construed as an agreement to waive any rights or fail to act in any other instance, whether or not similar.

31. Article XXXII Warranties

Seller represents and warrants to WHOI that the goods and services (and all components thereof) sold by Seller to WHOI shall:

(a) Be new, unused, and of good quality;

(b) Conform to all of WHOI’s specifications, standards, drawings, samples, and other requirements of this Agreement;

(c) Conform to specifications, standards, drawings, samples, performance criteria and any other other information provided by, or originating from, WHOI;

(d) Be fit for the purposes of the Agreement;

(e) Comply with all then-current safety standards (including labeling requirements, if Seller is to provide labels); and contain adequate warnings (if Seller is to provide warnings);

(f) Be free of asbestos, lead paint, or other hazardous substances;

(g) Be free from defects in material and workmanship and meet all applicable manufacturer’s, industry, and safety standards;

(h) Not infringe on any third party’s patent, copyright, trade secret, trademark, or any other intellectual property right of any third party and there is no actual or threatened claim or lawsuit by any third party based on violation of such rights.

Seller warrants that goods will perform as specified, and be free from defects in material and workmanship, for a period of two (2) years commencing with the end of the Inspection Period such that any cause of action for breach of warranty accrues, for limitations purposes, when WHOI discovers Seller’s refusal or inability to maintain the goods as warranted.

In addition to, and not in lieu of, Seller’s warranty obligations above, if, within two (2) years after the end of the Inspection Period, any of the goods or services are found to be not in accordance with the requirements of the Agreement, Seller shall correct it promptly after receipt of written notice from WHOI to do so. Seller warrants any goods or services furnished in connection with the correction of nonconformance goods or services from the date that Seller completes the correction in the same manner, at the same cost, at no additional cost, and with respect to the undelivered or unaccepted portion of the Order, provided compensation hereunder shall in no event exceed the total price of the Order.

32. Article XXXIII Warranty on Price/Most Favored Nation

Seller shall require all suppliers of subject inventions, materials, and services to require all suppliers of subject inventions, materials, and services to agree to do so. WHOI may purchase from or on behalf of the United States the subject invention, or any part thereof, at the lower of cost or fair market value, subject to the right of the nonbreaching party to receive indemnity, confidence, warranty, and limitation on liability, which shall survive indefatigably or until extinguished by their own terms.

33. Article XXXIV Works For Hire

The parties’ obligations under this Agreement shall continue for two (2) years after the date of final performance by WHOI for the date of completion of the phase or portion of the work required to do so. WHOI may, by written notice, requesting the Contractor to make any adjustment or change in the work performed under this Agreement. WHOI may purchase from or on behalf of the United States the subject invention, or any part thereof, at the lower of cost or fair market value, subject to the right of the nonbreaching party to receive indemnity, confidence, warranty, and limitation on liability, which shall survive indefatigably or until extinguished by their own terms.

34. Article XXXV Termination

(b) WHOI may, by written notice, terminate the Agreement for Seller’s default, in whole or in part, if Seller fails or refuses to comply with the provisions of this Agreement or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of the materials or supplies or perform the services within the time specified or any written extension thereof. In such event, WHOI may purchase from or on behalf of the United States the subject invention, or any part thereof, at the lower of cost or fair market value, subject to the right of the nonbreaching party to receive indemnity, confidence, warranty, and limitation on liability, which shall survive indefatigably or until extinguished by their own terms.

WHOI may purchase from or on behalf of the United States the subject invention, or any part thereof, at the lower of cost or fair market value, subject to the right of the nonbreaching party to receive indemnity, confidence, warranty, and limitation on liability, which shall survive indefatigably or until extinguished by their own terms. WHOI may purchase from or on behalf of the United States the subject invention, or any part thereof, at the lower of cost or fair market value, subject to the right of the nonbreaching party to receive indemnity, confidence, warranty, and limitation on liability, which shall survive indefatigably or until extinguished by their own terms.
Woods Hole Oceanographic Institution
Terms and Conditions of Purchase

Nothing in this Agreement shall entitle WHOI to ownership rights in any data, information, specifications, designs, drawings, programs, derivative works, computer software including source code or object code, ideas, techniques, methods, processes, know-how, documentation and materials, inventions, or discoveries whether or not patentable (collectively, "IP"), developed by Seller prior to or outside the scope of this Agreement ("Seller's Background IP"). WHOI shall be entitled to full ownership of all IP (along with any intellectual property rights thereto, including any trade secrets, patents, patent applications, copyrights, maskworks, database rights, industrial property rights, and other similar rights, regardless of the jurisdiction, and any applications), conceived or first actually reduced to practice in the performance of this Agreement ("Developed IP"), and such Developed IP shall be treated, at the time of conception, as WHOI's property. For the avoidance of doubt, Developed IP includes any and all IP developed or conceived in contemplation of an Order being issued by WHOI for goods or services, regardless of the actual date of conception or reduction to practice. When an Order includes a specific line item for services or an order line item includes requirements for an adaption or improvement to commercially available goods, such line item or requirement shall presumably be considered to be Developed IP, and Seller shall bear the burden of establishing that any IP delivered in satisfaction of said PO line item does not constitute Developed IP. Further, any IP developed during the period of performance of this Agreement in satisfaction of the requirements of this Agreement shall presumably be considered Developed IP unless Seller can establish by documented evidence that such IP was wholly developed outside of this Agreement, including being exclusively funded by Seller and being conceived and reduced to practice without any reference to any goods or services purchased by WHOI pursuant to this Agreement. All WHOI's IP shall be deemed its property and shall not be used by others or disclosed to others without WHOI's prior written permission.

All Developed IP that is considered "Work Made for Hire" as defined in in Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and used in 17 U.S.C. § 201 (or relevant EU legislation and the UK Copyright, Design and Patents Act 1988, c. 48, as amended), shall be deemed a "work made for hire" under this Agreement, with all right, title and interest in such Developed IP vesting with WHOI. For all other IP not deemed a work made for hire, Seller hereby assigns all such Developed IP to WHOI (or to any of WHOI’s affiliates as designated by WHOI) at no additional cost to WHOI. In addition, Seller, will provide reasonable, timely assistance to WHOI (at WHOI’s expense) to enable WHOI to secure WHOI’s rights in Developed IP, including providing written notice to WHOI within 15 days of developing any Developed IP. Seller will procure from its employees and subcontractors, at Seller’s code expense (including any compensation due Seller’s employees), all WHOI’s rights in any Developed IP, and will secure from Seller’s employees the execution of all patent applications, assignments, and other instruments necessary for the procurement of patents and other intellectual property rights and the vesting of title thereto in Developed IP. Seller also grants WHOI a fully paid-up perpetual license to employ any IP present in the goods and services purchased by WHOI in the use of those goods and services.
Woods Hole Oceanographic Institution
Terms and Conditions of Purchase
EXHIBIT A

52.202-1 Definitions (Nov. 2013)
52.203-6 Restrictions on Subcontractor Sales to the Government (Sept. 2006)
52.203-7 Anti-Kickback Procedure (May 2014)
52.203-13 Contractor Code of Business Ethics and Conduct (Apr. 2010) (if subcontract has a value in excess of $5,000,000.00 and a performance period of more than 120 days)
52.209-13 Utilization of Small Business Concerns (Oct. 2014) (if order exceeds the simplified acquisition threshold at FAR 2.101)
52.210-9 Small Business Subcontracting Plan (Oct. 2014) (if order exceeds $60,000,000) (this clause does not apply to small business concerns)
52.210-16 Liquidated Damages – Subcontracting Plan (Jan 1999) (if FAR 52.219-9 applies)
52.211-2 Notice to Government of Labor Disputes (Feb 1997)
52.211-2 Payment for Overtime Premiums (Jul 1990) (if order is a CR type order)
52.211-4 Contract Work Hours and Safety Standards Act – Overtime Compensation (May 2014) (if order exceeds the simplified acquisition threshold at FAR 2.101). WHOI may withhold or recover from Seller any sums the Contracting Officer withholds from WHOI because of a violation of a provision of this clause by the Seller or Seller’s subcontractor or supplier.
52.220-20 Walsh-Healey Public Contracts Act (Oct. 2010) (if order exceeds $15,000)
52.220-21 Prohibition of Segregated Facilities (Feb. 1999) (if order exceeds $10,000)
52.220-26 Equal Opportunity (Mar 2007) (if order exceeds $10,000)
52.220-35 Equal Opportunity for Veterans (Jul 2014) (if order exceeds $100,000,000)
52.220-36 Equal Opportunity for Workers with Disabilities (Jul 2014) (if order exceeds $15,000,000)
52.220-37 Employment Reports on Veterans (Jul 2014) (if order exceeds $100,000,000)
52.220-40 Notification of Employee Rights under the National Labor Relations Act (Dec. 2010) (if order exceeds $10,000,000)
52.220-50 Combating Trafficking in Persons (Feb 2009)
52.220-54 Employment Eligibility Verification (Aug 2013) (if order exceeds $3,000,000, including paragraph (e) where “Contractor” shall mean “Seller”)
52.225-3 Hazardous Material Identification and Material Safety Data (Jan 1997)
52.225-11 Dioxin-Depleting Substances (May 2001)
52.225-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011)
52.225-13 Restrictions on Certain Foreign Purchases (Jun 2008)
52.227-1 Authorization and Consent (Dec 2007) (if order is expected to exceed the simplified acquisition threshold at FAR 2.101)
52.227-9 Refund of Royalties (Apr 1984) (if amount of royalties reported during negotiations of the order exceeds $5,000)
52.227-10 Filing of Patent Applications – Classified Subject Matter (Dec 2007) (only if the order covers or is likely to cover classified subject matter)
52.229-3 Federal, State, and Local Taxes (Feb 2013)
52.230-2 Cost Accounting Standards (2014) (if order exceeds the simplified acquisition threshold at FAR 2.101, and certified cost or pricing data is required to be submitted in connection with the award of this order. This clause does not apply to this order if Seller is exempt under 48 CFR 9903.201-1)
52.230-3 Disclosure and Consistency of Cost Accounting Practices (May 2014) (if order exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4, and certified cost or pricing data is required to be submitted in connection with the award of this order. This clause does not apply to this order if Seller is exempt under 48 CFR 9903.201-1)
52.230-6 Administration of Cost Accounting Standards (Jun 2010) (if order exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4, and certified cost or pricing data is required to be submitted in connection with the award of this order. This clause does not apply to this order if Seller is exempt under 48 CFR 9903.201-1)
52.232-20 Limitation of Costs (Apr 1984) (if order exceeds the simplified acquisition threshold at FAR 2.101) Paragraph (b) of FAR 52.215-24 is not included in this order.
52.232-22 Limitation of Funds (Apr 1984) (if order exceeds the simplified acquisition threshold at FAR 2.101) Paragraph (b) of FAR 52.215-24 is not included in this order.
52.232-31 Limitation of Funds (Apr 1984) (if order exceeds the simplified acquisition threshold at FAR 2.101) Paragraph (b) of FAR 52.215-24 is not included in this order.
52.242-1 Notice of Intent to Disallow Costs (Apr 1984) (if order exceeds the simplified acquisition threshold at FAR 2.101) Paragraph (b) of FAR 52.215-24 is not included in this order.
52.242-2 Subcontracts (Oct 2010) (only if CR or TM/LH type orders)
52.246-6 Subcontracts for Commercial Items (Oct. 2014)
52.247-63 Preference for U.S. Flag Air Carriers (Jun 2003)
52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels (Feb 2006)
52.248-1 Value Engineering (Oct 2010) (only if the order is valued at $150,000.00 or more, and is discretionary (if identified by WHOI within the order) if this order is valued at less than $150,000.00

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