communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated to be saved by the contractor by virtue of providing such wage or rate as is authorized by the provisions for the work performed. If the work is actually performed in accordance with the prevailing wage rate applicable to the work performed, the contractor shall be entitled to and receive additional compensation equal to the difference between the prevailing wage rate and the rate paid to each laborer or mechanic in any workweek in which he or she is employed on such work. The request for the additional compensation shall be made promptly in writing to the Administrator of the Wage and Hour Division of the Department of Labor and the proposal shall be submitted to the contractor for approval. If the contractor does not approve the proposal within 10 days, the administrator shall determine the amounts and time frames for payment and compliance with the provisions set forth in the wage determination. If the contractor disagrees with the determination, it may request a hearing, and the determination will be appealed to the Court of Claims. (iii) The determination included in the contract shall be incorporated into the wage determination. (iv) The contractor shall provide the following to the contractor and subcontractor: (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (B) The contractor shall submit weekly for each week in which any contract work is performed a copy of the payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (C) The contractor shall submit weekly for each week in which any contract work is performed a copy of the payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (D) The contractor shall submit weekly for each week in which any contract work is performed a copy of the payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (E) The contractor shall submit weekly for each week in which any contract work is performed a copy of payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (F) The contractor shall submit weekly for each week in which any contract work is performed a copy of the payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (G) The contractor shall submit weekly for each week in which any contract work is performed a copy of the payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (H) The contractor shall submit weekly for each week in which any contract work is performed a copy of the payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (I) The contractor shall submit weekly for each week in which any contract work is performed a copy of payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (J) The contractor shall submit weekly for each week in which any contract work is performed a copy of the payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (K) The contractor shall submit weekly for each week in which any contract work is performed a copy of the payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (L) The contractor shall submit weekly for each week in which any contract work is performed a copy of the payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (M) The contractor shall submit weekly for each week in which any contract work is performed a copy of the payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (N) The contractor shall submit weekly for each week in which any contract work is performed a copy of payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (O) The contractor shall submit weekly for each week in which any contract work is performed a copy of the payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (P) The contractor shall submit weekly for each week in which any contract work is performed a copy of payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (Q) The contractor shall submit weekly for each week in which any contract work is performed a copy of the payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (R) The contractor shall submit weekly for each week in which any contract work is performed a copy of payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (S) The contractor shall submit weekly for each week in which any contract work is performed a copy of the payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (T) The contractor shall submit weekly for each week in which any contract work is performed a copy of payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (U) The contractor shall submit weekly for each week in which any contract work is performed a copy of payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (V) The contractor shall submit weekly for each week in which any contract work is performed a copy of the payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (W) The contractor shall submit weekly for each week in which any contract work is performed a copy of payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (X) The contractor shall submit weekly for each week in which any contract work is performed a copy of payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (Y) The contractor shall submit weekly for each week in which any contract work is performed a copy of the payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid. (Z) The contractor shall submit weekly for each week in which any contract work is performed a copy of payroll records for each laborer or mechanic employed on the project. The records shall include the name of the laborer or mechanic, the date of employment, the classification of work actually performed, and the total wages paid.
Woods Hole Oceanographic Institution  
Terms and Conditions of Purchase

12. Article XII Delivery/Shipping  
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 note.

13. Article XII Dispute Resolution  
Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their best efforts to resolve any dispute(s) that may arise regarding this Agreement:

a. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of formal negotiations between respective executive officers of each Party. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for formal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties.

b. If the Parties cannot timely resolve a dispute by executive negotiation, the Parties shall arbitrate to resolve any dispute arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity, or termination.

i. Where the amount in controversy is $200,000 or less, the dispute shall be resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution ("ICPR") Rules for Non-Administered Arbitration by a sole arbitrator. Notwithstanding the ICPR Rules, the Parties further agree that such arbitration where the amount in controversy is $200,000 or less shall not involve third-party discovery; shall be resolved on the papers and sworn witness statements, without a hearing, absent exceptional circumstances; and shall be resolved within six months of selection of the arbitrator.

ii. Where the amount in controversy exceeds $200,000, the dispute shall be resolved by arbitration in accordance with the ICPR Rules for Administered Arbitration by a sole arbitrator, or, if the amount in controversy exceeds $5 million, by three arbitrators, of whom each Party shall designate one, with the third arbitrator to be appointed by CPR.

iii. Any arbitration will take place in Boston, Massachusetts, and the arbitrator(s) must be licensed to practice law in Massachusetts. Although the substantive terms of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts, the arbitration and this agreement to arbitrate shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and related jurisprudence. The award of the arbitrator(s) will be final and binding and judgment upon the award may be entered by any court having jurisdiction thereof. Notwithstanding any applicable rules, the Parties shall be responsible for their own attorney fees, expenses, and costs, and the arbitrator(s) shall be without authority to enter an award of attorney’s fees, expenses, costs, or punitive or exemplary damages (except that the arbitrator(s) may sanction any Party for misconduct occurring during the arbitration). The Parties waive any right to appeal the arbitration award, to the extent a right to appeal may be lawfully waived. Each Party retains the right to seek judicial assistance: (i) to compel arbitration; (ii) to obtain interim measures of protection pending or during arbitration; (iii) to enforce any decision of the arbitrator, including the final award.

c. Notwithstanding the foregoing, injunctive relief from the United States District Court of Massachusetts or a state court located in Massachusetts (which both Parties submit to as being the exclusive venue and as having exclusive jurisdiction over such disputes) may be sought without resorting to a form of alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

14. Article XIV Equal Opportunity  
Seller shall not maintain or provide racially segregated facilities for employees at any establishment under his control. Seller agrees to adhere to the principles set forth in Executive Orders 11246 and 11375, and to undertake specifically to maintain employment policies and practices that affirmatively promote equality of opportunity of minority group persons and women; to take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment. To the extent not exempt, Contractor and Supplier will comply with the requirements of 41 CFR §§ 60-1.4(c), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or status as a qualified individual with a disability. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or status as a qualified individual with a disability. To the extent not exempt, Contractor and Supplier will also comply with the requirements of 29 CFR Part 471, Appendix A.

15. Article XV Excluded Parties List System  
Seller represents and warrants that it is not listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB Guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1968 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.”

16. Article XVI Indemnity  
Except to the extent specifically prohibited by law, Seller shall indemnify, defend, and hold harmless WHOI and its respective officers, directors, employees, and agents (the “WHOI Indemnities”) against any and all losses, liabilities, damages, and expenses (including reasonable attorneys’ fees and costs) that they may suffer as a result of any claims, demands, actions, or other proceedings, including those relating to intellectual property and violations of Applicable Laws, made or instituted by any third party against any of the WHOI Indemnities arising out of or relating to (1) any transaction conducted pursuant to this Agreement; (2) any of the goods and services provided by Seller pursuant to an Order, and (3) any investigations or audits undertaken as a result of Seller or its subcontractors and suppliers violations of Applicable Law (including FCPA) except to the extent caused by the sole negligence or willful misconduct of a WHOI Indemnitee. WHOI retains the right to control all aspects of the defense, including, but not limited to any decisions regarding the selection of counsel and/or the selection of the indemnified claims. Seller shall include similar indemnity provisions in agreements with its subcontractors and suppliers which shall include WHOI as a named indemnified party and be made available to WHOI upon receipt of written request. A failure to flow-down these indemnity provisions shall constitute a material breach of the Agreement.

17. Article XVII Independent Contractor  
Both parties acknowledge and agree that any transaction between the parties does not create or imply a particular relationship between WHOI and Seller and further agrees that Seller and WHOI are acting independently of each other: not as an affiliate, employee, agent, partner or joint venturer with the other. Neither Seller nor WHOI shall have the authority to represent, bind or act on behalf of the other.

18. Article XVIII Inspection  
The materials, supplies or services furnished shall be exactly as specified in each Order, free from all defects in Seller’s design, workmanship and materials, and, except as otherwise provided in this Agreement, shall be subject to inspection and test by WHOI at all times and places. If any item, shipment of items, or services are rejected as nonconforming by WHOI (for failure to meet WHOI’s specifications or
Woods Hole Oceanographic Institution
Terms and Conditions of Purchase

any other reason) as of or before the end of the Inspection Period ("Rejected Items"). Seller shall, at its cost and as directed by WHOI, (i) accept a return of such item or items. (ii) Repairs to such Rejected Items, which work shall include, but shall not be limited to, performing such additional work as is necessary to make such Rejected Items fully conforming ("the Remedial Work"); (iii) replace the Rejected Items with new items, such replacement items to be delivered in accordance with any and all instructions provided by WHOI and to include at Seller's cost any required installation (including removal of the Rejected Item). If WHOI determines in its sole discretion that Remedial Work is necessary for the repair of any Rejected Items, then WHOI may elect to either perform the Remedial Work itself or to have a third party perform the Remedial Work, in which case the cost of such Remedial Work shall be offset against the amounts otherwise due to Seller for such Rejected Items or charged separately by WHOI to Seller. Further, WHOI may require that the Remedial Work be performed on WHOI's premises by Seller, in which case WHOI shall provide Seller with reasonable access to its premises and otherwise assist Seller with such arrangements as are necessary to perform the Remedial Work. With respect to any Rejected Items to be repaired, WHOI will not be deemed to have accepted such items unless and until the Rejected Items are fully repaired to the requirements of the Agreement and are independently accepted in writing by WHOI following such Remedial Work. Rejected Items, if not required to be repaired as provided by this Section, shall be removed of the Agreement and are independently accepted in writing by WHOI following such Remedial Work. Rejected Items, if not required to be repaired as provided by this Section, shall be removed at Seller's cost from the premises immediately after notification, and, if not so removed by Seller, such Rejected Items may be disposed of or stored by WHOI at Seller's expense. Seller shall bear all risks as to Rejected Items and, in addition to any costs for which Seller may become liable under this Agreement, shall reimburse WHOI for all transportation costs, other costs incurred, or payments to Seller in accordance with the terms of this Agreement for Rejected Items. Notwithstanding final acceptance of and payment, Seller shall be liable for latent defects, fraud, or other such gross mistakes as amount to fraud.

19. Article XIX Insurance

Seller shall obtain and carry in full force and effect the following coverage and minimum limits:

- Commercial General Liability Insurance covering bodily injury, including death, property damage, and personal injury with regard to the work written on ISO CG00011207 or equivalent:
  - Each Occurrence: $1,000,000
  - Personal and advertising injury: $1,000,000
  - General Aggregate: $2,000,000

- Products-Completed Operations Aggregate: $2,000,000

- Auto Liability Insurance (for autos used in connection with the work):
  - Combined single limit: $1,000,000

- Workers’ Compensation Insurance, including employer’s liability and statutory disability for all persons employed, in connection with the work:
  - Worker’s compensation: Statutory
  - Employer’s Liability: $1,000,000

- Commercial Umbrella Insurance (where required by the work):
  - With no more restrictive coverage than the underlying policies
  - Limits to be determined according to the nature of the work

- Errors & Omissions Liability insurance (where applicable):
  - Per incident limit: $1,000,000
  - Aggregate: $2,000,000

- All Risk Property Insurance (where applicable):
  - In an amount equal to the cost of replacing materials and equipment provided by WHOI in the work to be insured as property in your care, custody, control.

- Any other insurance required by law or consistent with industry best practices.

All insurance required by this Agreement shall:

- be issued by an insurer licensed to practice in the Commonwealth of Massachusetts and rated A- VII or above or an insurer pre-approved by WHOI, and WHOI's approval shall not be unreasonably withheld;
- list WHOI as an additional insured with a waiver of subrogation thereunder;
- be primary and noncontributory with any insurance carried by WHOI;
- be endorsed to include product liability coverage;
- assure no less than 30 days’ written notice to be given to WHOI prior to any cancellation or material change thereof.

Seller shall provide WHOI with Certificates of Insurance evidencing compliance with this Section annually. Additional insurance coverage and/or limits may be required in specific instances. Policy premiums and deductibles shall be the sole responsibility of Seller. WHOI will maintain no insurance for the Seller including coverage for temporary material and equipment used in connection with the work.

By requiring insurance, WHOI does not represent that coverage and limits will necessarily be adequate to protect Seller’s liability nor do the requirements herein limit any liability of the Seller to WHOI.

Alternatively, in lieu of obtaining the insurance required by this Agreement, Seller may self-insure to the extent permitted by law, with WHOI’s prior written consent, which WHOI shall not unreasonably withhold.

20. Article XX Limitation on Liability

To the maximum extent permitted by law, WHOI’s total liability to Seller for any and all liabilities, claims or damages arising out of or relating to this Agreement, however caused and regardless of the legal theory asserted, including breach of contract or warranty, tort, strict liability, statutory liability or otherwise, shall not, in the aggregate, exceed the total dollar amount of the Order in question.

Further, notwithstanding any provision of this Agreement to the contrary, neither party shall be liable to the other party for any punitive, exemplary, special, indirect, incidental or consequential damages (including, but not limited to, lost profits, lost business opportunities, loss of use or equipment down time, and loss of or corruption to data) arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought (whether arising under contract, admiralty, tort or otherwise by operation of law), and even if the parties have been advised of the possibility of such damages or loss.

21. Article XXI Liquidated Damages/Penalty

WHOI does not accept any provision for liquidated damages in favor of Seller or that imposes penalties upon WHOI.

22. Article XXII Merger/Integration

This Agreement, including any attachments, schedules, and/or exhibits, constitutes the entire Agreement and understanding between the parties concerning this subject and as of its date, cancels, terminates and supersedes all prior written and oral understandings, Agreements, proposals, promises and representations of the parties respecting any of the subject matter. No subsequent representation, modification or amendment of this Agreement will be effective unless signed by both parties.

23. Article XXIII Applicable Laws

Any provision required to be included in a Federally Funded Contract by agreement, any applicable and valid Executive Order, Federal, State or local law, ordinance, rule or regulation, including the examination of records by the Controller General, the Occupational Health and Safety Act, the Uniform Guidance, and the Re-negotiation Act of 1951, as amended, shall be deemed to be incorporated herein.

All flow down regulations mandated by agreement, Applicable Laws, or otherwise, including, but not limited to the FAR provisions provided in Exhibit A to the extent such regulations are applicable, or any other such provisions not listed herein but required by Applicable Law, are incorporated herein by
reference. The date of the applicable clause determines the date of the FAR Clause that is applicable. The Contractor will file patent applications in additional countries or international patent offices either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commission under whose Trademark files to foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) of this paragraph must be made in writing, and shall be accompanied by the required fees as prescribed by this Agreement.

(5) Conditions When the Government May Obtain Title

The contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) after the contract fails to elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the agency may only request title within 60 days after learning of the failure of the contractor to disclose or elect within the specified times.

(2) subject inventions made with government support under (identify the contract) awarded by (identify the Federal agency).

(3) when the contractor fails to elect title to the subject invention within the times specified in (c), above;

(4) when, after having filed a patent application in a country after the times specified in (c), above, but prior to its receipt of the written request of the Federal agency, the contractor shall continue to retain title in that country.

(5) in any country in which the contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a subject invention.

(6) Exception to Contractor and Protection of the Contractor Right to File

The contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in (c), above. The contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of the contractor; and any grant of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The contractor also agrees to provide the contractor with the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded.

(7) Contractor's Domestic License

The contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and applicable agency regulations (if any). This license will not be revoked in that field of use or the government with respect to goods and services supplied by the contractor, except to the extent the contractor is entitled to revoke the license by the contractor's license to make the subject invention available to the public and that the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(8) Revocation or Modification of the License

The contractor shall notify the Federal agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a subject invention, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(9) Contractor's Agreement to Include

The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, “This invention was made with government support under (identify the contract) issued by the Federal agency. The government has certain rights in the invention.”

(c) Domestic Subcontracts

(1) The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm, a non-profit organization or an educational institution as the provider of the technology or service.

(2) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the funding agency for the purpose of this clause, and the contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(3) The contractor will include in all other subcontracts, regardless of tier, for experimental development or research work the patent rights clause required by (site section of agency implementing regulations or FAR).

(4) The contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of discussions, terms of first commercial sale or lease, gross receipts, and profits, if any, and such 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

Woods Hole Oceanographic Institution

Terms and Conditions of Purchase

24. Article XVII Payment, Extra Charges, Drafts

25. Article XVIII Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements

26. Article XXV Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements

27. Article XXVIII Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements

28. Article XXIX Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements

29. Article XXX Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements

30. Article XXXI Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements

31. Article XXXII Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements

32. Article XXXIII Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements

33. Article XXXIV Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements

34. Article XXXV Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements

35. Article XXXVI Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements
Article XXXVIII Warranty on Price/Most Favored Nation

Seller shall not at any time sell similar goods or services to a different buyer at prices below those stated in this Agreement. If Seller charges a different buyer a lower price for such goods or services under similar quantity and delivery conditions, Seller must immediately apply the lower price for the goods or services under this Agreement to WHOI's order. If Seller fails to meet the lower price, WHOI, at its option, may terminate the Agreement for cause.

Article XXXIX WHOI's Property

While any WHOI property is in the care, custody, or control of Seller (including while in transit that does not originate with WHOI), (i) Seller shall conspicuously mark such property as “Property of Woods Hole Oceanographic Institution”; (ii) Seller shall reasonably sequester such property from Seller's other property; and (iii) Seller shall be exclusively responsible for any and all losses of, or damages to, such property and any other resulting damages. If WHOI allows Seller to use any of WHOI's property (including, without limitation, tools or equipment) at WHOI's facility, Seller shall be exclusively responsible for any losses of, or damages to, such property occurring during Seller's use, including any other resulting damages. If any such losses of, or damages to, WHOI's property occurs, for which Seller is responsible, Seller shall assign to WHOI any warrants it receives from a manufacturer or supplier of goods sold by Seller and purchased by WHOI.

Article XXX Works For Hire

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 line item shall 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 sole 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.