**D’WORKS MARINE TECHNOLOGY INITIATIVE**

**Participation Agreement**

**July 2020**

This Participation Agreement (“Agreement”) is between the Woods Hole Oceanographic Institution (“WHOI”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a D’Works Innovation Fund Recipient (“Awardee”) as part of the D’Works Marine Technology Initiative. It is applicable to all activities at WHOI by this Awardee as a condition of receiving access to WHOI facilities and associated funding accounts.

Awardee’s execution of this Agreement and compliance with all terms and conditions contained herein are material to WHOI’s offering Awardee use of the facilities, the equipment contained therein, and any grants of funding. By signing this document, using the facilities, and/or accepting any funding, Awardee confirms that he/she has reviewed this Agreement and agrees to be bound by it at all times.

Program description: The D’Works Marine Technology Initiative (“DMTI”) operated by WHOI makes funding available to young and growing Massachusetts companies to address/solve technical or testing challenges in or with a new product or technology. Funded by the Massachusetts Technology Collaborative in partnership with WHOI’s Center for Marine Robotics, the purpose of this initiative is to advance the state of high technology in the ocean in order to improve the ability to observe and work throughout the world’s varied marine environments. In furtherance of this goal, the DMTI may allocate specialized resources and expertise, as available and as applicable, to promising entrepreneurs and startup companies to assist in their attraction of next stage of funding and business resources to reach success. This effort will seek to advance multiple categories of technology, including sensors, robotics research, platforms and vehicles. Each company participating in the Initiative may, at WHOI’s sole discretion, be provided access to a dedicated innovation funding account at WHOI’s Center for Marine Robotics against which it can charge specific costs.

The Parties agree as follows:

# **General Awardee Obligations**. In addition to the other restrictions, obligations and covenants contained herein, Awardee agrees as follows:

## Awardee shall only use the WHOI facilities in accordance with the terms and conditions of this Agreement, including the required Scope of Work with cost estimates in Appendix A, and any further direction provided by WHOI personnel.

## Awardee shall keep any WHOI facility in a neat, clean and attractive condition at all times, and Awardee shall not store any personal or other possessions in areas of any WHOI facility without prior approval from WHOI Center for Marine Robotics personnel.

## Awardees shall refrain from accumulating materials that cause overflow within any facility or storage space and shall remove any materials upon the request of a WHOI employee or representative.

## Awardee shall not cause any damage to any WHOI property, including by way of example only, damages to any facilities or equipment through improper, disallowed, unreasonable or inappropriate use of such equipment. Awardee shall not disturb the use and enjoyment of WHOI facilities by any other Awardee or WHOI staff.

## Awardee shall respect the privacy and property of others. Awardee shall further respect the physical security of other members’ possessions, materials, and space, and take no measures in an attempt to contravene the security measures of WHOI or any third party.

## Awardee shall use WHOI facilities for Awardee’s benefit only.

## Awardee shall not provide facility access to third parties.

## Awardee acknowledges that any violation of this Agreement will result in immediate termination and rescission of funding and access without financial recourse.

# **Safety and Security:**

## General statement. **SAFETY IS OF THE UTMOST IMPORTANCE, AND AWARDEE’S FAILURE TO FOLLOW WHOI’S SAFETY GUIDELINES ARE GROUNDS FOR IMMEDIATE TERMINATION AND RESCISSION OF FUNDING AND ACCESS TO THE FACILITIES, OR OTHER DISCIPLINARY PROCEEDINGS, AS DETERMINED BY WHOI IN ITS SOLE DISCRETION. THE FACILITIES AND EQUIPMENT ARE PROVIDED AS-IS. AWARDEE’S USE OF THE FACILITIES AND ANY EQUIPMENT OR MACHINERY THEREIN IS AT AWARDEE’S OWN RISK.**

## Awardee’s obligations. Notwithstanding anything to the contrary stated herein or otherwise, the Awardee shall assume responsibility for his/her own personal safety as well as the safety of others during the Awardee’s access to the Facility. **Awardee shall attend WHOI’s general safety training prior to accessing the Facilities for the first time.** Awardee shall further attend and complete any other safety training as requested by WHOI from time to time. Awardee shall further submit to training on the safe and proper use of specific equipment sought to be used by Awardee in the facilities. Awardee shall not use equipment if Awardee is (i) not trained, certified and comfortable with that piece of equipment, and (ii) unless Awardee has reviewed and understands all applicable safety procedures related thereto. **Awardee shall provide proof of certification for all equipment to be used prior to accessing the WHOI facilities and shall not use or operate any equipment or machinery for which Awardee is not certified**. Awardee shall report any malfunctioning equipment immediately and Awardee shall not use any equipment that is not functioning properly. Awardee shall not use any piece of equipment tagged “Out Of Service (OOS)” or otherwise designated as not functioning. Awardee shall at all times follow all applicable safety requirements as they apply to specific equipment and work locations, including, but not limited to WHOI requirements and U.S. OSHA regulations. Awardees are not permitted to use any equipment that requires a hoisting license, including overhead hoists, cranes, and forklifts at any time, regardless of whether Awardee holds applicable licenses or certifications thereto. At a minimum, Awardee is required to use safety glasses when using any equipment and/or tools in the facility. Prior to commencing any work in the facilities, Awardee shall familiarize himself/herself with the locations and status of first aid kits, fire extinguishers, and other safety devices. Equipment may not be removed from WHOI property.

## Duty to notify. Awardee agrees to be on the lookout for unsafe behavior and shall notify WHOI staff immediately to report (i) any suspected unsafe behavior or (ii) if Awardee believes any piece of equipment or infrastructure is unsafe. If any injury occurs, Awardee shall notify WHOI staff immediately or contact 508-289-2911. Awardee must submit a complete Accident Report within 24 hours of the incident. Accident/incident reports must be submitted online: <http://ehs.whoi.edu/ehs/DesktopDefault.aspx?tabindex=3&tabid=5&itemID=68>. Failure to comply is grounds for immediate termination of this Agreement, including Awardee’s funding and access to the facilities, and may result in disciplinary procedures.

## Acknowledgement of Risk and Consent for Treatment**:** WHOI SHALL NOT ASSUME RESPONSIBILITY FOR DAMAGE TO OR LOSS OF PROPERTY, PERSONAL ILLNESS, INJURY, OR DEATH OF AWARDEE. FURTHERMORE, WHOI SHALL NOT BE RESPONSIBLE FOR RENDERING EMERGENCY RESPONSE RELATED TO ANY FACILITY ACTIVITIES.

## Contact Information and Emergency Contact.For Awardee’s safety, Awardee must notify WHOI of any changes to Awardee’s contact information, including any emergency contact person and that person’s contact information. As a condition to Awardee’s access to WHOI, Awardee agrees to keep its contact information (including emergency contact information) current at all times.

## Additional acknowledgments. As a condition for entering into this Agreement, accepting any funds from WHOI, or accessing the WHOI facilities, Awardee acknowledges and agrees as follows:

### Awardee understands and acknowledges that Awardee’s activities in accessing WHOI facilities may expose Awardee to risks including discomfort, inconvenience, serious and permanent injury or disability, death, and/or loss of or damage to personal property as a result of, but not limited to, traumatic injury from equipment and tools; exposure to heat, flame, electrical current, or fumes; tripping on cords, materials or other obstacles; or emergency first aid treatment on-site.

### Awardee acknowledges that there are certain risks inherent in using this WHOI facility, including but not limited to those indicated in this section. Awardee acknowledges that not all risks can be prevented and assumes those risks beyond the control of WHOI or WHOI staff. Awardee represents that they are able, with or without accommodation, to use WHOI facilities and to use the equipment and/or supplies required.

### Should Awardee require emergency medical treatment as a result of accident or illness arising from using the facility, Awardee consents to such treatment. Awardees acknowledge that WHOI does not purchase health and accident insurance for external Awardees. Awardees agree to be financially responsible for any medical bills incurred as a result of using the facility. Awardees acknowledge that they have been advised to purchase medical insurance. Awardees acknowledge that they have been advised to discuss this activity with their medical provider and has the option to provide the Facility Coach with written information regarding medical conditions that could affect Awardee’s safe use of equipment, or about which emergency medical personnel should be informed.

### WHOI reserves the right, in its sole discretion, to require Awardee’s officers, employees, volunteers, agents, Awardees, contractors, vendors, permitted invitees or other third parties participating, assisting or using the facilities or services in connection with this Agreement to execute a separate written waiver and release in a form to be provided by WHOI. If requested by WHOI, Awardee shall promptly execute any such agreements, and Awardee shall not use or access any facilities or expend any funds until such agreement has been executed and returned to WHOI.

# **Program Funds and Use thereof.** Awardee may be granted funding through the DMTI program at WHOI’s discretion. Any funding provided shall be awarded in the form of a voucher of a specified amount that Awardee may redeem in connection with the use of WHOI facilities and/or testing for innovation and technology advancements in the ocean sciences as contemplated by the purpose of this DMTI program and detailed in the Scope of Work with cost estimate. The voucher award provides no value of any other nature and shall not be redeemable for or paid in cash or other medium of exchange. Awardee seeking to use the vouchers should request a listing of tests available under the program from WHOI. WHOI will endeavor to provide within a reasonable time (i) a listing of such tests available and the fees associated therewith, and (ii) a purchase order form for requesting work through this program. Awardee acknowledges that the tests made available and rates therefor are to be determined by WHOI in its sole discretion. Awardee further acknowledges that the purchase order provided may have terms and conditions specific thereto which may supplement and/or supplant the terms and conditions of this Agreement. To the extent that any terms conflict between this Agreement and the purchase order implemented, the terms and conditions of the purchase order shall govern. Awardee shall promptly pay to WHOI any overage from the estimated scope of work that exceed the value of Awardee’s available vouchers.

# **Lost, Stolen, or Damaged Items**. Awardee shall not leave valuable items unattended. WHOI shall not, under any circumstances, be held responsible for any of Awardee’s items that are lost, stolen or damaged.

# **Intellectual Property Rights**.

## General notice and prohibition against legal advice. Awardee acknowledges thatWHOI’s facilities are intended to be used as a collaboration space by the different Awardees. The mere use of WHOI’s facilities is not intended to interfere with or create any intellectual property obligations for or against the Awardee. Intellectual Property (IP) obligations may arise through third party agreements or circumstances. For example, IP obligations from an employment agreement or employer policy, whether that employer is WHOI or a third party company, may apply to what Awardee develops while accessing the WHOI facilities. WHOI provides no advice related to third party IP obligations, and Awardee understands that it shall neither request not rely upon advice given by WHOI personnel.

## Ownership of IP rights. Any IP that is solely created or developed by a Awardee while accessing the facility will be solely owned by Awardee or Awardee’s employer as the case may be. The members and Awardees acknowledge and agree that WHOI owns all rights, title, and interest, in and to all innovations, discoveries, or improvements created in whole or in part by WHOI employees or students. Any IP created jointly by Awardee and WHOI employees or students shall be jointly owned by the parties that contributed to the creation and development of such IP. In the event of joint development, each co-owner shall be entitled to make, use, sell, or otherwise exploit, including the right to create derivatives thereof, without accounting to the other co-owners.

## No transfer of WHOI IP. Notwithstanding anything to the contrary contained herein, nothing in this Agreement shall be construed (1) to transfer to or vest in Awardee or any third party any rights, title, or interest in WHOI Intellectual Property or (2) waive any rights in any intellectual property or proprietary rights which WHOI may possess or be entitled to.

# **Representations and Warranties**. Awardee accepts the use of the facilities and services on an “as is” basis and WHOI makes no representations or warranties about their condition or fitness or use for a particular purpose. Awardee hereby represents and warrants that its use of the facilities and services as set forth herein will not: (i) be obscene or defamatory, (ii) violate or infringe upon intellectual property or proprietary rights of any person, firm, or corporation, including but not limited to, the right of privacy; or (iii) violate any governmental law, resolution, statute, ordinance or regulatory act, and that it has obtained all necessary licenses, permissions and clearances to perform any work or testing requested.

# Limitation of Liability.

## TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL WHOI, ITS AFFILIATES, OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), BREACH OF CONTRACT, AWARDEE’S USE OF THE FACILITIES OR OTHERWISE, EVEN IF FORESEEABLE, EVEN IF AWARDEE HAD WARNED WHOI OF THE POSSIBLY OF ANY SUCH LOSS OR DAMAGE, AND EVEN IF ANY OF THE LIMITED REMEDIES IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

## IN NO EVENT WILL WHOI’S AGGREGATE LIABILITY WITH RESPECT TO ALL CLAIMS ARISING OUT OF THIS AGREEMENT EXCEED ONE THOUSAND DOLLARS ($1,000).

## AWARDEE, ITS OFFICERS, EMPLOYEES, VOLUNTEERS, AGENTS, PERMITTED INVITEES AND CONTRACTORS EXPRESSLY WAIVE ALL RIGHTS, CLAIMS AND DEMANDS AND FOREVER RELEASES, DISCHARGES AND HOLDS HARMLESS WHOI FROM ANY AND ALL DEMANDS, CLAIMS, ACTIONS AND CAUSES OF ACTION ARISING FROM ANY CAUSE WHATSOEVER AND ARISING DIRECTLY OR INDIRECTLY OUT OF AWARDEE’S USE OF THE FACILITIES AND SERVICES, WHETHER CAUSED BY THE AWARDEE’S ACTION OR NEGLIGENCE OR THE ACTION OR NEGLIGENCE OF WHOI PERSONNEL, THE AWARDEE’S EMPLOYEES, AGENTS, CONTRACTORS OR PERMITTED INVITEES OR ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT.

## The foregoing does not affect any liability that cannot be excluded or limited under applicable law.

# **Indemnification**. Awardee shall indemnify, defend, and hold WHOI and its affiliates, and their respective employees and agents harmless from any and all liabilities, demands, actions, claims, judgments, losses, damages, and costs (including reasonable attorneys’ fees) arising out of or related to: (A) Awardee’s breach of any of its obligations under this Agreement (B) Awardee’s breach of any representation and/or warranty set forth herein; (C) Awardee’s violation of any applicable law; or (D) Awardee’s or Awardee’s employee’s negligence or willful misconduct.

# **Confidentiality**. Awardee agrees and acknowledges that in the course of, or incident to, Awardee’s access, entry onto, and/or presence in WHOI’s facilities or site, Awardee may be given access to or otherwise exposed to certain Confidential Information of WHOI, whether by obtaining or reviewing any document or by observation on WHOI’s site. Awardee agrees to hold the Confidential Information and Trade Secrets in the strictest confidence and will not, without WHOI’s express written consent, divulge, copy, release, sell, loan or otherwise reveal such Confidential Information or Trade Secrets to others. Awardee further agrees not to retain, use, or exploit WHOI’s Confidential Information and Trade Secrets directly or indirectly for Awardee’s own benefit or that of any other person, firm, corporation or other entity. Awardee’s obligations shall remain in effect, on an item by item basis, until such time as the particular Confidential Information and/or Trade Secrets becomes generally known or available in the industry or to the general public through no act or fault of Awardee. The term “**Confidential Information**” shall include any and all forms of information relating to WHOI, WHOI’s property, WHOI’s Trade Secrets and information that concerns the confidential business of WHOI, including but not limited to WHOI's facility organization and design, laboratories and research facilities and all activities therein, manufacturing processes, materials, sales and marketing data, price lists, research and development efforts, machinery and equipment, current products, future or proposed products, prototypes, samples, inventions, computer programs, design and construction plans, business plans, financial information and reports, customer information, employee data, forecasts, strategies, specifications, ideas, “know-how” and all other proprietary business information. Awardee understands and acknowledges that WHOI’s trade secrets include processes, information and materials that are valuable and not generally known by WHOI’s competitors, including information of the type described above which WHOI obtained from another party under conditions of confidentiality and which WHOI treats as confidential, whether or not owned or developed by WHOI (the “**Trade Secrets**”).

# **Consent and Waiver for Publicity; Restrictions on use of WHOI’s Name, Trademarks, and Logos**. Awardee agrees that WHOI has the unrestricted right to publish images of activities and projects ongoing at our facilities, both in print and digitally. To the extent permission is needed to use Awardee’s image and likeness, Awardee hereby irrevocably grants such permissions and licenses necessary or convenient to use Awardee’s image and likeness in furtherance with WHOI’s rights under this section. Awardee shall not use WHOI’s name, trademarks, images, or logos without WHOI’s express prior written permission which may be granted or withheld in WHOI’s sole discretion. Such requests shall be made to, and the requisite written consent must come from, the Office of General Counsel for WHOI. Moreover, Awardee agrees that it will not use WHOI’s name, trademarks, images, or logos in any manner that will or may bring into disrepute the reputation or goodwill associated with WHOI and/or its brands.

# **Termination.** WHOI reserves the right to terminate any award or this Participation Agreement for convenience at any time. Upon notice thereof, Awardee’s access and funding shall be immediately revoked, and Awardee shall forfeit all unused funds provided through the program. Furthermore, Awardee shall work with WHOI to promptly remove any items belonging to Awardee from WHOI’s facilities.

# **Miscellaneous.**

## Waiver. No delay or omission on the part of WHOI in exercising any right under this Agreement shall operate as a waiver of such right or of any other right of WHOI, nor shall any waiver of such right or rights on any one occasion be deemed a bar to, or waiver of, the same right or rights on any future occasion. Furthermore, the acceptance by WHOI of any payment, or of a sum less than is due, shall not be construed as a waiver of any of WHOI’s rights unless such waiver is in writing.

## Amendments**.** WHOI reserves the right to amend the terms of this Agreement from time to time and at its sole discretion, without the consent of Awardee. WHOI will promptly notify Awardee of any amendments in writing, prior to such amendments taking effect. Awardees shall not use the facilities or continue to use or accept any funds provided hereunder if it does not agree with any amendments. Any further use of the facilities or any funds provided in connection with this Agreement by Awardee shall constitute Awardee’s acceptance of the revised terms and conditions.

## No Assignment**.** Awardee shall not have the right to assign its rights and obligations under this Agreement to any party. Any such purported assignment by Awardee shall be null and void.

## Entire Agreement. This Agreement and all exhibits, schedules and attachments, supersede all prior agreements, whether written or oral, between the parties with respect to its subject matter, and there are no covenants, promises, agreements, conditions or understandings, written or oral, except as herein set forth.

## Governing Law and Jurisdiction. This Agreement and all exhibits, schedules and attachments, shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to principles of conflict of laws that would require the application of any other law. Any legal suit, action, or proceeding arising out of, or related to, This Agreement or the subject matter hereof, shall be governed by the laws of the commonwealth of Massachusetts. Awardee waives any and all objections to the exercise of jurisdiction over Awardee by such courts and to venue in such courts.

APPENDIX A

SCOPE OF WORK AND BUDGET