

Draft Proposal Contract

for delivery of

3 autonomous underwater gliders

for

Foundation NWO-I / Royal NIOZ
(Royal Netherlands Institute for Sea
Research)



**Royal Netherlands Institute
for Sea Research**

Date: ~~1702~~-09-2021

Version: 1.~~2~~₁

Article 1.	Definitions.....	3
Article 2.	Subject of the Agreement.....	4
Article 3.	Delivery and acceptance.....	5
Article 4.	Invoicing and payment	6
Article 5.	Warranty	<u>87</u>
Article 6.	Subsequent delivery.....	<u>98</u>
Article 7.	Intellectual property	<u>108</u>
Article 8.	Project supervision	<u>109</u>
Article 9.	Documentation	<u>109</u>
Article 10.	Training and instruction	<u>109</u>
Article 11.	Force majeure	<u>109</u>
Article 12.	Notice of default and dissolution	<u>1140</u>
Article 13.	Liability and insurance.....	<u>1240</u>
Article 14.	Dissolution / termination.....	<u>1241</u>
Article 15.	Amendments	<u>1241</u>
Article 16.	Confidentiality	<u>1341</u>
Article 17.	Other terms	<u>1342</u>
Article 18.	Disputes	<u>1342</u>
Enclosure I	Further work agreements agreed in writing	<u>1544</u>
Enclosure II	Tender documents.....	<u>1645</u>
Enclosure III	General Government Purchase Conditions 2018 (ARIV-2018)	<u>1746</u>
Enclosure IV	Contractor's tender	<u>1847</u>
Enclosure V	Model testimony of performance after SAT tests	<u>1948</u>
Enclosure VI	Model bank guarantee	<u>2120</u>

This agreement is made

BETWEEN

1. Foundation NWO-I / Royal NIOZ (Royal Netherlands Institute for Sea Research), whose registered office is at Landsdiep 4, 1797 SZ Den Hoorn (Texel), the Netherlands (to be referred to hereinafter as the "Principal"), legally represented for these purposes by <name>, <function>

AND

2. [CONTRACTOR], a company registered in [country] under number [number] whose registered office is at [address] (to be referred to hereinafter as the "CONTRACTOR"), legally represented for these purposes by <name>, <function>

PRINCIPAL and CONTRACTOR are hereinafter collectively referred to as the Parties.

WHEREAS:

- Principal intends to enter into an agreement with regard to the delivery of three (3) autonomous underwater gliders (hereinafter: 'gliders') for scientific research;
- Contractor is willing and able to design, construct, fabricate, certify, sell and deliver the required gliders (including the necessary service) to Principal in accordance with the conditions stipulated hereinafter;
- Principal and Contractor wish to record the relevant agreements made in this agreement.

PRINCIPAL AND CONTRACTOR DECLARE TO HAVE AGREED TO THE FOLLOWING:

Article 1. Definitions

From here on forth it is understood by:

- 1.1 **Defect:** Failure to comply or fully comply with the requirements as indicated in the agreed specifications and documentation, or incorrect functioning of the three (3) gliders in any manner whatsoever.
- 1.2 **CEST:** Central Eastern Summer Time (UTC+2) between 1:00 UTC on the last Sunday of March and 1:00 UTC on the last Sunday of October
- 1.3 **CET:** Central Eastern Time (UTC+1)
- 1.4 **Delivery:** The consignment of the three (3) gliders and/or its components to the Delivery Site.
- 1.5 **Delivery in operational order:** design and delivery in operational order of the three (3) gliders in accordance with specifications agreed upon, including all associated and necessary parts.
- 1.6 **Delivery Site:** The place indicated by Principal, where the delivery in operational order of the three (3) gliders shall take place in accordance with that stipulated in Article 3 of the agreement.
- 1.7 **Documentation:** The documentation associated with the three (3) gliders to be delivered by the Contractor for the benefit of the Principal.
- 1.8 **Enclosures:** The appendices to this agreement that form part of the agreement.
- 1.9 **Equipment:** The components to be delivered by the Contractor under the terms of the present agreement, including the accompanying embedded software, materials, and documentation.

- 1.10 **FAT (Factory Acceptance Test):** Acceptance testing conducted at the site at which the three (3) gliders are manufactured and performed by employees of the Contractor, to determine whether a component or system satisfies the requirements, including hardware as well as software.
- 1.11 **Purchase price:** The compensation payable to Contractor by Principal in return for the delivery and consignment of the three (3) gliders in operational order.
- 1.12 **Parties:** Principal and Contractor
- 1.13 **SAT (Sea Acceptance Test):** Testing the three (3) gliders and their parts, after they have been delivered and installed at the location agreed between the Parties, to determine whether they meet and can continue to meet the agreed specifications and have the guaranteed properties as indicated in this agreement.
- 1.14 **Workday:** the calendar days, except for generally acknowledged holidays and other days which at the beginning of the calendar year have been established as obligatory days off by Principal, on which the agreed activities shall be performed. Working hours are from 8.30 hours to 17.30 hours on workdays.

Article 2. Subject of the Agreement

- 2.1 Contractor undertakes to design, construct, fabricate and deliver the three (3) gliders in operational order. The stipulations of this agreement shall be in force, unless they are departed from, and then only manifestly by written agreement between the Parties.
- 2.2 The Contractor is not authorized to supply equipment and/or software other than the agreed upon equipment and/or software and/or new or other models and/or versions of equipment and/or software, without prior written permission from the Principal. The Principal will not withhold its approval if the Contractor can demonstrate, to the satisfaction of the Principal, that the proposed new or different equipment and/or software meets the same quality and capacity requirements and that these do not lead to limitations in use and application possibilities for the Principal, even for other equipment or software, nor to higher operational and/or service costs. If the equipment and/or software proposed by the Contractor generally has a lower sales price, the Purchase price as stated under Article 4.1 will be reduced accordingly.
- 2.3 At all times this signed agreement shall prevail over other documents. Should the content of the Enclosures mentioned hereunder be contradictory, where the order below applies, where the first document takes precedence over the documents below. The following documents form part of this agreement:
- I. This agreement signed by the Parties;
 - II. If applicable: further work agreements agreed in writing (Enclosure I);
 - III. Tender documents (Enclosure II), consisting of:
 - a. (possibly) verification meeting report, dated [date];
 - b. Memorandum of Information: No. 2 dated [date] and No. 1 dated [date];
 - c. Descriptive document dated [date] incl. appendices including the technical/functional specifications;
 - IV. General Government Purchase Conditions 2018 (ARIV-2018) dated 3 May 2018 (Enclosure III);
 - V. Contractor's Tender dated [date] (Enclosure IV).

However, if the quality of the Contractor's Tender exceeds the quality required in the technical/functional specifications, the Tender for those parts will prevail over all other documents with the exception of this agreement.

- 2.4 If one or more provisions of this agreement and/or Enclosures are void or annulled, the remaining provisions will remain in full force and effect. In the event of avoidance or nullification, the Principal and the Contractor will consult and, where necessary, lay down further agreements in order to agree on new provisions to replace the void and/or nullified stipulations, whereby the purpose and purport of the voided or nullified stipulations are as much as possible is taken into account.
- 2.5 The Contractor has sufficiently informed itself of the Principal's objectives with regard to the present agreement and the relevant organization of the Principal. The Principal has provided the Contractor with sufficiently correct information for this purpose, and will - if desired - provide the Contractor with further information, insofar as such information is available from the Principal.
- 2.6 The Parties will inform each other about the developments that are taking place within their organizations and that are and/or may have relevance for the implementation of this agreement.

Article 3. Delivery and acceptance

- 3.1 After the three (3) gliders have been manufactured/assembled, a FAT test will be conducted by the Contractor at the Contractor's site, prior to shipment, to verify that the three (3) gliders meet the technical and functional specifications. The Principal reserves the right to be present at this inspection and testing and the Contractor will inform the Principal in a timely manner when and where the inspection and testing will take place. If the inspected and tested glider(s) does not meet the specifications, the Principal may refuse the glider(s) and the Contractor must restore the rejected glider(s) to such a condition in order to comply with the specification. The test certificate/report is provided to the Principal together with the delivery documents.
- 3.2 The Contractor will deliver the three (3) gliders Carriage and Insurance Paid~~Cost, Insurance and Freight~~ Incoterms 2020 (hereinafter: '~~CIF~~"CIP") to a port, or equal, in Europe agreed upon between the Parties. The Parties will agree on a delivery date and the Contractor guarantees that the delivery will take place at the latest on this date. The agreed delivery period is a strict and fatal deadline. If the three gliders cannot be delivered within the term guaranteed by the Contractor, the Principal has the right to dissolve the agreement immediately and without notice of default being required. In that case, the Principal is entitled to compensation for costs already incurred and its other damage insofar as the failure to realize the aforementioned delivery on the aforementioned date is the result of an attributable shortcoming on the part of the Contractor. The Contractor is also responsible for proper packaging and transport (procedures) of the gliders. The Contractor will follow any regulations indicated by third parties with regard to the transport and packing and unpacking of the gliders.
- 3.3 If the Contractor is or should be aware or may/must be expected that the delivery of the gliders to the Principal in operational condition will not take place on time, the Contractor will notify the Principal of this in writing as soon as possible, stating the cause of the delay, as well as the measures proposed by him to prevent or reverse the (imminent) delay. This does not affect the right of the Principal to demand timely delivery.

- 3.4 The Contractor is in default by the mere fact of exceeding the term referred to in Article 3.2, unless the Contractor proves that the exceeding cannot be attributed to the Contractor as referred to in Article 6:75 of the Dutch Civil Code.
- 3.5 The Contractor owes the Principal a penalty without further notice of default if the Contractor does not deliver the three (3) gliders or does not deliver it on time. The penalty during this agreement in the event of late delivery is 0.5% of the Purchase price as stated under Article 4.1 for each day of delay, to commence after a two (2) week grace period up to a maximum of 10% of the aforementioned Purchase price.
- 3.6 After delivery as forementioned, the Contractor further assembles, connects, tests and arranges the gliders in operational condition for the SAT tests in accordance with the technical and functional specifications included in Enclosure III to this agreement. Delivery in operational condition means that the technical properties of gliders work in accordance with the agreed technical and functional specifications.
- 3.7 The delivery in operational condition is deemed to have taken place when the Principal notifies the Contractor thereof in writing. The notification immediately follows the notification from the Contractor to the Principal of the readiness for delivery in operational condition. The Principal will not unreasonably refrain from giving the notification.
- 3.8 Immediately after delivery of the three (3) gliders in operational condition, the SAT tests of all gliders will be demonstrated and tested for the required operation.
- 3.9 Immediately after the SAT tests have been successfully completed, the three (3) gliders will be unconditionally accepted and handed over to the Principal, which is achieved by the signing of a written declaration of acceptance (see Enclosure V) to this effect by both the Contractor and the Principal SAT and Enclosure V shall be completed and accepted not to exceed sixty (60) days of receipt of the three (3) gliders. Any prior approvals given by the Principal on (part) deliveries and/or other activities in the context of the delivery of the three (3) gliders in no way restrict the rights that the Principal has in the context of whether or not to accept (ownership) of the three (3) gliders and the provision of the written declaration of acceptance by the Principal as aforesaid.
- 3.10 The legal transfer of ownership of the three (3) gliders transfers to the Principal as soon as the SAT tests have been approved unconditionally with the Principal and the Testimony of Performance after SAT (Enclosure V) has been signed by the Parties.

Article 4. Invoicing and payment

- 4.1 All obligations of the Contractor, as laid down in this agreement, will be performed for a fixed total price of EUR [price]. This amount is made up of and intended for:

Purchase price three (3) gliders base configuration	€ xxxxxx
Option 1	€ xxxxxx
Option 2	€ xxxxxx
Option etc.	€ xxxxxx
Costs of CIF -CIP transport, operational delivery, installation and SAT tests	€ xxxxxx
Costs of operational training for 3 NIOZ employees and maintenance training for 2 NIOZ employees at he premises of the manufacturer	€ xxxxxx
xxxxx	€ xxxxxx

- 4.2 All prices in article 4.1 are fixed and are stated in EUR excluding VAT (if and insofar as VAT is applicable).
- 4.3 Invoices are digitally sent by the Contractor in PDF format to: finance@nioz.nl.
- 4.4 An invoice must contain the following information:
- the relevant department or sector;
 - a project number and project description to be indicated by the Principal;
 - an obligation number to be indicated by the Principal;
 - the numbers actually delivered;
 - types of products and services;
 - individual amounts, as well as the total amount;
 - the date of delivery;
 - Contractor's VAT number (if applicable);
 - Chamber of Commerce number;
 - (IBAN) bank account number.
- 4.5 The Principal will pay the amounts owed by it on the basis of this agreement to the Contractor within 30 Days of receipt of the relevant invoice.
- 4.6 Payment is made in accordance with the payment schedule below:

Instalment	Percentage	Condition
1	40% (of the Purchase price as mentioned under Article 4.1)	After signing this agreement and submitting a bank guarantee (see below)
2	50% (of the Purchase price as mentioned under Article 4.1)	After delivery CIF <u>CIP</u> as per Article 3.2
3	10% (of the Purchase price as mentioned under Article 4.1)	After unconditionally acceptance as referred to in Article 3.9.

The first 40% deposit will only be made upon presentation of a bank guarantee (Enclosure VI) for the entire amount of the partial payment, excluding VAT, which guarantee has been drawn up and issued by a bank or a comparable financial institution and which has been approved by the Principal. The said bank guarantee will be returned to the bank after signing the (acceptance) statement as referred to in Article 3.9.

Or:

Payment is made in accordance with the payment schedule below:

<u>Instalment</u>	<u>Percentage</u>	<u>Condition</u>
<u>1</u>	<u>90%</u> (of the Purchase price as mentioned under Article 4.1)	<u>After delivery CIP as per Article 3.2</u>
<u>2</u>	<u>10%</u> (of the Purchase price as mentioned under Article 4.1)	<u>After unconditionally acceptance as referred to in Article 3.9.</u>

Article 5. Warranty

- 5.1 The Contractor guarantees for xx years after acceptance as mentioned under Article 4.1 that:
- the gliders contain the agreed technical and functional specifications and guaranteed properties as laid down in the specifications;
 - the gliders will be suitable for the purpose for which the Principal has acquired them.
- 5.2 The Contractor guarantees that, during the warranty period after acceptance as mentioned under Article 3.9, malfunctions and/or defects of the gliders will be repaired free of charge.
- 5.3 If the Principal finds at any time during the period referred to under Article 5.1 that the glider(s) do not comply with the provisions of Article 5.1 under a., the Principal will inform the Contractor of this in writing, and in urgent cases by telephone. If during the period referred to under Article 5.1 it appears that the glider(s) do not meet the requirements set out in this article, the Contractor has the obligation - without any costs for the Principal - to ensure that the functional requirements set are still met, for which the Principal only needs demonstrate that the glider(s) do not contain the guaranteed feature(s) or does not function properly. If the Contractor is of the opinion that the Principal cannot invoke Article 5.1, because a Defect does not belong to the guaranteed properties or can be traced back to causes not attributable to the Contractor or to goods not supplied by the Contractor, the burden of proof in this regard rests on Contractor.
- 5.4 After reporting the Defects in writing or by telephone, the Contractor undertakes those measures that lead or may possibly lead to the repair of the Defects in the shortest possible time.
- 5.5 If the Contractor is part of a holding company/group, the holding company/group must declare after signing this agreement that they will take over the aforementioned guarantee obligations under Article 5.1 in the event that the Contractor is liquidated and/or transferred and/or taken over and/or transfers to another company Group is understood to mean: a legal person together with its subsidiaries within the meaning of Article 24a and 24b, Book 2 of the Dutch Civil Code.
- 5.6 For the purpose of further guaranteeing the fulfilment of the aforementioned warranty obligations under Article 5.1, the Contractor will also submit warranty statements from one or more subcontractors/third suppliers to be designated by the Principal if and insofar as these are provided by the Contractor in the performance of this agreement. These warranty statements mean that the subcontractors/third-party suppliers involved will take over the warranty obligations as mentioned above under Article 5.1 (for that part for which they have performed) as their own warranty directly towards the Principal, in the event that the Contractor (for

whatever reason) no longer fulfils can fulfil its warranty obligations (in whole or in part) as aforesaid.

- 5.7 The Contractor warrants that all Equipment delivered under this agreement shall be free from defects in material and workmanship, and conform to Contractor's specifications for a period of twelve (12) months for gliders, ninety (90) days for spare parts, and six (6) months for all other Equipment from the date of original shipment.
- 5.8 All Equipment shall be returned to Contractor's factory after consultation for inspection prior to Contractor's confirmation of warranty coverage. This warranty does not apply to any Equipment that, upon examination by Contractor, or Contractor's authorized service provider, are found to have been (i) mishandled, misused, abused, or damaged by the Principal or any third party; (ii) altered from their original state; (iii) repaired by a party other than Contractor without Contractor's prior written approval; or (iv) improperly stored, installed, operated, or maintained in a manner inconsistent with Contractor's instructions. This warranty does not apply to defects attributed to (i) normal wear and tear or (ii) failure to comply with Contractor's safety warnings. Contractor, at its sole option, shall either repair or replace defective Equipment, or issue Principal a credit for the original price of the defective Equipment. Such repair, replacement, or credit shall be Principal's sole remedy for defective Equipment and services.
- 5.9 Contractor will replace or repair environmental sensors per the original sensor manufacturer's warranty provided the sensor and Contractor's Equipment are returned to Contractor within the sensor's original warranty period. Under no circumstances is Contractor liable for recall, retrieval, removal, dismantling, re-installation, redeployment, or re-commissioning of any defective Equipment or any costs associated therewith including, but not limited to, any subsea work performed below the waterline, heavy lift operations, or the transportation to or from offshore locations. Consumables obtained from third parties shall bear the warranty of their manufacturer.
- 5.10 The warranty period for repaired or replaced Equipment or re-performed services shall be the greater of (i) ninety (90) days or (ii) the unexpired portion of the original warranty period. The warranty period for repair work performed on Equipment that are not covered by the original warranty is ninety (90) days from the date of return shipment and applies only to that portion of the Equipment that was repaired. Contractor warrants that services will be competently performed by persons fully skilled in their performance. Any claim for breach of this warranty must be made within ninety (90) days after completion of the specific services for which breach is claimed. Seller shall re-perform defective services if timely claimed, and such re-performance by Contractor shall be Principal's sole remedy for such breach.

Article 6. Subsequent delivery

- 6.1 Contractor shall, in any case, be capable of delivering parts or functionally equivalent parts at the request of Principal for up to ~~10~~five (5) years after acceptance, as indicated in Article 3.9.
- 6.2 Contractor shall, in any case, stock sufficient parts to sell and deliver to Principal for up to 10 years after acceptance, as indicated in Article 3.9.
- 6.3 Contractor, during and after the said period of 10 years, undertakes to inform Principal immediately about any impending stagnation in relation to his ability to deliver parts of the gliders, so that Principal may take the necessary measures.

Article 7. Intellectual property

- 7.1 The Contractor declares that it is authorized to supply the gliders to third parties. The Contractor guarantees that the underwater gliders delivered as such, as well as the application thereof used by the Principal, does not infringe any intellectual (property) right(s) of third parties pursuant to this agreement. If it must nevertheless be acknowledged by the Contractor or if a decision is made by a Dutch court in legal proceedings against the Contractor that a product supplied by the Contractor does infringe an intellectual property right as mentioned above, the Contractor will use a method of its choice and at its expense, after consultation with the Principal, cancel the infringement of the violated right. The Contractor may not harm the interests of the Principal with the method it uses. All damage to be suffered by the Principal as a result is for the account of the Contractor.

Article 8. Project supervision

- 8.1 Both the Principal and the Contractor will appoint representatives of their organization when the agreement is signed, who will act as contact persons for the implementation of this agreement.

Article 9. Documentation

- 9.1 The Contractor will provide the Principal with associated documentation about the properties, functions, operation, maintenance and possibilities for use of the underwater gliders. The documentation must be such as to provide a correct, complete and detailed description.
- 9.2 The Principal is entitled to reproduce and change the documentation, provided that the indications of copyright and the like that are applied to original copies are preserved.
- 9.3 The Contractor will ensure that the documentation supplied by it will be replaced, changed or adjusted as soon as possible at its expense during the warranty period if it should become apparent at any time that the documentation contains incorrect information or is otherwise incomplete, insufficient or outdated.

Article 10. Training and instruction

- 10.1 Contractor shall train and support the personnel of Principal, and if necessary third parties, in the use and maintenance of the underwater gliders.
- 10.2 Contractor shall, in each case, opportunely inform Principal about training procedures that are necessary for use and maintenance of the gliders.
- 10.3 The training and support shall be given by competent and suitable experts. In as much as support is concerned, this shall be given, as far as possible, by experts that were involved in the design and engineering of the gliders.

Article 11. Force majeure

- 11.1 In the event of force majeure (inevitable shortcoming), the fulfilment by the Parties concerned of the obligations arising from the agreement will be suspended in whole or in part, without the Parties being mutually obliged to pay any compensation in this regard. In the event of a force majeure, the other party will be notified in writing, accompanied by the necessary supporting documents.

- 11.2 If a situation arises in which there is a causal relationship between unforeseen circumstances as a result of COVID-19 and the fact that the Contractor threatens to deviate from what has been agreed as a consequence of this, the Contractor will make every effort to limit the consequences of this, and undo it if possible. COVID-19 is a circumstance that cannot be attributed to the Contractor and the Parties will then consult with each other to make agreements about settlement according to the standards of reasonableness and fairness. The burden of proof of causal relationship between unforeseen circumstances as a result of COVID-19 lies with the Contractor.
- 11.3 Force majeure is in any case not understood to mean: strikes by or lack of personnel, illness of personnel, late delivery and/or unsuitability of materials, of the software and/or other parts of the underwater gliders, unless this is attributable to the other party, attributable shortcoming of third parties engaged by the Contractor and/or liquidity or solvency problems on the part of the Contractor.

Article 12. Notice of default and dissolution

- 12.1 If one of the Parties fails to fulfil one or more of its obligations under this Agreement, the other Party will give it notice of default, unless a prior notice of default is not required or fulfilment of the relevant obligations is already permanently impossible. in which case the negligent Party will be in immediate default.
- 12.2 The notice of default will be given in writing, whereby the negligent Party will be given a reasonable period of time to still fulfil its obligations. This term has the character of a strict deadline.
- 12.3 The Party that imputably fails to fulfil its obligation(s) is liable to the other Party for compensation for the damage suffered or to be suffered by this other Party.
- 12.4 Except as provided elsewhere in this agreement, each of the Parties has the right to dissolve this agreement, in whole or in part, in the cases described below, without further notice of default and judicial intervention, with immediate effect:
- a. by the Principal, if the delivery time agreed in Article 3.2 has been exceeded;
 - b. by each Party, if the other Party fails to fulfil any obligation in connection with the agreement, which failure is of such a serious nature that enforcement of the agreement cannot reasonably be required and the renouncing Party, after giving notice of default by registered letter and a reasonable period of time for performance has been granted, fails to comply with this obligation or fails to take appropriate steps to correct it;
 - c. by the Principal, when the Contractor applies for a suspension of payments (or provisional suspension of payments) or if it is granted a suspension of payments (or provisional suspension of payments); the Contractor files for bankruptcy or is declared bankrupt; the Contractor's company is liquidated; Contractor discontinues its current business; a substantial part of the Contractor's assets is seized or the Contractor is otherwise no longer able to fulfil the obligations under this agreement;
 - d. by the Principal, when any compensation, reward, gift or any other advantage in whatever form has been promised, offered or provided to staff belonging to the Principal or to its representatives by or on behalf of the Contractor, if this results in the attitude of those personnel or those representatives with regard to the conclusion or performance of this or any other agreement concluded or yet to be concluded.
- 12.5 Dissolution of the agreement takes place by registered letter to the other Party.

- 12.6 Failure by either Party to enforce any provision of this agreement at any time shall in no way affect the rights of the Party concerned to still demand full performance by the other party. The acceptance by the other party of one of its obligations does not imply the waiver by the first-mentioned Party of its rights arising from that obligation.
- 12.7 Obligations which by their nature are intended to continue even after the dissolution of the agreement, will continue to exist after the dissolution of this agreement. These obligations include: intellectual (property) rights (Article 7), confidentiality (Article 16), applicable law, dispute resolution and choice of domicile (Article 18).

Article 13. Liability and insurance

- 13.1 The Contractor, who imputably fails to fulfil its obligation(s), is liable to the Principal, as well as its personnel and third parties engaged by the Principal for compensation for all damage suffered and/or to be suffered. This liability is, except for claims resulting from damages resulting from death or injury and/or intent or gross negligence on the part of the Contractor and/or its personnel and/or in the event of violation of intellectual property rights, limited to an amount of € 500,000 per event with a maximum of € 1,500,000 per year. However, the Contractor is not liable for consequential/indirect damage such as: missed savings and/or lost profit and/or lost turnover.
- 13.2 The Contractor indemnifies the Principal against all (financial) consequences of claims from third parties (whereby staff of the Principal can be regarded as third parties in that regard) in any way related to the performance of its obligations arising from the agreement.
- 13.3 A shortcoming in the fulfilment of this agreement cannot be attributed to the Contractor if it is not due to its fault, nor is it for its account by law, legal act or generally accepted views (force majeure).
- 13.4 The Contractor has taken out insurance in a manner that is appropriate and customary in accordance with traffic standards and is thus insured against business liability. This insurance provides at least the cover required by the Tender Documents.
- 13.5 On request, at any time during the term of the agreement, the Contractor shall immediately submit a certified copy of its insurance policy or a proof/certificate of insurance to the Principal.
- 13.6 The Contractor is entitled to change its business liability insurance, provided that the required coverage included in the Tender Documents is not affected and the other conditions stated in this agreement are met.

Article 14. Dissolution / termination

- 14.1 In the event of full or partial dissolution of the present agreement, Principal shall be authorised, without prejudice to all his other rights, to re-assign the execution of the agreement, partially or entirely, to another party or parties.

Article 15. Amendments

- 15.1 The Parties can only agree in writing amendments to this agreement, including all Annexes. Oral agreements, regardless of their nature, by whom or when they are made, are not legally valid.

Article 16. Confidentiality

- 16.1 The Parties will observe strict confidentiality with regard to information about each other's organisation, procedures and any other data that can be qualified as confidential. Subject to the prior written consent of the other Party, each of the Parties shall not make information and data carriers available to it available to third parties and shall only disclose it to its personnel insofar as this is necessary for the performance of the agreed performance. The Parties will oblige their personnel to comply with these confidentiality provisions.
- 16.2 Contractor's personnel involved in the performance of the work, insofar as these are performed at the Principal's premises, are obliged to observe the safety procedures maintained by the Principal.
- 16.3 None of the Parties shall make any mention of the agreement in publications or advertisements without the written permission of the other Party.

Article 17. Other terms

- 17.1 The General Government Purchase Conditions 2018 (ARIV-2018) apply to this agreement, insofar as this agreement does not deviate from them. The general delivery and payment conditions of the Contractor, or other general conditions of the Contractor, do not apply to this agreement.
- 17.2 Notifications, including promises of (further) agreements, that are important for the implementation of this agreement, are only binding on the Parties if they are made or confirmed in writing by a future person. Neither of the Parties is authorized to induce the other Party to perform, promises and the like, against any form of remuneration to that staff member, without which payment of the performance of the undertaking would not have been effected, or other conditions would have been established.
- 17.3 Failure by one of the Parties to demand implementation of any provision within a term agreed in the agreement does not affect the right to comply with the requirements, unless the relevant party has been agreed in advance and in writing.

Article 18. Disputes

- 18.1 Any dispute regarding the formation, interpretation and/or performance of this agreement, as well as any other dispute regarding or in connection with this agreement, whether legal or factual, without exception, shall be settled by the competent court of the District Court of Noord-Holland, the Netherlands.
- 18.2 This agreement is governed by Dutch law.

Thus agreed and done and signed in twofold

In witness whereof the parties have executed this contract in two originals on the dates indicated below:

For the Principal

by:

Name:

Signature:

Title:

Date:

For the CONTRACTOR

by:

Name:

Signature:

Title:

Date:

DRAFT

ENCLOSURE I FURTHER WORK AGREEMENTS AGREED IN WRITING

(if applicable)

DRAFT

ENCLOSURE II TENDER DOCUMENTS

(already in possession of the Parties)

DRAFT

ENCLOSURE III GENERAL GOVERNMENT PURCHASE CONDITIONS 2018 (ARIV-2018)

(already in possession of the Parties)

DRAFT

ENCLOSURE IV CONTRACTOR'S TENDER

(already in possession of the Parties)

DRAFT

ENCLOSURE V MODEL TESTIMONY OF PERFORMANCE AFTER SEA ACCEPTANCE TEST

Concerns approval of :
Contractor : [Contractor]
Principal : Foundation NWO-I / Royal NIOZ
Date :

The Undersigned,

..... ,

duly representing Foundation NWO-I / Royal NIOZ in this matter, declares that the three (3) autonomous underwater gliders delivered under the terms and conditions of the above agreement has been delivered in proper operational condition and that the proper functioning of the three (3) autonomous gliders has been demonstrated and tested and that the three (3) autonomous gliders therefore are considered as having been unconditionally/conditionally*) approved. The warranty period as stipulated in the agreement shall take effect as of the date on which this performance testimony is signed.

<place>, date

For Foundation NWO-I / Royal NIOZ:

Name :
Function :
Signature :

In presence of Contractor, represented by:

Name :
Function :
Signature :

*) NOTE. If the transfer is conditional the applicable condition(s) must be specified in an attached enclosure.

Enclosure with Performance Testimony

Concerns :
Contractor : [Contractor]
Principal : Foundation NWO-I / Royal NIOZ
Date :

CONDITION

Specified below are minor defects and imperfections which were found to be present in [specify which glider(s)] at the time it was tested for approval and which were recognised by both parties as being of no consequence for the proper functioning of the [specify which glider(s)].

The Contractor declares that the minor defects and imperfections specified hereunder shall be fixed and alleviated before the second Sea Acceptance Test.

<place>, date.
(fill in date)

For Contractor:

Name :
Function :
Signature :

For Foundation NWO-I / Royal NIOZ:

Name :
Function :
Signature :

ENCLOSURE VI MODEL BANK GUARANTEE

The undersigned (*bank's name*), located in (*full address*), hereinafter referred to as 'the Guarantor', hereby waives all defences granted to guarantors by law, opposite Foundation NWO-I / Royal NIOZ, established at Landsdiep 4, 1797 SZ Den Hoorn (Texel), the Netherlands hereinafter referred to as 'the Principal', irrevocable and unconditional guarantee for the correct performance by (*company name*) located in (*full address*), hereinafter referred to as 'the Contractor', of its obligations, arising from the agreement regarding the following commissioned by the Principal and to be delivered by the Contractor:

The delivery of three (3) autonomous underwater gliders for marine research, namely the correct fulfilment of obligations arising from the agreement, during a period up to and including the actual date of acceptance by the Principal such up to an amount worth (*the first instalment*) as stated in Article 4, paragraph 6 of the Agreement, including VAT, being:

€ (*in numbers.....*) (*in writing.....*)

On the basis of this bank guarantee, the Guarantor undertakes, at the Principal's first written request, stating that the Contractor has failed to properly fulfil the obligations described in the Agreement, to immediately pay the Principal a maximum of the above amounts. If the Guarantor has received from the Principal a copy of a registered letter addressed to the Contractor by the Principal in which the Principal notifies the Contractor of its intention to invoke the bank guarantee.

This security will remain in force up to and including the date on which the Principal has fully and unconditionally accepted the Sea Acceptance Tests and the Contractor has thereby fulfilled its obligations with regard to delivery the three (3) autonomous underwater gliders arising from the Agreement.

If, after the Contractor has fulfilled its obligations under the Agreement, the Principal fails to return the documents submitted for the purpose of this security to the Contractor, the Contractor is entitled to request the Guarantor in writing to terminate this security.

This guarantee is expressly not a surety within the meaning of Article 7:850 of the Dutch Civil Code and further. The provisions of Article 7:850 to 7:870 of the Dutch Civil Code therefore do not apply to this warranty.

The costs for this security are for the account of the Contractor.

This bank guarantee is exclusively governed by Dutch law. In the event of any disputes arising from the bank guarantee, only the District Court of Noord-Holland is competent.

(*name of the authorized official on behalf of the Guarantor*)
(*function of the authorized official on behalf of the Guarantor*)
(*date of signature*)
(*drawn up in [place]*)

Signature