JOINT PROJECT AGREEMENT

This Joint Project Agreement ("this Agreement") is made as of September 20, 2010, by and between the Schmidt Research Vessel Institute ("SRVI"), a Washington nonprofit corporation, and The Monterey Bay Aquarium Research Institute ("MBARI"), a California nonprofit public benefit corporation, in light of the following recitals:

RECITALS

A. Charitable Organizations

SRVI was organized in 2009, and is operated exclusively for charitable purposes and is tax exempt under Section 501(c)(3) of the Internal Revenue Code. SRVI is classified by the IRS as a private operating foundation under Sections 509(a) and 4942(j)(3) of the Internal Revenue Code.

MBARI was organized in 1987, and is operated exclusively for charitable, scientific and educational purposes, and is tax exempt under Section 501(c)(3) of the Internal Revenue Code. MBARI is classified by the IRS as a private operating foundation under Sections 509(a) and 4942(j)(3) of the Internal Revenue Code.

Marine Science and Technology Foundation ("MSTF") was organized in 2008, and is operated exclusively for charitable purposes and is tax exempt under Section 501(c)(3) of the Internal Revenue Code. MSTF is classified by the IRS as a private operating foundation under Sections 509(a) and 4942(j)(3) of the Internal Revenue Code.

B. Charitable Purposes

SRVI, MBARI, and MSTF share common charitable purposes in the research, development, and operation of technologies for scientific research and ocean exploration, and making their technologies available to other research scientists and the marine science community worldwide. To further their charitable purposes, SRVI, MBARI and MSTF, entered into a Memorandum of Understanding dated February 11, 2010 ("MOU"), in which they agreed to cooperate, when possible and appropriate, in projects involving ocean engineering, scientific research, and marine operations.

C. Collaboration on Joint Project

SRVI is planning to conduct its first science cruise on *R/V Lone Ranger* in winter 2010 (the "Cruise"). SRVI has selected a deep-ocean long time-series monitoring program proposed by MBARI investigator, Ken Smith to observe, measure, and monitor the supply of organic carbon and changes in the sedimentation of the sinking food supply along with changes in the abundance and size of conspicuous benthic fauna and their activity of the sea floor at abyssal depths in the eastern North Atlantic. The Cruise will also include sampling a representative number of *Sargassum* patches to measure the impacts of climate change; also led by Ken Smith.

MBARI has conducted a long time-series study in the eastern North Pacific (4,100 m depth) and deployed similar deep sea instrument. MBARI wishes to collaborate with SRVI and support SRVI with MBARI personnel for the Cruise. In exchange, MBARI will be paid or reimbursed by SRVI for fees and costs incurred by MBARI in connection with the Cruise, and will have the opportunity compare the data collected from the Cruise with two existing deep-sea time-series stations in the eastern North Pacific and eastern North Atlantic, in furtherance of and substantially related to MBARI's exempt purposes.

MSTF is constructing, with MBARI's assistance under a separate agreement, a time-series monitoring observatory, MSTF Deep-Sea Observatory ("Observatory"), and will provide the Observatory in time for the use of SRVI and MBARI as part of the Cruise.

SRVI and MBARI's collaboration are collectively referred to as the "Cruise Project". MSTF is a third party, not a party, to this Agreement.

AGREEMENT

In consideration of the foregoing and in exchange of the mutual promises contained herein, SRVI and MBARI (collectively, "the parties") agree as follows:

1. **Project Summary.** The project will be conducted from September 20, 2010 to June 30, 2011 "Project Period". The Project Period is also described in the Project Detail on **Exhibit A** . The Project Period may be extended by written agreement of both parties. Additional fees or costs incurred during any extension period will be agreed upon in writing signed by both parties prior to any extension of the Project Period.

2. **Budget.** SRVI and MBARI are developing a detail budget ("Budget"). The final budget will be approved by both parties and will be attached to this Agreement as **Exhibit B**. Each party shall immediately inform the other party of any circumstances that have significant impact upon the Cruise and the Budget may be adjusted as agreed upon by the parties in writing.

3. **Location.** Preparation for the Cruise will be conducted at MBARI. The Cruise will be conducted over the Atlantic Ocean.

4. **Support and Services provided by MBARI.** MBARI will support the Cruise by providing the following services, equipment and facilities to SRVI during the Project Period (collectively "MBARI's Support") in exchange for the fees described in Section 5 below:

   (a) Use of MBARI's Dock house and dockside laboratory space for the use and storage of SRVI laboratory equipment during the Project Period and while the engineering works are performed out of MBARI's headquarters in Moss Landing, California (included in the Initial Fee described below);

(b) Use of the MBARI's shop materials and scientific supplies needed in preparation of the Cruise during the Project Period; and

(c) Use of the identified MBARI investigators, engineers, and scientists affiliated with this project to organize, research, sampling, identify and analyze scientific data during the Project Period and publish the results.

5. **Fees.**

(a) Initial Fee. SRVI agrees to pay MBARI an advance of Ten Thousand Dollars ($10,000) for the mobilization of the personnel, which will be credited toward the total fees of this Agreement. SRVI shall pay the Initial Fee promptly upon signing this Agreement.

(b) Maximum Fees. The total fees and costs payable by SRVI to MBARI under this Agreement shall not exceed Forty Thousand Four Hundred Dollars ($40,400). When the fees and costs have reached $40,400 MBARI shall be under no obligation to provide any further Support, and SRVI shall be under no obligation to make further payments to MBARI unless and until both parties agree to increase the Maximum Fees. Any increase must be approved in a writing signed by both parties as an amendment to this Agreement.

(c) Travel Fees. Travel costs which SRVI will pay for directly via a cash advance to MBARI travelers are detailed in Exhibit B, and MBARI travelers are expected to provide an expense report directly to SRVI as justification for the costs.

6. **Accounting.** The fees and costs incurred by MBARI and invoiced to SRVI will be recorded in accordance with generally accepted accounting principles consistently applied and in accordance with MBARI's cost principles and accounting policies.

7. **Invoices and Payment.** MBARI shall invoice SRVI on a monthly basis during the Project Period for MBARI's fees and costs. SRVI shall pay the invoice within thirty (30) days of receiving the invoice. MBARI shall mark its final invoice "FINAL" and submit it to SRVI not later than sixty (60) days after the expiration or early termination of the agreement. All invoices shall, at a minimum, state in detail the fees and costs and the dates on which they were incurred. All fees are payable in U.S. Dollars and delivered to MBARI's headquarters.

8. **Deliverables.** MBARI shall deliver a final technical report not later than sixty (60) days after the expiration of the agreement. The final report shall include a summary statement of progress toward the original stated aims, a list of the

results, and a list of the publications or plans for further publication resulting from the project.

9. **Excusable Delays.** MBARI shall not be,responsible for any delays in the Cruise Project if such delays arise out of causes beyond MBARI's control and without its fault or negligence.

10. **Operational Responsibility.** The Captain of the *R/V Lone Ranger* shall be solely responsible for all decisions concerning the operation of the *R/V Lone Ranger*, including but not limited to decisions concerning the weather, the safety of the *R/V Lone Ranger*, other on board equipment, and the person on board the *R/V Lone Ranger.* MBARI and all of its personnel, agents and representatives, including the Principal Investigator, Ken Smith, will cooperate fully with all decisions made by the Captain.

11. **SRVI's Responsibilities.** SRVI's costs and expenses shall include, but not be limited to, labor, materials, equipment and shipping costs incurred by MBARI for the project and will be purchased directly from vendors by SRVI for the project.

12. **MBARI's Responsibilities.** MBARI's scientists shall conduct MBARI funded testing and sampling work at MBARI's sole cost and expense. MBARI's costs and expenses shall include $26,586 and are not included in the Maximum Fees payable to MBARI.

13. **MSTF's Responsibilities.** MSTF's participation is limited to solely providing the Observatory; and MSTF is a third party of this agreement. MSTF will provide SRVI with evidence that MSTF has adequate liability insurance to protect the Observatory, and MSTF has no liability insurance that extends protection to any other person or non MSTF equipment, facilities, or SRVI's vessels.

14. **Equipment Loan Agreements.** MBARI and SRVI shall enter into an MBARI Equipment Loan Agreement for SRVI's use of the ROV Phantom, tether, console, tether winch, senor, and camera which is an estimated resource value of $102,000. The Equipment Loan Agreements, when executed, will be attached as **<u>Exhibit D</u>.**

15. **Waiver and Release Form.** All employees, agents, and representatives of MBARI who go on board the *R/V Lone Ranger* for to participate in the Cruise, to observe the Cruise, or for any other reason, must execute SRVI's Visiting Participant Release Form and Medical History Form attached to this Agreement as **<u>Exhibit C.</u>**

16. **Termination.** If either MBARI or SRVI determines that it is in its best interests to terminate the Cruise Project because of lack of sufficient funds, failure of equipment, or other substantial reason, either party may terminate this Agreement upon thirty (30) calendar days written notice to the other party. Upon receipt of written notice from SRVI, MBARI shall take reasonable steps to reduce all costs

and outstanding obligations under this Agreement. In the event of termination by either party, SRVI shall pay MBARI for all reasonable costs incurred up to the effective date of termination.

17. **Insurance.**

(a) SRVI represents and warrants that SRVI has adequate liability insurance to protect SRVI's ships, equipment, officers, employees, agents, and representatives who will be participating in the Cruise Project with MBARI and MSTF, while acting within the scope of their employment by or contractual agreement with SRVI, and SRVI has no liability insurance that extends protection to any other person.

(b) MBARI represents and warrants that MBARI has adequate liability insurance to protect MBARI's equipment, officers, employees, agents, and representatives who will be participating in the Cruise Project with SRVI and MSTF, while acting within the scope of their employment by or contractual agreement with MBARI, and MBARI has no liability insurance that extends protection to any other person.

18. **Assumption of Risk, Indemnification, Warranty &Liability.** SRVI agrees to defend, indemnify, and hold harmless MBARI and its officers, directors, employees, agents and representatives from and against any claims for damages, loss or expense, including reasonable attorneys' fees, arising out of or related to SRVI's use of MBARI's premises, equipment, research vessels, or any of them. Under no circumstances shall MBARI be liable for consequential damages under this Agreement. SRVI assumes all risk of damage or loss to SRVI's Cruise. MBARI and SRVI represents and warrants to the other that it has the right and authority to enter into and perform its obligations under this agreement, that it owns, or has the valid right to use, the Intellectual Property of such party. EXCEPT AS OTHERWISE PROVIDED HEREIN, EACH PARTY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS, GUARANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, ANY IMPLIED WARRANTY ARISING FROM TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE OR ANY OTHER WARRANTIES, CONDITIONS, GUARANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, IN LAW OR IN FACT, ORAL OR IN WRITING.

19. **Notices.** Communications regarding the fiscal and administrative aspects of this agreement shall be between the CFOs for MBARI and SRVI:

Schmidt Research Vessel Institute
555 Bryant Street, #374
Palo Alto, CA 94301
Attn.: John Kelly, Chief Financial Officer
Fax No.: (650) 461-8090

E-mail: jkelly@srvi.org

Monterey Bay Aquarium Research Institute
7700 Sandholdt Road
Moss Landing, CA 95039-0628
Attn.: Michael Pinto, Chief Financial Officer
Fax No.: (831) 775-1620
E-mail: pinto@mbari.org

Key Personnel. The scope of work supported by this agreement shall be under the general guidance and technical direction of MBARI's Ken Smith and Alana Sherman, the Co-PIs of the agreement. The Co-PIs shall be responsible for the proper management and conduct of the research activities hereunder. MBARI's Co-PIs may be replaced only with the approval of SRVI. The contact information for MBARI's Co-PIs is provided below:

Ken Smith, Ph.D.
Monterey Bay Aquarium Research Institute
7700 Sandholdt Rd, Moss Landing, CA 95039-9644
Phone: (831) 775-1710, Fax: (831) 775-1620
Email: ksmith@mbari.org

Alana Sherman, Ph.D.
Monterey Bay Aquarium Research Institute
7700 Sandholdt Rd, Moss Landing, CA 95039-9644
Phone: (831) 775-1780, Fax: (831) 775-1620
Email: alana@mbari.org

20. **Publications.** MBARI personnel are free to publish the results of the research activities supported by this agreement. Decisions on authorship of any publication shall be consistent with the customary practices in the academic and scientific community. MBARI shall insure the acknowledgement of the support from SRVI and a disclaimer shall be made in any publication of any material based on or developed in whole or in part from the support from this agreement.

21. **Use of Name**. MBARI and SRVI shall not use the name of the other party or of any investigator in any advertising or promotional material without the prior written approval of the other.

22. **Patents and Inventions.** Notwithstanding anything to the contrary in this agreement, MBARI and SRVI shall each retain ownership of, and all right, title and interest in and to, their respective pre-existing Intellectual Property, and no license therein, whether express or implied, is granted by this agreement or as a result of the services performed hereunder. To the extent the parties wish to grant

to the other rights or interests in pre-existing Intellectual Property, separate license agreements on mutually acceptable terms would need to be executed.

Inventions made by MBARI employees in performance of the project shall be solely owned by MBARI. Inventions made jointly by MBARI employees and SRVI employees ("Jointly Developed") in performance of the project shall be jointly owned. Inventions made solely by SRVI employees shall be solely owned by SRVI.

For the purposes of this Section 16 (Intellectual Property), the term "employees" shall mean and refer to a party's employees, as well as its independent contractors, consultants, and other persons providing services to such party.

MBARI grants to SRVI a royalty-free, paid up, worldwide, perpetual, non-exclusive, non-transferable, non-sublicensable license to use any MBARI Intellectual Property incorporated into any Deliverable, solely for the use of that Deliverable in connection with the MBARI-SRVI project.

As used herein, "Intellectual Property" shall mean inventions (whether or not patentable), works of authorship, trade secrets, techniques, know-how, ideas, concepts, algorithms, and other intellectual property developed in relation to the MBARI-SRVI project pursuant to this agreement.

23. **Copyright.** MBARI shall own copyright in all written works and materials that is created in whole or in part to this agreement. Either MBARI and/or SRVI may use the written works and materials to further their charitable purposes.

24. **Records and Audits.** MBARI shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to reflect properly all direct and indirect costs of whatever nature incurred in the performance of this agreement. All such records, as well as MBARIs's facilities utilized in the performance of the agreement shall be subject upon request at all reasonable times to inspection by SRVI.

25. **Dispute Resolution.** The parties agree to attempt in good faith to resolve any dispute relating to this Agreement. Any mediation or arbitration shall be held in Monterey, California, unless another location is mutually agreed upon by the parties.

26. **No Assignment.** This Agreement is between SRVI, and MBARI and shall not be assigned by either party without the written consent of the other party.

27. **Miscellaneous.**

    (a) This document with attached Exhibits is the entire agreement between MBARI and SRVI for the Cruise Project. Any changes, amendments, or modifications shall be made by amendments to this Agreement in writing, signed by the duly authorized representatives of both parties. This Agreement shall apply to and be binding upon the officers, directors, successors and assigns of the parties.

(b) The rights and obligations of the parties shall be governed by and construed in accordance with the laws of the State of California.

(c) If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(d) This Agreement has been negotiated by the parties, each of which has been represented by counsel. This Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party.

(e) This Agreement shall be executed in duplicate originals.

IN WITNESS WHEREOF, the parties have caused this Joint Project Agreement to be effective as of the date set forth above and when executed by their duly authorized representatives.

MONTEREY BAY AQUARIUM RESEARCH INSTITUTE

By: [signature]

Name: Michael Pinto

Its: Chief Financial Officer

SCHIMDT RESEARCH VESSEL INSTITUTE

By: John Kelly

Name: John Kelly

Its: Chief Financial Officer

Exhibits:
A – Cruise Project Detail
B – Cruise Project Budget
C – SRVI Visiting Participant Release and Medical History Forms
D – Equipment Loan Agreements

SRVI-MBARI Joint Project Agreement
Exhibit A

Project Detail

Project Period: September 20, 2010 – June 30, 2010

Project Plan

Deployment of Deep-Sea Observatory

The deep-sea observatory to be deployed from the Lone Ranger and recovered for servicing at some later date from Falkor (or other R/V) will include the following:

- McLane sediment traps (2)
- Syntactic flotation blocks (8)
- Locating spar buoy with flasher and transmitter (1)
- Time-lapse camera/strobe system (1)
- Synthetic mooring line (600 m)
- Steel ballast weight (400 lbs)

This instrumentation can be deployed from the existing crane. Laboratory equipment would be portable diagnostic instruments for testing the entire system electronics prior to deployment. The seawater in the collection cups for each sediment trap would be collected with a surface bucket and filtered prior to being preserved with formalin to prevent degradation during the time-series deployment.. Sample and data processing would not take place until the recovery of the observatory from the Falkor or other R/Vs.

At the same time, the autonomous Benthic Rover can be deployed to conduct time-series measurements of sediment community oxygen consumption (SCOC) as a measure of organic carbon demand by the benthic community along a transect of sea floor stations. Such measurements would provide temporal resolution for sediment community carbon demand matching that of the time-lapse camera and sediment traps (carbon supply). However, there is only one of these mobile transiting instruments and it is currently dedicated to measurements at the eastern North Pacific time-series site (Sta. M). In lieu of the mobile time-series measurements provided by the Rover, we propose to conduct short-term measurements of SCOC using a free vehicle grab respirometer (FVGR) for two to three-day incubations during the cruise.

The FVGR can be deployed and recovered from the Lone Ranger using the ship's crane and a capstan to take up the flotation line during recovery. It consists of the following components:

- Syntactic flotation blocks (7)
- Synthetic flotation line (100 m)
- Locating spar buoy with flasher and transmitter (1)
- FVGR (1)
- Steel ballast weights (300 lbs)

Collection of Sargassum Brown Alga

Collect a representative number of *Sargassum* patches and their associated community along a transect of 6 stations spaced ~ 30 nautical miles apart in the Sargasso Sea. Before collecting the patches, a Phantom ROV will be used to observe and image the community and surrounding water from below using HD camcorder, CTD and fluorometer. The data will be used to make comparisons with previous sampling efforts prior to the current warming trend. The data will be analyzed and the results published in refereed journals. Specimens of the various species will be sent to appropriate taxonomic experts for positive identification and curating.

SRVI-MBARI Joint Project Agreement
Exhibit B

Project Period: September 20, 2010 – June 30, 2011

Project Budget

See attached Excel Spreadsheet

MBARI Cost Share

See attached Excel Spreadsheet

MBARI Cost Share for Carbon Cycling "DSO" project

See attached Excel Spreadsheet

Smith Pelagic Sargassum Budget	MBARI Req Y1 (2010)	SRVI Pay Direct	SRVI to MBARI	Total
Alana Sherman / MBARI Engineer	$ 3,216.70		$ 3,216.70	$ 3,216.70
1 week yr 1, 2 weeks yr 2 at sea				
Knute Brekke / ROV Pilot	$ 9,037.77		$ 9,037.77	$ 9,037.77
2 weeks at sea per year				
Brett Hobson / MBARI Mech Engineer	$ 2,760.42		$ 2,760.42	$ 2,760.42
1 week at sea per year				
Benefits 52%	$ 7,807.74		$ 7,807.74	$ 7,807.74
Labor Total	$ 22,822.63		$ 22,822.63	$ 22,822.63
Material/Supplies Aquaria				
Plastic Aquaria (6 @ $3,200 ea)	$ 19,200.00	$ 19,200.00		$ 19,200.00
Sewater pumps/tubing	$ 5,000.00	$ 5,000.00		$ 5,000.00
Plankton Netting	$ 200.00		$ 200.00	$ 200.00
Lab Equipment	$ 1,700.00		$ 1,700.00	$ 1,700.00
Lab Supplies	$ 2,000.00		$ 2,000.00	$ 2,000.00
				$ -
Equipment				$ -
Freezer (-80c) for ship	$ 15,000.00	$ 15,000.00		$ 15,000.00
				$ -
Shipping to Bermuda (20ft container)	$ 25,000.00	$ 25,000.00		$ 25,000.00
				$ -
Travel				$ -
4 personnel RT airfare to Bermuda @$650 ea	$ 2,600.00	$ 2,600.00		$ 2,600.00
4 personnel 3 days lodging @ $373/day ea	$ 4,476.00	$ 4,476.00		$ 4,476.00
4 personnel 3 days meals @ $136/day ea	$ 1,632.00	$ 1,632.00		$ 1,632.00
				$ -
External Ship Time (?)	$ -			$ -
				$ -
Direct Cost Total	$ 99,630.63	$ 72,908.00	$ 26,722.63	$ 99,630.63
				$ -
Modified Total Direct Cost	$ 84,630.63		$ 26,722.63	$ 26,722.63
DC less Equipment				$ -
Indirect Cost (51%)	$ 43,161.62		$ 13,628.54	$ 13,628.54
				$ -
Total Cost	$ 142,792.26	$ 72,908.00	$ 40,351.18	$ 113,259.18

Smith Pelagic Sargassum Budget	Year 1 (2010)	Year 2 (2011)	Cumulative
Ken Smith/PI			
2 weeks sea	$ 7,825.77	$ 8,138.80	$ 15,964.57
Jake Ellena/Research Tech			
2 weeks at sea	$ 2,010.00	$ 2,090.40	$ 4,100.40
2 weeks reg	$ 1,747.88	$ 1,817.80	$ 3,565.68
Benefits 52%	$ 6,023.50	$ 6,264.44	$ 12,287.94
Labor Total	$ 17,607.15	$ 18,311.43	$ 35,918.58
Direct Cost Total	$ 17,607.15	$ 18,311.43	$ 35,918.58
Modified Total Direct Cost	$ 17,607.15	$ 66,704.50	
DC less Equipment			
Indirect Cost (51%)	$ 8,979.65	$ 34,019.30	$ 42,998.94
Total Cost	$ 26,586.79	$ 52,330.73	**$ 78,917.52**

	Year (2010)	Year 2 (2011)	Year 3 (2012)	Cumulative
Ken Smith/PI				
2 weeks sea	$ 7,825.77	$ 8,138.80	$ 8,464.35	$ 24,428.92
Jake Ellena/Research Tech				
2 weeks at sea	$ 2,010.00	$ 2,090.40	$ 2,174.02	$ 6,274.42
1 week reg	$ 873.94	$ 3,635.59	$ 3,781.01	$ 8,290.54
Machinist				
1 week regular	$ 1,673.00			$ 1,673.00
Benefits 52%	$ 6,439.01	$ 7,209.69	$ 7,498.08	$ 21,146.78
Labor Total	$ 18,821.72	$ 21,074.48	$ 21,917.46	$ 61,813.66
Materials/ Supplies				
Sediment trap bridal assembly	$ 2,500.00			$ 2,500.00
Flotation block assembly	$ 2,000.00			$ 2,000.00
Direct Cost Total	$ 23,321.72	$ 21,074.48	$ 21,917.46	$ 66,313.66
Indirect Cost (51%)	$ 11,894.08	$ 10,747.99	$ 11,177.91	$ 33,819.97
Total Cost	$ 35,215.80	$ 31,822.47	$ 33,095.37	**$ 100,133.63**

SRVI-MBARI Joint Project Agreement
Exhibit C
Visiting Participant Release Form & Medical History Form

(SRVI MOM to provide)

SRVI-MBARI Joint Project Agreement
Exhibit D
Equipment Loan Agreements

MONTEREY BAY AQUARIUM RESEARCH INSTITUTE
EQUIPMENT LOAN AGREEMENT

Purpose: For use when MBARI loans its equipment to another party.

Agreement Date: 09/08/2010

Borrower Name: Schmidt Research Vessel Foundation

Address:

555 Bryant Street, #374
Palo Alto, CA 94301
Attn.: John Kelly, Chief Financial Officer
Fax No.: (650) 461-8090
E-mail: jkelly@srvi.org

The Equipment:

Description: ROV Phantom, tether, console, tether winch, sensor and camera
Serial Number: 1
Value: $102,000.00

Term of the Loan:

Delivery Date: 12/1/2010

Return Date: 6/30/2011

Intended Location of the Equipment:
Cruise track between Bermuda and Bahamas

Fee, if any: none

Payment Terms, if applicable:

Credit or acknowledgement, if applicable: none

Designated Representatives:

MBARI Representative: Ken Smith	Tel. No.:831-775-1710
Borrower Representative:	Tel. No.: 650 - 681-8402

Additional Terms (to modify or supplement the Terms and Conditions below):

Terms and Conditions:

1. **Agreement.** This Equipment Loan Agreement (this "Agreement") is entered into by and between the Monterey Bay Aquarium Research Institute ("MBARI") and the borrower named above ("Borrower") as of the Agreement Date above. MBARI hereby agrees to loan the Equipment identified above to Borrower, and Borrower agrees to borrow the Equipment from MBARI, subject to the terms and conditions of this Agreement.

2. **Term.** The term of the loan of the Equipment and this Agreement is set forth above.

3. **Fee.** Borrower shall pay MBARI the fee set forth above for the loan of the Equipment within thirty (30) days following receipt of MBARI's invoice therefor.

4. **Costs and Expenses.** Unless otherwise indicated in the Additional Terms above, Borrower shall be responsible for all costs and expenses associated with the delivery, use, and return of the Equipment.

5. **Delivery and Return.** Unless otherwise indicated in the Additional Terms above, Borrower shall be responsible at its expense for taking possession of the Equipment, delivering it to the Intended Location designated above, and returning it to MBARI no later than the Return Date designated above.

6. **Condition.** MBARI shall tender the Equipment to Borrower in good operating condition, and Borrower shall return the Equipment to MBARI in good operating condition, normal wear and tear excepted. Borrower shall be responsible for all costs and expenses necessary to maintain and repair the Equipment while in its possession or control, provided that Borrower shall obtain MBARI's prior written approval before performing repairs to the Equipment. MBARI reserves the right to perform the repairs itself and to charge Borrower for the cost of repairs.

7. **Location and Possession.** Borrower shall use the Equipment at the Intended Location designated above and shall not move the Equipment to another location without MBARI's prior written consent. Borrower shall not turn over possession or control of the Equipment to anyone else without MBARI's prior written consent.

8. **Liability.** Borrower agrees to defend, indemnify and hold harmless MBARI and its officers, directors, agents and employees from and against all claim or liability for loss, injury, death, or damage to persons or property, including reasonable attorneys' fees, arising from the loan of the Equipment to Borrower or Borrower's use of the Equipment, except only to the extent caused by MBARI's negligent acts or omissions.

9. **Insurance.** Unless otherwise indicated in the Additional Terms above, Borrower shall, at all times during the term of this loan, carry insurance covering the Equipment against loss or damage with limits of no less than the value of the Equipment set forth above. Borrower agrees to have this insurance endorsed to name MBARI as an

additional insured; to provide MBARI with proof of insurance upon commencement of this loan; and to ensure that MBARI is given at least thirty (30) days' prior written notice of cancellation of the insurance.

10. **Dispute Resolution.** The parties agree to try in good faith to resolve any dispute relating to this Agreement. If they cannot to do so, they agree first to try to settle the dispute by mediation; if this is unsuccessful, they agree to binding arbitration with the American Arbitration Association. Judgment on the arbitration award may be entered in any court having jurisdiction. Any such mediation or arbitration shall be held in Monterey, California, unless another location is mutually agreed upon.

11. **Miscellaneous.** This is the entire agreement between the parties on the subject matter and may not be modified except in writing signed by both parties. This Agreement shall apply to and be binding upon the heirs, personal representatives, successors and assigns of the parties. The rights and obligations of the parties shall be governed by and construed in accordance with the laws of the State of California. Borrower shall not assign this Agreement or any obligations thereunder without MBARI's prior written consent. In any action to enforce or interpret this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees from the other party.

MONTEREY BAY AQUARIUM RESEARCH INSTITUTE	**BORROWER**
C. Michael Pinto, Chief Financial Officer	John Kelly, Chief Financial Officer