

ASSOCIATION OF UNIVERSITIES FOR RESEARCH IN ASTRONOMY

TERMS AND CONDITIONS

Table of Contents

GENERAL PROVISIONS 3
COMMUNICATION 3
ELECTRONIC AND FAX SIGNATURES; WRITTEN COMMUNICATIONS 3
PUBLICITY 3
PUBLICATIONS 3
COPYRIGHTABLE MATERIAL 4
PATENT INFRINGEMENT, USE AND CONSENT 5
PRICES AND PAYMENT LIMIT 5
COMPUTATION OF TIME 5
INDEPENDENT CONTRACTOR 6
SMALL AND SMALL DISADVANTAGED SUBCONTRACTING 6
INDEMNITY AND INSURANCE 6
WARRANTY 8
TERMINATION; SUSPENSION OF WORK; EVENTS UPON TERMINATION 9
FORCE MAJEURE 10
LABOR DISPUTES 11
ASSIGNMENT 11
ACCESS TO RECORDS 11
AUDIT AND AVAILABILITY OF RECORDS 11
ARBITRATION 12
PRESENCE ON AURA PREMISES 12

USE OF AURA'S FACILITIES **13**
AURA REPRESENTATIVE PLACED AT CONTRACTOR'S FACILITY **13**
GENERAL ACCESS BY AURA **13**
RISK OF LOSS **13**
OSHA AND MSDS SHEETS **13**
GOVERNMENT PROPERTY **13**
US STATUTORY REQUIREMENTS **14**
EQUAL EMPLOYMENT OPPORTUNITY **14**
DEBARMENT **14**
ASSIGNMENT/SUBCONTRACTING **14**
LABOR DISPUTES **14**
CLEAN AIR AND WATER ACTS **14**
BYRD ANTI-LOBBYING AMENDMENT **14**
COPELAND ANTI-KICKBACK ACT **15**
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT **15**
NONDISCRIMINATION **15**
PATENT RIGHTS (APRIL, 1992) **15**

GENERAL PROVISIONS

COMMUNICATION
All communications concerning administration of this agreement must be furnished solely to the AURA Contracts Officer at the address given in this agreement. Communications of a technical nature only may be directed to the AURA Technical Representative designated by the AURA Contracts Officer.

ELECTRONIC AND FAX SIGNATURES; WRITTEN COMMUNICATIONS
(a) Documents relating to this agreement may be effectively signed by either: (1) Electronically signing a PDF file using the Adobe Acrobat Digital Signature Tool; (2) Signing a hard copy and then either faxing it to the recipient or scanning it and emailing it to the recipient as a scanned document; or (3) Sending an original hard-copy.

(b) When this agreement requires that something be “in writing,” an email communication is sufficient to meet this requirement.

PUBLICITY
Contractor shall not publicize or advertise in any manner anything relating to this agreement without obtaining prior written approval from AURA for each publicity/advertising item. AURA may require acknowledgements of its sponsors as a condition of approval.

PUBLICATIONS

(a) The Contractor is responsible for assuring that an acknowledgment of NSF support is made:

1. In any publication (including World Wide Web pages) of any material based on or developed under this contract, in the following terms: "This material is based upon work supported by the National Science Foundation under Cooperative Agreement No. AST-06457970."

2. NSF support also must be orally acknowledged during all news media interviews, including popular media such as radio, television and news magazines.

(b) The Contractor is responsible for assuring that every publication of material (including World Wide Web pages) based on or developed under this award, except scientific articles or papers appearing in scientific, technical, or professional journals, contains the following disclaimer: "Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Science Foundation."

(c) The Contractor is responsible for assuring that two copies of every publication of material based on or developed under this award, clearly labeled with the cooperative agreement number and other appropriate identifying information, are sent to the cognizant NSF Program Officer promptly after publication.

(d) All reports and publications resulting from this Contract are encouraged to use the metric system of weights and measures.

COPYRIGHTABLE MATERIAL

(a) The term "Subject Writing" refers to any copyrightable material which is produced by Contractor in the course of performing the Work under this Agreement or which otherwise arises out of the Work and which is either delivered to AURA or is distributed to any persons other than Contractor's personnel and agents. Subject Writings include such items as reports, books, journal articles, software, databases, sound recordings, photographs, artwork, and videotapes.

(b) Except as otherwise specified in this Agreement, the Contractor may own or permit others to own the copyright in all Subject Writings. Contractor agrees that if it or anyone else does own copyright in a Subject Writing, then for each Subject Writing: AURA, and any subsequent organization operating AURA, shall have nonexclusive, transferable, irrevocable, royalty- free license to exercise throughout the world all rights provided by copyright for research purposes. These licenses, however, will not include the right to sell copies of the copyrighted works to the public.

(c) Contractor agrees to acquire, through written agreement or an employment relationship, the ability to comply with the requirements of the preceding paragraphs. The Contractor further agrees that any transfer of copyright or any other rights to a Subject Writing, by it or anyone whom it has allowed to own such rights, will be made subject to the requirements of this section.

(d) Any and all Information furnished to Contractor by or on behalf of AURA shall remain the sole property of AURA and shall be used by Contractor only in connection with Contractor's performance of Work under this Agreement. Contractor shall not, without the prior express written consent of AURA, disclose or reveal such Information or any portion thereof to any person not employed by Contractor in performance under this Agreement (except designated authorized representatives of AURA) or utilize such Information for any purpose other than such performance; provided, however, that such restriction on disclosure shall not apply to Information which:

> (1) was or becomes part of the public domain otherwise than through any act or omission on the part of Contractor;
>
> (2) was already in the possession of the Contractor at the time of its receipt of such Information without any restrictions on disclosure; or
>
> (3) was acquired by Contractor from a third party (other than from a representative of AURA) without any undertaking of confidentiality imposed on or by the disclosing party. Contractor shall take all precautions reasonably desirable and necessary to safeguard the Information and comply with the provisions of the preceding sentence. Upon the earlier of termination of this Agreement for any reason, or as requested by AURA at any time, Contractor shall promptly deliver all Information to AURA that has been provided to Contractor by or on behalf of AURA.

(e) Subject to the provisions of Section 5.2, below, Contractor may retain the entire right, title, and interest of any and all Information first developed, acquired, or produced by Contractor related to the Work or this Agreement, including design documents developed as part of the project; provided, however, that with respect to any Information in which Contractor retains title:

(1) AURA, or any organization that succeeds it as the Managing Organization, shall have a non-exclusive, non-transferable, irrevocable, paid-up license to use or have used on their behalf, for all purposes throughout the world, and

(2) each of the Parties shall have a non-exclusive, non-transferable, irrevocable, paid-up license to use or have used on their behalf such Information throughout the world for research purposes. AURA, any organization that succeeds it as the Managing Organization, may translate, duplicate, reproduce, distribute, and disclose in any manner and for any purpose all of such Information.

(f) Proprietary information acquired, developed, or produced by Contractor prior to the date of this Agreement that was not acquired, developed, or produced by Contractor for any purposes related to this project, shall not be deemed to be "Information" under this Agreement. To the extent that Contractor incorporates any Proprietary Information into the Work, Contractor hereby grants AURA a non-exclusive, non-transferable, irrevocable, paid-up license to use or have used on their behalf, for all purposes, such Proprietary Information throughout the world. Information shall only be considered “Proprietary Information" if it is clearly marked as such by Contractor. Unless otherwise specified in this Agreement, AURA or any organization that succeeds it as the Managing Organization may translate, duplicate, reproduce, distribute, and disclose in any manner and for any purpose all of such Proprietary Information.

PATENT INFRINGEMENT, USE, AND CONSENT

(a) Contractor shall report to the Contract Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Contractor has knowledge. In the event of any claim or suit against AURA on account of any alleged patent or copyright infringement arising out of the performance of the Work or out of the use of any supplies furnished or Work performed hereunder, Contractor shall furnish to AURA, when requested by the Contract Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim.

(b) The Government of the United States has given its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this Agreement or any part hereof or any amendment hereto or any sub-contract hereunder (including any lower-tier subcontract).

(c) Contractor shall pay all royalties and license fees related to this Agreement.

PRICES AND PAYMENT LIMIT

Except as specifically noted, the prices given in this agreement include all charges related to the goods or services provided, including, but not limited to storage, packing, transportation, taxes, overhead, indirect costs, etc. AURA shall not be obligated to reimburse Contractor for any costs in addition to the agreed price unless such costs are specifically listed in this agreement.

COMPUTATION OF TIME

Except as expressly provided otherwise in this Contractor Agreement, references to “days” or “weeks” or “months” shall mean calendar days, weeks, or months, respectively, and time periods specified in this Contractor Agreement shall be measured in calendar days, weeks, and months. Whenever the date for the exercise of any right, privilege, remedy, or the discharge of any duty under this Contractor Agreement falls upon a Saturday, Sunday, or any public or legal

holiday, the party having the right, privilege, remedy, or duty shall have the time extended until 5:00 p.m., MST on the next succeeding day that is not a Saturday, Sunday, or holiday.

INDEPENDENT CONTRACTOR

In performing services under this Agreement, the Contractor shall be deemed an independent contractor and shall not act as nor be an agent or employee of AURA. As an independent contractor, the Contractor will be solely responsible for determining the means and methods of performing the construction/ professional and/or technical services described in Article 1 of the Contract, and shall have complete charge and responsibility for persons employed by Contractor and engaged in the performance of the specified Work. All of the Contractor's activities will be at its own risk, and Contractor is hereby given notice of this responsibility for making arrangements to guard against physical, financial, and other risks as appropriate. Contractor shall observe and abide by all applicable laws and regulations, including, but not limited to, those of AURA relative to conduct on its premises.

SMALL AND SMALL DISADVANTAGED SUBCONTRACTING

It is AURA policy that small business concerns and small socially and economically disadvantaged business concerns be given the maximum practicable opportunity to compete for subcontracts in order to assure maximum small business participation consistent with fulfilling AURA's contractual obligations in an efficient and economical manner.

INDEMNITY AND INSURANCE

a. Contractor shall at all times keep AURA free and clear from all claims, liens, and encumbrances asserted by any person or other entity for any reason whatsoever arising from the furnishing of services under this Agreement. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless AURA, its directors, officers, employees, agents, representatives, and affiliates (hereinafter collectively referred to as "Indemnified Parties") for, from, and against any and all claims, demands, actions or causes of action, costs, damages, liabilities, injuries, expenses, or losses of any nature whatsoever to which any of the Indemnified Parties may become subject under any theory of liability whatsoever ("Claims") insofar as such Claims (or actions in respect hereof) arise from, are connected with, or are related to: (i) any inaccuracy in or breach of any of Contractor's representations and warranties set forth in this Agreement; or (ii) any intentional misconduct, negligent acts, errors, mistakes, or omissions of Contractor, its officers, employees, agents, or any tier of subcontractor in performing the obligations and the work covered by this Agreement. To the fullest extent permitted by law, AURA shall be responsible for its own negligent acts, omissions, and mistakes, and those of its employees and sub-consultants. Although Contractor shall defend AURA, in the event of a final determination of joint negligence or other breach of duty between Contractor and AURA, Contractor's total indemnity liability to AURA shall be the percentage determined to be Contractor's share of liability. Every obligation of this indemnification paragraph shall survive the completion of the Work hereunder and the termination of this Agreement.

b. Contractor shall, at its own expense, during the course of this Agreement, maintain in force at all times insurance to cover its obligations under this Agreement, and such policy shall contain an endorsement to eliminate any exclusions that might operate to prohibit the policy's coverage of the types of claims covered by this Agreement, and such endorsement shall specially cover the terms of this Agreement. Contractor shall name AURA as an additional insured under such contract of insurance. If self-insured, Contractor will provide a Statement of Self-Insurance.

In addition, Contractor shall, at its sole cost and expense, maintain in force at all times during the period of performance the types of insurance designated below with the limits of liability specified. The insurance carrier must be approved by AURA and have an A.M. Best rating of A- or better. If self-insured, Contractor will provide a Statement of Self-Insurance.

• Workers' Compensation:	Statutory limits
• Comprehensive General Liability:	$1,000,000 each occurrence/$3,000,000 Annual aggregate (including contractual liability)
• Products/Completed Operations	$XX,000,000 each occurrence (equal to contract value)

For worked performed under this Agreement on AURA's premises, Contractor will also provide the following coverage (If self-insured, Contractor will provide a Statement of Self-Insurance, including limits, if any):

• Automobile Liability:	
• Bodily Injury	$1,000,000 each occurrence
• Property Damage	$1,000,000 each occurrence

Should Contractor take possession of property belonging to AURA that at any time will be in transit, or at a location other than AURA, additional proof of insurance for “personal property of others in the care, custody, and control” shall be provided to AURA. The limit of such coverage will be valued at replacement cost of such property as determined by AURA.

The amount and type of insurance coverage requirements set forth in this Agreement or Statement of Self-Insurance shall in no way be construed as limiting the scope of the indemnity in this Article or be construed to limit Contractor’s obligations or liability under this Agreement. Such indemnity shall be required by Contractor from its subcontractors on behalf of AURA.

c. A Certificate of Insurance or Statement of Self-Insurance evidencing each of the above coverages and requirements shall be delivered to AURA within fifteen (15) days following the date that Contractor receives a fully executed original of this Agreement, or prior to commencement of the Work, whichever occurs first. The certificate(s) shall name AURA, its officers, agents, and employees as additional insureds, and shall provide a forty-five (45) day notice of cancellation. Requests to modify coverage will be delivered to AURA forty-five (45) days prior to the effective date of change, and such modification will require approval by AURA. Certificates shall not be canceled, materially changed, or allowed to expire until forty-five (45) days’ prior written notice has been given to AURA.

d. AURA shall promptly notify the Contractor in writing of any Claim(s) brought against AURA for which Contractor may be responsible under this provision. Upon its receipt of notification of Claim(s) by AURA, Contractor shall promptly take over and defend any such Claim(s) by tendering the Claim(s) to its insurance company for handling. Such insurance coverage shall be primary and shall be used for purposes of satisfying Contractor’s obligations hereunder. In the event said Claim(s) is/are not covered by insurance or such insurance is exhausted, Contractor shall directly fulfill its obligations to indemnify, defend, and hold harmless under this provision and take over and defend any such Claim(s). If Contractor fails to assume or

maintain control of the defense of any Claim(s) (either through its insurance company or directly), AURA shall have the right to control such defense. In addition, AURA shall have the right and option to represent itself in defense of any such Claim(s) at any time if AURA, in its sole discretion, determines that its rights are not being appropriately defended by Contractor. If AURA controls such defense, Contractor agrees to pay to AURA, promptly upon demand, all reasonable attorneys' fees and other costs and expenses of defense. If Contractor assumes control of such defense and AURA reasonably concludes that Contractor and AURA have conflicting interests or different defenses available with respect to such proceeding, then the reasonable fees and expenses of counsel and the associated costs of such proceeding to AURA shall be considered and included as "expenses" for purposes of this Agreement.

e. Neither party hereto shall agree to any settlement of, or the entry of any judgment arising from, any third party claim involving the other without the prior written consent of the other, which shall not be unreasonably withheld, delayed, or conditioned.

WARRANTY

a. Contractor warrants that the equipment and parts delivered AURA hereunder meet and satisfies all of AURA's requirements set forth in the Statement of Work (Attachment A).

b. Contractor warrants that the equipment delivered to AURA hereunder, including all hardware and software will, upon completion of the contract, be free from defects in material or workmanship for one year after delivery and installation. Further, Contractor warrants all labor related to the installation of the systems for a period of five years after installation. The Surety shall not be held beyond one year of completion date. Products that are not manufactured by Contractor, but that are purchased by Contractor will be subject to the warranty provisions provided by the equipment manufacturer of such product(s), unless Contractor notifies AURA of any additional warranty provisions in writing. The obligation of Contractor under this warranty is the repair or replacement of any defective or malfunctioning parts with new or refurbished parts. If Contractor fails to replace or repair such parts, AURA's remedy shall be a refund of the price charged by the manufacturer of the part (whether that be Contractor or a third party) to its dealers for such parts as are proven to be defective. To obtain service under this warranty, AURA must bring the malfunction to the attention of Contractor or one of its authorized dealers during the one year warranty period.

c. The Implied Warranty of Merchantability and the Implied Warranty of Fitness for a Particular Purpose under the Arizona Uniform Commercial Code are hereby implied in and applicable to the construction of the instrument by Contractor hereunder to AURA.

d. Contractor warrants that its performance of the work, including the selection of the equipment to meet AURA's needs and the labor performed in the installation of said equipment, will be carried out with that standard of care, skill, and diligence normally provided by a professional organization in the performance of similar services. Contractor further warrants that the performance of subcontractors at any tier, or any other person assigned by it under this Agreement, shall be in accordance with sound practice and professional standards of its trade and the requirements of this Agreement. If any portion of the services supplied fails to comply with this warranty, and Contractor is so notified in writing within one (1) calendar year after completion of this Agreement, Contractor will correctly perform such portion of the services at its own expense or, at AURA's option, will refund the amount of the compensation paid for such portion.

TERMINATION; SUSPENSION OF WORK; EVENTS UPON TERMINATION

a. *Termination for Convenience.*

(i) AURA shall have the right to terminate performance under this Agreement, in whole or in part, at any time for convenience, by notifying the Contractor in writing at least thirty (30) days in advance of the effective date of termination specified in such notice. The 30 day notice requirement will not apply to an agreement terminated pursuant to Article 1 of the main contract.

(ii) Upon the termination of this Agreement for convenience, Contractor shall:

(a) stop work as specified in the notice;

(b) terminate all subcontracts to the extent they relate to the work terminated;

(c) settle all outstanding liabilities in conjunction with the termination of subcontracts;

(d) return to AURA any and all information, documentation, software programs, database tables, configuration files, unit tests, component integration tests, and other items and materials provided by AURA to Contractor;

(e) make available to AURA for pick up or shall transfer to AURA electrically, as may be applicable, all documents and documentation, information, data, databases, software, source code, parts, goods, materials, equipment, and general intangibles (including all Contractor intellectual property licensed to AURA) purchased, developed, prepared, or provided by Contractor for the purpose of performing the Work;

(f) take any action that may be necessary for the protection and preservation of the property related to this Contract that is in the possession of Contractor (including AURA personal Property); and

(iii) In the event of termination for convenience, Contractor will be paid for all work incurred as of the date of termination pursuant to the terms set forth above and for all non-cancelable commitments entered into by Contractor in accordance with the terms of this Agreement prior to the date of termination.

b. *Termination for Default.*

(i) *Curable defaults by Contractor.* AURA shall have the right to terminate performance under this Agreement at any time for Contractor's default of the terms and conditions of this Agreement by notifying Contractor in writing and giving Contractor thirty (30) days' prior written notice of such default and the opportunity to cure such default. If Contractor fails to cure such default(s), AURA may terminate this Agreement after the expiration of the cure period upon sending written notice of termination to Contractor.

(ii) *Curable defaults by AURA.* Contractor shall have the right to terminate performance under this Agreement at any time for AURA's default of the terms and conditions of this Agreement, by notifying AURA in writing and giving AURA thirty (30) days' prior written notice of such default and the opportunity to cure such default. If AURA fails to cure such default(s), Contractor may terminate this agreement after the expiration of the cure period upon sending written notice of termination to AURA.

c. *Suspension of NSF Funding; Termination.*

Performance of the Work under this Agreement may be suspended by AURA in the event the NSF suspends funding to AURA. AURA shall suspend this Agreement by providing written notice of such suspension to Contractor. In the event of such suspension, AURA shall be responsible for paying Contractor for all Work incurred as of the date of the suspension of the Work. In the event that the Work is suspended for more than one year, AURA may terminate this Agreement upon written notice to Contractor.

d. *Error in Termination for Default results in Termination for Convenience.*
If, after termination of this Agreement due to Contractor's default, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause set forth above.

e. *Events upon Termination.*
In addition to any provisions above which specify events upon termination, the following shall be applicable to the termination of this Agreement in accordance with this Article.

(i) In the event of termination of this Agreement for any reason, Contractor will be paid for all Work incurred as of the date of termination pursuant to the terms above and for all non-cancelable commitments entered into by Contractor in accordance with the terms of this Agreement prior to the date of termination. In no event shall the liability of AURA exceed the Contract Sum. Notwithstanding the foregoing, AURA may withhold amounts due to Contractor as AURA deems to be necessary to reimburse itself for the excess costs incurred in curing, completing, or procuring similar goods and services and excess costs incurred in AURA's operation because of the breach.

(ii) In the event of termination of this Agreement for any reason and upon payment of all sums owed pursuant to this Article, Contractor shall: (i) shall make available to AURA for pick up at Contractor's place of business and/or transfer to AURA electronically all AURA personal property provided to Contractor by AURA, as well as all portions of the Work for which AURA has paid, including, but not limited to all documents and documentation, information, data, data bases, software, source code, parts, goods, materials, equipment and general intangibles (including all Contractor intellectual property licensed to AURA) developed or provided by Contractor for use with or integration into the Project and for which Contractor has been paid by AURA;

(ii) provide to AURA all Contractor intellectual property licensed to AURA hereunder; and

(iii) provide AURA with copies of all documentation prepared in accordance with the Statement Of Work.

FORCE MAJEURE.
Neither Contractor nor AURA shall be liable for failure to fulfill its obligations herein or for delays in performance or delivery, as applicable, due to causes beyond its reasonable control, including, but not limited to: acts of God, natural disasters, acts or omissions of other parties, acts or omissions of civil or military authority, Government shut downs (total or partial), the termination, lapse, or delay in government funding, changes in governmental priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, riots, war, acts of terrorism, delays in transportation, or inability to obtain labor or materials through its regular sources (hereinafter collectively or singularly referred to as force majeure event). Where there

is an event of force majeure, the party prevented from or delayed in performing its obligations under this contract must immediately notify the other party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that party from or delaying that party in performing its obligations under this contract. That party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its performance of the contract and to fulfill its obligations under the contract. Upon completion of the event of force majeure, the party affected must as soon as reasonably practicable recommence performance of its obligations under this contract. In the event of such delay, the date of performance or of delivery shall be extended for a period equal to the time lost by reason of said delay on written approval of AURA. Contractor shall maintain a log of time lost and the reasons therefore for the periodic review by the Technical Representative. This Agreement shall be amended in writing to reflect a change in the period of performance due to delay.

An event of force majeure does not relieve a party from liability for an obligation that arose before the occurrence of that event. In the event the force majeure event exists for a year or more, either party hereto may seek to terminate this Agreement without further liability. All costs, including fees, incurred by Contractor as a result of such termination shall be reimbursable including, without limitation, all non-reimbursable costs and non-cancelable commitments incurred prior to the receipt of the termination notice.

LABOR DISPUTES
If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this agreement, the Contractor shall immediately give written notice, including all relevant information, to AURA. This provision shall be included in all subcontracts issued by Contractor related to the work.

ASSIGNMENT
This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties hereto, but may not be voluntarily assigned in whole or in part by either party without the prior written consent of the other party, provided, however, that AURA may assign this Agreement to the United States of America without the permission of the Contractor. Further, unless this Agreement is assigned to the Government, it does not bind or purport to bind the National Science Foundation or the United States of America. AURA may assign its rights under this agreement to either the National Science Foundation or to an organization succeeding it as the operator of the Gemini Observatory.

ACCESS TO RECORDS
AURA, the NSF, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to this agreement for the purpose of making audits, examinations, excerpts and transcriptions.

AUDIT AND AVAILABILITY OF RECORDS
AURA is responsible for ensuring that Contractor is in compliance with applicable laws and regulations and other award conditions. AURA, the NSF, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Contractor that are directly pertinent to this agreement. Financial reports, supporting documents, and other records pertinent to this agreement shall be retained by Contractor for a period of three (3) years from the date of final payment except that records related to audits, appeals, litigation, or the settlement of claims arising out of

performance of this agreement shall be retained until such audits, appeals, litigation, or claims have been resolved. Notwithstanding any other conditions of this Agreement, the records and financial statements of Contractor shall be made available upon request, at the Contractor's regular place of business, for examination by AURA or their duly authorized representative(s).

ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All matters within the scope of the Federal Arbitration Act of the United States (9 U.S.C. §§1 et seq.) shall be governed by it. The place of arbitration shall be Tucson, Arizona. The arbitrator shall have the right to award or include in its award any relief that he or she deems proper in the circumstances, including without limitation, money damages (with interest on unpaid amounts from date due), specific performance, and injunctive relief. The arbitrators shall not have the authority to award exemplary, punitive, or special damages. The award and decision of the arbitrator shall be conclusive and binding upon all parties hereto, and judgment upon the award may be entered in any court of competent jurisdiction. Notwithstanding anything to the contrary contained herein, each party hereto shall have the right in a proper case to obtain temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction, provided, however, that the parties agree to contemporaneously submit their dispute for arbitration on the merits as provided herein.

Both parties shall share the cost of the dispute resolution process equally; however, personal attorneys and witnesses or specialists are the direct responsibility of each party, and their fees and expenses shall be the responsibility of the individual parties.

PRESENCE ON AURA PREMISES

a. The Contractor agrees that all persons working for or on behalf of the Contractor whose duties bring them upon AURA's premises shall obey the rules and regulations that are established by AURA and shall comply with the reasonable directions of AURA's officers.

b. The Contractor shall be responsible for the acts of its employees, subcontractor(s), or agents while on AURA's premises. Accordingly, the Contractor agrees to take all necessary measures to prevent injury and loss to persons or property located on AURA's premises. The Contractor shall be responsible for all damages to persons or property caused by the Contractor, its subcontractors, or any of its agents or employees. The Contractor shall promptly repair, to the specifications of AURA, any damage that it, its subcontractor(s), or its employees or agents may cause to AURA's premises or equipment. If the Contractor fails to repair such damage, AURA may repair or have repaired the damage, and the Contractor shall reimburse AURA promptly for the cost of the repair. Alternatively, AURA may deduct the cost of the repair from any amounts owed to Contractor under this Agreement and seek reimbursement for any unpaid amount of the cost of repair from Contractor.

c. Contractor must comply with Safety Regulations as promulgated by the Occupational Safety and Health Act of 1970 as amended.

d. The Contractor agrees that, in the event of an accident of any kind, Contractor will immediately notify the Technical Representative designated herein and thereafter furnish a full written report of such accident.

e. The Contractor shall perform the services described in this Agreement without interfering with the activities of AURA, which will be coordinated with AURA.

USE OF AURA'S FACILITIES
The Contractor, its employees, subcontractors, or agents shall have the right to use only those facilities of AURA that are necessary to perform services under this Agreement and shall have no right of access to any other facilities of AURA.

AURA REPRESENTATIVE PLACED AT CONTRACTOR'S FACILITY
From time to time, the Technical Representative may choose to have an AURA representative placed at the facility where Contractor is performing the Work. Contractor will provide this representative with an office or cubicle, desk, telephone, and internet or email access, and will allow the AURA representative to attend all meetings and discussions regarding the Work.

GENERAL ACCESS BY AURA
Contractor will grant AURA personnel access at reasonable times to all places where the Work is being performed, including access to locations where Gen 4#3 subcontractors are performing any part of the Work, provided that access will be subject to site access rules. Contractor shall allow AURA to attend all meetings and teleconferences regarding the Work, both internal and with the Gen 4#3 subcontractors. Contractor will promptly provide AURA copies of any materials (documents, drawings, models, source code, etc.) prepared in the course of the Work (whether by Contractor or a Gen 4#3 subcontractor) at any time upon request by the Technical Representative, even if the materials are not part of the Gen4#3 Contract Deliverables.

RISK OF LOSS
Contractor and its subcontractors shall have and bear the risk of loss of materials and equipment left or stored on AURA's premises. Contractor and its subcontractors shall properly insure such materials and equipment against loss, damage, or destruction or other casualty. AURA shall not be responsible for loss, damage, or destruction of said materials and equipment while such materials are on AURA's premises. AURA will be responsible for loss, damage, or destruction of said materials and equipment after installation.

OSHA AND MSDS SHEETS
All equipment and materials used in the performance of this agreement must conform to the standards required by the William-Steiger Occupational Safety and Health Act of 1970. Proposers must furnish Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment, or hazardous materials at the time of delivery.

GOVERNMENT PROPERTY
If AURA provides Contractor with any equipment or materials or finances their purchase, Contractor shall make sure that they are all marked as "U.S. Government Property," shall attach tracking labels if supplied by AURA, shall track their locations at all times, and shall maintain the same in good condition. Contractor shall return this property to AURA upon demand or at the conclusion of the work, whichever comes first

US STATUTORY REQUIREMENTS

EQUAL EMPLOYMENT OPPORTUNITY
Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

DEBARMENT
No part of the work shall be subcontracted to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." By signing this contract or performing this purchase order contractor certifies that neither it nor any of its principle employees is on this debarred list. Contractor shall require a similar certification from all firms awarded subcontracts over $25,000.

ASSIGNMENT/SUBCONTRACTING
AURA may assign its rights under this agreement to either the National Science Foundation or to an organization succeeding it as the operator of the Gemini Observatory. Contractor shall not assign or delegate its rights/responsibilities under this agreement without prior written permission from AURA, and any assignment without such permission shall be void. Any assignment with AURA's permission shall not relieve contractor of responsibility for successful performance of the work. Contractor may not subcontract any portion of the work, not including purchases of commercially available items, without prior written permission from AURA.

LABOR DISPUTES
If the contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this agreement, the Contractor shall immediately give notice, including all relevant information, to AURA. This provision shall be included in all subcontracts issued by contractor related to the work.

CLEAN AIR AND WATER ACTS
Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).
Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

BYRD ANTI-LOBBYING AMENDMENT
By signing this contract contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of Gemini, any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining this contract or any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to AURA.

COPELAND ANTI-KICKBACK ACT
Contractors and subcontractors on public building or public work financed in whole or in Part by Loans or Grants from the United States in excess of $2,000.00 shall comply 18 USC 874. The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. AURA shall report all suspected or reported violations to the Federal awarding agency.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
In performing the work contractor shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

NONDISCRIMINATION
(a) This agreement is subject to the provisions of Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d], the regulations issued pursuant thereto by NSF [45 CFR 611], and the Assurance of Compliance which the Contractor has filed with NSF. No person on the basis of race, color, national origin, or handicap shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under this agreement. In addition, if the project involves an education activity or program, as defined by Title IX of the Education Amendments of 1972 [20 U.S.C. 1681-1686], no person on the basis of sex shall be excluded from participation in the project.
(b) By signing this agreement, Contractor certifies that it has filed an Assurance of Compliance with Title VI of the Civil Rights Act of 1964 document with either the NSF or U.S. Department of Health and Human Services, as is required under the NSF Grant General Conditions (GC-1). If Contractor has not filed such an Assurance of Compliance please contact the AURA Contracts Officer for the required form.
(c) Contractor certifies that during the term of this contract it will comply with Section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794] and NSF's implementing regulations [45 CFR 605].
(d) Contractor agrees to comply with the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq] as implemented by the Department of Health and Human Service regulations at 45 CFR 90 and the regulations of NSF at 45 CFR 617.

PATENT RIGHTS (APRIL, 1992)
(a) Definitions.

1. INVENTION means any invention or discovery, which is or may be patentable or otherwise protectable under Title 35 of the USC, to any novel variety of plant, which is or may be protected under the Plant Variety Protection Act (7 USC §§2321 et seq.).
2. SUBJECT INVENTION means any invention of the Contractor conceived or first actually reduced to practice in the performance of Work under this sub-award.
3. PRACTICAL APPLICATION means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the

invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.
4. MADE when used in relation to any invention means the conception or first actual reduction to practice of such invention.
5. NON-PROFIT ORGANIZATION means a domestic university or other institution of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 USC §501(c)) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 USC §501(a)) or any domestic non-profit scientific or educational organization qualified under a State non-profit organization statute.
6. NSF means the National Science Foundation, an agency of the federal government of the United States of America.

(b) Allocation of Principal Rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Patent Rights clause and 35 USC §203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world. With respect to any subject invention in which the Contractor retains title, AURA shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on their behalf the subject invention throughout the world for research purposes.

(c) Invention Disclosure, Election of Title and Filing of Patent Applications by Contractor.
1. The Contractor will disclose each subject invention to NSF within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of patent matters. The disclosure to NSF shall be in the form of a written report and shall identify the agreement under which the invention was made, and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to NSF, the Contractor will promptly notify NSF of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.
2. The Contractor will elect in writing whether or not to retain title to any such invention by notifying NSF within two years of disclosure to NSF. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the U. S., the period for election of title may be shortened by NSF to a date that is no more than 60 days prior to the end of the statutory period.
3. The Contractor will file its initial patent application on an invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the U. S. after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

4. Requests for extension of the time for disclosure to NSF, election, and filing under subparagraphs 1, 2, and 3, may, at the discretion of NSF, be granted.

(d) Conditions When the Government May Obtain Title. The Contractor will convey to NSF, upon written request, title to any subject invention:

1. if the Contractor fails to disclose or elect the subject invention within the times specified in paragraph c. above, or elects not to retain title; provided that NSF may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times;
2. in those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) 1 above, but prior to its receipt of the written request of NSF, the Contractor shall continue to retain title in that country; or
3. in any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Contractor.

1. The Contractor will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the subject invention within the times specified in paragraph c. above. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the Contractor Agreement was awarded. The license is transferable only with the approval of NSF except when transferred to the successor of that part of the Contractor's business to which the invention pertains.
2. The Contractor's domestic license may be revoked or modified by NSF to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR §404. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at discretion of NSF to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of the license, NSF will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by NSF for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR §404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Contractor Action to Protect Government's Interest.

1. The Contractor agrees to execute or to have executed and promptly deliver to NSF all instruments necessary to: (i) establish or confirm the rights the Government has throughout the world in those subject inventions for which the Contractor retains title; and (ii) convey title to NSF when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

2. The Contractor agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under this Contractor Agreement in order that the Contractor can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by paragraph c. 1. above. The Contractor shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U. S. or foreign statutory bars.
3. The Contractor will notify NSF of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
4. The Contractor agrees to include, within the specification of any U. S. patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the Contractor agreement) awarded by the National Science Foundation. The Government has certain rights in this invention. "
5. The Contractor or its representative will complete, execute and forward to NSF a confirmation of a License to the U. S. Government and the page of a United States patent application that contains the Federal support clause within two months of filing any domestic or foreign patent application.

(g) Subcontracts. The Contractor will include this Patent Rights clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work. The subcontractor will retain all rights provided for the Contractor in this Patent Rights clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(h) Reporting on Utilization of Subject Inventions. The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor and such other data and information as NSF may reasonably specify. The Contractor also agrees to provide additional reports in connection with any march-in proceeding undertaken by NSF in accordance with paragraph j. of this Patent Rights clause. As required by 35 USC §202(c)(5), NSF agrees it will not disclose such information to persons outside the Government without the permission of the Contractor.

(i) Preference for United States Industry. Notwithstanding any other provision of this Patent Rights clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the U. S. unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the U. S. However, in individual cases, the requirement for such an agreement may be waived by NSF upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on

similar terms to potential licensees that would be likely to manufacture substantially in the U. S. or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights. The Contractor agrees that with respect to any subject invention in which it has acquired title, NSF has the right in accordance with procedures at 37 CFR §401.6 and NSF regulations at 45 CFR §650.13 to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances and if the Contractor, assignee, or exclusive licensee refuses such a request, NSF has the right to grant such a license itself if NSF determines that:

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

2. such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

3. such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensee; or

4. such action is necessary because the agreement required by paragraph i. of this Patent Rights clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the U. S. is in breach of such agreement.

(k) Special Provisions for Contracts with Non-profit Organizations. If the Contractor is a non-profit organization, it agrees that:

1. rights to a subject invention in the U. S. may not be assigned without the approval of NSF, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;

2. the Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co- inventors (when NSF deems it appropriate) when the subject invention is assigned in accordance with 35 USC §202(e) and 37 CFR §401. 10;

3.the balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific or engineering research or education; and

4. it will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give preference to a small business firm if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the Contractor is also satisfied that the small

business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures or practices with the Secretary when the Secretary's review discloses that the Contractor could take reasonable steps to implement more effectively the requirements of this paragraph k. 4.

(l) Communications.

All communications required by this Patent Rights clause should be sent to:
Patent Assistant Office of the General Counsel
National Science Foundation
4201 Wilson Boulevard
Arlington, VA 22230