Gemini Instrument Feasibility Studies
RFP No. 0506720

Exhibit B: Fixed-Price Contract: Terms and Conditions (Document GIFS-03.3)

Association of Universities for Research in Astronomy, Inc. (AURA)
Operating the
Gemini Observatory
Hilo, Hawaii and Cerro Pachón, Chile



Definitions.
(a) "FAR" refers to the Federal Acquisition Regulations which can be found at: http://www.acquisition.gov/far/

(b) "AURA" refers to the Association of Universities for Research in Astronomy, Inc., an Arizona Corporation.

(c) The term "this agreement" refers to this contract.

(d) The term "Vendor" refers to the Contractor as defined in the Main Document.

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.

TECHNICAL DIRECTION. The Technical Representative identified by the AURA Contracts Officer is authorized to provide technical information needed by Vendor, but is not authorized to direct Vendor to do anything that will affect the price, schedule, requirements, or scope of the work, or which may give rise to a claim for extra costs or schedule delay. If the Technical Representative, or anyone at AURA, gives Vendor any direction that will result in a change to the price, schedule, requirements, or scope of work, or which may give rise to a claim for extra costs or schedule delay vendor shall not implement the direction but shall instead contact the AURA Contracts Officer and request guidance on how to proceed.

AMENDMENTS AND CHANGE ORDERS. (a) Nothing in this agreement, including the scope or qualities of the services or goods provided, may be modified except by means of a written document (amendment or change order) signed by the AURA Contracts Officer and accepted by the vendor. Verbal agreements or direction from anyone other than the AURA Contracts Officer to modify or add work or requirements are void; if anyone at AURA gives vendor any direction that will result in a change to the price, schedule, requirements, or scope of work, or which may give rise to a claim for extra costs or schedule delays, vendor shall not implement the direction but shall instead contact the AURA Contracts Officer and request guidance on how to proceed.

(b) An amendment describes the modification and the agreed price adjustment and is signed by both vendor and the AURA Contracts Officer.

(c) A change order is issued and signed by the AURA Contracts Officer and describes the modification to the scope of work while leaving the costs to be determined later. All change orders shall be performed by vendor on a time and materials basis using the hourly rates for personnel and the overhead charges on purchased materials and services listed in the main body of the agreement or provided to AURA upon request prior to commencing work on the change order. Claims shall be submitted on change orders within 30 days after the change order work is completed and shall contain an itemization of labor hours by worker category and purchased goods/services. AURA shall review change order claims promptly

and if there is no dispute prepare a contract amendment which closes out the change order by modifying the agreement price and scope of work to include the change order.

COPYRIGHTABLE MATERIAL. (a) The term "Subject Writing" refers to any copyrightable material which is produced by vendor 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 vendor's personnel and agents. Subject Writings include such items as drawings, documents, reports, books, journal articles, software, databases, sound recordings, photographs, artwork, and videotapes.

(b) Except as otherwise specified in this agreement, the vendor may own or permit others to own the copyright in all Subject Writings. Vendor agrees that if it or anyone else does own copyright in a Subject Writing, then for each Subject Writing: (1) AURA, and any subsequent organization operating the Gemini Observatory, shall have nonexclusive, nontransferable, irrevocable, royalty-free license to exercise throughout the world all rights provided by copyright for purposes related to operating the Gemini Observatory; and (2) the parties to the Gemini Agreement shall have nonexclusive, nontransferable, irrevocable, royalty-free license to exercise throughout the world all rights provided by copyright for research purposes. These licenses shall include the rights to reproduce, prepare derivative works, distribute (but not sell) copies to the public, and perform publicly and display publicly, by or on behalf of the license holder.

(c) The vendor agrees to acquire, through written agreement or an employment relationship, the ability to comply with the requirements of the preceding paragraphs. The vendor 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) Except as provided otherwise in this agreement, there shall be no confidentiality restrictions on Subject Writings and AURA may disclose any of them to any person or organization.

(e) Vendor may place restrictions on disclosure of proprietary information acquired by vendor prior to the date of this Contract that was not developed for any purposes related to the Gemini Observatory (collectively, the "Proprietary Information"), provided, however, that AURA, and any successor operator of the Gemini Observatory shall be permitted to disclose Proprietary Information to its employees and agents for purposes of Gemini Observatory operations. Material shall only be considered to be "Proprietary Information" if it is clearly marked as such by Vendor and otherwise meets the definition given in this paragraph.

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; or (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.

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 vendor for any costs in addition to the agreed price unless such costs are specifically listed in this agreement.

INDEMNIFICATION. (a) To the extent permitted by law, vendor shall defend, indemnify, and hold harmless AURA, its directors, officers, successors, employees, and visitors, from any claim, loss, damage or expense (including reasonable attorney's fees), including any incidental or consequential damages, directly or indirectly arising out of:

(1) Any infringement or claim of infringement of patents, trade secrets, copyright, or trademark by reason of the use of the goods or services purchased under this agreement except for goods fabricated to AURA's detailed design;

(2) Any act or omission by the vendor, or its employees, agents, subcontractors or assignees arising out of or in connection with performance of services ordered by this agreement.

(b) These indemnity obligations will survive the expiration or termination of this agreement.

CHOICE OF LAW. The laws of the State of Hawaii, without regard to conflict of laws provisions, shall govern the formation, performance and the legal enforcement of this agreement, and venue for any judicial action shall be Honolulu, Hawaii.

INDEPENDENT CONTRACTOR. The vendor is an independent contractor and not an agent or employee AURA. Vendor has no authority to bind AURA to any agreements or liability except as expressly set forth herein. Vendor shall be solely responsible for the acts of vendor, its employees, and agents.

TERMINATION FOR DEFAULT/CAUSE. (a) If the vendor refuses or fails to timely perform any of the provisions of this agreement with such diligence as will ensure its completion within the time specified in this agreement, AURA may notify the vendor in writing of the non-performance, and if not promptly corrected within the time specified, AURA may terminate the vendor's right to proceed with this agreement or such part of this agreement as to which there has been delay or a failure to properly perform. The vendor shall continue performance of the agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere and excess costs incurred in AURA's operation because of any resulting delay. Payment for completed services performed and accepted shall be at the price(s) provided in this agreement.

(b) AURA may withhold amounts due to the vendor 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 operations because of the breach.

(c) The vendor shall not be in default by reason of any failure in performance of this agreement in accordance with its terms if such failure arises out of acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

(d) If after termination of the vendor's right to proceed under this clause, it is determined for any reason that the vendor 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.

TERMINATION FOR CONVENIENCE. AURA may terminate this agreement in whole or in part, for its convenience. AURA shall give written notice of the termination to the vendor specifying the part of the agreement terminated and when termination becomes effective. Upon receipt of the notice of termination, the vendor shall incur no further obligations except to the extent necessary to mitigate costs of performance. The amount due to vendor upon termination shall be calculated as described in FAR 52.249-5 (Educational and Other Nonprofit Institutions). Regardless of any other provisions, the amount of the termination liability under this paragraph shall not exceed the amount of the price provided in this agreement plus a reasonable cost for settlement expenses.

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

TIME OF ESSENCE. Time is of the essence in performing this agreement.

COMPLETE AGREEMENT/WAIVER. This agreement is the exclusive expression of the parties' agreement and replaces all prior understandings, whether written or verbal. The terms of this agreement may not be altered or explained by course of dealing, course of performance, trade custom, or consistent additional terms. A course of performance by the parties which is inconsistent with the terms of this agreement shall not constitute a modification or waiver of those terms.

CONSEQUENCES OF BREACH. AURA's operation will suffer negative consequences and additional costs if the deliverable goods/services do not exactly meet the specifications and schedule given in this agreement.

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. Bidders must furnish Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.

EQUAL EMPLOYMENT OPPORTUNITY. Vendor 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 vendor certifies that neither it nor any of its principle employees is on

this debarred list. Vendor 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. Vendor 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 vendor of responsibility for successful performance of the work. Vendor 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 vendor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this agreement, the Vendor shall immediately give notice, including all relevant information, to AURA. This provision shall be included in all subcontracts issued by vendor related to the work.

PUBLICATIONS.

(a) The vendor 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. AST0525280."

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 Vendor 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 Vendor 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.

CLEAN AIR AND WATER ACTS. Vendor 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 vendor 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.

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 vendor which are directly pertinent to this agreement for the purpose of making audits, examinations, excerpts and transcriptions.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. In performing the work vendor 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 vendor 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 Vendor 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, Vendor 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 Vendor has not filed such an Assurance of Compliance please contact the AURA Contracts Officer for the required form.

(c) Vendor 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) Vendor 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 contract.

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 through-out the world. With respect to any subject invention in which the Contractor retains title, the non-U.S. Parties to the Gemini Agreement shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on their behalf the subject invention through-out 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 AURA within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of

patent matters. The disclosure to AURA shall be in the form of a written report and shall identify the contract 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 AURA, the Contractor will promptly notify AURA 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 AURA within two years of disclosure to AURA. 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. 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 contract 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 contract 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 contract) 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 subcontractors' 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 that 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 coinventors (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