

AURA GENERAL PROVISIONS

**ASSOCIATION OF UNIVERSITIES FOR RESEARCH IN ASTRONOMY, INC.
GENERAL PROVISIONS FOR A CONTRACTOR AGREEMENT**

1. DEFINITIONS

- (a) "AURA" refers to the Association of Universities for Research in Astronomy, Inc., an Arizona Corporation.
- (b) "NSF" refers to the National Science Foundation.
- (c) "Work Locations" are, collectively, any and all locations at which the Work will be performed by Contractor or any of its sub-Contractors or suppliers, including, but not limited to, design and drafting facilities, fabrication and machine shops, welding facilities, painting and coating facilities, assembly facilities, packaging facilities, and all other locations at which the Work will be performed.
- (d) "CO" refers to the Contracts Officer.
- (e) "Contractor Agreement" refers to the Contract or Subaward of which this document is made a part.
- (f) "Contractor" refers to the Contractor or Subawardee designated in the Contract or Subaward of which this document is made a part.

2. COMMUNICATION

All communication concerning administration of this Contractor Agreement must be furnished solely to the CO at the address indicated in this Contractor agreement. Communication of a technical nature only may be directed to the Technical Representative designated in the Contractor agreement.

3. TECHNICAL DIRECTION

The Technical Representative identified by the CO is authorized to provide technical information required by the Contractor, but is not authorized to direct Contractor to do anything that will affect the price or schedule of the Work. If the Technical Representative gives the Contractor any direction that will result in a price or schedule change, the Contractor shall not implement the direction, but shall instead contact the CO and request guidance on how to proceed.

4. 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 Contractor 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.

5. 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.

6. U. S. STATUTORY REQUIREMENTS

6.1 APPLICABLE FEDERAL STANDARDS AND REQUIREMENTS

- (a) By acceptance of this Agreement, Contract or Purchase Order, Contractor or Seller certifies that it shall comply with all applicable clauses from the most recent (as amended) National Science Foundation *Cooperative Agreement Financial & Administrative Terms and Conditions* (CA-FATC); these articles may be found in:

http://www.nsf.gov/pubs/policydocs/cafadc/cafadc_117pdf

- (b) By acceptance of this Agreement, Contract or Purchase Order, Contractor or Seller certifies that it shall comply with the applicable provisions of the most recent (as amended) "2 CFR § 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). These provisions may be found in: <https://www.gpo.gov/fdsys/granule/CFR-2014-title2-vol1/CFR-2014-title2-vol1-part200/content-detail.html>

6.2 EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

- (a) This Section 6.2 is applicable if the amount of this Contractor Agreement exceeds \$100,000. Contractor agrees that the CO, the Director of the NSF, and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three (3) years after final payment under this Contractor Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Contractor involving transactions related to this Contractor Agreement. Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the CO, the Director of the NSF, and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract" as used here excludes: (1) purchase orders and subcontracts not exceeding \$100,000; and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. Such periods of access and examination, for records which relate to: (i) litigation or settlement of claims arising from the performance of this Contractor Agreement; or (ii) costs and expenses of this Contractor Agreement as to which exception has been taken by the Comptroller General of the United States, or any duly authorized representative from the General Accounting Office of the United States, shall continue until such appeals, litigation, claims, or exceptions have been disposed of. Contractor shall reimburse AURA for any and all amounts paid to Contractor which are used to perform the Work which are subsequently determined to be a "disallowed" cost in accordance with the "OMB Uniform guidance: Administrative Requirements, Cost Principles & Audit Requirements for Federal Awards." (Also known as the Omni Circular) which can be found in 2 CFR 200 et. seq.
- (b) Financial records, supporting documents, statistical records, and other records pertinent to this Contractor Agreement shall be retained by the Contractor for a period of three (3) years after final payment under this Contractor Agreement, or for such longer periods, if any, as is required by applicable statutes or by other provisions of this Contractor Agreement. Records that relate to audits, appeals, litigation, or settlement of claims arising out of the performance of the Work under this Contractor Agreement shall be retained until such audits, appeals, litigation, or claims have been disposed of. Records relating to intellectual property shall be retained by the Contractor for three (3) years after final payment under this Contractor Agreement. Unless court action or audit proceedings have been initiated, Contractor may substitute microfilm copies of original records.
- (c) The CO, the Director of the NSF, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of Contractor, to make audits, examinations, excerpts and transcripts of all direct and indirect costs of whatever nature claimed and reimbursed under this Contractor Agreement. Such records shall be made available, upon request and during normal business hours, at Contractor's regular place of business. Contractor shall reimburse AURA for any and all amounts paid to Contractor which are used to perform the Work which are subsequently determined to be a "disallowed" cost in accordance with "OMB Uniform guidance: Administrative Requirements, Cost Principles & Audit Requirements for Federal Awards." (Also known as the Omni Circular) which can be found in 2 CFR 200 et. seq.
- (d) Further, any negotiated subcontract in excess of \$100,000 made by Contractor shall include a provision to the effect that the CO, the Contractor, the Director of the NSF, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to pertinent records for similar purposes. In the event that this clause is or may not be enforceable as a result of Contractor or any of its subcontractors being foreign entities not located within the United States, Contractor shall cooperate to effect the intent of this Contractor Agreement by permitting an auditing agency of the Government of any foreign nation having jurisdiction over Contractor or such subcontractor to exercise all rights provided the Director of the NSF

and the Comptroller General of the United States under this Section 6.2.

6.3 EQUAL OPPORTUNITY

During the performance of this Contractor Agreement, Contractor agrees as follows:

- (a) Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.
- (b) Contractor shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship
- (c) Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by AURA that explain this clause.
- (d) Contractor shall, in all solicitations or advertisement for employees placed by, or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other Contractor agreement or understanding, the notices to be provided by AURA advising the labor union or workers' representative of Contractor's commitments under this clause, and the union shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) Contractor shall comply with Executive Order 11246, as amended, by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", and as supplemented by regulation at 41 CFR part 60, "Office of Federal Contract Compliance Program, Equal Employment Opportunity, Department of Labor."
- (g) Contractor shall furnish to the National Science Foundation all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the date of the Contractor Agreement, unless filed within 12 months preceding the date of the Contractor Agreement.
- (h) Contractor shall permit access to its books, records and accounts by the NSF or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain Contractor's compliance with the applicable rules, regulations, and orders.
- (i) If the OFCCP determines that Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, the Contractor Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (j) Contractor shall include the terms and conditions of this Section 6.3 in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or Contractor.
- (k) Contractor shall take such action with respect to any subcontract or purchase order as the NSF may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if Contractor becomes involved in, or is threatened with, litigation with a subcontractor or Contractor as a result of any direction, Contractor may request the United States to enter into the litigation process to protect the interests of the United States.
- (l) Notwithstanding any other clause in this Contractor Agreement, disputes related to this Section 6.3 will be governed by the procedures in 41 CFR 60-1.1.

6.4 CLEAN AIR AND WATER

(a) This clause is applicable only to Work conducted within the United States. Contractor agrees as follows: (1) To comply with all the requirements of Section 114 of the Clean Air Act, as amended (41 USC 7414, Et. Seq.) and Section 308 of the Clean Water Act (33 USC 1318, as amended by P.L. 92-500), relating to inspection, monitoring, entry, reports and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued there under before the award of this Contractor Agreement; (2) That no portion of the Work required by this Contractor Agreement will be performed in a facility listed on the Environmental Protection Agency list of violating facilities on the date when this Contractor Agreement

was awarded, unless and until the EPA eliminates the name of such facility or facilities from such listing; (3) To use its best efforts to comply with Clean Air Standards and Clean Water Standards at the facilities in which the Contractor Agreement is being performed; and (4) To insert the substance of the provisions of this clause into any non-exempt subcontract, including this clause 13.3(a)(4).

(b) The terms used in this Section 6.4 have the following meanings: (1) The term "Air Act" means the Clean Air Act, (42 USC 7401 Et. Seq.); (2) The term "Water Act" means Clean Water Act, (33 USC 1251 Et. Seq.); and (3) The term "Clean Air Standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of the Air Act (42 USC 7410(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 USC 7411(c) or (d)), or an approved implementation procedure under Section 111 (d) of the Air Act (42 USC 7412(d)); (4) The term "Clean Water Standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 USC 1842), or by a local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 USC 1317); (5) The term "compliance" means compliance with Clean Air Standards or Clean Water Standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency in accordance with the requirements of the Air Act or Water Act and related regulations; (6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by the Contractor or a subcontractor utilized in the performance of the Contractor Agreement or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

6.5 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (Mar 1986)

If this Agreement involves (a) payment(s) to Contractor in excess of \$2,000.00, Contractor and its subcontractors shall comply and cause its subcontractor to comply with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-333) as supplemented by the Department of Labor Regulations (29 CFR part 5). This Contractor

Agreement and any subcontract made by Contractor to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) (the Act), is subject to the following terms and all other applicable provisions and exceptions of the Act and the regulations of the Secretary of Labor.

(a) Neither Contractor, nor any subcontractor contracting for any part of the Work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300), shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) In the event of any violation of the provisions set forth in paragraph 6.5 (a), Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractors shall be liable to AURA for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph 6.5 (a) in the sum of \$10 for each calendar day on

which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph 6.5 (a).

(c) AURA may, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractors under the Contractor Agreement or any other Federal Contractor agreement with the Contractor, or any other Federally assisted Contractor Agreement subject to the Contract Work Hours and Safety Standards Act which is held by AURA, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or any subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph 6.5 (b).

(d) Contractor or its subcontractors shall maintain payrolls and basic payroll records during the course of the Work and shall preserve them for a period of three (3) years from the completion of the Contractor Agreement for all laborers and mechanics working on the Contractor Agreement. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours

worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act. The records to be maintained under this paragraph 6.4(d) shall be made available by Contractor or subcontractor for inspection, copying or transcription of authorized representatives of AURA and the Department of Labor. Contractor or its sub-subcontractors shall permit such representatives to interview employees during working hours on the job.

(e) Contractor and its subcontractors shall insert in any subcontracts the provisions set forth in paragraphs 6.5 (a) through 6.5 (d) and also a clause requiring the subcontractor to include these provisions in any lower tier subcontract. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs 6.5 (a) through 6.5 (d).

6.6 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 Contractor Agreement or performing the Work the 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.

6.7 BYRD ANTI-LOBBYING AMENDMENT

By signing this Contractor Agreement, 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 AURA, 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 of subcontractors shall certify 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 any agency, a Member of Congress, Officer or employee of Congress or an employee or member of Congress in connection with obtaining any federal contract, grant or other award covered by 31 U.S. C. 1352. Such disclosures are forwarded from tier to tier up to AURA.

7. FLY AMERICA ACT

The following shall be applicable to Contractor and its subcontractors.

1. In accordance with the Fly America Act (49 USC 40118), any air transportation to, from, between, or within a country other than the U.S. of persons or property, the expense of which will be assisted by NSF funding, must be performed by or

under a code-sharing arrangement with a U.S.-flag air carrier if service provided by such a carrier is available (see Comptroller General Decision B-240956, dated September 25, 1991). Tickets (or documentation for electronic tickets) must identify the U.S. flag air carrier's designator code and flight number.

2. For the purposes of this requirement, U.S.-flag air carrier service is considered available even though: (a) comparable or a different kind of service can be provided at less cost by a foreign-flag air carrier;

(b) foreign-flag air carrier service is preferred by, or is more convenient for, NSF or traveler; or

(c) service by a foreign-flag air carrier can be paid for in excess foreign currency.

3. The following rules apply unless their application would result in the first or last leg of travel from or to the U.S. being performed by a foreign-flag air carrier:

(a) a U.S.-flag air carrier shall be used to destination or, in the absence of direct or through service, to the farthest interchange point on a usually traveled route.

(b) if a U.S.-flag air carrier does not serve an origin or interchange point, a foreign-flag air carrier shall be used only to the nearest interchange point on a usually traveled route to connect with a U.S. flag air carrier.

d. *Use of Foreign-Flag Air Carriers*

There are certain circumstances under which use of a foreign-flag air carrier is permissible. These circumstances are outlined below:

1. *Airline "Open Skies" Agreements:*

A foreign flag air carrier may be used if the transportation is provided under an air transportation agreement between the United States and a foreign government, which the Department of Transportation has determined meets the requirements of the Fly America Act. For information on "open skies" agreements in which the United States has entered, please refer to the General Services Administration's (GSA) website at <http://www.gsa.gov/portal/content/103191>.

Note on U.S./European Union Open Skies Agreement

In 2007, the U.S. entered into an "Open Skies" Agreement with the European Union ("EU"). This agreement was modified in June 2010. The current Agreement gives European Community airlines (airlines of Member States) the right to transport passengers and cargo on flights funded by the U.S. government, when the transportation is between: (

1) any two points outside the United States; or (2) a point in the United States and any point outside the United States that the EU airline is authorized to serve under the "Open Skies" Agreement. As of 2011, two significant changes have been made to the U.S./EU Open Skies Agreement. First, EU airlines are now granted the right to transport civilian agency-funded passengers who are NOT eligible to travel on GSA Airline City Pair Contract fares (e.g., grantees) between a point in the United States and a point outside the United States even if there is a GSA Airline City Pair Contract fare in effect between the origin and destination points. An individual, however, who is traveling on a route for which there is a City Pair Contract fare in effect, *and who is eligible for such a fare* (e.g., Federal employee), will be required to fly on a U.S. carrier, absent another applicable exception. Second, under the amended Agreement, EU airlines are now authorized to transport passengers between points in the United States and points outside the EU if the EU airline is authorized to serve the route under the Agreement. This includes flights that originate, arrive, or stop in the EU. Prior to this change, EU airlines were limited to flying passengers between points in the U.S. and points in the EU.

2. *Involuntary Rerouting:* Travel on a foreign-flag carrier is permitted if a U.S.-flag air carrier involuntarily reroutes the traveler via a foreign-flag air carrier, notwithstanding the availability of alternative U.S.-flag air carrier service.

3. *Travel To and From the U.S. on non-European Community Airlines*

Use of a non-European Community foreign-flag air carrier is permissible if the airport abroad is:

- (a) the traveler's origin or destination airport, and use of U.S.-flag air carrier service would extend the time in a travel status by at least 24 hours more than travel by a foreign-flag air carrier; or
- (b) an interchange point, and use of U.S.-flag air carrier service would increase the number of aircraft changes the traveler must make outside of the U.S. by two or more, would require the traveler to wait four hours or more to make connections at that point, or would extend the time in a travel status by at least six hours more than travel by a foreign-flag air carrier.

4. *Travel Between Points Outside the U.S. on non-European Community Airlines*

Use of a non-European Community foreign-flag air carrier is permissible if:

- (a) travel by a foreign-flag air carrier would eliminate two or more aircraft changes en route;
- (b) travel by a U.S.-flag air carrier would require a connecting time of four hours or more at an overseas interchange point;

Or

(c) the travel is not part of the trip to or from the U.S., and use of a U.S.-flag air carrier would extend the time in a travel status by at least six hours more than travel by a foreign-flag air carrier.

5. *Short Distance Travel.* For all short distance travel, regardless of origin and destination, use of a foreign-flag air carrier is

permissible if the elapsed travel time on a scheduled flight from origin to destination airport by a foreign-flag air carrier is three hours or less and service by a U.S.-flag air carrier would double the travel time.