



ASSOCIATED UNIVERSITIES, INC./NATIONAL RADIO ASTRONOMY OBSERVATORY/GREEN BANK OBSERVATORY
 GENERAL TERMS AND CONDITIONS
 FIXED PRICE and TIME AND MATERIAL ORDERS EXCEEDING \$100,000

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**GENERAL TERMS AND CONDITIONS
FIXED PRICE and TIME & MATERIALS
IN EXCESS of \$100,000**

Article 1. Independent Contractor

In the conduct of the work hereunder the Contractor. Subcontractor or Vendor (herein after “Contractor”) is acting in the capacity of an independent contractor and is not an agent or employee of AUI in the performance of the work. AUI, however, shall have general direction of the work and the right to control the final result sought to be obtained and the acceptance of the materials, products, supplies and/or services.

Article 2. Indemnity and Limitation of Liability

Contractor agrees to defend, indemnify, and hold harmless AUI and the Government, the affiliated companies of each, and all of their directors, employees, agents and representatives, from and against:

1. Any claim, demand, cause of action, liability, loss, or expense arising by reason of Contractor’s actual or asserted failure to comply with any law, ordinance, regulation, rule or order, or with this Contract. This clause includes, but is not limited to, fines or penalties by Government authorities and claims arising from Contractor’s actual or asserted failure to pay taxes.
2. Any claim, demand, cause of action, liability, loss, or expense arising from actual or asserted violation or infringement of rights in any patent, copyright, proprietary information, trade secret, or other property right caused or alleged to be caused by the use or sale of goods, materials, equipment, methods, processes, designs or information, including construction methods, construction equipment, and temporary construction facilities, furnished by the Contractor or its subcontractors in performance of the work. Should any goods or services provided by Contractor become, or appear likely to become, the subject of a claim of infringement of a patent, copyright or other property right, Contractor shall, at AUI’s option, either procure for AUI and the Government the right to continue using such goods or services, replace same with equivalent, non-infringing goods or services, or modify the goods or services so that the use thereof becomes non-infringing, provided that any such modification or replacement is of equal quality and provides equal performance to the infringing goods or services.
3. Any claim, demand, cause of action, liability, loss or expense for actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of this Contract or out of any acts or omissions of Contractor, or subcontractors.
4. Contractor’s indemnity obligations shall apply regardless of whether the party to be indemnified was concurrently negligent, whether actively or passively, excepting only where the injury, loss, or damage was cause solely by the negligence of willful misconduct of, or defects in design furnished by, the party to be indemnified. Contractor’s defense and indemnity obligations shall include the duty to reimburse any attorney’s fees and expenses incurred by AUI or the Government for legal action to enforce Contractor’s indemnity obligations.
5. In the event that the indemnity provisions in this Contract are contrary to the law governing this Contract, then the indemnity obligations applicable hereunder shall be construed to be to the fullest extent allowable by applicable law.
6. With respect to claims by employees of Contractor or its subcontractors, the indemnity obligations created under this clause, shall not be limited by the fact of, amount, or type of benefits or compensation, payable by or for Contractor, its subcontractors or suppliers under any workers compensation, disability benefits, or other employee benefits acts or regulations, and Contractor waives any limitation of liability arising from workers’ compensation or such other acts or regulations.

7. AUI shall be entitled to retain from payments otherwise due Contractor such amounts as shall reasonably be considered necessary to satisfy any claims, suits or liens for damages that fall within Contractor's indemnity obligations under this clause, until such claims, suits or liens have been settled and satisfactory evidence to that effect has been furnished to AUI.

8. NEITHER AUI NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, PARENTS, SUBSIDIARIES, AND AFFILIATES (HEREINAFTER COLLECTIVELY, THE "AUI GROUP") SHALL HAVE ANY LIABILITY WITH RESPECT TO THEIR OBLIGATIONS HEREUNDER OR OTHERWISE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE, LOST PROFITS, LOST SAVINGS, OR OTHER FINANCIAL LOSS, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, THE AUI GROUP SHALL NOT HAVE ANY LIABILITY TO CONTRACTOR OR ANY OTHER PERSON IN CONNECTION WITH THE SERVICES RENDERED PURSUANT TO THIS CONTRACT, EXCEPT FOR ANY LIABILITY FOR LOSSES, CLAIMS, DAMAGES, OR LIABILITIES WHICH HAVE BEEN FINALLY DETERMINED IN ACCORDANCE HEREOF TO HAVE RESULTED SOLELY FROM THE AUI GROUP'S GROSS NEGLIGENCE OR UNLAWFUL OR WILLFUL MISCONDUCT. IN ANY EVENT, THE LIABILITY OF THE AUI GROUP TO CONTRACTOR FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT PAID TO CONTRACTOR BY THE AUI GROUP FOR THE SERVICES GIVING RISE TO THE LIABILITY. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE.

Article 3. Notices

All notices or communications shall be in writing and mailed or delivered to National Radio Astronomy Observatory (NRAO), at the address shown below, and to the Contractor at the address set forth below, or to such other place or places as AUI or the Contractor, as the case may be, shall designate in writing.

National Radio Astronomy Observatory

Contractor (NAME)

Article 4. Permits and Responsibility for Work

The Contractor, without additional expense to AUI, shall obtain all necessary licenses and permits. AUI shall provide all necessary assistance in obtaining the required licenses and permits. The Contractor shall be responsible for all damages to persons or property that occurs as a result of its fault or negligence in connection with the prosecution of the work. The Contractor shall also be responsible for all materials delivered and work performed until completion and final acceptance, except for any completed unit thereof which theretofore may have been finally accepted. The Contractor shall take proper safety and health precautions to protect the work, the workers, employees, the public, and the property of others.

Article 5. Compliance With Laws, Regulations, and NSF Terms and Conditions

The Contractor agrees to comply with the latest revision or modification of all applicable Federal, State, and local laws, codes, and regulations in connection with the prosecution of the work, as well as NSF cooperative agreement financial and administrative terms and conditions applicable by reason of the fact that this contract is issued under a cooperative agreement with the U.S. Government. In the event any such change in applicable law, regulation, term, or condition impacts the cost of this Contract, such impact shall be addressed pursuant to Article 7, Changes.

Article 6. Design--Review and Ownership

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific information, and all photographs, negatives, reports, findings, recommendations and memoranda of every description, as well as all copies of the foregoing, relating to the work or any part thereof, shall be subject to review by AUI at all reasonable times. All such material (whether or not specifically identified above) originated in the course of the work shall be the property of the U.S. Government and may be used by the U.S. Government for any purpose whatsoever including making it available for public use without any claim on the part of the Contractor for additional compensation. Such material shall be delivered to AUI, or otherwise disposed of by the Contractor as AUI may direct during the progress of the work, or in any event as AUI shall direct upon completion or termination of this contract. The Contractor and his subcontractors shall afford AUI proper facilities for any inspection pursuant to this article. Limited data rights will be provided.

Article 7. Changes

1. AUI may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes: (i) in the specifications (including drawings and designs); (ii) in the method or manner of performance of the work, or place of delivery; (iii) in the AUI-furnished or U.S. Government-furnished facilities, equipment, materials, services, or site; (iv) time of performance of the work, or delivery schedule; or (v) plans and specifications and instructions incorporated in the contract. Only an authorized AUI contracts or procurement representative may execute a change. Any work performed prior to an executed change order, will at the Contractor's risk.
2. In the event the US Government mandates a change or alters the terms of its agreement with AUI that impact this Contract, including but not limited to changes in applicable law, code, regulation, and/or cooperative agreement terms and conditions, notwithstanding any other term herein, AUI may unilaterally change this Contract and/or the nature of the Contract to address and accommodate the US Government's change or alteration.
3. Any other written order, including direction, instruction, interpretation, or determination which is regarded as a change by the Contractor will be considered, provided AUI receives written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order within thirty (30) days of receiving such order.
4. Except as herein provided, no order, statement, or conduct of AUI or its representatives shall be treated as a change under this article or entitle the Contractor to an equitable adjustment hereunder.
5. If any change under this article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by an order, an equitable adjustment may be made and the contract modified in writing accordingly. Such an equitable adjustment shall be dependent on available funding. Except for claims based on defective specifications, no claim for any change under paragraph 2 above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required. Furthermore, in the case of defective specifications for which AUI is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

6. If the Contractor intends to assert a claim for an equitable adjustment under this article, he must, within 30 days after receipt of a written change order under paragraph 1 or 2 above, submit to AUI a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by AUI. The statement of claim hereunder may be included in the notice under paragraph 3 above. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" article of this contract; however, nothing in this article shall excuse the Contractor from proceeding with the contract as changed.
7. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

Article 8. Inspection and Inspection System

1. Except as otherwise provided in this contract, all material and workmanship shall be subject to inspection, examination and test by AUI at any and all times during the manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. AUI shall have the right to reject defective material and workmanship or require their correction. Rejected workmanship shall be satisfactorily corrected, and rejected material shall be replaced with proper material without charge therefore and the Contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed in a timely manner with the replacement of the rejected material and/or the correction of defective workmanship, AUI may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost thereof to the Contractor (excluding incidental and consequential damages), or may terminate the right of the Contractor to proceed as provided in the Termination for Default article.
2. The Contractor shall furnish promptly, without additional charge, all reasonable facilities, labor, and materials necessary for the safe and convenient inspection and tests that may be required by the inspectors. All inspection and tests by AUI shall be performed in such manner as not unnecessarily to delay the work. Special full size and performance tests shall be as described in the specifications. The Contractor may be charged with any additional cost of inspection when material and workmanship are not ready at the time inspection is requested by the Contractor.
3. Should it be considered necessary or advisable by AUI at any time before final acceptance of the entire work to reexamine work already completed, the Contractor, on request, shall promptly furnish all necessary facilities, labor and materials. If such work is found to be defective or nonconforming in any material respect, due to fault of the Contractor or its subcontractors, it shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of this contract, an equitable adjustment shall be made in the amount due under this contract to compensate the Contractor for the additional services rendered in such examination and reconstruction. If completion of the work has been delayed, the Contractor shall be granted a suitable extension of time on account of the additional work involved.
4. Inspection of material and finished articles to be incorporated in the work at the site shall be made at the place of production, manufacture or shipment, whenever the quantity justifies it, unless otherwise stated in the Specifications. Such inspection and acceptance, unless otherwise stated in the Specifications, shall be final, except as to latent defects, departures from specific requirements of this contract and the Specifications and drawings made a part thereof, damage or loss in transit, fraud, or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of material and workmanship for final acceptance as a whole or in part shall be made at the site. Nothing contained in this article shall in any way restrict AUI's right under any warranty or guarantee.
5. The Contractor shall (1) maintain an adequate inspection system and perform such inspections as will insure that the work performed under the contract conforms to the contract requirements, and; (2) maintain and make available to AUI adequate records of such inspections.

Article 9. Materials and Workmanship Warranty

1. All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of AUI, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
2. The Contractor shall obtain AUI's approval of the machinery and mechanical and other equipment to be incorporated into the work (such approval shall not be unreasonably withheld). When requesting approval, the Contractor shall furnish to AUI; the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by AUI, the Contractor shall also obtain AUI's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
3. All work under this contract shall be performed in a skillful and workmanlike manner. AUI may require, in writing, that the Contractor remove from the work any employee AUI deems incompetent, careless, or otherwise objectionable.

Article 10. Warranty

Unless otherwise expressly provided herein, the Contractor warrants to AUI that the goods to be delivered hereunder will be free from defects in design, material, workmanship, and title, will fully conform to the specifications and will meet all the requirements of this contract. If it appears at any time or times within one (1) year from the date of final acceptance by AUI that the goods delivered hereunder do not meet the warranty specified above, and AUI notifies the Contractor promptly to this effect, the Contractor shall thereupon correct any defect, including non-conformity with the specifications, at its own expense, in a manner satisfactory to AUI, or, at the option of AUI and at no cost to AUI, replace the goods with free shipping charges. AUI's premises with goods conforming to the requirements. The Contractor shall be responsible for installation of repaired or replaced parts, at no cost to AUI. The Contractor warrants that the material, equipment, and apparatus, after installation and/or final testing, shall give proper and continuous service under all conditions and services required and specified, or which may be reasonably inferred from the specification. This warranty shall be applicable to any and all corrected or replaced parts, material, or workmanship until one (1) year after the delivery, or, as the case may be, the installation, final testing and acceptance of the same. The rights and remedies specified in this Article shall be without prejudices to any other rights or remedies that AUI may have for breach of warranty.

Article 11. Preference for United States-Flag Air Carriers

1. "International air transportation," as used in this article, means transportation by air between a place in the United States and a place outside the United States, or between two places both of which are outside the United States.

"United States," as used in this article, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"United States-flag air carrier," as used in this article, means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 USC 1371).

2. Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 USC 1517 (Fly America Act)) requires that all Federal agencies and U.S. Government contractors and subcontractors use U.S. flag air carriers for U.S. Government financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General

of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

3. The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.
4. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a certification on vouchers involving such transportation essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see Section 47.403 of the Federal Acquisition Regulation).

[STATE REASONS]:

(end of certification)

5. The Contractor shall include the substance of this article, including this paragraph 5, in each subcontract or purchase under this agreement that may involve international air transportation.

Article 12. Assignment

1. Neither this contract nor any interest therein, or claim thereunder, shall be assigned or transferred by the Contractor except with the prior written approval of AUI. Nothing in this article shall preclude Contractor from assigning monies due and payable to its financial institutions. Assignment is defined to include the transfer or sale of all or substantially all of the business of a Party to which this Contract relates to a third party, whether by merger, sale of stock, sale of assets or otherwise.
2. This Agreement does not bind or purport to bind the U.S. Government or the National Science Foundation (NSF), an independent agency of the U.S. Government. Consequently, any claims or disputes arising from or in performance of this Agreement shall solely be between the Parties of this Agreement and no others.
3. AUI reserves its right to assign this Agreement to any third party should a successor Awardee be selected by the NSF.

Article 13. Examination of Records

1. The Contractor agrees that AUI, the NSF, the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under this contract or such lesser time specified in the Federal Acquisition Regulations (Subpart 4.7, Contractor Records Retention) have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.
2. The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that AUI, the NSF, the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract or such lesser time specified in the Federal Acquisition Regulation Subpart 4.7 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 in this article excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public, plus any applicable reasonable connection charge.

3. The periods of access and examination described in paragraphs 2 and 3 above, for records which relate to (1) appeals under the "Disputes" article of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract to which exception has been taken by AUI, the NSF, the Comptroller General or any of their duly authorized representatives, shall continue until such appeals, litigations, claims, or exceptions are disposed of.

Article 14. U.S. Government Property

The Contractor assumes the risk of, and shall be responsible for any loss of or damage to U.S. Government property in its possession, except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract. The term "U.S. Government property" shall be taken to mean property, title to which is vested in the U.S. Government. No U.S. Government property shall be disposed of without the prior written consent of AUI.

Article 15. Insurance

Where the Contractor is required to work on a site or sites owned or operated by AUI or the U.S. Government:

1. The Contractor will maintain policies providing the following insurance protection for the Contractor, which insurance shall apply to all operations of the Contractor under this contract and employees of the Contractor engaged therein. The Contractor shall also provide an endorsement to its liability policies naming AUI as additional insured.
 - a. WORKER'S COMPENSATION--Coverage, as provided in the Worker's Compensation Law, including occupational disease coverage, by the law of the State where the work is performed. Where all or any portion of this contract is performed in more than one State, Worker's Compensation coverage shall not be less than that of the State requiring the highest limits.
 - b. GENERAL LIABILITY--Insurance with limits of \$1 million per occurrence/ \$2 million aggregate for bodily injury liability in the comprehensive policy form.
 - c. VEHICLE PUBLIC LIABILITY AND PROPERTY DAMAGE--Insurance with limits of combined \$1 million for bodily injury liability and property damage liability on the comprehensive policy form covering all owned, non-owned, and hired vehicles which will be used in connection with the work to be done under this contract.
2. The Contractor may purchase at its own expense such additional or other insurance protection as it may deem necessary. AUI may allow or restrict access to the site of the work to such personnel of any insurance carrier providing additional or other insurance coverage to that referred to in the foregoing paragraph 1 as AUI may deem necessary for the proper servicing of such insurance.
3. The Contractor shall furnish three copies of a certificate of insurance naming Associated Universities, Inc., as an additional insured, to show compliance with paragraph 1 above. The Contractor shall furnish AUI with renewal notices of all applicable insurance policies.
4. The Contractor shall require that its subcontractors, any tier, working on the site shall maintain as a minimum the insurance coverage set out in paragraph 1 above, and that such subcontractors provide AUI with certificates of insurance as provided in paragraph 3 above.

Article 16. Termination for Default

1. If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, AUI may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event, AUI may take over the work,

and prosecute the work to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary thereof. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to AUI resulting from his refusal or failure to complete the work within the specified time, excluding incidental and consequential damages.

2. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
 - a. The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of AUI in its contractual capacity, acts of another contractor in performance of a contract with AUI, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and
 - b. The Contractor within ten (10) days from the beginning of such delay (unless AUI grants a further period of time before the date of the final payment under the contract), notifies AUI in writing of the causes of delay.

AUI shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in its judgment, the findings of fact justify such an extension, and its findings of fact shall be final and conclusive on the parties subject only to appeal as provided in the article of this contract entitled "Disputes."

3. If, after notice of termination of the Contractor's right to proceed under the provisions of this article, it is determined for any reason that the Contractor was not in default under the provisions of this article, or that the delay was excusable under the provisions of this article, the rights and obligations of the parties shall, if the contract contains an article providing for termination for convenience of AUI, be the same as if the notice of termination has been issued pursuant to such article. If, in the foregoing circumstances, this contract does not contain an article providing for termination for convenience by AUI, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the article of this contract entitled "Disputes."
4. The rights and remedies of AUI provided in this article are in addition to any other rights and remedies provided by law or under this contract.
5. As used in paragraph 2.a of this article, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

Article 17. Termination for Convenience

1. The performance of work under this contract may be terminated by AUI in accordance with this article in whole, or from time to time in part, whenever AUI or the U.S. Government shall determine that such termination is in the best interest of AUI or the U.S. Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.
2. After receipt of a Notice of Termination, and except as otherwise directed by AUI, the Contractor shall:
 - a. Stop work under the contract on the date and to the extent specified in the Notice of Termination;
 - b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under contract as is not terminated;

- c. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
 - d. Assign to AUI, in the manner, at the time, and to the extent directed by AUI, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case AUI shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of such orders and subcontracts;
 - e. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of AUI to the extent it may require, which approval or ratification shall be final for all the purposes of this article;
 - f. Transfer title to the U.S. Government and deliver in the manner, at the times, and to the extent, if any, as directed by AUI:
 - (1) The fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and;
 - (2) The completed or partially completed plans, drawings, information, and other property which, if the contract has been completed, would have been required to be furnished to AUI.
 - g. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by AUI, any property of the types referred to in subparagraph 2.f above. The Contractor may acquire any such property under the conditions prescribed and at a price or prices approved by AUI. The proceeds of any such transfer or disposition shall be credited to the price or cost of the work covered by this contract or paid as AUI may direct;
 - h. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and ;
 - i. Take such action as may be necessary, or as AUI may direct, for the protection and preservation of the property related to this contract.
3. After receipt of a Notice of Termination, the Contractor shall submit to AUI its termination claim, in the form and with the certification prescribed by AUI. Such claim shall be submitted promptly but in no event later than six (6) months from the effective date of termination, unless one or more extensions in writing are granted by AUI upon written request of the Contractor within such six month period or authorized extension thereof.
 4. Subject to the provisions of paragraph 3, the Contractor and AUI may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this article, which amount or amounts may include a reasonable allowance for profit on work done. Such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.
 5. In arriving at the amount due the Contractor under this article, there shall be deducted:
 - a. All unliquidated advance or other payments on account made to the Contractor, applicable to the terminated portion of this contract;
 - b. Any claim which AUI may have against the Contractor in connection with this contract, and;
 - c. The agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by the Contractor or sold, pursuant to the provisions of this claim, and not otherwise recovered by or credited to AUI.

6. If the termination hereunder is partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with AUI a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

Article 18. Disputes

1. Disputes Between the Parties, Unrelated to a US Government Decision. Any controversy or claim arising out of or relating to this contract, or the breach thereof, that is not subject to review or a decision by the US Government, as determined by AUI, shall be settled by arbitration in accordance with the rules of the American Arbitration Association. Hearings shall be held in the City of Charlottesville, Commonwealth of Virginia, unless an alternate site is designated by mutual agreement. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Pending the final decision of any dispute under or in connection with this contract that may arise prior to the completion of performance hereunder, the Contractor shall diligently proceed with the performance of its undertakings.
2. Disputes Involving the Government. Notwithstanding the foregoing, any dispute for which the Contractor contends that the US Government is responsible ("Sponsor Dispute") shall be resolved pursuant to this subsection.
 - a. For any Sponsor Dispute, the Contractor may submit a detailed claim to AUI including, for any claim in excess of \$100,000, an appropriate Contractor certification that: (a) the claim is made in good faith, (b) the supporting data are accurate to the best of the Contractor's knowledge and belief, (c) the amount requested accurately reflects the Contract adjustment for which the Contractor believes the US Government is liable, and (d) the certifying official is duly authorized to certify the claim on behalf of the Contractor. AUI shall, upon receipt of adequate information from the Contractor, submit an appropriate corresponding claim to the US Government.
 - b. If a decision on a question of fact or law is issued by the US Government and the decision relates to this Contract, said decision, if binding upon the AUI, shall also be binding upon the Contractor with respect to this Contract. If, however, the Contractor is affected by such decision and if AUI elects not to appeal such decision or brings suit, AUI shall promptly notify the Contractor. After receipt of such notice by AUI, if the Contractor submits a timely request to AUI to appeal such decision or brings suit, AUI shall file an appeal or bring suit. If AUI appeals such decision or brings suit, whether at its election or at the Contractor's request, any decision on such appeal or suit, if binding upon AUI, shall be binding on the Contractor as relates to this Contract
 - c. If any such appeal or suit is taken or brought by AUI, whether at its election or at the Contractor's request, the Contractor shall assist AUI in its prosecution thereof in every reasonable manner and the Contractor shall be afforded reasonable opportunity to participate in the prosecution thereof to the extent the Contractor's interest may be affected. To the extent requested by AUI, the Contractor shall prosecute for AUI any appeal or suit taken or brought at the Contractor's request and, in such event, AUI shall assist the Contractor in every reasonable manner. All costs and expenses incurred by AUI and the Contractor in prosecuting any appeal or suit taken or brought solely at the Contractor's request shall be paid entirely by the Contractor.
 - d. If as a result of any decision or judgment which is binding upon AUI and the Contractor, AUI is unable to obtain payment or reimbursement from the US Government, or is required to refund or credit to the US Government, any amount with respect to any item of cost or fee for which AUI has paid or reimbursed the Contractor, the Contractor shall, upon demand, promptly repay such amount to AUI.
 - e. The Parties agree to accept the relief as to a time extension or additional compensation, obtained from the US Government, if any, as well as all other aspects of the final decision following appeal or the expiration of the time for appeal as full and final resolution of any Sponsor Dispute.
 - f. Pending resolution of any Dispute, the Contractor shall proceed with the Work under this Contract as directed by AUI.

Article 19. Copyrightable Material

1. "Subject writing" means any material that:

- a. is or may be copyrightable under Title 17 of the United States Code, and
- b. is produced by the Contractor or its employees in the performance of work under this contract.

"Subject writings" includes such items as reports, books, journal articles, software, sound recordings, video tapes, and video discs. "Subject writings" do not include adaptations of, modifications to, and improvements on material produced in the performance of work under this contract so long as the adaptation, modification, or improvement is not performed under this contract.

2. **Copyright Ownership, U.S. Government License.** The Contractor may own or permit others to own the subject writings and copyrights therein. The Contractor agrees that if it or anyone else does own copyright in a subject writing, the U.S. Government will have a nonexclusive, nontransferable, irrevocable, royalty-free license to exercise or have exercised for or on behalf of the United States throughout the world all exclusive rights provided by copyright. Such license, however, will not include the right to sell copies or phonorecords of the copyrighted work to the public.
3. **Delivery of Subject Writings.** The Contractor agrees to deliver to the National Science Foundation (NSF), on written request from the Grants and Agreements Officer, two copies of any subject writing. The Contractor may identify portions of any subject writing that it believes to be exempt from disclosure under the Freedom of Information Act and request that NSF not disclose those portions outside the U.S. Government.
4. **Publications.** The Contractor may transfer or permit its employees to transfer rights to a subject writing submitted for publication in a scientific journal, another periodical, a book, or a collection. Any transfer of rights to a subject writing for publication will include a requirement that an acknowledgement of NSF support and, if appropriate, a disclaimer be published with the subject writing.
5. **Approval of Commercialization Plans.** The Contractor will obtain the written approval of the NSF Grants and Agreements Officer before transferring to any party exclusive or nonexclusive rights for commercial development, use, or sale of subject writings. The Contractor may request such permission for a particular transaction, all transactions planned for a particular subject writing, a class of transactions, or a class of subject writings.
6. **Income.** Unless otherwise specifically approved by the NSF Grants and Agreements Officer, all income earned by the Contractor from subject writings, after payment of expenses incidental to the preparation and dissemination of subject writings, including costs associated with commercial development, will be used to support scientific research or education consistent with the mission and objectives of AUI and the National Radio Astronomy Observatory.
7. **Contractor Action to Protect U.S. Government's Interest.** The 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 subject to the requirements of this article. Finally, the Contractor agrees that it will not deliver to NSF any copyrighted material other than subject writings unless it has obtained for the U.S. Government a license for such material identical to that reserved in subject writings by paragraph 2 of this article.
8. **NSF Response to Requests, Appeal.** NSF will respond to a request that portions of a subject writing be withheld from disclosure before disclosing the material and to a request for approval of a commercialization plan within thirty days. The Contractor may appeal a complete or partial denial of its request to the NSF Director of the Division of Acquisition and Cooperative Support.

Article 20. Patent Rights

1. Definitions

- a. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 25 of the United States Code (USC), or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (USC 2321 et. seq.);
- b. "Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in Section 41(d) of the Plant Variety Protection Act, 7 USC 2401(d)) must also occur during the period of contract performance;
- c. "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 U.S. Government regulations, available to the public on reasonable terms;
- d. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention;
- e. "Small business firm" means a domestic small business concern as defined at Section 2 of Public Law 85-536 (15 USC 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this article, the size standards for small business concerns involved in U.S. Government procurement and subcontracting/subawarding at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used;
- f. "Nonprofit organization" means a 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 of (25 USC 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

2. 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 article and 35 USC 203. With respect to any subject invention in which the Contractor retains title, the U.S. Government shall have a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

3. Invention Disclosure, Election of Title and Filing of Patent Application by Contractor

- a. The Contractor will disclose each subject invention to the National Science Foundation (NSF) within two months after the inventor discloses it in writing to Contractor personnel responsible for 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 to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or in public use of the invention and whether a manuscript describing the invention 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;
- b. 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 United States, 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;

- c. The Contractor will file its initial patent application on a subject 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 United States 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 permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order;
- d. Requests for extension of the time for disclosure election, and filing under subparagraphs a, b, and c may, at the discretion of NSF be granted.

4. Conditions When the U.S. Government May Obtain Title

The Contractor will convey to NSF, upon written request, title to any such invention:

- a. If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph 3 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;
- b. In those countries in which the Contractor fails to file patent applications within the times specified in paragraph 3 above; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph 3 above, but prior to its receipt of the written request of NSF, the Contractor shall continue to retain title in that country;
- c. 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 reexamination or opposition proceeding on, a patent on a subject invention;

5. Minimum Rights to Contractor and Protection of the Contractor Right to File

- a. The Contractor will retain a non-exclusive, royalty-free, license throughout the world in each subject invention to which the U.S. Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph 3 above. The Contractor's license extends to its domestic subsidiary 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 party of the Contractor's business to which the invention pertains;
- b. 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 Part 404 and NSF licensing regulations (if any). 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 the discretion of NSF to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country;
- c. 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 30 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 Part 404 and NSF regulations (if any) concerning the licensing of U.S. Government-owned inventions, any decision concerning the revocation or modification of its license.

6. Contractor Action to Protect the U.S. Government's Interest

- a. The Contractor agrees to execute or to have executed and promptly deliver to NSF all instruments necessary to: (1) establish or confirm the rights the U.S. Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (2) convey title to NSF when requested under paragraph 4, above, and to enable the U.S. Government to obtain patent protection throughout the world in that subject invention;
- b. 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 contract in order that the Contractor can comply with disclosure provisions of paragraph 3 above, and to execute all papers necessary to file patent applications on subject inventions and to establish the U.S. Government's right in the subject inventions. The disclosure format should require, as a minimum, the information required by 3.a above. The Contractor shall instruct such employees through 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 United States or foreign statutory bars;
- c. The Contractor will notify NSF of any decision not to continue the 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;
- d. The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement:

"This invention was made with U.S. Government support under (identify the agreement) awarded by the National Science Foundation. The U.S. Government has certain rights in this invention."

7. Subcontracts

The Contractor will include this article, 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 article, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractors subject inventions.

8. 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 as may be requested by NSF in connection with any march-in proceeding undertaken by NSF in accordance with paragraph 10. of this article. As required by 35 USC 202(c)(5), NSF agrees it will not disclose such information outside the U.S. Government without permission of the Contractor.

9. Preference for United States Industry

Notwithstanding any other provision of this article, 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 United States 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 United States. 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 unsuccessfully efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

10. 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 in 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 nonexclusive, 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:

- a. 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;
- b. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
- c. 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;
- d. Such action is necessary because the agreement required by paragraph 9 of this article has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

11. Special Provisions for Awards With Nonprofit Organizations

If the Contractor is a nonprofit organization, it agrees that:

- a. Rights to a subject invention in the United States 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;
- b. The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 USC 202(e) and 37 CFR 401.10;
- c. 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 research or education, and;
- d. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as 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 NSF may review the Contractor licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the NSF when the NSF's review discloses that the Contractor could take reasonable steps to implement more effectively the requirements of this paragraph 11.d.

12. Communications

All disclosures, elections, confirmations of the U.S. Government license, copies of patents, and other routine communications should be sent to the NSF Patent Paralegal, Office of the General Counsel, National Science Foundation, Washington, DC 20550. Requests for waivers and other exceptional communications with the Foundation regarding this clause should be addressed to the NSF Intellectual Property Attorney, Office of the General Counsel, National Science Foundation, Washington, DC 20550.

Article 21. Authorization and Consent

The U.S. Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in performance of the contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

Article 22. Notice and Assistance Regarding Patent and Copyright Infringement

1. The Contractor shall report to the NSF Grants and Agreements Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
2. In the event of any claim or suit against the U.S. Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the U.S. Government, when requested by the NSF Grants and Agreements Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the U.S. Government except where the Contractor has agreed to indemnify the U.S. Government.

Article 23. Clean Air and Water

1. "Air Act," as used in this article, means the Clean Air Act (42 USC 7401 et. seq.).

"Clean air standard," as used in this article, means:

- a. Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
- b. An applicable implementation plan as described in section 110(d) of the Air Act (42 USC 7410 (d));
- c. An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 USC 7411 (c) or (d)), or;
- d. An approved implementation procedure under section 111(d) of the Air Act (42 USC 7412(d)).

"Clean water standard," as used in this article, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under 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 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 USC 1317).

"Compliance," as used in this article, means complied with:

- a. Clean air or water standards, or;

- b. 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 under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this article, means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are colocated in one geographical area.

"Water Act," as used in this article, means Clean Water Act (33 USC 1251 et. seq.).

2. The Contractor agrees:

- a. To comply with all the requirements of section 114 of the Clean Air Act (42 USC 7414) and section 308 of the Clean Water Act (33 USC 1318) 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, and all regulations and guidelines issued to implement those acts before the award of this contract;
- b. That no portion of the work required by this contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;
- c. To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract work is being performed, and;
- d. To insert the substance of this article into any non-exempt subcontract, including this subparagraph 2.d.

Article 24. Utilization of Labor Surplus Area Concerns

1. It is the policy of AUI and the U.S. Government to make awards to concerns that agree to perform substantially in labor surplus areas (LSA's) when this can be done consistent with efficient performance of this contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use its best efforts to place subcontracts in accordance with this policy.
2. In complying with paragraph 1 above, and with paragraph 3 below, of the article of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," the Contractor shall observe the following order of preference in subcontracting: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.
3. "Labor Surplus Area" as used in this article means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

Article 25. Utilization of Women-Owned Small Businesses

1. "Women-owned small businesses," as used in this article means businesses that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"Control," as used in this article, means exercising the power to make policy decisions.

"Operate," as used in this article, means being actively involved in the day-to-day management of the business.

2. It is the policy of the United States that women-owned businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency.

3. The Contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts that it makes to the fullest extent consistent with the efficient performance of this contract.

Article 26. Utilization of Small Business Concerns and Small Disadvantaged Business Concerns

1. It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts/agreements let by any Federal agency.
2. The Contractor hereby agrees to carry out this policy in awarding subcontracts to the fullest extent consistent with efficient performance of this contract. Under this contract, the Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the National Science Foundation as may be necessary to determine the extent of the compliance with this article.
3. As used in this contract, the term "Small Business Concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern:
 - a. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals, and;
 - b. Whose management and daily business operations are controlled by one or more of such individuals.

The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act.

4. The Contractor, acting in good faith, may rely on written representations by its subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

Article 27. Health and Safety

1. The Contractor shall take all reasonable precautions in the performance of the work under this contract to protect the health and safety of employees and of members of the public from all hazards and to minimize danger to life and property, and shall comply with all applicable health, safety, and fire protection laws, regulations, and requirements.
2. The Contractor shall maintain an accurate record of all cases of death, occupational disease, or injury arising out of, or in the course of, employment incident to performance of the work under this contract. In addition, the Contractor shall promptly furnish AUI and the NSF Grants and Agreements Officer details of any deaths, serious occupational diseases, injuries resulting in permanent handicaps, and major accidents occurring in connection with this contract.
3. The Contractor shall clearly identify any hazardous materials or components in the equipment, materials or goods according to Material Safety Data Sheet (MSDS) rules.

Article 28. Equal Opportunity

1. If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts/awards and/or subcontracts/subawards that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs 2.a through 2.k below. Upon request, the Contractor shall provide information necessary to determine the applicability of this article.
2. During performing of this contract, the Contractor agrees as follows:
 - a. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin;
 - b. The Contractor shall take affirmative action to ensure that applicants are employed, and that 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. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices that explain this article;
 - d. The Contractor shall state, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin;
 - e. The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice advising the labor union or worker's representative of the Contractor's commitments under this article, and post copies of the notice in conspicuous places available to employees and applicants for employment;
 - f. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor;
 - g. The Contractor shall furnish to AUI and 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 award, unless filed within 12 months preceding the date of the award;
 - h. The Contractor shall permit access to its books, records, and accounts by the awarding agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purpose of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders;
 - i. If the OFCCP determines that the Contractor is not in compliance with this article or any rule, regulation, or order of the Secretary of Labor, this agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further U.S. Government awards 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. The Contractor shall include the terms and conditions of subparagraph 2.a through 2.k of this article 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 subcontract or vendor;
 - k. The Contractor shall take such action with respect to any subcontract or purchase order as the National Science Foundation may direct as a means of enforcing these terms and conditions, including sanctions for

noncompliance provided that, if the Contractor becomes involved in, or is threatened with, litigation with a subcontract or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation process to protect the interests of the United States;

3. Notwithstanding any other article in this contract, disputes relative to this article will be governed by the procedures in 41 CFR 60-1.1.

Article 29. Affirmative Action for Veterans

1. The Contractor shall not discriminate against an individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as:

- Employment
- Upgrading
- Demotion or transfer
- Recruitment
- Advertising
- Layoff or termination
- Rates of pay or other forms of compensation
- Selection for training, including apprenticeship

2. The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).
3. The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.
4. The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.
5. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
6. The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

Article 30. Employment of the Handicapped

1. Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as:

- Employment
 - Upgrading
 - Demotion or transfer
 - Recruitment
 - Advertising
 - Layoff or termination
 - Rates of pay or other forms of compensation
 - Selection for training, including apprenticeship
2. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 USC 793) (the Act), as amended.
 3. The Contractor agrees to post employment notices stating: (1) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (2) the rights of applicants and employees.
 4. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director).
 5. The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.
 6. If the Contractor does not comply with the requirements of this article, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
 7. The Contractor shall include the terms of this article in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for non-compliance.

Article 31. Nondiscrimination

- 1) The Contractor and its subcontractors are subject to the provisions of Title VI of the Civil Rights Act of 1964 (PL 88-352) and the regulations issued pursuant thereto by the Foundation (45 CFR 611). No person on the basis of race, color, sex, national origin, or handicap shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under the contract. In addition, if the project involves an education activity or program, as defined by Title IX of the Education Amendments of 1972 (PL-3181 20 USC 1681-1686), no person on the basis of sex shall be excluded from participation in the project. Further, by acceptance of the contract, the Contractor assures AUI and the Foundation that it will comply with Section 504 of the Rehabilitation Act of 1973 (29 USC 794) and the Foundation's implementing regulations (45 CFR 605) effective March 1, 1982.
- 2) The National Radio Astronomy Observatory is committed to providing a safe and welcoming environment for our employees, visitors, and guests, and has adopted a Code of Conduct that includes prohibitions against discrimination and harassment of any kind, including sexual harassment. Learn more at <http://go.nrao.edu/conduct>.

Article 32. Convict Labor

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing imprisonment except as provided by Public Law 89-176, September 10, 1965, (18 USC 4082 (c) (2)) and Executive Order 11755, December 29, 1973.

Article 33. Walsh-Healey Public Contracts Act

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 USC 35-45), the following terms and conditions apply:

1. All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.
2. All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 USC 40).

Article 34. Notice of Labor Disputes

Whenever an actual or potential labor dispute is delaying or threatens to delay the performance of the work, the Contractor shall immediately notify AUI in writing. Such notice shall include all relevant information concerning the dispute and its background.

Article 35. Contingent Fees

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, AUI shall have the right to annul this contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Article 36. Officials Not to Benefit

No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

Article 37. Federal, State, and Local Taxes (April 1984)

"Contract date," as used in this article, means the effective date of this contract or modification.

"All applicable Federal, State, and local taxes and duties," as used in this article, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed tax," as used in this article, means any new or increased Federal, state, or local tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved tax," as used in this article, means any amount of Federal, state, or local excise tax or duty, except social security or other employment taxes that would otherwise have been payable on the transactions or property covered by this contract but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

1. The contract price includes all applicable Federal, State, and local taxes and duties.
2. The contract price shall be increased by the amount of any after-imposed tax, provided the Contractor warrants in writing that no amount for such newly imposed excise tax or duty or rate increase was included in the contract price, as a contingency, reserve or otherwise.
3. The contract price shall be decreased by the amount of any after-relieved tax.
4. The contract price shall be decreased by the amount of any excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of AUI or the U.S. Government.
5. No adjustment shall be made in the contract price under this article unless the amount of the adjustment exceeds \$100.
6. The Contractor shall promptly notify AUI of all matters relating to any excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as AUI directs.
7. The U.S. Government or AUI shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

Article 38. Taxes--Foreign Fixed-Price Contracts (April 1984)

1. To the extent that this contract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this article applies in lieu of any Federal, State, and local taxes article of the contract.
2. "Contract date," as used in this article means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Country concerned," as used in this article means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this contract are made.

"Tax" and "taxes," as used in this article, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

"All applicable taxes and duties," as used in this article, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

"After-imposed tax," as used in this article means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

"After-relieved tax," as used in this article, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the

Contractor is not required to pay or bear, or for which the Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Excepted tax," as used in this article, means social security tax or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

3. Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the U.S. Government and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.
4. The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of AUI or the U.S. Government or to comply with the provisions of paragraph 9 below.
5. The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The U.S. Government shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the U.S. Government for such taxes. The U.S. Government shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the U.S. Government.
6. The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of AUI or the U.S. Government or to comply with the provisions of paragraph 9 below.
7. No adjustment shall be made in the contract price under this article unless the amount of the adjustable exceeds \$100.
8. If the Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, US Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the U.S. Government as AUI directs.
9. The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the U.S. Government, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the U.S. Government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.
10. The Contractor shall promptly notify AUI of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as AUI directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of AUI, including any interest, penalty, and reasonable attorney's fees.

Article 39. Payments

AUI shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by AUI if:

1. The amount due on the deliveries warrants it; or
2. The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

Article 40. Title to Materials and Supplies

Unless otherwise provided in this contract, title to the materials and supplies purchased hereunder shall pass directly from Seller to Government at the point of delivery shown herein, subject to the right of AUI to inspect and reject, in accordance with specifications and terms and conditions hereof.

Article 41. Responsibility for Supplies

Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection, (ii) after delivery to AUI at the designated point and prior to acceptance or rejection by AUI and giving notice thereof by AUI, AUI shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents or employees of AUI acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection, except that AUI shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction or damage to the supplies results from the gross negligence of officers, agents, or employees of AUI acting within the scope of their employment.

Article 42. Materials and Property Furnished

1. When AUI furnishes parts, tooling, equipment or other property, title to which is in the U.S. Government, the Contractor's packing sheet and final invoice must contain this statement: "All parts, tooling, or other property furnished or acquired for this contract (except that which became normal industrial waste or was replaced at the Contractor's expense) have been returned in the form of parts, equipment, and tooling." Title to all such equipment and tooling furnished by AUI shall remain in the U.S. Government, and AUI shall at all times have the right to immediate repossession thereof.
2. If AUI furnishes any material, title to which is in the U.S. Government, for fabrication hereunder, the Contractor agrees not to use any other material in such fabrication without AUI's written consent. AUI reserves the right to retain 10 percent of the total amount of the Contractor's invoice until all requirements of this article have been fulfilled.
3. Except as otherwise provided in this contract, the Contractor shall return to AUI the U.S. Government property furnished or acquired under this contract in as good condition as when received except for reasonable wear and tear or for utilization of the property in accordance with the requirements of this contract.

Article 43. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification described in 31 U.S.C. 1352. Each tier certifies to the tier above 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 of a member of Congress in connection with obtaining 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 the recipient.

Article 44. Governing Law

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard to its choice of laws rules.

Article 45. Waiver

No release, discharge, or waiver of any provision of the Contract shall be enforceable against or binding upon either Party unless in writing and executed by a duly authorized officer of the Party. Moreover, neither the failure to insist upon strict performance of any of the terms, provisions, or conditions thereof, nor to exercise any option herein given or to require performance on the part of the other Party of any term, provision, or condition hereof, shall be deemed a waiver of any rights or remedies or a waiver of any breach or default of any kind or nature, nor affect the validity of any part hereof, nor the right of either Party thereafter to enforce.

Article 46. Severability

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Contract shall in no way affect the validity, enforceability or legality of any of its other provisions.

Article 47. Confidentiality

In this Clause, “Confidential Information” means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party (the “Disclosing Party”) to the other party (the “Receiving Party”) whether before, on or after the date of this Contract including, without limitation: (1) with respect to AUI, Terms of Reference under the Prime Grant Agreement and the terms and pricing under the Prime Grant Agreement, and all other information clearly identified as confidential and relating to the Prime Grant Agreement; and (2) information relating to the Disclosing Party’s products, services, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.

During the term of this Agreement and after termination or expiration of this Agreement for any reason the Receiving Party: (1) will not use Confidential Information for a purpose other than the performance of its obligations under this Contract; (2) will not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party; and (3) will make every effort to prevent the use or disclosure of Confidential Information, using the same degree of care to protect the Disclosing Party’s Confidential Information that it uses to protect its own Confidential Information, which in no instance shall be less than a commercially reasonable amount of care.

This clause does not apply to Confidential Information which: (1) is at the date of this Contract, or at any time after that date becomes, publicly known other than by the Receiving Party’s breach of this Contract; or (2) can be shown by the Receiving Party to the Disclosing Party’s reasonable satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party; or (3) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or (4) is independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information or breach of this Agreement; or (5) is required to be disclosed by law, regulation, judicial or administrative process, or in connection with litigation pertaining hereto.

Revised September 2021