

ASSOCIATION OF **U**NIVERSITIES FOR **R**ESEARCH IN **A**STRONOMY, **I**NC.

PROFESSIONAL SERVICES AGREEMENT NO. XXXXXX

THIS PROFESSIONAL SERVICES AGREEMENT NO. XXXXXX is made effective this ___ day of _____, 20XX by and between the **ASSOCIATION OF UNIVERSITIES FOR RESEARCH IN ASTRONOMY, INC.** an Arizona non-profit corporation, located at 950 North Cherry Avenue, Tucson, Arizona 85719 hereinafter referred to as "AURA" and _____ with offices located at _____ hereinafter referred to as the "Consultant."

Recitals:

A. Under Cooperative Agreement AST_XXXXXXX between AURA and the United States of America represented by the National Science Foundation, CFDA # 47.049, now in full force and effect, AURA operates the XXXXXSAMPLE OBSERVATORYXXXXX, an AURA center, and is engaged in managing, operating, and maintaining observatories and related activities for research in the field of astronomy.

B. AURA has obtained funding from the National Science Foundation through Cooperative Agreement AST XXXXXXXX, Cooperative Support Agreement AST XXXXXXXX, CFDA # 47.049.

C. AURA desires to contract with Consultant to perform the work to further develop the project known as the "NAME OF PROJECT XXXXXXXXXXXX" in accordance with the terms and conditions of this Professional Services Agreement hereinafter referred to as "Agreement".

D. Consultant is willing to contract with AURA and to provide such services and to perform them in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the parties do mutually agree as follows:

ARTICLE 1. SCOPE OF WORK

a. Consultant shall provide all labor, materials and services to perform and complete the work described in the "statement of work" which appears in Consultant's proposal set forth in Attachment "A," a copy of which is attached hereto and incorporated herein by reference as though fully set forth herein. The work specifically described in the "statement of work" section of the proposal set forth in Attachment A shall be referred to as "the Work."

B. The Work shall be performed in accordance with: (i) the terms and conditions of this Professional Services Agreement; (ii) the AURA General Provisions set forth in Attachment B ("General Provisions"), and the Scope of Work found in Attachment "A". The terms of Attachment B are hereby incorporated by this reference as though fully set forth herein.

ARTICLE 2. PERIOD OF PERFORMANCE

The period of performance for completion of the Work shall commence on XXXXXXXXXXXXXXXXXX and shall continue through XXXXXXXX inclusive ("Period of Performance"); the Period of Performance shall be extended beyond that date only by mutual agreement of the parties in writing.

ARTICLE 3. CONTRACT SUM

AURA shall pay Consultant for performance and completion the Scope of Work described in Article 1, by an hourly rate per job description. The Agreement will be capped at XXXXXXXX dollars USD (\$XXXXX). If required, AURA will issue additional contract/change order sum as applicable.

	Rate (hrly)	Est. Qty.	Total
XXXXXXXXXXXXXXXXXX	\$XXX.00	XXXX hours	\$XXXXX.00
XXXXXXXXXXXXXXXXXX	\$XXXX.00	XXXXX	\$XXX.00
Total			\$XXXXXXXX.00

See attached proposal for details.

ARTICLE 4. BUDGET

The Budget is included in the attached proposal and hereby incorporated into this Agreement.

ARTICLE 5. PAYMENTS

a. The Consultant shall be paid monthly upon submission of proper invoice or vouchers, the prices stipulated herein, for work performed, delivered and/or rendered and accepted less deductions, if any, as provided herein.

b. Only a complete invoice shall be processed for payment. To be considered complete, the invoice shall include: (1) the name of Consultant; (2) the date of invoice; (3) the invoice number; (4) the contract/sub-award number; (5) a brief description of work completed; (6) the time period covered by the invoice; and (7) the phone number and name of the contact person who can be contacted with questions the invoice.

c. Each invoice presented for payment must bear the following certification:
"We acknowledge that the above statement is just and correct to the best of our knowledge and belief; that payment therefore has not been received; the funds expended are reasonable, allowable and allocable; the costs are in compliance with the terms and conditions of this agreement; that this statement has been prepared from the books of account and records of the Consultant; and unencumbered title to the materials provided and work completed rests in the Consultant."

By Example
Signature
Name: _____
Title: _____

Invoices should be mailed or sent via email to:

AURA, Inc.
Attn: XXXXXXXXXXXXX
Contracts Office
950 North Cherry Avenue
Tucson, AZ 85719
Email to: XXXXXXXX@aura-astronomy.org

d. Payment shall be made within thirty (30) days after AURA's receipt of Consultant's proper invoice.

ARTICLE 6. AURA ADMINISTRATIVE AND TECHNICAL REPRESENTATIVES

a. The Contracts Officer(s) (CO) are the only personnel authorized to approve changes to this Agreement and to perform post-award functions in administering and enforcing this Agreement.

b. The AURA CO assigned to this Agreement is XXXXXXXXXXXXXXXX Any questions relating to the terms and conditions of this Agreement should be brought to his/her attention at (XXX) 318-XXXX or by email to XXXXXXXX@aura-astronomy.org.

c. The CO may appoint, by written notification to Consultant, a Technical Representative to act on behalf of AURA for purposes of administering, and providing direction to Consultant related to the detailed technical aspects of the Work. In no event, however, shall AURA be bound by any understanding, agreement, modification, change order, or other matter deviating from the provisions of this Agreement unless formalized by appropriate written contractual documents executed by the CO. Technical direction by the Technical Representative is only valid if: (1) it is issued in writing and is consistent with the description of the work contained in the Statement of Work; (2) it does not constitute a new assignment of work nor change the express terms, conditions or specifications of this Agreement; and (3) it does not constitute a basis for any increase in the Agreement Sum or extension of time for completion of the Work.

d. XXXXXXXXXXXXXX shall serve as the Technical Representatives (TR) to act on behalf of AURA for the purpose of overseeing the expenditure of funds, and to provide advice and responses to requests for information that do not alter the terms of this Agreement. Any questions regarding the technical performance of this Agreement should be directed to XXXXXXXXXXXXXX.

e. The person executing this Agreement on behalf of AURA hereby warrants and represents that she has authority to enter into this Agreement on behalf of AURA.

ARTICLE 7. CONSULTANT ADMINISTRATIVE AND TECHNICAL REPRESENTATIVES

a. XXXXXXXXXXXXXX will serve as the Principal Investigator (PI) for Consultant. XXXXXXXXXX shall be responsible for the overall technical aspects of this Agreement.

b. Consultant's PI is considered "Key" to performance of the Work described in this Agreement, and shall not be replaced without the written consent of the AURA CO. AURA, may, at its option, terminate performance of this Agreement in the event the Key Representative terminates employment with the Consultant, or relocates to another project or institution. In the event of termination, the terms and conditions indicated in Article 18 shall apply.

c. Consultant's Principal Investigator shall be: (1) the primary contact for Consultant in all technical matters in connection with this Agreement; and (2) responsible for the administration, coordination, and supervision of the work by Consultant.

c. The Contracts Officer, or individual with the authority to legally bind the Consultant, is XXXXXXXXXXXXXXXXXXXX. Any questions relating to the terms and conditions of this Agreement should be brought to his/her attention at XXX-XXX-XXXX or by email to XXXXXXXX@XXXXXXXX.XXX.

The person executing this Agreement on behalf of Consultant hereby warrants and represents that he or she has authority to enter into this Agreement on behalf of Consultant.

e. Changes to the authorized representatives will be communicated in writing without the necessity of a formal amendment hereto. AURA shall acknowledge acceptance of such change, in writing, by email or facsimile. Consultant shall not replace the Principal Investigator without giving prior written notice to AURA.

ARTICLE 8. WEEKLY MEETINGS (If applicable)

Weekly teleconference meetings will be held between the Consultant's staff and the XXXXX assigned to this project.

ARTICLE 9 REPORTS

a. Final Report (*May change to fit the project*)
(i) Consultant shall submit to AURA's designated Technical Representative and Contracts Officer a final report that summarizes the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract.

ARTICLE 10. CHANGES

a. AURA may at any time, through a written change notice to this Agreement, make changes within the scope of work or period of performance of this Agreement. Consultant's and AURA's contractual

representatives shall negotiate an equitable adjustment in the terms of this Agreement to cover any such change, if appropriate. No payment for extras shall be made except as specifically authorized by a written Amendment to the Agreement.

b. Nothing in this Agreement, including the statement of work or the quality of the services provided, may be modified except by means of a written amendment or change order signed by both Parties. Verbal agreements to modify or add work are void.

ARTICLE 11. DELAYS

Consultant shall notify AURA in writing, by email or facsimile, within ten (10) working days from notification of any delay in the performance of specified services and shall specify in writing to AURA the proposed revised delivery date as soon as practicable after notice of delay. Such notification shall not be construed as repudiation by Consultant of its obligations under this Agreement. Consultant shall not be liable for delays in performance or delivery due to causes beyond its reasonable control, and not otherwise due to its fault or negligence. In the event of such delay, the date of performance or of delivery shall be extended for a period equal to the time lost by reason of said delay on written approval of AURA, which shall not be unreasonably withheld.

ARTICLE 12. SUSPENSION OF THE WORK

Performance of the Work under this Agreement may, upon written notice to Consultant, be suspended by AURA in the event funding for this project is suspended or delayed. Such suspension by AURA shall be considered temporary and in no way shall be deemed to be a termination. Consultant shall be compensated for work completed up to the date and time of suspension.

ARTICLE 13. QUALITY OF SERVICES

The Consultant agrees to perform the Work in accordance with those standards of professional care, skill, and diligence normally provided in the performance of similar services and work.

ARTICLE 14. INFORMATION AND DATA RIGHTS

a. Except as specifically authorized in this Agreement, or as otherwise approved by AURA in accordance with this Agreement, information and other data solely developed or acquired by AURA and furnished to Consultant by AURA for the Work in the performance of this Agreement shall be used only in connection with the work under this Agreement.

b. Technology that is jointly developed by Consultant and AURA in performing the Work under this Agreement shall be jointly owned ("Joint Technology"). Joint Technology shall be subject to the terms and conditions of this Agreement.

c. Except for inventions, which are governed by the Patents Clause of the AURA General Provisions attached hereto, the Consultant does hereby grant, assign and convey to AURA and to the National Science Foundation a non-exclusive, royalty free, worldwide, non-transferable, irrevocable

license, in and to all original works of authorship and intellectual property that are created by Consultant and delivered to AURA pursuant to the terms of this Agreement, to exercise or have exercised for or on behalf of the U.S. throughout the world all the exclusive rights provided by copyright; such license to the NSF, however, will not include the right to sell copies of the copyrighted works to the public ("Consultant Technology").

Consultant acknowledges and understands that if this award is subject to an identified international agreement or treaty, the NSF can direct AURA to convey to any foreign participant or otherwise dispose of such rights to such original works of authorship as are required to comply with that agreement or treaty.

Except as otherwise specified in this Agreement or by this provision, Consultant may own or permit others, including employees and subcontractors, to own the original works of authorship and intellectual property created under this Agreement, pursuant to applicable federal and state laws and regulations, but agrees that such transfer by it or by anyone whom it has allowed to own such rights, must be made subject to the requirements of this Article 14. Consultant agrees to sign and execute any additional agreements or documents which may be requested by AURA to effect and fulfill the intent and requirements of this article.

d. Notwithstanding any clause of this Agreement, Consultant does hereby grant to the National Science Foundation in perpetuity the right to use and reproduce data produced under this award without charge or additional expense (except for whatever reasonable costs are incurred by the awardee to reproduce the data) as necessary for the operation and management of AURA facilities. This includes the right to make such data available to any party interested in competing for any subsequent award to operate and manage the AURA facilities, and any awardees, the National Science Foundation selects as a result of these competitions.

ARTICLE 15. PUBLICATIONS

a. AURA reserves the right to publish or otherwise make public the data resulting from this Agreement. AURA shall submit any such manuscript or release to the Consultant for comment prior to publication or release. The Consultant will be given thirty (30) days to review the request.

b. Except as otherwise required by law or regulation, neither party shall release or distribute any materials or information containing the name of the other party or any of its employees without prior written approval by an authorized representative of the non-releasing party, but such approval shall not be unreasonably withheld.

ARTICLE 16. INDEPENDENT CONTRACTOR

In performing the Work under this Agreement, the Consultant shall be deemed an independent contractor and shall not act as nor be an agent or employee of AURA. As an independent contractor, the Consultant will be solely responsible for determining the means and methods for performing the Work described in Article 1 and shall have complete charge and responsibility for persons employed by Consultant and engaged in the performance of the specified work. All of Consultant's activities will be at its own risk and is hereby given notice of this responsibility for arrangements to guard against physical, financial, and other risks as appropriate. Consultant shall

observe and abide by all applicable laws and regulations, including, but not limited to, those of AURA relative to conduct on AURA's premises as may be applicable.

ARTICLE 17. U.S. REGULATION COMPLIANCE

a. In the performance of this Agreement, the Parties may transfer, exchange, or develop data, information, software, hardware or other technology that may be subject to U.S. export control laws and regulations, including the International Traffic in Arms Regulations, 22 C.F.R. 120-130, and the Export Administration Act regulations, 15 C.F.R. 730-774. Each of the Parties individually will be responsible for obtaining export licenses or other export authority as may be required before exporting controlled data, information, software, hardware or other technology to foreign countries or providing access to foreign persons (as defined in 22 C.F.R. 120.16). Each of the Parties agrees to comply with any applicable United States laws and regulations in the export of such data, information, software, hardware, or other technology. No other Party will be responsible for any failure of another Party to comply with such laws or regulations.

b. It is understood that the Consultant is subject to United States laws and regulations (including with limitation the Arms Export Control Acts, as amended, and the Export Administration Act of 1979), and that their obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The Consultant agrees that it will not directly or indirectly transmit, by way of trans-shipment, export, diversion or otherwise, any export-controlled information except in accordance with any and all applicable United States export control laws and regulations. The Consultant generally performs fundamental work that is exempt from export control licensing under applicable export control laws. As a result, the Consultant typically does not wish to take receipt of export-controlled information, except as may be specifically agreed to and for which the Consultant has made specific arrangements. AURA represents that it will not provide Consultant with any export controlled information or materials without first informing Consultant and without obtaining Consultant's written agreement and consent to accept such materials, Further, the Consultant should not be provided or have accessibility to any export-controlled information or materials from any other source without first informing AURA of the export-controlled nature of the information or materials and obtaining from AURA its written consent to accept such information as well as any specific instructions regarding the mechanism pursuant to which such information should be passed.

c. The Consultant will, under no circumstances, accept any material it has reason to believe is export controlled without first expressly agreeing in writing to undertake necessary measures to ensure protection of the same.

ARTICLE 18. INDEMNIFICATION AND INSURANCE

a) Consultant shall at all times keep AURA free and clear from all claims, liens, and encumbrances asserted by any person or other entity for any reason whatsoever arising from the furnishing of services under this Professional Services Agreement. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless AURA, its directors, officers, employees, agents, representatives and affiliates (hereinafter collectively referred to as "Indemnified Parties") for, from and against any and all claims, demands, actions or causes of action, costs, damages, liabilities, injuries, expenses, or losses of any nature whatsoever to which any of the Indemnified Parties may become subject under any theory of liability whatsoever ("Claims") insofar as such

Claims (or actions in respect hereof) arise from, are connected with or are related to: (i) any inaccuracy in or breach of any of Consultant's representations and warranties set forth in this Agreement; and (ii) any intentional misconduct, negligent acts, errors, mistakes or omissions of Consultant, its officers, employees, agents or any tier of subcontractor in performing the obligations and the work covered by this Professional Services Agreement. To the fullest extent permitted by law, AURA shall be responsible for its own negligent acts, omissions and mistakes, and that of its employees and sub-contractors. Although Consultant shall defend AURA, in the event of a final determination of joint negligence or other breach of duty between Consultant and AURA, Consultant's total indemnity liability to AURA shall be the percentage determined to be Consultant's share of liability. Every obligation of this indemnification paragraph shall survive the completion of the services hereunder and the termination of this Agreement. Notwithstanding the foregoing, Consultant shall not be liable for lost profits, punitive or liquidated damages, or fines, fees, charges or costs related to the foregoing described damages. Except as otherwise provided for herein, AURA shall be responsible for its own attorneys' fees and costs on matters not covered by this indemnification provision set forth in this Article 17. Consultant shall be responsible for its' own attorneys' fees and costs.

b) Accordingly, AURA shall promptly notify the Consultant in writing of any claim or action brought against AURA for which the Consultant may be responsible under 12a. On such notification, the Consultant shall promptly take over and defend any such claim or action.

c) AURA shall have the right and option to represent itself in defense of any such claim or action at any time if AURA, in its sole discretion, determines that its rights are not being appropriately defended by the Consultant.

d) The Consultant shall at its own expense, during the course of this Professional Services Agreement, maintain in force at all times the following minimum limits of insurance. The insurance carrier must be approved by AURA and have an A.M. Best rating of A- or better.

- Workers' Compensation: Statutory limits
- Comprehensive General Liability: \$1,000,000 each occurrence/\$2,000,000 annual aggregate (including contractual liability)
- Products/Completed Operations \$1,000,000 each occurrence

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

f) A Certificate of Insurance evidencing each of the above coverages and requirements shall be delivered to AURA prior to commencement of the work. The certificate(s) shall name AURA, its officers, agents, and employees as additional insureds, and shall provide a forty-five (45) day notice of cancellation. Requests to modify coverage will be delivered to AURA 45 days prior to effective date of the change and such modification will require approval by AURA.

g) These coverages and limits are to be considered minimum requirements under this Agreement and shall in no way limit the liability or obligations of Consultant under this Agreement.

ARTICLE 19. TERMINATION

a. Either party shall have the right to terminate performance under this Agreement at any time for its convenience. If termination is for the convenience, the party that wishes to terminate the agreement shall notify the other party at least thirty (30) days in advance of the effective date of termination specified in such notice. On said termination, Sub recipient shall be paid for all services satisfactorily rendered in accordance with Scope of Work.

b. Either party shall have the right to terminate performance under this Agreement at any time for the other party's default by notifying such party in writing. If termination is for default, the defaulting party shall have thirty (30) days, or such longer period as the non-defaulting party may authorize in writing, after the receipt of written notice of the nature of the default to correct the same, before such termination is given by the non-defaulting party.

ARTICLE 20. NON-EXCLUSIVE CONTRACT

Nothing in this Agreement shall be construed as granting Consultant exclusive rights to perform the Work to be provided under this Agreement. AURA reserves the right to perform the same or similar work itself or to contract with others for the same or similar work.

ARTICLE 21. ASSIGNMENT

This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties hereto, but may not be voluntarily assigned in whole or in part by either party without the prior written consent of the other, except that this Agreement may be assigned to the National Science foundation or to a third party should a successor to AURA for the management of the National Solar Observatory be selected by the National Science Foundation without the prior approval of Consultant.

ARTICLE 22. FORCE MAJEURE

Neither Contractor nor AURA shall be liable for failure to fulfill its obligations herein or for delays in performance or delivery, as applicable, due to causes beyond its reasonable control, including, but not limited to: acts of God, natural disasters, acts or omissions of other parties, acts or omissions of civil or military authority, Government shut downs (total or partial), the termination, lapse or delay in government funding, changes in governmental priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, riots, war, acts of terrorism (hereinafter collectively or singularly referred to as force majeure event). Where there is an event of force majeure, the party prevented from or delayed in performing its obligations under this contract must immediately notify the other party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that party from, or delaying that party in performing its obligations under this contract and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfill its or their obligations under the contract. Upon completion of the event of force majeure, the party affected must as soon as reasonably practicable recommence performance of its obligations under this contract. An event of force majeure does not relieve a party from liability for an obligation that arose before the occurrence of that event. In the event the force majeure event

exists for a year or more, either party hereto may seek to terminate this Agreement without further liability.

ARTICLE 23. STATUTORY AND ADMINISTRATIVE PROVISIONS

A. By signing this Contract, the Contractor certifies that it will comply with all applicable clauses from the Cooperative Contract (CA) AST-XXXXXXX, CSA-AST No. XXXXXXX, and the Federal Standards and Requirements set forth in the National Science Foundation Cooperative Contract Financial & Administrative Terms and Conditions dated July 1, 2016 and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). The Uniform Guidance can be found at:

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200main_02.tpl

B. Contractor shall comply with the following articles of the National Science Foundation Cooperative Contract Financial & Administrative Terms and Conditions (FATC's) dated January 31, 2017, and if any changes are found in the updates, if applicable, and shall ensure that the applicable articles are appropriately addressed and flowed down to all subcontractors. These articles may be found at: https://www.nsf.gov/awards/managing/co-op_conditions.jsp.

ARTICLE 24. LAWS AND REGULATIONS

a. Each party expressly agrees to abide by any and all applicable federal, state and local laws, regulations and ordinances governing their obligations under this Agreement, including without limitation, and to the extent applicable, state and federal rules governing non-discrimination, immigration, Title 7 of the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, the Age Discrimination and Employment Act of 1967, the Equal Pay Act of 1963, the National Labor Relations Act, the Fair Labor Standards Act, the Rehabilitation Act of 1973 and the Occupational Safety and Health Act of 1970, and Executive Order #11246, as may be from time to time modified or amended.

b. The Federal government requires that AURA impose on its Contractors the requirement that such Contractors comply with certain federal laws and regulations as a condition of AURA's receipt of federal funds. Therefore, this Agreement incorporates by reference herein the following statutes and regulations with the same force and effect as if they were fully set forth herein. In performing its obligations under this Agreement, Consultant agrees to comply with all applicable statutes and regulations set forth below and shall require and cause its sub-contractors to comply with such statutes and regulations. Upon request, the Contracts Officer assigned to this Agreement will make the full text of any statute or regulation set forth herein available to Consultant.

(i). Consultant and its subcontractors shall comply with E.O. 11246 "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR 1964-1965 Comp., p. 339), as amended by E. O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(ii). If this Agreement involves (a) payment(s) to Consultant in excess of \$100,000.00, Consultant and its subcontractors shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act (33 USC 1251 et seq.) as amended.

(iii). If this Agreement involves (a) payment(s) to Consultant in excess of \$100,000.00, Consultant shall provide and shall require its subcontractors to provide and file certifications that comply with the Byrd Anti-Lobbying Amendment (31 USC 1352).

(iv). If this Agreement involves (a) payment(s) to Consultant equal to or in excess of \$25,000.00, Consultant shall provide AURA with confirmation that it is not listed on the government-wide Excluded Parties List System in accordance with the OMB guidelines at 2 CFR Part 180 that implement E.O.s 12549 (3 CFR, 1986 Comp. p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension."

(v). To the extent that this Agreement requires the performance of experimental, developmental or research work, Consultant agrees that the Federal government and AURA shall have rights in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the Federal agency from which AURA received financial assistance to carry out the work contemplated by this Agreement.

(vi). Consultant agrees that all subcontracts it awards to others to assist it in fulfilling its obligations under this Agreement shall contain all of the applicable provisions set forth in this Article 26 and shall require all such subcontractors to comply with all such provisions.

ARTICLE 25. AUDIT AND AVAILABILITY OF RECORDS

AURA is responsible for ensuring that Consultant is in compliance with applicable laws and regulations and other award conditions. Financial reports, supporting documents, statistical records and other records pertinent to this Agreement, shall be retained by Consultant for a period of three (3) years from the date of final payment and records related to audits, appeals, litigation or the settlement of claims arising out of performance of this Agreement shall be retained by Consultant until such audits, appeals, litigation or claims have been resolved. Notwithstanding any other conditions of this Agreement, the records and financial statements of Consultant shall be made available upon request, at Consultant's regular place of business, for examination by AURA or their duly authorized representative(s).

ARTICLE 26. CONFIDENTIALITY

(a) Each Party agrees to keep confidential any information, document, or other material which is communicated to it as confidential or the disclosure of which may be clearly prejudicial to the other Parties. Each Party shall limit the circle of recipients of confidential information on a need-to-know basis and shall ensure that the recipients are aware and comply with the obligations defined in this confidentiality clause.

(b) Notwithstanding the above, a Party is entitled to disclose confidential information which it is required by law to disclose or which, in a lawful manner, it has obtained from a third party without any obligation of confidentiality, or which it has developed independently of confidential information, or which has become public knowledge in a way other than as a result of a breach by that Party of its obligations under this confidentiality clause.

ARTICLE 27. APPLICABLE LAW

This agreement shall be governed, interpreted and construed in accordance with the laws of the State of Arizona without regard to its conflict of law rules.

ARTICLE 28. ARBITRATION

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

ARTICLE 29. ORDER OF PRECEDENCE IN THE EVENT OF CONFLICTS

a. The intent of this Agreement is to include all items necessary for the proper execution and completion of the Work, so that the provisions of each document comprising this Agreement shall be construed in a manner consistent with the provisions of the other documents. The various documents comprising this Agreement are complementary, and what is required by any one shall be as binding as if required by all.

b. In the event of conflict among the provisions of any of the documents comprising this Agreement, interpretation of this Agreement shall be governed in the following descending order of priority: (1) The articles of this Agreement (2) the AURA General Provisions for a Professional Services Contract incorporated by reference (Attachment B); (3) the Federal Standards and Requirements set forth in the National Science Foundation Cooperative Agreement Financial & Administrative Terms and Conditions dated December 26, 2014; and the attached Scope of Work.

ARTICLE 30. SURVIVAL

The terms, conditions, representations, indemnifications and warranties contained in this Agreement shall survive the termination of this Agreement and acceptance of the Work.

ARTICLE 31. SEVERABILITY

The invalidity in whole or in part of any provision of this contract shall not affect the validity of other provisions. The failure by either party to enforce a right hereunder promptly shall not be deemed a waiver of such right, and no waiver of right under a provision shall constitute a waiver of any other right under such provision or any other provision.

ARTICLE 32. ENTIRE AGREEMENT

This Agreement, together with any addenda and amendments relating hereto constitutes the entire agreement of the Parties, and there are no other representations, promises, agreements, conditions or understandings, either oral or written, between the Parties other than as set forth herein. Any amendments, alterations or modifications to this agreement must be in writing and signed by the Parties of this agreement to be effective.

ARTICLE 33. WAIVER

One or more waivers of a breach of any covenant, term, or provision of this Agreement by any Party shall not be construed as a waiver of a subsequent breach of the same covenant, term or provision; nor shall it be considered a waiver of any other then existing, preceding, or subsequent breach of a different covenant, term, or provision.

ARTICLE 34. INTEGRATION

This Agreement, together with any addenda and amendments relating hereto, sets forth the entire understanding between the parties and supersedes all prior or contemporaneous agreements, representations and understandings between the parties with respect to the subject matter of this Agreement. This Agreement may only be amended in a writing signed by both parties hereto.

ARTICLE 35. NOTICES

Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered: (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

For AURA:

XXXXXXXXXXXXX
Contracts Officer
AURA Inc.

950 North Cherry Avenue
Tucson, AZ 85719
Phone: 520.318.XXXX
Email: XXXXXXXX@aura-astronomy.org

For CONSULTANT:
Please provide this info.

or to such other address as either party may from time to time specify in writing to the other party.
Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice that has been received by the party to whom it is sent as evidenced by confirmation slip.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates set forth below to be effective on the date first set forth above.

**ASSOCIATION OF UNIVERSITIES FOR
RESEARCH IN ASTRONOMY, INC.**

Contracts Officer

Dated: _____

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

Dated: _____