

AGREEMENT/CONTRACT NO. N0006593C

Between the

ASSOCIATION OF UNIVERSITIES FOR RESEARCH IN
ASTRONOMY, INC.

Operating the Gemini Telescope

And

TBD

For the

GEMINI NORTH ADAPTIVE OPTICS BENCH

For

**THE GEMINI OBSERVATORY TELESCOPE
MAUNAKEA, HAWAI'I**

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ASSOCIATION OF UNIVERSITIES FOR RESEARCH IN ASTRONOMY, INC.

CONTRACT No. N0006593C

This contract (the “Contract”) is entered into between the **Association of Universities for Research in Astronomy, Inc.**, an Arizona non-profit corporation (hereinafter “AURA”) and **[Insert]**, having its principal place of business in **[city, state]** (hereinafter “Contractor”), and shall be effective as of the **[]** day of **[]**.

RECITALS

WHEREAS, AURA performs scientific research and manages federally supported research facilities for certain federal agencies, including but, not limited to, the National Science Foundation (“NSF”), Department of Energy (“DOE”), and National Aeronautics and Space Administration (“NASA”);

WHEREAS, in furtherance of AURA’s work on behalf of one or more federal agencies, AURA requires certain supplies, services, or both, which are described in this Contract; and

WHEREAS, Contractor has the capability and desire to furnish such supplies and/or services to AURA in a manner consistent with the statement of work, applicable industry professional and/or technical standards, and all applicable laws.

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Parties agree as follows:

Article 1 Purpose

The purpose of this Contract is for AURA to acquire from Contractor the design, implementation, integration, procurement, acceptance testing, packaging, transportation, delivery and warranty of the Gemini North Adaptive Optics facility (GNAO) Adaptive Optics Bench (AOB) in a two-phase approach. Phase 1 is an initial competitive Conceptual Design Phase, concluding at the Conceptual Design Review (CoDR), the purpose of this Contract; followed by a downselect to a single contractor, Phase 2. The first phase will consist of a Preliminary Design for which Gemini intends to award two or more contracts to separate teams. The second phase (the Post-Preliminary-Design) will encompass a critical design, manufacture and test, delivery, and commissioning of the instrument. A proposal for the Post-Preliminary-Design Contract will be part of the final deliverables due under the initial contract. AURA intends to award the Post-Preliminary-Design contract work to one of the teams doing the Preliminary Design.

Article 2 Contract Format

1. Contract Terms and Structure. This Contract is comprised of the terms and conditions set

forth in the body of the Contract as supplemented by the Appendices attached hereto, all of which are incorporated herein by reference. **Appendix 1** sets forth the Statement of Work and Technical Specifications (hereinafter “SOW”). **Appendix 2** sets forth additional terms and conditions required by prime contracts between AURA and one or more federal agencies.

2. Most Restrictive Terms Govern. To the extent that terms related to a particular subject matter are applied in a more restrictive manner in any particular section of this Contract, or by incorporation of federal requirements by reference, the most restrictive terms shall apply. Any questions regarding any perceived conflict of terms shall be promptly brought to the attention of AURA’s designated Contracts Officer.

3. Irreconcilable Conflict. In the event of an irreconcilable conflict between the provisions of any of the documents that make up this contract, the terms of a document that appears higher on the numbered list immediately below shall control over the terms of a document that is lower on the list.

1. Main Documents (this document, including Terms and Conditions as applicable)
2. Statement of Work
3. All specifications

Article 3 Scope of Work

1. Contractor’s Obligation. Contractor shall perform all work and furnish to AURA all deliverables set forth in the SOW, **Appendix 1**. Contractor shall perform such work and prepare such deliverables in accordance with industry standards of skill, professionalism, diligence, and care. Contractor shall perform all such work in a manner consistent with all requirements of this Contract, including all federal requirements incorporated by reference herein. As stated in the SOW, **Appendix 1**, A proposal for the Post-Preliminary-Design Contract will be part of the final deliverables due under the initial contract. AURA intends to award the Post-Preliminary-Design contract work to one of the teams doing the Preliminary Design.

2. Licenses and Permits. Contractor hereby certifies that it has, and shall maintain throughout the term of this Contract, all licenses necessary to the performance of the work described in **Appendix 1**. Contractor shall obtain all permits (if any) necessary to perform the work described in **Appendix 1**. Upon request by AURA, Contractor shall promptly provide proof of such license and permits.

3. Key Personnel. Key personnel (if any) are listed in **Appendix 1**. Contractor shall not remove or replace key personnel without prior approval of AURA. Any proposed substitute key person shall have materially equivalent qualifications and skills to the person for whom substitution is requested. In the event Contractor is able to demonstrate that a proposed substitute meets such standards, AURA shall not unreasonably deny substitution.

4. Period of Performance/. The period of performance for this Contract shall be as follows:

[Deliverable / Phase of Work] Item	[Delivery / Completion] Date
[insert brief description]	

Article 4 Payment

1. Invoices. Contractor shall submit invoices to AURA on a **monthly** basis. Invoices shall provide detail commensurate with the Budget and shall include any supporting documentation that is reasonably prescribed by AURA. The final invoice must be submitted no later than sixty (60) days after the end of the final period of performance. Invoices shall be submitted to:

Daniel Calabrese, Sr. Contracts Officer	520-318-8149
AURA	
950 N Cherry Ave	
Tucson, AZ 85719	dcalabrese@aura-astronomy.org

An email copy of the invoice shall be sent to: ContractsInvoice@aura-astronomy.org

2. Cost Reimbursement Contract. For Phase A, this Contract is a cost-plus-fixed-fee contract (). Payment shall be made in accordance with Contractor’s approved budget (the “Budget”) through monthly reimbursement of actual “allowable costs” incurred in performance of the work described in **Appendix 1**, plus a portion of the agreed fee, as set forth in the schedule reduced to writing in **Article 3**. Contractor’s Budget is set forth as **Appendix 1**. Subject to AURA’s right to reject nonconforming work, AURA shall make payment within thirty (30) days of receipt of a proper invoice. Total Cost Plus Fixed Fee is XXXX

3. Allowable Costs. Allowable costs shall be limited to those costs that are consistent with (i) the federal cost principles set forth at [2 C.F.R. Part 200, Subpart E / 48 C.F.R. Part 31], (ii) Contractor’s approved Budget, and (iii) any other terms and conditions of this Contract limiting allowability of costs.

4. Maximum Contract Payment. For Phase A and Phase B, the maximum payment authorized under this Contract is **[insert]** (hereinafter “Maximum Contract Price”). Upon reaching seventy-five (75) percent of the Maximum Contract Price in total invoicing, Contractor shall alert AURA’s designated Contracts Officer to that fact. If AURA’s Contracts Officer has any doubt regarding whether the full SOW can be accomplished within the Maximum Contract Price, AURA may, in its sole discretion: (i) reduce the scope of work to ensure maximum value is obtained within the authorized contract amount, or (ii) increase the Maximum Contract Price by

amendment to the Budget. The Contractor is not obliged to continue work beyond the target cost unless or until the contract funding is increased subject to the Limitation of Cost Clause below.

5. Phase B Cost-Plus Incentive Fee. A cost-plus incentive fee contract will provide for an initially negotiated fee to be adjusted later by an agreed upon formula based on the relationship of total allowable costs to total target costs. This contract type specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula. After contract performance, the fee payable to the Contractor will be determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs and decreases in fee below target fee when total allowable costs exceed target costs. When total allowable cost is greater than or less than the range of costs within which the fee-adjustment formula operates, the Contractor will be paid total allowable costs, plus the minimum or maximum fee.

The agreed upon formula for this Contract shall be:

Target Cost: TBD
Target Fee: TBD
Share Ratio: TBD
Min Fee: TBD
Max Fee: TBD

6. Limitation of Cost. The Contractor shall notify the Contracts Officer in writing whenever it has reason to believe that:

- (1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or
- (2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

As part of the notification, the Contractor shall provide the Contracts Officer a revised estimate of the total cost of performing this contract.

Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause -

- (1) AURA is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified and
- (2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified, until the Contracts Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract.

No notice, communication, or representation in any form other than that specified in Article 6 below, or from any person other than the Contracts Officer, shall affect this contract's estimated

cost. In the absence of the specified notice, AURA is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to AURA whether those excess costs were incurred during the course of the contract or as a result of termination.

Article 5 Term

1. Base Period. This Contract shall commence on the effective date set forth above and shall continue through the end of the period of performance or final delivery date set forth in Article 3, Section 4 (Period of Performance), as applicable. AURA shall have the unilateral right (but not obligation) to extend the period of performance or final delivery date, prospectively or retroactively, as necessary to accommodate delays by Contractor.

2. Option Periods. AURA shall have the unilateral right to extend the term of this Contract up to a total performance period of [insert]. AURA may exercise its right to extend the Contract in multiple increments. Rates paid/applicable budgets during options periods shall be as agreed by the Parties and designated in **Appendix 1**. If no rate or budget has been negotiated for an option period, Contractor and AURA shall cooperate in good faith to set reasonable rates/budget commensurate with the rates/budget agreed for the base period, taking into account the nature of the work required during the option period.

Article 6 AURA Contracts Officer

1. Contracts Officer Designation. AURA's designated Contracts Officer for this Contract is:

Name: Daniel Calabrese
Email: dcalabrese@aura-astronomy.org
Phone: 520-318-8149

2. Authority of Contracts Officer. The Contracts Officer is AURA's primary representative for oversight and administration of this Contract. The Contracts Officer is the only person authorized to approve changes to this Contract.

3. Technical Representatives. The Contracts Officer may designate, by written notification to Contractor, one or more Technical Representatives to provide technical direction to Contractor in the course of performing its obligations under this Contract. The Technical Representative has no authority to amend this Contract. Direction by the Technical Representative is only valid if it: (i) is consistent with the SOW, (ii) does not constitute a new assignment of work or material change to agreed performance obligations, *and* (iii) does not create any additional cost of contract performance beyond that contemplated for the agreed SOW. In the event that Contractor believes that any direction provided by the Technical Representative may constitute additional

work or a change to the agreed Contract terms, Contractor shall promptly notify the Contracts Officer.

Article 7 Contractor's Project Manager

Contractor shall designate an individual to serve as Contractor's Project Manager. The Project Manager shall be responsive to communications from AURA's Contracts Officer. The Project Manager shall be sufficiently senior within Contractor's organization and knowledgeable about the type of work and/or deliverables covered by the SOW to facilitate efficient administrative coordination with AURA.

Article 8 Changes

1. Change to SOW. AURA shall have the unilateral right, through its Contracts Officer, to direct, in writing, changes to the SOW, **Appendix 1**. If such change will impact the cost of performance by Contractor, Contractor shall promptly so notify AURA, and the Parties shall cooperate in good faith to negotiate a reasonable increase in the contract price. Any such price adjustment shall be commensurate with the scope and complexity of additional work or modified work.
2. Contractor's Obligation to Proceed. If the Parties cannot promptly agree on upon an appropriate price adjustment, AURA shall have the right to require Contractor to nonetheless proceed promptly with the work as modified, and Contractor shall be entitled to payment of an additional amount equal to its actual incremental increased cost of performance while the Parties continue to negotiate final payment amount. Alternatively, upon failure to promptly agree to a price adjustment, in its sole discretion, AURA shall have the right to (i) direct Contractor to proceed with the SOW as originally stated and (ii) identify an alternate means by which to accomplish the additional work (including engaging an alternate contractor for the additional work).

Article 9 Delays

1. Delay. Contractor shall promptly notify AURA of any expected delay in performance or delivery and shall cooperate in good faith with AURA to modify the performance or delivery schedule in such a manner as to minimize impact to AURA operations.
2. Remedies for Delay. In the event of material impact to AURA operations, AURA shall have the right to reduce the contract price by an amount commensurate to the cost impact to AURA caused by the delay. Further, in the event that AURA cannot reasonably endure the delay in performance, AURA may terminate the Contract.
3. Liquidated Damages.

- (a) Notwithstanding the remedies set forth above, the Parties agree that AURA shall be entitled to liquidated damages in the sum of [\$] per calendar [day/week] of [late delivery / performance of any phase of work].
- (b) Lateness shall be measured against the delivery/performance schedule set forth in Article 2, Section 4 (Delivery Schedule/Period of Performance). In calculating days for purposes of liquidated damages: (i) each day shall be counted as commencing after midnight of the previous day, (ii) each partial day shall count as a full day, (iii) the due date shall not be counted, and (iv) the day of actual completion/delivery shall be counted. Delayed performance excused in writing by AURA's Contracts Officer shall not be considered late.
- (c) The Parties acknowledge and agree that the sum set forth in this clause was set based upon the nature of work under this Contract and fairly represents an estimate of foreseeable damages to AURA as a result of late delivery/performance.
- (d) If AURA invokes this liquidated damages remedy, the amount calculated hereunder shall be deemed to fully compensate AURA for actual costs incurred as a result of the late delivery/performance for which it was invoked. AURA shall be entitled to offset any payments due Contractor by the amount of applicable liquidated damages.

Article 10
AURA Facility Access and Use

1. Contractor Access to Facilities. Contractor shall be granted access to AURA facilities to the extent necessary to efficiently accomplish its obligations under this Contract. Matters of access shall be coordinated via AURA's Contracts Officer and Technical Representative(s). Access may be limited when necessary to ensure Contractor's work not interfere with other activities of AURA or its research partners. In the event that other AURA or research partner activities are an impediment to efficient performance of this Contract, AURA and Contractor shall cooperate in good faith to adjust the performance or delivery schedule accordingly.
2. Facility Rules. Contractor and Contractor's personnel shall, at all times, obey all rules applicable to conduct within AURA facilities and shall comply with the reasonable direction of facility managers. In the event any such rules or direction becomes an impediment to efficient performance of this Contract, Contractor shall promptly bring the matter to the attention of AURA's Contracts Officer.
3. Bodily Injury and Property Damage. If the SOW calls for performance of work on AURA premises, Contractor shall indemnify AURA for any (i) bodily injury to Contractor's personnel or third parties relating to Contractor's activities on AURA premises, and (ii) property damage arising out of Contractor's activities on AURA premises.
4. Damage to AURA Facilities or Equipment. If the SOW calls for performance of work on

AURA premises or work with AURA equipment, Contractor shall be responsible for all damage to facilities, equipment, or other property caused by Contractor or its personnel, subcontractors, or agents. Contractor shall promptly notify AURA's Contracts Officer of any such damage and shall reimburse AURA for the cost of repair.

5. Survival. The rights and obligations of Sections 3 (Bodily Injury and Property Damage) and 4 (Damage to AURA Facilities or Equipment) in this Article 10 (AURA Facility Access and Use) shall survive the expiration or termination of this Contract.

Article 11 Insurance

1. Insurance. Contractor shall, during the term of this Contract, maintain in force the following insurance coverage with no less than the following minimum limits:

- (a) Comprehensive General Liability with coverage of at no less than \$1 million per claim and \$3 million annual aggregate.
- (b) Workers' Compensation at statutory limits.

2. Contractual Liability Coverage. If the SOW calls for performance of work on AURA premises, Contractor shall ensure that its Comprehensive General Liability insurance coverage includes coverage for "contractual liabilities."

3. Professional Liability Coverage. If the work covered under this Contract entails activities for which professional liability coverage is customarily acquired (*e.g.*, errors and omission or malpractice coverage), Contractor shall maintain such coverage at customary limits, but in no case less than \$1 million per claim and \$3 million annual aggregate.

4. Proof of Insurance and Tail Coverage. Upon request by AURA, Contractor shall promptly provide AURA with proof of insurance. Contractor shall ensure continuing coverage for liabilities that may be asserted in relation to activities under this Contract for a period of three (3) years from the end of the term of this Contract.

5. Self-Insurance Accepted. Contractor may meet its obligations under this Article 11 (Insurance) by providing AURA with satisfactory proof of the pertinent coverages through a comprehensive program of self-insurance.

6. Survival. The rights and obligations of this Article 11 (Insurance) shall survive the expiration or termination of this Contract.

Article 12 Termination

1. Termination Without Cause. AURA shall have the right to terminate performance under this Contract without cause upon thirty (30) days' written notice to Contractor.

2. Termination for Cause. Upon material breach by Contractor, AURA shall have the right to terminate this Contract for cause in accordance with this section. In the event of material breach by Contractor, AURA shall notify Contractor in writing of the circumstances constituting the material breach. Contractor shall be afforded ten (10) calendar days after receipt of such notice to cure its breach. If Contractor fails to cure its breach within that time, AURA may proceed with termination of the Contract for cause by written notice, which may then be immediately effective. Material breach shall include, but not be limited to:

- (a) Contractor's failure to meet required performance standards as described herein or in the SOW;
- (b) Contractor's loss of any license necessary to perform the Contract;
- (c) Contractor's failure to meet the insurance requirements of this Contract;
- (d) Debarment, suspension, or exclusion of Contractor or its key personnel from participation in federal contracts or awards;
- (e) A material change in Contractor's financial condition that reasonably indicates Contractor will be unable to perform its obligations under this Contract; or
- (f) Contractor's failure to comply with federal standards or requirements incorporated into this contract by reference.

3. Contractor's Obligations Upon Termination. Regardless of the reason for which this Contract is terminated, Contractor shall cease all work in progress and shall cancel, to the maximum extent possible without creating risk of loss of work already performed, all related obligations to third-parties. In ceasing work in progress, Contractor shall safeguard the work accomplished. If so directed by AURA, Contractor shall turn over all work in progress in a manner calculated to facilitate AURA's taking over of the work directly or through a replacement contractor.

4. Contractor's Right to Payment Upon Termination. Upon termination without cause, AURA shall pay Contractor for work performed to the date of termination, plus reasonable termination costs such as subcontract winddown costs where subcontracts are not immediately cancellable. Upon termination for cause, the Parties shall negotiate final payment as appropriate, taking into account the basis for termination and any liabilities of Contractor to AURA under the circumstances.

5. Suspension or Termination of Contract for Loss of Federal Support. Notwithstanding any other term of this Contract, AURA shall have the right to immediately suspend or terminate performance of this Contract in the event (i) federal funds available to fund the Contract are suspended or terminated or (ii) the project in furtherance of which the contracted work is needed is suspended or terminated. In such event, Contractor's right to payment shall be as set forth above for termination without cause.

6. Survival. The rights and obligations of this Article 12 (Termination) shall survive the expiration or termination of this Contract.

Article 13 Relationship of the Parties

Contractor's relationship to AURA is that of an independent contractor. None of the provisions of this Contract are intended to create, nor shall be construed to create any relationship between or among the Parties other than that of independent entities. Neither of the Parties shall be construed to be the agent, partner, co-venturer, employee nor representative of the other Party.

Article 14 Access to Records

Contractor shall provide reasonable access to records related to performance of this Contract to AURA, the federal agency providing the funds for this Contract, NSF, and the federal General Accountability Office.

Article 15 Confidential Information

If the work required under this Contract will require Contractor to have access to the proprietary or confidential information of AURA, Contractor shall execute a nondisclosure agreement ("NDA") in substantially the same form as that provided in **Appendix 4**.

Article 16 Warranty

1. Contractor warrants that the equipment and parts delivered to AURA hereunder meet and satisfies all of AURA's requirements set forth in the Statement of Work (**Appendix 1**).
2. Contractor warrants that the equipment delivered to AURA hereunder, including all hardware and software will, upon completion of the contract, be free from defects in material or workmanship for one year after delivery and installation. Further, Contractor warrants all labor related to the installation of the systems for a period of five years after installation. Products that are not manufactured by Contractor, but that are purchased by Contractor will be subject to the warranty provisions provided by the equipment manufacturer of such product(s), unless Contractor notifies AURA of any additional warranty provisions in writing. The obligation of Contractor under this warranty is the repair or replacement of any defective or malfunctioning parts with new or refurbished parts. If Contractor fails to replace or repair such parts, AURA's remedy shall be a refund of the price charged by the manufacturer of the part (whether that be Contractor or a third party) to its dealers for such parts as are proven to be defective. To obtain service under this warranty, AURA must bring the malfunction to the attention of Contractor or one of its authorized dealers during the one-year warranty period.

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

Article 17
Collaboration and Information Sharing in Performance

1. To the extent that the work under this Contract impacts AURA's information technology or other technical systems, Contractor shall keep AURA's Technical Representative apprised of its activities through close coordination and regular updates. Such coordination shall be used to ensure Contractor is able to efficiently perform the work and to ensure that AURA is promptly apprised of any activities or events that may negatively impact AURA's systems or may interfere with other work of AURA.

Article 18
Information Security

1. To the extent that the work under this Contract impacts AURA's information technology or other technical systems, Contractor shall keep AURA's Technical Representative apprised of its activities through close coordination and regular updates. AURA's Information Technology Network is to be used for AURA business purposes and to serve the interests of the corporation.

Article 19
Warranty of No Infringement

1. Contractor represents and warrants that none of the services performed under this Contract, nor any supplies, equipment, instruments, or other deliverables provided under this Contract, will, in any way whatsoever, infringe, or constitute misappropriation of, any right of any third party, including, any copyrights, mask work rights, patent rights, trademark rights, trade secret rights or confidentiality rights.

Article 20
Patent and Copyright Indemnity

1. Contractor shall indemnify AURA and the Government (and their officers, agents, and employees) against all liability, including costs, for infringement of any copyright or patent arising out of, or resulting from, the manufacture or delivery of supplies, the performance of

services, or the construction, alteration, modification, or repair of real property, equipment, software, or instruments, under this Contract. AURA shall promptly notify Contractor if AURA becomes aware of any such claim or the potential for any such claim.

Article 21
Section 889 Compliance

1. Contractor is prohibited, in performance of this Contract, from providing AURA any equipment, service or system that uses, as a substantial component, covered telecommunications equipment or services. "Covered telecommunications equipment" is defined at Section 889 of Public Law 115-232 (Aug. 13, 2018) and 2 C.F.R. § 200.216 to include the equipment and services of Huawei Technology Company and ZTE Corporation as well as that of certain other entities and affiliates. If Contractor determines, during the term of this Contract or during a period extending for one (1) year after the end of the term, that it failed to comply with this prohibition, it shall promptly notify AURA and replace the noncompliant equipment or service with compliant equipment or services at no additional cost to AURA. Contractor hereby acknowledges that it was placed on notice of this obligation in the course of the contract negotiation and award process.

Article 22
NSF Rights in Data Clause

1. Notwithstanding any other term in this Contract to the contrary (if any), Contractor shall grant to NSF an irrevocable, worldwide, nonexclusive, royalty-free license to use, display, disclose, reproduce or modify (and to permit others to use, display, disclose, reproduce or modify), for any purpose whatsoever, the following items (which may constitute data or copyrightable works) to the extent delivered under this Contract:

- (a) Preventative maintenance guides;
- (b) Preventative maintenance histories;
- (c) Operating manuals and similar plans;
- (d) Facility and instrument drawings (including design, shop and as-built drawings), designs and specifications;
- (e) Schematics;
- (f) Warranty data;
- (g) Schedules;
- (h) Software and manuals developed under this Contract;

- (i) Inventories;
- (j) Document indices;
- (k) Contracts and vendor agreements;
- (l) Operations reports;
- (m) Memoranda with third parties; and
- (n) Safety manuals.

Contractor shall include a clause materially similar to this clause in all subcontracts under this Contract.

Article 23

Licenses Relating to Contract Work Product

1. AURA and Government Licenses Relating to Contract Work Product.

(a) Contractor has been engaged to perform work for AURA relating to technical systems, in particular by developing or creating software or hardware, or modifications or repairs to software or hardware.

(b) Contractor shall, and hereby does, grant to AURA and the Government an irrevocable, worldwide, nonexclusive, royalty-free license to use, display, disclose, reproduce or modify (and to permit others to use, display, disclose, reproduce or modify) for any purpose whatsoever any copyrightable work first made in the performance of this Contract.

(c) This Contract is supported by funds made available from the National Science Foundation and constitutes a “funding agreement” for purpose of the Bayh Dole Act, 35 U.S.C. § 200 *et seq.*, and its implementing regulations at 37 C.F.R. Part 401. As such:

(i) The “standard patent rights clause” set forth at 37 C.F.R. § 401.14 is hereby incorporated by reference as if restated in full text herein. Throughout such clause, “Federal agency” and “agency” are changed to “AURA and/or the National Science Foundation”.

(ii) Contractor affirms that it has reviewed the standard patent rights clause and will promptly make any disclosures to AURA and the government that are required thereunder. Further, to the extent failure to make any disclosure results in relinquishment or forfeiture of any rights, Contractor agrees to cooperate in good faith with AURA and the government to convey required rights, and/or provide evidence of conveyance of such rights, to the government.

(iii) Contractor further agrees that, notwithstanding any clause to the contrary in this Contract, the government is an intended beneficiary of the standard patent rights clause and shall have the right to directly enforce it vis-a-vis Contractor.

(d) Contractor shall deliver to AURA the work product for which it is engaged under this Contract (including, for software, source code and operating code), as well as copies of all technical data related to such work product (including, but not limited to technical manuals). AURA shall have the right to require delivery of software code developed under this Contract and any technical data developed under this Contract for a period extending for three (3) years after the end of the term of the Contract.

(e) Contractor shall ensure that all of Contractor's employees and subcontractors performing work in furtherance of this Contract have executed written assignments of rights in any patentable inventions or copyrightable works that they may be involved in creating in the course of their work under this Contract, such that Contractor possesses sufficient rights to meet its obligations under this Section (AURA and Government Licenses Relating to Contract Work Product).

Article 24 Force Majeure

1. 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, or 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. That party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its performance of the contract and to fulfill its obligations under the contract. Upon completion of the event of force majeure, the party affected must as soon as reasonably practicable recommence performance of its obligations under this contract. In the event of such delay, the date of performance or of delivery shall be extended for a period equal to the time lost by reason of said delay on written approval of AURA.

Article 25 Applicable Law

1. Governing Law. This Contract shall be governed under the law of the State of Arizona, without regard to its conflict of law provisions.

2. Construction in a Manner Consistent with Applicable Federal Laws. Contractor's obligations under this Contract shall be interpreted and performed in a manner consistent with applicable federal laws, including, but not limited to, federal requirements incorporated by reference.

Article 26 Dispute Resolution

1. Informal Dispute Resolution. The Parties shall first attempt, in good faith, to promptly resolve disputes arising under this Contract informally by negotiation between AURA's Contracts Officer and Contractor's Project Manager. Upon identification of any matter of dispute, the aggrieved Party shall promptly notify the other Party of the matter and its position. Except that this clause shall not be construed as limiting AURA's suspension and termination rights under Article 12 (Termination) in any way whatsoever, the Parties agree that they shall not invoke more formal means of dispute resolution, including the filing of any lawsuit, for ten (10) calendar days following the commencement of informal negotiations, unless such delay would materially prejudice the rights of the aggrieved party.

2. AURA Right to Invoke Mediation and Arbitration. If a dispute, including any allegation of breach, is not resolved by informal means as described above, at AURA's sole discretion, AURA may invoke mediation or arbitration of the disputed matter. AURA's right to invoke mediation or arbitration shall apply to all disputes, including those first raised by AURA and those first raised by Contractor. If mediation or arbitration is invoked by AURA, the mediation or arbitration shall be conducted in accordance with the applicable Commercial Rules of the American Arbitration Association. There shall be a single presiding arbitrator or mediator, and the Parties shall mutually agree to such arbitrator or mediator within thirty (30) calendar days of AURA's invocation of mediation or arbitration. Unless otherwise agreed by AURA, the place of mediation or arbitration shall be Tucson, Arizona. Mediation and arbitration under this section shall not be mutually exclusive; AURA may first invoke mediation and later invoke arbitration. In the case of arbitration, the award rendered by the arbitrator shall be final and binding on the Parties and may be entered and enforced in any court having jurisdiction. Each Party shall bear its own costs incurred in the course of mediation or arbitration and shall bear one half of the costs of the mediation or arbitration process.

3. No Other Limitations. Except as otherwise expressly provided in this Contract, the Parties shall have and retain all rights to seek all lawful remedies for breach of this Contract.

Article 27 Assignment

1. Assignment Required by Federal Agency. When required by the federal agency providing the funds for this Contract, or when required by NSF in relation to management of an NSF Major Facility, Contractor agrees that AURA's rights and obligations under this Contract may be assigned to and/or assumed by the funding agency, NSF, or another entity designated by the funding agency or NSF to serve as the successor to AURA's interests under the Contract.

2. No Assignment by Contractor. The rights, obligations and responsibilities established herein shall not be assigned, delegated, or transferred by Contractor without the express written consent of AURA.

Article 28 Miscellaneous

1. No Waivers. No assent or waiver, express or implied, of any breach of any one or more of the covenants, conditions or provisions hereof shall be deemed a waiver of any other covenant, condition or provision hereof, or a waiver of any subsequent breach of the same covenant, condition or provision.

2. Severability. The provisions of this Contract are severable. If any clause, sentence, provision or other portion of this Contract is or becomes illegal, null, void, or unenforceable for any reason, or is held by any court of competent jurisdiction to be so, the remaining portions of this Contract shall continue to be valid and enforceable as to the Parties hereto, unless the Parties agree that such a clause, sentence, provision, or other portion of this Contract is of sufficient materiality to require amendment or termination of this Contract.

3. Intended Beneficiaries. The only intended beneficiaries of this Contract are AURA and Contractor. Notwithstanding the forgoing, if the “standard patent rights clause” of 37 C.F.R. § 401.14 is incorporated into this Contract, the government shall be considered an intended beneficiary of this Contract to the extent, and only to the extent, set forth in such clause. Otherwise, there are no intended third-party beneficiaries of this Contract.

4. Survival. All rights and obligations which, by their terms, are designated to survive expiration or termination of this Contract shall survive such expiration or termination and constitute continuing rights and obligations.

5. Entire Agreement and Amendments. This Contract represents the complete understanding of the Parties with regard to the subject matter. Any amendment to this Contract shall be in writing and signed by both Parties. This Contract supersedes any other agreements or understandings between the Parties, whether oral or written, relating to the subject matter of this Contract.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their duly authorized representatives, intending to be legally bound hereby.

**FOR THE ASSOCIATION OF UNIVERSITIES
FOR RESEARCH IN ASTRONOMY**

Signature: _____

Name: _____

Title: _____

Date: _____

FOR [CONTRACTOR]

Signature: _____

Name: _____

Title: _____

Date: _____

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**APPENDIX 1
STATEMENT OF WORK AND BUDGET**

Technical Specifications:

Permits/Licenses Required:

Key Personnel (if any):

Deliverables:

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APPENDIX 2
REQUIRED FEDERAL COMPLIANCE TERMS
NATIONAL SCIENCE FOUNDATION

1. **Funding Agency and Type.** This Contract is funded through a Cooperative Agreement with NSF AST-1839225. As such, certain specific terms are required as set forth herein.
2. **Federal Requirements.** The performance of Contractor under this Contract is subject to the following federal requirements, which are incorporated by reference herein:
 - (a) 2 C.F.R. Part 200, as adopted by NSF at 2 C.F.R. Part 2500;
 - (b) The NSF Cooperative Agreement Financial & Administrative Terms and Conditions (CA-FATC) (Nov 12, 2020) as supplemented and modified by the NSF Major Multi-User Research Facility Projects CA-FATC (March 23, 2021), available at: [CA-FATC Modifications & Supplemental Changes - 3/23/2021 \(nsf.gov\)](https://www.nsf.gov/pubs/policydocs/pappg20_1/index.jsp); and
 - (c) The NSF Performance & Award Policies & Procedures Guide (“PAPPG”), available at: https://www.nsf.gov/pubs/policydocs/pappg20_1/index.jsp, to the extent the requirements of the PAPPG are not inconsistent with the CA-FATC described immediately above.
3. **Whistleblower Protection.** This Contract is subject to the whistleblower protection provisions of 41 U.S.C. § 4712.
4. **Fly America Act.** Any foreign travel funded under this Contract shall be carried out in a manner consistent with the restrictions of the Fly America Act, 40 U.S.C. § 40118. Contractor should contact AURA’s Contracts Officer with any questions regarding compliance.
5. **Domestic Preference to the Extent Practicable.** To the greatest extent practicable for work under this Contract, Contractor shall use goods, manufactured products, or materials produced in the United States. For purposes of this clause, “manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products, concrete, glass (including optical fiber), and lumber. For purposes of this clause, “produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial smelting stage through the application of coatings, occurred in the United States.
6. **Certification Regarding Lobbying (“Byrd Anti-Lobbying Amendment”).** If this contract exceeds \$100,000, by signature on this Contract, Contractor’s representative certifies to the best of his or her knowledge and belief that:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract or the NSF Cooperative Agreement funding this Contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) Contractor shall require that the language of this certification be included all subcontracts and that all subcontractors shall certify and disclose accordingly.

The above certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification may be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

7. Clean Air Act and Clean Water Act. If this Contract is valued in excess of \$150,000, Contractor shall comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 *et seq.*) and Clean Water Act (33 U.S.C. § 1251 *et seq.*). Violations must be reported to AURA, NSF, and the local Regional Office of the Environmental Protection Agency.

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

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

10. Assignment/Subcontracting. AURA may assign its rights under this agreement to either the National Science Foundation or to an organization succeeding it as the operator of NOIRLab. Contractor shall not assign or delegate its rights/responsibilities under this agreement without

prior written permission from AURA, and any assignment without such permission shall be void. Any assignment with AURA's permission shall not relieve contractor of responsibility for successful performance of the work. Contractor may not subcontract any portion of the work, not including purchases of commercially available items, without prior written permission from AURA.

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

12. Contract Work Hours and Safety Standards Act. In performing the work contractor shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours-in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

13. Nondiscrimination. This agreement is subject to the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the regulations issued pursuant thereto by NSF (45 CFR 611), and the Assurance of Compliance which the Contractor has filed with NSF. No person on the basis of race, color, national origin, or handicap shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under this agreement. In addition, if the project involves an education activity or program, as defined by Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1686), no person on the basis of sex shall be excluded from participation in the project.

14. Davis-Bacon, as amended (40 U.S.C. 276a to a-7) (applicable to contracts for construction exceeding \$2,000.): All purchase orders for construction shall comply with the provision titled "Davis-Bacon Act (40 U.S.C. 276A to a-7) and as supplemented by the Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, the contract shall be required to pay wages to labor and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Seller shall be required to pay wages not less than once a week. The Seller shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a subcontract or purchase order shall be conditioned upon the acceptance of the wage determination. The Seller shall report all suspected or reported violations to AURA.

**APPENDIX 3
NONDISCLOSURE AGREEMENT
FORM**

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