

APPENDIX E

ASSOCIATION OF UNIVERSITIES FOR RESEARCH IN ASTRONOMY, INC.

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

1. DEFINITIONS

- (a) "AURA" refers to the Association of Universities for Research in Astronomy, Inc., an Arizona Corporation.
- (b) "NSF" refers to the National Science Foundation.
- (c) "Work Locations" are, collectively, any and all locations at which the Work will be performed by Vendor or any of its sub-vendors or suppliers, including, but not limited to, design and drafting facilities, fabrication and machine shops, welding facilities, painting and coating facilities, assembly facilities, packaging facilities, and all other locations at which the Work will be performed.
- (d) "SACO" refers to the Sub-Award and Contracts Officer.
- (e) "Vendor Agreement" is broadly defined to include a contract between AURA with a dealer, distributor, merchant, professional firm, consulting firm, or other business that: (i) offers and sells goods and/or services (including professional services) to businesses.; (ii) offers and sells similar goods and/or services to many purchasers; and (iii) offers and sells goods and/or services which are otherwise ancillary to the operation of a federal program. The term, "Vendor Agreement," includes and refers to a "Professional Services Agreement" or to a "Professional Services Agreement award," if applicable; the term, "Vendor Agreement" may be used in lieu of the term, "Professional Services Agreement" or the term, "Professional Services Agreement award."
- (f) "Vendor" includes and refers to a dealer, distributor, merchant, professional firm, consulting firm, or other business that: (i) offers and sells goods and/or services (including professional services) to businesses.; (ii) offers and sells similar goods and/or services to many purchasers; and (iii) offers and sells goods and/or services which are otherwise ancillary to the operation of a federal program. Use of the term, "Vendor" includes and refers to the Vendor entity (if any) and a Vendor's authorized representatives.

2. COMMUNICATION

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

3. TECHNICAL DIRECTION

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

4. VENDOR AGREEMENTS

4.1 LABOR DISPUTES

If the Vendor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Vendor Agreement, the Vendor shall immediately give notice, including all relevant information, to AURA. This provision shall be included in all subcontracts issued by Vendor related to the Work.

4.2 ASSIGNMENT

AURA may assign its rights under this Vendor Agreement to either the National Science Foundation or to an organization succeeding it as the operator of the AURA. Vendor shall not assign or delegate its rights/responsibilities under this vendor agreement without prior written permission from AURA, and any assignment without such permission shall be void. Any assignment with AURA's permission shall not relieve vendor of responsibility for successful performance of the Work. Vendor may not subcontract any portion of the Work – not including purchases of commercially available items – without prior written permission from AURA.

5. INTELLECTUAL PROPERTY

5.1 COPYRIGHTABLE MATERIAL

(a) The term "Subject Writing" refers to any copyrightable material which is produced by Vendor in the course of performing the Work under this vendor agreement or which otherwise arises out of the Work and which is either delivered to AURA or is distributed to any persons other than Vendor's personnel and agents. Subject Writings include such items as reports, books, journal articles, software, databases, sound recordings, photographs, artwork, and videotapes.

(b) Except as otherwise specified in this Vendor Agreement, the Vendor may own or permit others to own the copyright in all Subject Writings. Vendor agrees that if it or anyone else does own copyright in a Subject Writing, then for each Subject Writing: AURA, and any subsequent organization operating AURA, shall have nonexclusive, nontransferable, irrevocable,

royalty-free license to exercise throughout the world all rights provided by copyright for research purposes. These licenses, however, will not include the right to sell copies of the copyrighted works to the public.

(c) Vendor agrees to acquire, through written agreement or an employment relationship, the ability to comply with the requirements of the preceding paragraphs. The Vendor further agrees that any transfer of copyright or any other rights to a Subject Writing, by it or anyone whom it has allowed to own such rights, will be made subject to the requirements of this section.

(d) Any and all Information furnished to Vendor by or on behalf of AURA shall remain the sole property of AURA and shall be used by Vendor only in connection with Vendor's performance of Work under this Vendor Agreement. Vendor shall not, without the prior express written consent of AURA, disclose or reveal such Information or any portion thereof to any person not employed by Vendor in performance under this Vendor Agreement (except designated authorized representatives of AURA) or utilize such Information for any purpose other than such performance; provided, however, that such restriction on disclosure shall not apply to Information which: (1) was or becomes part of the public domain otherwise than through any act or omission on the part of Vendor; (2) was already in the possession of the Vendor at the time of its receipt of such Information without any restrictions on disclosure; or (3) was acquired by Vendor from a third party (other than from a representative of AURA) without any undertaking of confidentiality imposed on or by the disclosing party. Vendor shall take all precautions reasonably desirable and necessary to safeguard the Information and comply with the provisions of the preceding sentence. Upon the earlier of termination of this Vendor Agreement for any reason, or as requested by AURA at any time, Vendor shall promptly deliver all Information to AURA that has been provided to Vendor by or on behalf of AURA.

(e) Subject to the provisions of Section 5.2, below, Vendor may retain the entire right, title, and interest of any and all Information first developed, acquired, or produced by Vendor related to the Work or this Vendor Agreement; provided, however, that with respect to any Information in, which Vendor retains title: (1) AURA, or any organization that succeeds it as the Managing Organization, shall have a non-exclusive, non-transferable, irrevocable, paid-up license to use or have used on their behalf, for all purposes throughout the world, and (2) each of the Parties shall have a non-exclusive, non-transferable, irrevocable, paid-up license to use or have used on their behalf such Information throughout the world for research purposes. AURA, any organization that succeeds it as the Managing Organization, may translate, duplicate, reproduce, distribute and disclose in any manner and for any purpose all of such Information.

(f) Proprietary information acquired, developed or produced by Vendor prior to the date of this Vendor Agreement that was not acquired, developed or produced by Vendor for any purposes related to this project, shall not be deemed to be "Information" under this Vendor Agreement. To the extent that Vendor incorporates any Proprietary Information into the Work, Vendor hereby grants AURA a non-exclusive, non-transferable, irrevocable, paid-up license to use or have used on their behalf, for all purposes, such Proprietary Information throughout the world. Information shall only be considered "Proprietary Information" if it is clearly marked as such by Vendor. Unless otherwise specified in this Vendor Agreement, AURA, any organization that succeeds it as the Managing Organization, may translate, duplicate, reproduce, distribute and disclose in any manner and for any purpose all of such Proprietary Information.

5.2 PATENT INFRINGEMENT, USE AND CONSENT

(a) Vendor warrants that the Work and Vendor's performance under this Vendor Agreement shall not infringe any valid United States or foreign patents, trademarks or copyrights, except where such infringement arises solely from a process or product specified by AURA under this Vendor Agreement unless Vendor or its subcontractors have information that use of such process or product will or may cause an infringement and fail to promptly notify AURA of such infringement. Vendor shall report to the SACO, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Vendor Agreement of which the Vendor has knowledge. In the event of any claim or suit against AURA on account of any alleged patent or copyright infringement arising out of the performance of the Work or out of the use of any supplies furnished or Work performed hereunder, Vendor shall furnish to AURA, when requested by the SACO, all evidence and information in possession of the Vendor pertaining to such suit or claim.

(b) The Government of the United States has given its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this Vendor Agreement or any part hereof or any amendment hereto or any sub-contract hereunder (including any lower-tier subcontract).

(c) Vendor shall pay all royalties and license fees related to this Vendor Agreement.

5.3 PATENT RIGHTS (APRIL, 1992)

(a) Definitions.

1. INVENTION means any invention or discovery, which is or may be patentable or otherwise protectable under Title 35 of the USC, to any novel variety of plant, which is or may be protected under the Plant Variety Protection Act (7 USC §§2321 et seq.).

2. SUBJECT INVENTION means any invention of the vendor conceived or first actually reduced to practice in the performance of Work under this sub-award.

3. PRACTICAL APPLICATION means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to

establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

4. MADE when used in relation to any invention means the conception or first actual reduction to practice of such invention.

5. NON-PROFIT ORGANIZATION means a domestic university or other institution of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 USC §501(c)) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 USC §501(a)) or any domestic non-profit scientific or educational organization qualified under a State non-profit organization statute.

6. NSF means the National Science Foundation, an agency of the federal government of the United States of America.

(b) Allocation of Principal Rights. The Vendor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Patent Rights clause and 35 USC §203. With respect to any subject invention in which the vendor retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U. S. the subject invention throughout the world. With respect to any subject invention in which the Vendor retains title, AURA shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on their behalf the subject invention throughout the world for research purposes.

(c) Invention Disclosure, Election of Title and Filing of Patent Applications by Vendor.

1. The Vendor will disclose each subject invention to NSF within two months after the inventor discloses it in writing to Vendor personnel responsible for the administration of patent matters. The disclosure to NSF shall be in the form of a written report and shall identify the vendor agreement under which the invention was made, and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to NSF, the Vendor 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 Vendor.

2. The Vendor 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 U. S., the period for election of title may be shortened by NSF to a date that is no more than 60 days prior to the end of the statutory period.

3. The Vendor will file its initial patent application on an invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the U. S. after a publication, on sale, or public use. The Vendor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

4. Requests for extension of the time for disclosure to NSF, election, and filing under subparagraphs 1, 2, and 3, may, at the discretion of NSF, be granted.

(d) Conditions When the Government May Obtain Title. The Vendor will convey to NSF, upon written request, title to any subject invention:

1. if the Vendor fails to disclose or elect the subject invention within the times specified in paragraph c. above, or elects not to retain title; provided that NSF may only request title within 60 days after learning of the failure of the Vendor to disclose or elect within the specified times;

2. in those countries in which the Vendor fails to file patent applications within the times specified in paragraph (c) 1 above, but prior to its receipt of the written request of NSF, the Vendor shall continue to retain title in that country; or

3. in any country in which the Vendor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Vendor.

1. The Vendor will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Vendor fails to disclose the subject invention within the times specified in paragraph c. above. The Vendor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Vendor is a party and includes the right to grant sublicenses of the same scope to the extent the Vendor was legally obligated to do so at the time the Vendor Agreement was awarded. The license is transferable only with the approval of NSF except when transferred to the successor of that part of the Vendor's business to which the invention pertains.

2. The Vendor's domestic license may be revoked or modified by NSF to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR §404. This license will not be revoked in that field of use or the geographical areas in which the Vendor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at

discretion of NSF to the extent the Vendor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, NSF will furnish the Vendor a written notice of its intention to revoke or modify the license, and the Vendor will be allowed thirty days (or such other time as may be authorized by NSF for good cause shown by the vendor) after the notice to show cause why the license should not be revoked or modified. The Vendor has the right to appeal, in accordance with applicable regulations in 37 CFR §404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Vendor Action to Protect Government's Interest.

1. The Vendor agrees to execute or to have executed and promptly deliver to NSF all instruments necessary to: (i) establish or confirm the rights the Government has throughout the world in those subject inventions for which the Vendor retains title; and (ii) convey title to NSF when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

2. The Vendor 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 Vendor each subject invention made under this Vendor Agreement in order that the Vendor can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by paragraph c. 1. above. The Vendor shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U. S. or foreign statutory bars.

3. The Vendor will notify NSF of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

4. The Vendor agrees to include, within the specification of any U. S. patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the vendor agreement) awarded by the National Science Foundation. The Government has certain rights in this invention. "

5. The Vendor or its representative will complete, execute and forward to NSF a confirmation of a License to the U. S. Government and the page of a United States patent application that contains the Federal support clause within two months of filing any domestic or foreign patent application.

(g) Subcontracts. The Vendor will include this Patent Rights clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work. The subcontractor will retain all rights provided for the Vendor in this Patent Rights clause, and the Vendor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(h) Reporting on Utilization of Subject Inventions. The Vendor 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 Vendor 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 Vendor and such other data and information as NSF may reasonably specify. The Vendor also agrees to provide additional reports in connection with any march-in proceeding undertaken by NSF in accordance with paragraph j. of this Patent Rights clause. As required by 35 USC §202(c)(5), NSF agrees it will not disclose such information to persons outside the Government without the permission of the Vendor.

(i) Preference for United States Industry. Notwithstanding any other provision of this Patent Rights clause, the Vendor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the U. S. unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the U. S. However, in individual cases, the requirement for such an agreement may be waived by NSF upon a showing by the Vendor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U. S. or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights. The vendor agrees that with respect to any subject invention in which it has acquired title, NSF has the right in accordance with procedures at 37 CFR §401. 6 and NSF regulations at 45 CFR §650. 13 to require the Vendor, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances and if the Vendor, assignee, or exclusive licensee refuses such a request, NSF has the right to grant such a license itself if NSF determines that:

1. such action is necessary because the Vendor or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

2. such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Vendor, assignee, or their licensees;
 3. such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Vendor, assignee, or licensee; or
 4. such action is necessary because the agreement required by paragraph i. of this Patent Rights clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the U. S. is in breach of such agreement.
- (k) Special Provisions for Contracts with Non-profit Organizations. If the Vendor is a non-profit organization, it agrees that:
1. rights to a subject invention in the U. S. may not be assigned without the approval of NSF, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Vendor;
 2. the Vendor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when NSF deems it appropriate) when the subject invention is assigned in accordance with 35 USC §202(e) and 37 CFR §401. 10;
 3. the balance of any royalties or income earned by the Vendor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific or engineering research or education; and
 4. it will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give preference to a small business firm if the vendor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the vendor 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 Vendor. However, the Vendor agrees that the Secretary of Commerce may review the Vendor's licensing program and decisions regarding small business applicants, and the Vendor will negotiate changes to its licensing policies, procedures or practices with the Secretary when the Secretary's review discloses that the Vendor could take reasonable steps to implement more effectively the requirements of this paragraph k. 4.
- (l) Communications. All communications required by this Patent Rights clause should be sent to:

Patent Assistant
Office of the General Counsel
National Science Foundation
4201 Wilson Boulevard
Arlington, VA 22230

6. COMPUTATION OF TIME

Except as expressly provided otherwise in this Vendor Agreement, references to "days" or "weeks" or "months" shall mean calendar days, weeks or months, respectively, and time periods specified in this Vendor Agreement shall be measured in calendar days, weeks and months. Whenever the date for the exercise of any right, privilege, remedy or the discharge of any duty under this Vendor Agreement falls upon a Saturday, Sunday or any public or legal holiday, the party having the right, privilege, remedy or duty shall have the time extended until 5:00 p.m., MST on the next succeeding day that is not a Saturday, Sunday or holiday.

7. U. S. STATUTORY REQUIREMENTS

7.1 APPLICABLE FEDERAL STANDARDS AND REQUIREMENTS

a. By signing this Agreement, the Vendor certifies that it will comply with all applicable clauses from the Cooperative Agreement (CA) AST 0809409, the CA General Conditions, the Federal Standards and Requirements set forth in NSF Financial and Administrative Terms and Conditions dated October 10, 2010; OMB Circulars A-110; A-21 and A-133 as incorporated herein.

b. The Vendor shall ensure that the following articles of the Financial and Administrative Terms and Conditions dated October 10, 2010, if applicable, are appropriately addressed and flow down to all subcontractors: Articles 5, 7, 9, 10, 11, 12, 17, 18, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 33, 34, 35, 36, 37, 38, 42, 43, 44, 45, 46 and 47. These articles may be found at http://www.nsf.gov/publications/pub_summ.jsp?ods_key=cafatc1010.

7.2 EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

(a) This Section 7.2 is applicable if the amount of this Vendor Agreement exceeds \$100,000. Vendor agrees that the SACO, the Director of the NSF, and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three (3) years after final payment under this Vendor Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Vendor involving transactions related to this Vendor Agreement. Vendor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the SACO, the Director of the NSF, and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract" as used here excludes: (1) purchase orders and subcontracts not exceeding \$100,000; and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. Such periods of access and examination, for records which relate to: (i) litigation or settlement of claims arising from the performance of this Vendor Agreement; or (ii) costs and expenses of this Vendor Agreement as to which exception has been taken by the Comptroller General of the United States, or any duly authorized representative from the General Accounting Office of the United States, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

(b) Financial records, supporting documents, statistical records, and other records pertinent to this Sub-award shall be retained by the Vendor for a period of three (3) years after final payment under this Vendor Agreement, or for such longer periods, if any, as is required by applicable statutes or by other provisions of this Vendor Agreement. Records that relate to audits, appeals, litigation, or settlement of claims arising out of the performance of the Work under this Vendor Agreement shall be retained until such audits, appeals, litigation, or claims have been disposed of. Records relating to intellectual property shall be retained by the Vendor for three (3) years after final payment under this Vendor Agreement. Unless court action or audit proceedings have been initiated, Vendor may substitute microfilm copies of original records.

(c) The SACO, the Director of the NSF, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of Vendor, to make audits, examinations, excerpts and transcripts of all direct and indirect costs of whatever nature claimed and reimbursed under this Vendor Agreement. Further, any negotiated subcontract in excess of \$100,000 made by Vendor shall include a provision to the effect that the SACO, the Vendor, the Director of the NSF, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to pertinent records for similar purposes.

(d) In the event that this clause is or may not be enforceable as a result of Vendor or any of its subcontractors being foreign entities not located within the United States, Vendor shall cooperate to effect the intent of this Vendor Agreement by permitting an auditing agency of the Government of any foreign nation having jurisdiction over Vendor or such subcontractor to exercise all rights provided the Director of the NSF and the Comptroller General of the United States under this Section 7.2.

7.3 EQUAL OPPORTUNITY

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

(a) Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.

(b) Vendor shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

(c) Vendor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by AURA that explain this clause.

(d) Vendor shall, in all solicitations or advertisement for employees placed by, or on behalf of Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(e) Vendor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other vendor agreement or understanding, the notices to be provided by AURA advising the labor union or workers' representative of Vendor's commitments under this clause, and the union shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) Vendor shall comply with Executive Order 11246, as amended, by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", and as supplemented by regulation at 41 CFR part 60, "Office of Federal Contract Compliance Program, Equal Employment Opportunity, Department of Labor".

(g) Vendor shall furnish to the National Science Foundation all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders or the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the date of the Vendor Agreement, unless filed within 12 months preceding the date of the Vendor Agreement.

(h) Vendor shall permit access to its books, records and accounts by the NSF or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain Vendor's compliance with the applicable rules, regulations, and orders.

(i) If the OFCCP determines that Vendor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, the Vendor Agreement may be canceled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Vendor 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) Vendor shall include the terms and conditions of this Section 7.3 in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(k) Vendor shall take such action with respect to any subcontract or purchase order as the NSF may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if Vendor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, Vendor may request the United States to enter into the litigation process to protect the interests of the United States.

(l) Notwithstanding any other clause in this Vendor Agreement, disputes related to this Section 7.3 will be governed by the procedures in 41 CFR 60-1.1.

7.4 CLEAN AIR AND WATER

(a) This clause is applicable only to Work conducted within the United States. Vendor agrees as follows: (1) To comply with all the requirements of Section 114 of the Clean Air Act, as amended (41 USC 7414, Et. Seq.) and Section 308 of the Clean Water Act (33 USC 1318, as amended by P.L. 92-500), relating to inspection, monitoring, entry, reports and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued there under before the award of this Vendor Agreement; (2) That no portion of the Work required by this Vendor Agreement will be performed in a facility listed on the Environmental Protection Agency list of violating facilities on the date when this Vendor Agreement was awarded, unless and until the EPA eliminates the name of such facility or facilities from such listing; (3) To use its best efforts to comply with Clean Air Standards and Clean Water Standards at the facilities in which the Vendor Agreement is being performed; and (4) To insert the substance of the provisions of this clause into any non-exempt subcontract, including this clause 7.4 (a)(4).

(b) The terms used in this Section 7.4 have the following meanings: (1) The term "Air Act" means the Clean Air Act, (42 USC 7401 Et. Seq.); (2) The term "Water Act" means Clean Water Act, (33 USC 1251 Et. Seq.); and (3) The term "Clean Air Standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of the Air Act (42 USC 7410(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 USC 7411(c) or (d)), or an approved implementation procedure under Section 111 (d) of the Air Act (42 USC 7412(d)); (4) The term "Clean Water Standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 USC 1842), or by a local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 USC 1317); (5) The term "compliance" means compliance with Clean Air Standards or Clean Water Standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency in accordance with the requirements of the Air Act or Water Act and related regulations; (6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by the Vendor or a subcontractor utilized in the performance of the Vendor Agreement or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

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

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

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

(b) In the event of any violation of the provisions set forth in paragraph 7.5(a), Vendor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Vendor and subcontractors shall be liable to AURA for

liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph 7.5 (a) in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph 7.5(a).

(c) AURA may, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by Vendor or subcontractors under the Vendor Agreement or any other Federal vendor agreement with the Vendor, or any other Federally assisted Vendor Agreement subject to the Contract Work Hours and Safety Standards Act which is held by AURA, such sums as may be determined to be necessary to satisfy any liabilities of Vendor or any subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph 7.5 (b).

(d) Vendor or its subcontractors shall maintain payrolls and basic payroll records during the course of the Work and shall preserve them for a period of three (3) years from the completion of the Vendor Agreement for all laborers and mechanics working on the Vendor Agreement. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act. The records to be maintained under this paragraph 7.5 (d) shall be made available by Vendor or subcontractor for inspection, copying or transcription of authorized representatives of AURA and the Department of Labor. Vendor or its subcontractors shall permit such representatives to interview employees during working hours on the job.

(e) Vendor and its subcontractors shall insert in any subcontracts the provisions set forth in paragraphs 7.5 (a) through 7.5 (d) and also a clause requiring the subcontractor to include these provisions in any lower tier subcontract. Vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs 7.5 (a) through 7.5 (d).

7.6 DEBARMENT

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

7.7 BYRD ANTI-LOBBYING AMENDMENT

By signing this Vendor Agreement, subcontractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of AURA, any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining this contract or any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to AURA.