

**NATIONAL SCIENCE FOUNDATION**

**Contract with**

**ASSOCIATED UNIVERSITIES, INC.,**

**for Construction and Operation of the**

**Radio Astronomy Observatory**

**at**

**Green Bank, Pocahontas County, West Virginia**

NSF-C50

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THIS CONTRACT, effective as of November 17, 1956, is entered into by the UNITED STATES OF AMERICA, hereinafter called the GOVERNMENT, represented by the NATIONAL SCIENCE FOUNDATION, hereinafter called the FOUNDATION, and ASSOCIATED UNIVERSITIES, INC., hereinafter called the CONTRACTOR, an educational corporation organized and existing under the laws of the State of New York, with its principal office in New York, New York:

WITNESSETH THAT:

WHEREAS, the National Science Foundation, pursuant to Sections 3 and 11 of the National Science Foundation Act of 1950, wishes to enter into a contract for the conduct of basic research activities in the field of radio astronomy,

NOW THEREFORE, the parties hereto mutually agree as follows:

ARTICLE I - OBJECTIVE

The Contractor, as provided herein, shall organize, construct, operate and maintain an observatory (hereinafter called "Observatory") for research in the field of radio astronomy. In carrying on such research it shall be one of the objectives of the Contractor to strengthen basic research and education in radio astronomy throughout the United States and its Territories and Possessions. The

Observatory shall be made available to qualified personnel, to the maximum extent possible, for the conduct of research in radio astronomy.

#### ARTICLE II - DESCRIPTION OF THE OBSERVATORY

The Observatory shall be located on land in and near Green Bank, Pocahontas County, West Virginia, (hereinafter called the "Site") now, or hereafter to be, acquired by or on behalf of the Government for that purpose. The Observatory shall contain facilities and equipment appropriate for the conduct of research in radio astronomy (including one or more radio telescopes, at least one of which shall have a diameter of approximately 140 feet) and appropriate ancillary buildings and facilities all as mutually agreed upon from time to time.

#### ARTICLE III - STATEMENT OF WORK

The Contractor shall perform work and services in accordance with programs and financial plans approved by the Foundation. Such work and services shall include:

- (a) Planning for the establishment, construction and operation of the Observatory;
- (b) Acquisition of land, and design, engineering, construction and alteration, by subcontract or otherwise, of structures

and utilities at the Site and elsewhere, and the provision of major equipments therefor, all as approved in advance in writing by the Foundation except as the parties may otherwise agree from time to time;

- (c) Management, operation and maintenance of the Observatory with the primary purpose of making its research facilities available for visiting scientists;
- (d) Conduct of research in the field of radio astronomy;
- (e) Staffing the Observatory (subject to the provisions of paragraph 3 of Article XII);
- (f) Dissemination and publication of scientific and technical information and operating experience developed in the course of the work;
- (g) Such other activities on which the parties may mutually agree.

**ARTICLE IV - TERM OF CONTRACT**

The term of this contract shall be for five (5) years commencing on November 17, 1956, and continuing through November 16, 1961.

**ARTICLE V - FUNDS OBLIGATED**

The Foundation has obligated for this contract for the creation of a radio astronomy facility, from obligational authority available to the Foundation, the amount of four million dollars (\$4,000,000.00). In the event the Foundation elects to furnish real or personal property for the purposes of this contract, the amount of this obligation may be reduced appropriately. The Foundation may increase this obligation at its discretion from time to time by execution of an amendment to this contract.

**ARTICLE VI - REIMBURSEMENT**

1. In addition to the payment of the management allowance provided for in paragraph 2 of this Article VI, the Foundation shall reimburse the Contractor for, and/or shall permit the use of funds advanced by the Foundation to defray, within the limits of funds obligated under Article V, all costs incurred by the Contractor arising out of or connected with the work under this contract; provided, however, that this obligation to reimburse the Contractor or

this authorization to use advanced funds shall not exist in the case of any cost or expense resulting directly from bad faith or willful misconduct on the part of a corporate officer of the Contractor, a member of the Contractor's Board of Trustees, or the Director or other officer of the Observatory. The Contractor shall, to the extent of its ability, take all lawful cash and trade discounts, rebates, allowances, credits, salvage and commissions.

2. The Foundation shall pay the Contractor a management allowance, as agreed on from time to time, and for the period beginning with the effective date of this contract and ending June 30, 1957, at the rate of forty thousand dollars (\$40,000.00) per year payable in monthly installments. The Foundation and the Contractor, as soon as possible after June 30, 1957 and as soon as possible after the close of each fiscal year thereafter, shall determine by mutual agreement whether the management allowance for the fiscal year then current should be increased or decreased. Pending an agreement (or if the parties fail to reach agreement), the management allowance shall be paid at the rate provided for the immediately preceding fiscal year. Any adjustment of the allowance mutually agreed upon as aforesaid shall be retroactive to the commencement of the fiscal year to which the agreement applies.



3. All revenues received by the Contractor in connection with its performance hereunder shall be accounted for by the Contractor and shall be applied in reduction of any payments to be made by the Foundation to the Contractor under this contract, unless otherwise requested by the Foundation. The term "revenues" shall not include the management allowance payable under paragraph 2 of this Article VI.

ARTICLE VII - FINANCIAL STATEMENTS, PLANS AND ESTIMATES

1. As of the close of business each month the Contractor shall submit financial statements to the Foundation setting forth all assets, reserves, liabilities, and details of financial operation in connection with the work hereunder.

2. The Contractor shall submit to the Foundation, as and when requested, budget estimates and justifications for work and services to be performed pursuant to this contract in subsequent fiscal years.

3. Not later than March 31 of each year, the Contractor shall submit, as requested by the Foundation, a financial plan for the fiscal year commencing the following July 1.

4. Subject to the availability of funds, on or about July 1, 1957, the Foundation will, if necessary, increase the obligation of funds under this contract to provide for operation and maintenance of the Observatory during fiscal years ending June 30, 1958 and June 30, 1959; thereafter, on or about July 1 of each year, the Foundation will, if necessary, increase the obligation of funds to provide for operation and maintenance of the Observatory for the fiscal year commencing the next succeeding July 1.

5. The Contractor shall use its best efforts to perform the work in accordance with the approved financial plans prepared in accordance with the foregoing paragraph 3 of this Article VII. If at any time the Contractor has reason to believe that the total cost to the Government for the performance of this contract will be substantially greater than the amount of the funds obligated for this contract, the Contractor shall notify the Foundation in writing to that effect, giving its revised estimate of such total cost for the performance of this contract. The Contractor shall not be obligated to continue, or to undertake performance of any work under this contract, the cost of which, in its judgment, would exceed the amount of the funds obligated for this contract.

ARTICLE VIII - ADVANCE PAYMENTS

1. The Contractor shall not be under any obligation whatsoever to advance or use any of its funds in the performance of this contract, or for the close out of the contract upon expiration or termination, but it shall be reimbursed as provided in this contract to the extent that it, at its option, advances or uses any of its funds for such purpose.

2. Prior to the commencement of the work under this contract, the Foundation shall make an advance payment to the Contractor in an amount mutually agreed upon. Thereafter the Contractor shall submit to the Foundation requests for further advance payments in such amounts as the Contractor deems necessary for the effective prosecution of the work.

3. Until all such advance payments are liquidated, all funds received as advance payments under this contract, together with all funds received as reimbursements for the cost of the work under this contract (other than reimbursement for expenditures made by the Contractor from its own funds), shall be deposited in a special bank account or accounts at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the

Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935, 49 Stat. 684) as amended (12 U.S.C. 264) separate from the Contractor's general or other funds. Such special account or accounts shall be designated so as to indicate clearly to the bank their special character and purpose, and the balance in such account or accounts shall be used by the Contractor exclusively for carrying out the purposes of this contract and any amendments to this contract, and not for other business of the Contractor. The Foundation shall have the right, during business hours, to inspect and make copies of any entries in the books and records of the bank or banks relating to the said special account or accounts.

4. Upon termination of this contract, any balance of funds theretofore advanced by the Foundation and not expended in the course of the work, or required to meet expenses and commitments theretofore incurred (including an estimated reserve for contingent liabilities), or made by the Contractor in the course of the work, shall be returned to the Foundation.

5. The Contractor may make payments to its contractors and materialmen in advance out of the special account or accounts for labor or services, or to pay for

materials in advance of delivery at the site of the work or at an approved storage site. The Contractor, where appropriate, shall require subcontractors and materialmen to whom advances are made to provide adequate security for such advances.

ARTICLE IX - FISCAL RECORDS, ACCOUNTS AND INSPECTIONS

1. The Contractor agrees to keep records and books of account showing the actual cost to it of all labor, materials, equipment, supplies, and services and other expenditures of whatever nature for which reimbursement or payment is authorized under this contract. The Contractor shall maintain a system of accounting, as may be mutually agreed upon, which conforms to acceptable accounting practices for the type of work performed hereunder and which shall adequately record its financial operations.

2. The Foundation shall at all reasonable times be afforded proper facilities for audit and inspection of, and have access to, all books, records, correspondence, instructions, plans, drawings, receipts, vouchers, and other memoranda having record value, of the Contractor and subcontractors which relate to work done under this contract. The Contractor further agrees to include in

all its procurement agreements hereunder, with the exception of fixed price procurement agreements entered into following the submission of bids, a provision to the effect that the subcontractor or seller agrees that the Foundation shall 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 herein does not include contracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

3. All books of account and supporting documents relating to this contract having record value, and all other data having record value evidencing costs allowable and revenues received under this contract, shall be preserved in such manner and at such locations as may be mutually agreed upon, and shall be disposed of by the Contractor as the Foundation may from time to time determine. Preservation and disposition of material in accordance with the foregoing provisions shall be at the expense of the Foundation. All other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor at its own expense for a period

of three (3) years after final settlement of the contract, or otherwise disposed of from time to time in such manner as may be agreed upon. If at any time after the expiration of three (3) years after final settlement of the contract, the Contractor wishes to destroy or otherwise dispose of records preserved by it in accordance with the foregoing provisions, the Contractor shall give written notice thereof to the Foundation which, within sixty (60) days after receipt of such notice, may direct the Contractor to deliver all or any part of such records to the Foundation at the Foundation's expense.

4. The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any pertinent books, documents, papers and records of the Contractor involving transactions related to this contract.

5. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the General Accounting Office shall have access to and the right to examine any pertinent books, documents, papers and records of such subcontractor involving transactions related to the subcontract. The

term subcontract, as used herein, does not include contracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

6. Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

#### ARTICLE X - GOVERNMENT AND OTHER PROPERTY

1. Reservation by Government. The Government reserves the right to erect buildings, provide facilities, and furnish materials, equipment, machinery, tools or services, including communication services, as may be mutually agreed upon to be needed and suitable for the work.

2. Title. Legal title to all real and personal property, the cost of which has been defrayed from funds other than the management allowance provided for in paragraph 2 of Article VI, provided the Contractor by the Foundation, shall vest in the Government when title passes from the Vendor, unless otherwise specified in writing by the Foundation.

3. Markings, Records and Controls. The Contractor shall maintain at all times, as mutually agreed upon, adequate markings, records and controls to cover all real and personal property purchased for the work, the cost of which the Contractor has defrayed from funds advanced to



it by the Foundation or which have been furnished by the Foundation. Upon termination of this contract, the Contractor shall do all things necessary to deliver to places designated by the Foundation, and at the Foundation's expense, all non-expended personal property purchased by the Contractor with funds provided by the Foundation pursuant to this contract or otherwise furnished by the Foundation in connection with the performance of the work hereunder.

4. Disposition of Government Property. With the prior approval in writing of the Foundation (whether such approval is given prior to or after the giving of a notice of termination of this contract for the convenience of the Government), the Contractor may transfer or otherwise dispose of Government property, either real or personal, in its possession in connection with the work under this contract to such parties and upon such terms and conditions as the Foundation may approve in advance, or with like approval by the Foundation, the Contractor may itself acquire title to such property or any of it at a price mutually agreeable. The proceeds of any such transfer or disposition or the agreed price of any property, title to which is so acquired by the Contractor, shall be applied

in reduction of any payments to be made by the Foundation to the Contractor under this contract, or shall otherwise be paid in such manner as the Foundation may direct.

5. Accounting at Termination. After the expiration or termination of this contract, the Contractor, within a reasonable time as requested by the Foundation, shall render an accounting of all property not theretofore expended in the course of the work.

6. Contractor's Liability. (a) Except as otherwise specifically provided, the Contractor shall not be liable for loss or destruction of, or damage to, any property purchased or otherwise acquired by it and in the possession or the control of the Contractor in connection with this contract, including Government property, unless the Foundation shall establish that such loss, destruction, or damage results from the willful misconduct or bad faith on the part of some corporate officer of the Contractor, a member of the Contractor's Board of Trustees, or the Director or other officer of the Observatory.

(b) Unless otherwise approved by the Foundation, the Contractor will not seek reimbursement for the cost of insurance (including self-insurance funds or reserves) covering loss or destruction of, or damage to, Government property.

(c) Upon the happening of loss or destruction of, or damage to, Government property (arising from any cause), the Contractor shall, to the extent it deems reasonable and practicable, communicate immediately with the Foundation and take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order and furnish such statement concerning such Government property as the Foundation may request. The Contractor, to the extent reasonable and practical, may make repairs and renovations of damaged Government property, except that major repairs and renovations shall be made only with the approval of the Foundation.

(d) In the event the Contractor is indemnified, reimbursed or compensated for any loss or destruction of, or damage to, Government property, it shall equitably reimburse the Foundation. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Foundation, shall, at the Foundation's expense, furnish all reasonable assistance and cooperation (including the execution of instruments of assignment in favor of the Government) in obtaining recovery.

ARTICLE XI - RESPONSIBILITY OF CONTRACTOR - CONTINGENCIES

1. All work under this contract is to be performed at the expense of the Government, and the Contractor shall not be liable for, and the Foundation shall indemnify and hold the Contractor, the members of its Board of Trustees and its corporate officers, jointly and severally, harmless against any delay, failure, loss, expense (including expense of litigation) or damage (including personal injuries and deaths, and property damage) of any kind arising out of or connected with the work, and whether or not any employee or employees of the Contractor may be responsible therefor; provided, however, that the management allowance provided in paragraph 2 of Article VI shall constitute complete payment for all corporate expenses incurred by the Contractor hereunder and all losses and expense of any kind (including expenses of litigation) arising out of or connected with the undertakings or activities covered by or financed from the management allowance, except for losses, expense, (including expense of litigation) for personal injuries, death and property damage occurring during the course of work carried on in connection with this contract.

2. Except as otherwise agreed by the Foundation and the Contractor, (1) the Foundation shall pay directly and shall discharge completely all final judgments, including assessed costs, entered against the Contractor or a member of its Board of Trustees or its corporate officers, jointly or severally, in litigation instituted against the Contractor on account of any act or acts or omission or omissions in the performance of the work called for in this contract, and (2) the Foundation shall discharge completely any and all claims against the Contractor arising in connection with this contract which are settled by an agreement approved in writing by the Foundation.

3. The provisions of paragraphs (1) and (2) of this Article shall not apply in any instance where the Foundation shall establish that the delay, failure, loss, expense or damage was caused directly by bad faith or willful misconduct on the part of some corporate officer of the Contractor, a member of its Board of Trustees, or the Director or other officer of the Observatory.

#### ARTICLE XII - SPECIAL REQUIREMENTS

1. Except as otherwise directed by the Foundation in writing, the Contractor agrees to do the following:

(a) Procure and maintain such bonds and insurance as the Contractor may deem appropriate except that no insurance shall be obtained on Government property. All bonds or insurance policies maintained by the Contractor shall, by appropriate language, exclude any claim on the part of the insurer or obligor to be subrogated, on payment of a loss or otherwise, to any claim against the United States;

(b) Procure all necessary permits and licenses; abide by all applicable laws, and regulations and ordinances having the effect of law or expressly provided for in this contract, of the United States of America, the state, territory, or political subdivision in which the work is done, and of any other duly constituted public authority;

(c) Reduce, or cause to be reduced, to writing all consultant agreements and subcontracts, including all contracts let by subcontractors (with the exception of lump sum subcontractors) in connection with the work hereunder; make all such contracts in its own name, or in the name of its subcontractors, and not bind or purport to bind the Government or the Foundation; insert or cause to be inserted a provision in each subcontract that it is assignable to the Government.

2. Each expenditure, order, purchase or commitment made pursuant to this contract by the Contractor, or by any cost reimbursement subcontractor hereunder, (except commitments made in connection with employment of personnel) for an amount in excess of one hundred dollars (\$100.00) shall be in writing.

3. The Contractor shall not pay from funds provided by the Foundation under the provisions of this contract any salary in excess of fifteen thousand dollars (\$15,000.00) per annum or any consultant fee in excess of seventy-five dollars (\$75.00) per day without prior written approval of the Foundation. Before appointing the Director of the Observatory or the members of the Advisory Committee to be appointed by the Contractor in connection with the performance of the work under this contract, the Contractor shall consult with the Director of the Foundation.

4. The Contractor shall obtain the written approval of the Foundation before making any commitment to acquire items, the purchase of which may be restricted from time to time by law or regulation imposed upon the Foundation. The Contractor shall also obtain the written approval of the Foundation before entering into any agreement on a

cost, a cost-plus-a-fixed-fee, or a time and material basis, or which contains an indemnification or hold harmless provision in favor of a third party.

5. When the Foundation requires that the Contractor initiate or defend litigation in connection with this contract, the Contractor shall proceed with the litigation in good faith. The Contractor shall give immediate notice in writing to the Foundation of any action filed against the Contractor or any subcontractor in connection with this contract, and of any claim against the Contractor or any subcontractor (including actions and claims for infringement of patents) which may be reimbursable under this contract. Except as otherwise directed by the Foundation in writing, the Contractor shall furnish immediately to the Foundation copies of all pertinent papers received by the Contractor with respect to such actions or claims. Upon request of the Foundation, and to the extent not in conflict with any applicable policy or contract of insurance, the Contractor shall effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims, except those against the Government, arising from any such claims against the Contractor or subcontractor; and, if required by the Foundation, shall



authorize representatives of the Government to settle or defend any such litigation and to represent the Contractor in, or take charge of, any such litigation.

#### ARTICLE XIII - INSPECTIONS AND REPORTS

1. The Foundation shall have the right to inspect in such manner and at such times as it deems appropriate, all activities of the Contractor arising in the course of the work under this contract.

2. The Contractor shall make reports to the Foundation with respect to its activities under this contract. The number and content of these reports shall be the subject of mutual agreement except as otherwise provided herein.

#### ARTICLE XIV - SAFETY AND ACCIDENT PREVENTION

The Contractor shall initiate and take all reasonable steps and precautions to protect health and minimize danger from all hazards to life and property, and shall make all reports and permit all inspections as required by the Foundation and shall conform to all applicable health and safety laws and regulations.

#### ARTICLE XV - PATENTS

1. Whenever, in the course of the work hereunder, any discovery or invention related to said work is made

by the Contractor or any of its employees, or by any person directly associated with the Contractor in technical or professional work hereunder, the Contractor shall furnish the Foundation with complete information thereon, and shall use its best efforts to give the Foundation reasonable notice of the place and time of filing of any application for a patent, domestic or foreign, on any such invention or discovery. Thereafter, any foreign patent and the rights thereunder shall be disposed of in accordance with the written direction of the Foundation. When and if the Contractor or any of its employees or any other person associated with it in technical or professional work as aforesaid obtains a domestic patent, it shall grant or cause to be granted to the Government an irrevocable, royalty-free, non-exclusive license to use such invention or discovery for governmental purposes.

2. If the Contractor shall secure execution of agreements in approved form to effectuate the purposes of the foregoing paragraph 1 from each person covered by paragraph 1, other than clerical and manual labor personnel who do not have access to technical information in the regular course of their employment, the Contractor shall not be responsible to the Government for any

default under this Article on its part which is caused by the non-performance of such agreement by such individual; the Contractor, however, agrees that in the event any such individual shall fail to perform his agreement with the Contractor to such extent that the Contractor is unable to perform its obligations to the Government under this Article, the Contractor will assign to the Government, so far as is legally possible, all rights of the Contractor therein.

3. The Contractor, unless the Foundation shall otherwise in writing agree, shall cause to be included in each subcontract entered into by it hereunder, provisions appropriate to effectuate the purposes of paragraph 1 of this Article XV.

ARTICLE XVI - DRAWINGS, DESIGNS, SPECIFICATIONS AND  
OBSERVATIONAL DATA

1. All drawings, designs, specifications, and other memoranda which the Contractor deems to be of record value prepared by, or otherwise under the control of the Contractor, in connection with the performance of the work hereunder, shall be and remain the property of the Government, but the Contractor shall have the right to use such drawings, designs, specifications and memoranda.

2. Copies of all such drawings, designs, specifications and memoranda shall be delivered to the Foundation at any time at its request. The cost of preparing any such copies shall be borne by the Foundation.

3. A policy mutually agreed to by the Foundation and the Contractor, for the preservation of observational data shall be established.

#### ARTICLE XVII - LABOR PROVISIONS

1. Rates of Wages: The following provisions of this paragraph 1 are applicable to all construction, alteration and/or repair of public buildings or public works of the United States requiring or involving the employment of mechanics and/or laborers when the cost thereof is in excess of two thousand dollars (\$2,000.00) as required by the Davis-Bacon Act, U.S.C. Title 40, Section 276 a., et seq.:

- (a) All mechanics and laborers employed or working upon the site of the work, or under the Housing Act of 1949 in the construction or development of the project, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account

(except such payroll deductions as are permitted by the Anti-Kickback Regulations (29 C.F.R. Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the pertinent wage determination decision of the Secretary of Labor, furnished to the Contractor by the Foundation from time to time and hereby made a part of this contract, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics; and the wage determination decision shall be posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

- (b) The Foundation may withhold or cause to be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor on the work the full amount

of wages required by the contract. In the event of failure to pay any laborer or mechanic employed or working on the site of the work, or under the Housing Act of 1949 in the construction or development of the project, all or part of the wages required by the contract, the Foundation may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

- (c) (1) Payroll records will be maintained during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work, or under the Housing Act of 1949 in the construction or development of the project. Such records will contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly

number of hours worked, deductions made and actual wages paid.

(2) The Contractor will obtain from its construction subcontractors and submit monthly certified copies of all payrolls to the National Science Foundation. The certification will affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. The Contractor will require subcontractors to make their employment records available for inspection by authorized representatives of the Foundation and the Department of Labor, and to permit such representatives to interview employees during working hours on the job.

(d) Apprentices will be permitted to work only under a bona fide apprenticeship program registered with a State Apprenticeship Council which is recognized by the Federal

Committee on Apprenticeship, U. S. Department of Labor; or if no such recognized Council exists in a State, under a program registered with the Bureau of Apprenticeship, U. S. Department of Labor.

- (e) The Contractor will comply with the regulations of the Secretary of Labor made pursuant to the Anti-Kickback Act of June 13, 1934, 48 Stat. 948; 62 Stat. 740; 63 Stat. 108; U.S.C. 874, 40 U.S.C. 276 b, c, and any amendments or modifications thereof, will cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and will be responsible for the submission of affidavits required of subcontractors thereunder, except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances and exemptions from the requirements thereof.
- (f) The Contractor will insert in each of his subcontracts the provisions set forth in



stipulations (a), (b), (c), (d), (e) and (g) hereof, and such other stipulations as the Foundation may by appropriate instructions require.

(g) A Breach of stipulations (a) through (f) may be grounds for termination of the contract.

2. Eight-Hour Law. No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this paragraph of the contract. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of

pay. For each violation of the requirements of this paragraph of the contract a penalty of five dollars (\$5.00) shall be imposed upon the Contractor for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this paragraph of the contract, and all penalties thus imposed shall be withheld for the use and benefit of the Government: Provided, That this stipulation shall be subject in all respects to the exceptions and provisions of the Eight-Hour Laws as set forth in U. S. Code, Title 40, Sections 321, 324, 325, 325a, and 326, which relate to hours of labor and compensation for overtime.

3. Excess Wage Rates. All wage rates, with the exception of those established in connection with fixed price subcontracts, including compensation for overtime under paragraph 2 of this Article, for laborers and mechanics engaged in work under this contract shall be approved in writing by the Foundation. Any amount paid by the Contractor to any laborer or mechanic in excess of such wage rates shall be at the expense of the

Contractor and shall not be reimbursed by the Government unless such excess wage rates shall have been approved or ratified by the Foundation.

#### ARTICLE XVIII - NOTICE TO FOUNDATION OF LABOR DISPUTES

Whenever an actual or potential labor dispute arises in the course of the work under this contract, the Contractor shall immediately inform the Foundation of the relevant facts.

#### ARTICLE XIX - TERMINATION

1. The performance of work under this contract may be terminated by the Foundation in whole, or from time to time in part, whenever for any reason the Foundation shall determine any such termination is for the best interests of the Government, by delivery to the Contractor of a Notice of Termination specifying the extent and manner in which the work under this contract shall be terminated, and the effective date of such termination.

2. Except as directed by the Foundation in the Notice of Termination, or except as mutually agreed by the Foundation and the Contractor, the Contractor shall take the following action after a Notice of Termination has been delivered in accordance with paragraph 1 of

this Article: (a) terminate all work under the contract on the date specified in the Notice of Termination, or to any lesser extent as directed by the Foundation; (b) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portions of the work under the contract as may not have been terminated; (c) terminate all orders and subcontracts to the extent they relate to the terminated portion of the work; (d) assign to the Government in the manner and to the extent directed by the Foundation, all of the right, title, and interest of the Contractor under specified orders or subcontracts so terminated; (e) settle, with the approval or ratification of the Foundation, all orders and subcontracts, (which have not been assigned to the Government), obligations, commitments, liabilities and claims, the cost of which would be reimbursable in accordance with the provisions of this contract in whole or in part; (f) transfer title (to the extent that title has not already been transferred) and deliver to the Government in the manner, to the extent and at the times directed by the Foundation (i) the completed and incompletd work, supplies, material and other property produced as a part

of or acquired in respect of the performance of the terminated work, and (ii) the plans, drawings, information and other property which, if the contract had been completed, would be furnished to the Government; (g) complete performance of such part of the work as shall not have been terminated; and (h) take such other action as may be necessary, or as the Foundation may direct, for the protection and preservation of property which is in the possession of the Contractor and in which the Government has or may acquire interest.

3. The Foundation shall pay to the Contractor the following amounts (without duplication of any item):

- (a) All costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination and such of those costs as may continue for a reasonable time thereafter with the approval of or as directed by the Foundation, provided, however, that the Contractor shall proceed as rapidly as practicable to discontinue such costs.

- (b) If the performance of work under this contract is terminated by the Foundation under this Article XIX by Notice of Termination in which the effective date of termination is less than three months from the date of delivery of such Notice, a sum which will give the Contractor a total of three monthly installments of the management allowance, provided in paragraph 2 of Article VI, from the date of delivery of the Notice of Termination.
- (c) The cost of settling and paying claims, either arising out of the termination of work under subcontracts or orders or with respect to any other obligations, commitments and liabilities, the cost of which would be reimbursable in accordance with the provisions of this contract, and costs arising in connection with the termination of this contract in whole or in part and properly chargeable to this contract.
- (d) Any other reasonable cost, approved or ratified by the Foundation as incidental

to the termination of work under this contract, including legal, accounting, clerical costs and expenses, and costs of compilation and documentation of scientific data.

4. The obligation of the Foundation to make any of the payments required by this Article shall be subject to any unsettled claim in connection with this contract which the Government may have against the Contractor.

5. No settlement under this Article shall prejudice the Contractor's rights to reimbursement with respect to claims subsequently found or determined by the Contractor to have been incurred in the performance of the contract and not known or determined at the time of such settlement.

6. The close out of this contract, upon its expiration, shall be accomplished and settled in the same manner, and with the same effect, as though the contract had been terminated by the Foundation hereunder.

7. Any other provision of this contract to the contrary notwithstanding, the Contractor and the Foundation may agree upon a different method of termination and/or the whole or any part of the amount or amounts which the

Contractor is to receive upon and in connection with (i) any termination pursuant to this Article or (ii) expiration of the period of work performance without prior termination thereof. The Contractor and the Foundation shall promptly negotiate in good faith to agree upon the amount returnable to the Foundation as the accumulated balance remaining unexpended of moneys received by the Contractor under Article VI - REIMBURSEMENT. Any agreements so reached shall be evidenced by a supplemental agreement to this contract which shall be final and binding upon the parties with regard to their respective claims against each other concerning this contract, except as therein otherwise expressly provided.

ARTICLE XX - CONVICT LABOR

In connection with the performance of this contract, the Contractor agrees not to employ a person undergoing sentence of imprisonment at hard labor. This provision shall not be construed to prevent the Contractor or any subcontractor from obtaining any of the supplies or any component parts or ingredients to be furnished under this contract or any of the materials or supplies to be used in connection with the performance of this contract, directly or indirectly, from any



Federal, state or territorial prison or prison industry, provided that such articles, materials or supplies are not produced pursuant to any contract or other arrangements under which prison labor is hired or employed or used by any private person, firm or corporation.

**ARTICLE XXI - NON-DISCRIMINATION IN EMPLOYMENT**

In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Foundation setting forth the provisions of the non-discrimination clause. The Contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except (i) subcontracts for standard commercial supplies or raw materials, (ii) subcontracts to be performed outside the

United States where no recruitment of workers within the limits of the United States is involved, (iii) purchase orders on pocket-size forms similar to U. S. Standard Form 44, and (iv) subcontracts to meet other special requirements or emergencies, if recommended by the Committee on Government Contracts. In case of purchase orders hereunder which do not exceed five thousand dollars (\$5,000.00), the third sentence of this Article may be omitted.

#### ARTICLE XXII - DISPUTES

Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by an authorized representative of the Foundation, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. Within thirty (30) days from the date of receipt of such copy, the Contractor may appeal by mailing or otherwise furnishing to the said authorized representative a written appeal addressed to the Foundation, and the decision of the Foundation (or of any board or other tribunal created by it for the purpose of hearing appeals of this character) shall, unless determined by a

court of competent jurisdiction to have been fraudulent, arbitrary, capricious, so grossly erroneous as necessarily to imply bad faith, or not to have been supported by substantial evidence, be final and conclusive; provided, that, if no such appeal to the Foundation is taken, the decision of the said authorized representative shall be final and conclusive; provided further, that the authorized representative who decides a dispute pursuant to the first sentence hereof shall not make an appellate decision in regard to said dispute. In connection with any appeal proceeding under this Article, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. In the event a dispute arises during the performance of the contract, the Contractor shall proceed diligently with the performance of the contract and in accordance with the said authorized representative's decision pending final decision of the dispute hereunder.

**ARTICLE XXIII - OFFICIALS NOT TO BENEFIT**

No member of, or delegate to, Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to

extend to this contract if made with a corporation for its general benefit.

**ARTICLE XXIV - COVENANT AGAINST CONTINGENT FEES**

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

**ARTICLE XXV - USE OF DOMESTIC ARTICLES**

1. Unless the Foundation shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, the Contractor, its subcontractors, and all materialmen or suppliers shall use, in the performance of the work, only such unmanufactured articles, materials and supplies as have been mined or produced in the United States, and only such manufactured

articles, materials, or supplies as have been manufactured in the United States substantially from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States. The provisions of this Article shall not apply if the articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of satisfactory quality.

2. The Contractor's obligations under this Article shall be fully satisfied by inserting appropriate provisions to effectuate the purposes described in paragraph 1 above in all contracts and orders with its subcontractors, materialmen and suppliers.

#### ARTICLE XXVI - ASSIGNMENT OR TRANSFER

Neither this contract, nor any interest or claim relating to this contract, shall be assigned or transferred, except with the prior approval of the Foundation in writing.

ARTICLE XXVII - TAXES

The Foundation shall have the right to issue to the Contractor tax-exemption certificates or to furnish other proof of exemption acceptable to the Federal, State or local governments concerned. The Contractor shall, in any event, take such steps as may be requested by the Foundation to cause any taxes, fees, duties, or other assessments, to be paid under protest, to institute and prosecute litigations and other proceedings in its own name, to preserve and to cause to be assigned to the Government any rights to refunds, to permit the Government to institute and prosecute any claims, litigations, and other proceedings in the Contractor's or in the Government's name, and otherwise to furnish the Government all reasonable assistance and cooperation. All of these steps and measures shall be the subject of reimbursement under this contract.

IN WITNESS WHEREOF, the parties have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

By Alan T. Waterman  
Director, National Science Foundation  
(Official Title)

ASSOCIATED UNIVERSITIES, INC. (Contractor)

By Lloyd V. Berkner  
President, Associated Universities, Inc.  
(Official Title)

350 Fifth Avenue, New York 1, N. Y.

CERTIFICATE

I, Charles F. Dunbar, Secretary, certify that I am the Secretary of the corporation named as Contractor in the foregoing contract; that Lloyd V. Berkner who signed said contract on behalf of the Contractor was then President of said corporation; that said contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

\_\_\_\_\_  
(Corporate Seal)

Charles F. Dunbar

THIS NEGOTIATED CONTRACT IS AUTHORIZED BY AND EXECUTED UNDER THE NATIONAL SCIENCE FOUNDATION ACT OF 1950, 42 U.S.C. 1861 et seq.