

**FEDERAL FINANCIAL ASSISTANCE  
AWARD OF INTERNATIONAL COOPERATIVE AGREEMENT  
Between The**

**And The  
USDA, FOREST SERVICE**

select from drop-down Title:

Upon execution of this document, an award to \_\_\_\_\_, hereinafter referred to as “\_\_\_\_\_,” in the amount of \_\_\_\_\_, is made under \_\_\_\_\_. \_\_\_\_\_ accepts this award for the purpose described in the application narrative. Your application for Federal financial assistance, dated \_\_\_\_\_, and the attached, “U.S. Forest Service Provisions for International Grants with Foreign Entities,” are incorporated into this letter and made a part of this award.

- A. LEGAL AUTHORITY. \_\_\_\_\_ shall have the legal authority to enter into this agreement, and the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project, which includes funds sufficient to pay the nonfederal share of project costs, when applicable.
  
- B. STATEMENT OF SUBSTANTIAL INVOLVEMENT. The U.S. Forest Service anticipates involvement in this Cooperative Agreement and intends on being substantially involved in the following way(s):
  - 1.
  
- C. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this instrument.

**Principal Cooperator Contacts:**

<b>Cooperator Program Contact</b>	<b>Cooperator Administrative Contact</b>
Name:	Name:
Address:	Address:
City, State, Zip:	City, State, Zip:
Telephone:	Telephone:
FAX:	FAX:
Email:	Email:

**Principal U.S. Forest Service Contacts:**

<b>U.S. Forest Service Program Manager Contact</b>	<b>U.S. Forest Service Administrative Contact</b>
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Name: Address: City, State, Zip: Telephone: FAX: Email:	Name: Address: City, State, Zip: Telephone: FAX: Email:
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- D. AVAILABILITY OF FUNDS. U.S. Forest Service funds in the amount of \$ \_\_\_\_\_ are currently available for performance of this instrument through \_\_\_\_\_. The U.S. Forest Service's obligation for performance of this instrument beyond this date is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the U.S. Forest Service for any payment may arise for performance under this instrument beyond \_\_\_\_\_ until funds are made available to the U.S. Forest Service for performance and until \_\_\_\_\_ receive(s) notice of availability to be confirmed in a written modification by the U.S. Forest Service.
- E. select from drop-down PAYMENTS – FINANCIAL ASSISTANCE. See provision \_\_\_\_\_ in the attachment, 'Provisions For International Grants With Foreign Entities.'
- F. PRE-AWARD COSTS FOR INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS. Pursuant to 2 CFR 215.25(e)1, pre-award costs incurred as of \_\_\_\_\_ are hereby authorized under this award.
- G. PRE-AWARD COSTS FOR STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS. Pursuant to OMB Circular A-87, Attachment B, No. 31, pre-award costs incurred as of \_\_\_\_\_, are hereby authorized under this instrument.
- H. ALLOWABLE COSTS. See provision \_\_\_\_\_ in the attachment, 'Provisions For International Grants With Foreign Entities.'
- I. INDIRECT COST RATES – PROVISIONAL. See provision \_\_\_\_\_ in the attachment, 'Provisions For International Grants With Foreign Entities.'
- J. REVISION OF BUDGET. See provision \_\_\_\_\_ in the attachment, 'Provisions For International Grants With Foreign Entities.'
- K. PROGRAMMATIC CHANGES. \_\_\_\_\_ shall obtain prior approval for any change to the scope of objectives of the approved project, key personnel, or transfer of substantive programmatic work to another party.
- L. FLY AMERICAN ACT. The Fly America Act (49 U.S.C. 40118) requires that all air travel and shipments under this award must be made on U.S. flag air carriers to the extent service by such carriers is available. The Administrator of General Services Administration (GSA) is authorized to issue regulations for purposes of implementation. Those regulations may be found at 41 CFR part 301, and are hereby incorporated by reference into this award.

- M. MODIFICATIONS. Modifications within the scope of this award shall be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least \_\_\_\_\_ days prior to implementation of the requested change. The U.S. Forest Service is not obligated to fund any changes not properly approved in advance.
- N. COMMENCEMENT/EXPIRATION DATE. This award is executed as of the date of the last signature and is effective through \_\_\_\_\_ at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.
- O. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this award. In witness whereof, the parties hereto have executed this award as of the last date written below.

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\_\_\_\_\_, \_\_\_\_\_ Date

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\_\_\_\_\_, \_\_\_\_\_ Date  
U.S. Forest Service,

The authority and format of this instrument have been reviewed and approved for signature.

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\_\_\_\_\_, \_\_\_\_\_ Date  
U.S. Forest Service Grants & Agreements  
Specialist

## **ATTACHMENT: U.S. FOREST SERVICE PROVISIONS FOR INTERNATIONAL AWARDS WITH FOREIGN ENTITIES**

- A. COLLABORATIVE ARRANGEMENTS. Where permitted by terms of the award, may enter into collaborative arrangements with other organizations to jointly carry out activities with grant funds.
- B. NON-LIABILITY. The U.S. Forest Service does not assume liability for any third party claims for damages arising out of this award.
- C. NOTICES. Any notice given by the U.S. Forest Service or will be sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the award.

To , at 's address shown in the award or such other address designated within the award.

Notices will be effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- D. USE OF U.S. FOREST SERVICE INSIGNIA. In order for to use the U.S. Forest Service insignia on any published media, such as a webpage, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.
- E. PRIOR APPROVAL FOR SUBAWARDS/SUBCONTRACTS. All subawards and subcontracts shall be approved by the U.S. Forest Service prior to award unless this requirement is waived in the award letter.
1. Subawards shall be made only with responsible Recipients who possess the potential ability to perform successfully under the terms and conditions of a proposed agreement. Consideration shall be given to such matters as integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources. Awards shall not be made to firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." The U.S. Forest Service will provide the grantee with a copy of this list upon request.
  2. All subawards shall at a minimum contain provisions to define a sound and complete agreement in addition to those that are specifically required by any other provisions

in this award. Whenever a provision within this award is required to be inserted in a subawards, shall insert a statement in the subawards that in all instances where the U.S. Forest Service is mentioned, 's name will be substituted. If subaward are being made to U.S. organizations, a suggested subaward format incorporating 7 CFR 3015, et. seq., and FSH 1509.11, ch. 20 will be provided.

- F. WAIVER OF PRIOR APPROVAL FOR SUBGRANTS/SUBCONTRACTS. The U.S. Forest Service waives the approval requirements for subgrants/subcontracts under the provision, "PRIOR APPROVAL FOR SUBGRANTS/SUBCONTRACTS.'
- G. METRIC SYSTEM OF MEASUREMENT. Wherever measurements are required or authorized, they shall be made, computed, and recorded in metric system units of measurement, unless otherwise authorized by the U.S. Forest Service Program Manager in writing when it has found that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets. Where the metric system is not the predominant standard for a particular application, measurements may be expressed in both the metric and the traditional equivalent units, provided the metric units are listed first.
- H. BUILDING AND COMPUTER ACCESS BY NON-U.S. FOREST SERVICE PERSONNEL. may be granted access to U.S. Forest Service facilities and/or computer systems to accomplish work described in the Operating Plan or Statement of Work. All non-government employees with unescorted access to U.S. Forest Service facilities and computer systems must have background checks following the procedures established by USDA Directives 3505 and Departmental Manual 4620-02. Those granted computer access must fulfill all U.S. Forest Service requirements for mandatory security awareness and role-based advance security training, and sign all applicable U.S. Forest Service statements of responsibilities.
- I. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no United States member of, or United States delegate to, Congress shall be admitted to any share or part of this award, or benefits that may arise therefrom, either directly or indirectly.
- J. SAFEGUARDING U.S. FUNDS. shall establish safeguards to ensure that U.S. Federal funds are properly spent. shall ensure that funds are not used for partisan or political activity purposes, including, but not limited to:
1. supporting election, referendum, initiative, or similar procedure;
  2. influencing the outcomes of elections; introducing legislation;
  3. influencing government officials to engage in similar lobbying activity;
  4. preparing, distributing, or using publicity or propaganda, or by urging members of the general public to contribute to or participate in any mass demonstration, march,

rally, fund raising drive, lobbying campaign or letter writing or telephone campaign;  
or

5. attending legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation.

K. TRAFFICKING IN PERSONS.

1. Provisions applicable to a Recipient that is a private entity.

- a. You as the Recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

- (1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- (2) Procure a commercial sex act during the period of time that the award is in effect; or
- (3) Use forced labor in the performance of the award or subawards under the award.

- b. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

- (1) Is determined to have violated a prohibition in paragraph a.1 of this award term; or
- (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
  - i. Associated with performance under this award; or
  - ii. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 7 CFR 3017.

2. Provision applicable to a Recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

- a. Is determined to have violated an applicable prohibition in paragraph a.1 of this

award term; or

- b. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

- (1) Associated with performance under this award; or
- (2) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 7 CFR 3017.

3. Provisions applicable to any recipient.

- a. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
- b. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
  - (1) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
  - (2) Is in addition to all other remedies for noncompliance that are available to us under this award.
- c. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

4. Definitions. For purposes of this award term:

- a. “Employee” means either:
  - (1) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
  - (2) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- b. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of

subjection to involuntary servitude, peonage, debt bondage, or slavery.

c. “Private entity”:

(1) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

(2) Includes:

- i. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
- ii. A for-profit organization.

d. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

#### L. DRUG-FREE WORKPLACE.

1. agree(s) that it will publish a drug-free workplace statement and provide a copy to each employee who will be engaged in the performance of any project/program that receives federal funding. The statement must
  - a. Tell the employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace;
  - b. Specify the actions will take against employees for violating that prohibition; and
  - c. Let each employee know that, as a condition of employment under any instrument, he or she
    - (1) Must abide by the terms of the statement, and
    - (2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace, and must do so no more than five calendar days after the conviction.
2. agree(s) that it will establish an ongoing drug-free awareness program to inform employees about
  - a. The dangers of drug abuse in the workplace;
  - b. Your policy of maintaining a drug-free workplace;



- c. Any available drug counseling, rehabilitation and employee assistance programs; and
  - d. The penalties that you may impose upon them for drug abuse violations occurring in the workplace.
3. Without the U.S. Forest Service's expressed written approval, the policy statement and program must be in place as soon as possible, no later than the 30 days after the effective date of this instrument, or the completion date of this instrument, whichever occurs first.
4.           agree(s) to immediately notify the U.S. Forest Service if an employee is convicted of a drug violation in the workplace. The notification must be in writing, identify the employee's position title, the agreement number of each instrument on which the employee worked. The notification must be sent to the U.S. Forest Service within ten calendar days after           learn(s) of the conviction.
5. Within 30 calendar days of learning about an employee's conviction,           must either
  - a. Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 USC 794), as amended, or
  - b. Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
- M. POSITIONS OF INFLUENCE.           shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- N. U.S. GOVERNMENT EMPLOYMENT STATUS. In no event must           or subrecipients be considered as employees of the United States government, unless authorized by Federal Statute.
- O. NONDISCRIMINATION IN INTERNATIONAL PROGRAMS. No U.S. citizen or legal resident shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this award on the basis of race, color, national origin, age, handicap, or sex.
- P. IMPLEMENTATION OF E.O. 13224 -- EXECUTIVE ORDER ON TERRORIST FINANCING. is/are reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and

organizations associated with terrorism. It is the legal responsibility of to ensure compliance with these Executive Orders and laws. This provision must be included in all contracts issued under this agreement.

Q. INDIRECT COST RATES – PROVISIONAL.

1. Provisional indirect cost rates shall be established for 's accounting periods during the term of this award. Pending establishment of revised provisional or final rates, allowable indirect costs shall be reimbursed at the rates, on the bases, and for the periods shown in the Award/agreement.
2. , not later than nine months after the close of each of its accounting periods during the term of this award, shall submit to the Program Manager proposed final indirect cost rates with supporting cost data. The proposed rates shall be based on 's actual cost experience during that fiscal year. Negotiations of final indirect cost rates shall begin soon after receipt of 's proposal.
3. Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable cost principles.
4. The results of each negotiation shall be set forth in an indirect cost rate agreement signed by both parties. Such agreement is automatically incorporated into this award and shall specify (1) the agreed upon final rates, (2) the bases to which the rates apply, (3) the fiscal year for which the rates apply and (4) the items treated as direct costs. The agreement shall not change any monetary ceiling, award obligation, or specific cost allowance or disallowance provided for in this award.
5. Pending establishment of final indirect cost rates for any fiscal year, shall be reimbursed either at negotiated provisional rates or at billing rates acceptable to the Program Manager, subject to appropriate adjustment when the final rates for the fiscal year are established. To prevent substantial overpayment or underpayment, the provisional or billing rates may be prospectively or retroactively revised by mutual agreement.
6. Any failure by the parties to agree on any final rate(s) under this provision shall be considered a dispute within the meaning of the standard provision of the award, entitled "Disputes".

R. REVISION OF BUDGET.

1. The approved award/agreement budget is the financial expression of 's program as approved during the award process.
2. is/are required to report deviations from budget and program plans, and request prior approvals from the Program Manager for any of the following reasons:

- a. To change the scope or the objectives of the project and/or revise the funding allocated among project objectives.
  - b. To change a key person where specified in the awarding document, or allow a 25% reduction in time devoted to the project.
  - c. Additional funding is needed.
  - d. Where indirect costs have been authorized, \_\_\_\_\_ plan(s) to transfer funds budgeted for indirect costs to absorb increases in direct costs or vice versa.
  - e. The inclusion of costs that require prior approval in accordance with the applicable set of Cost Principles.
  - f. The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.
  - g. \_\_\_\_\_ intend(s) to contract or subaward any of the work under this award, and such contracts or subawards were not included in the approved award budget.
3. The U.S. Forest Service is under no obligation to reimburse \_\_\_\_\_ for costs incurred in excess of the total amount obligated under the award. If the total obligated amount under the award has been increased, the Program Manager shall notify \_\_\_\_\_ in writing of the increase and specify the new total obligated amount.

S. PROGRAM INCOME – FINANCIAL ASSISTANCE.

1. \_\_\_\_\_ shall apply the standards set forth in this Provision to account for program income earned under the award/agreement.
2. If any program income is generated as a result of this award, the income shall be applied using the \_\_\_\_\_ alternative as described in 7 CFR 3016.25 and 3019.24.
3. Unless the terms and conditions of the award provide otherwise, \_\_\_\_\_ shall have no obligation to the U.S. Government regarding program income earned after the end of the project period.
4. Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award/agreement and they comply with the applicable Cost Principles.
5. Unless the terms and conditions of the award provide otherwise, \_\_\_\_\_ shall have no obligation to the U.S. Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental,

developmental, or research awards.

T. ALLOWABLE COSTS.

1. shall be reimbursed for costs incurred in carrying out the purposes of this award which are determined by the Grants & Agreements Specialist to be reasonable, allocable, and allowable in accordance with the terms of this award and the applicable cost principles in effect on the date of this award (For educational institutions use OMB Circular A-21; for all other non-profit organizations use OMB Circular A-122; and for profit making firms use Federal Acquisition Regulation 31.2). may obtain a copy of the applicable cost principles from the Grants & Agreements Specialist. Brief definitions of what may be considered as reasonable, allocable, and allowable costs are provided below, however, it is 's responsibility to ensure that costs incurred are in accordance with the applicable set of Cost Principles.
  - a. Reasonable. Shall mean those costs that are generally recognized as ordinary and necessary and would be incurred by a prudent person in the conduct of normal business.
  - b. Allocable Costs. Shall mean those that are incurred specifically for the award.
  - c. Allowable Costs. Shall mean those costs that conform to any limitations in the award.
2. Prior to incurring a questionable or unique cost, shall obtain the Grants & Agreements Specialist's written determination on whether the cost will be allowable.
3. It is the U.S. Forest Service policy that no funds shall be paid as profit or fee to under this agreement or any subrecipient. This restriction does not apply to contractual relationships under this agreement.

U. FINANCIAL STATUS REPORTING. A Federal Financial Report, form SF-425 (and Federal Financial Report Attachment, SF-425A, if required for reporting multiple grants), must be submitted select from drop-down. The final SF-425 (and Sf-425A, if applicable) must be submitted either with the final payment request or no later than 90 days from the expiration date of the instrument. These forms may be found at [www.whitehouse.gov/omb/grants\\_forms](http://www.whitehouse.gov/omb/grants_forms).

V. REPORT OF FEDERAL CASH TRANSACTIONS. Using SF-425, Federal Financial Report, shall submit a report of federal cash transaction within 15 calendar days following the end of each quarter, unless otherwise agreed upon in writing. A final financial status report is required within 90 days from the expiration date of this instrument.

W. ACCOUNTING, AUDIT, AND RECORDS.

1. shall maintain financial records, supporting documents, statistical records and all other records pertinent to the award in accordance with generally accepted accounting principles formally prescribed by the U.S., the cooperating country, or the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) to sufficiently substantiate charges to this award. Accounting records that are supported by documentation shall as a minimum be adequate to show all costs incurred under the award, receipt, and use of goods and services acquired under the award, the costs of the program supplied from other sources, and the overall progress of the program. Unless otherwise notified, 's records and subrecipient's records which pertain to this award shall be retained for a period of three years from the date of submission of the final expenditure report and may be audited by the U.S. Forest Service and/or its representatives.
2. Foreign for-profit and non-profit organizations that expend \$500,000 or more per their fiscal year in "U.S. Forest Service awards", i.e. as Recipients or subrecipients of U.S. Forest Service grants or cooperative agreements, or as cost reimbursable subcontractors of U.S. Forest Service grants or cooperative agreements, shall have an annual audit conducted in accordance with the "Guidelines for Financial Audits Contracted by Foreign Recipients" issued by the U.S. Forest Service Inspector General.
3. Foreign for-profit and non-profit organizations expending less than \$500,000 per their fiscal year under U.S. Forest Service cost-reimbursable contracts, grants, cooperative agreements, or agreements with host governments shall be exempt from the above financial audit requirements, but are subject to the requirement to make records available upon request for review by U.S. Forest Service officials or their designees.
4. The U.S. Forest Service shall retain the right to conduct a financial review, require an audit, or otherwise ensure adequate accountability of organizations expending U.S. Forest Service funds regardless of the audit requirement.
5. Foreign organizations that provide U.S. Forest Service resources to other organizations to carry out the U.S. Forest Service program and activities shall be responsible for monitoring their subcontractors or subgrantees. Allowable costs for limited scope subrecipient audits charged to U.S. Forest Service funds shall be limited to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort; earmarking; and reporting.
6. The audit report shall be submitted to the U.S. Forest Service within 30 days after completion of the audit; the audit shall be completed, and the report submitted, not later than 9 months after the close of 's fiscal year. The U.S. Forest Service Inspector General will review this report to determine whether it complies with the audit requirements of this award. No audit costs may be charged to this award if audits have not been made in accordance with the terms of this provision. In cases of

continued inability or unwillingness to have an audit performed in accordance with the terms of this provision, the U.S. Forest Service shall consider appropriate sanctions which may include suspension of all or a percentage of disbursements until the audit is satisfactorily completed.

7. This provision in its entirety shall be incorporated into all subawards with non-U.S. organizations which meet the \$500,000 threshold as described at paragraph (b) of this Provision. Subawards to non-U.S. organizations which are for more than \$10,000 but do not meet the \$500,000 threshold shall at a minimum incorporate paragraph (d) of this Provision. Subawards of grants and cooperative agreements made to U.S. organizations shall state that the U.S. organization is subject to the audit requirements contained in OMB Circular A-133.

- X. select from drop-down PAYMENTS – FINANCIAL ASSISTANCE. select from drop-down payments are approved under this award. Only costs for those project activities approved in (1) the initial award, or (2) modifications thereto, are allowable. Requests for payment shall be submitted on Standard Form (SF) select from drop-down, and shall be submitted no more than monthly. In order to approve a Request for Advance Payment or Reimbursement, the U.S. Forest Service shall review such requests to ensure advances or payments for reimbursement are in compliance and otherwise consistent with OMB, USDA, and U.S. Forest Service regulations. Advance payments shall not exceed the minimum amount needed or no more than is needed for a 30-day period, whichever is less. If receive(s) an advance payment and subsequently requests an advance or reimbursement payment, then the request must clearly demonstrate that the previously advanced funds have been fully expended before the U.S. Forest Service can approve the request for payment. Any funds advanced, but not spent, upon expiration of this award shall be returned to the U.S. Forest Service.

The invoice must be sent by one of three methods (email is preferred):

EMAIL: asc\_ga@fs.fed.us

FAX: 877-687-4894

POSTAL: Albuquerque Service Center  
Payments – Grants & Agreements  
101B Sun Ave NE  
Albuquerque, NM 87109

Send a copy to:

- Y. ELECTRONIC FUND TRANSFER TO A FOREIGN VENDOR OR WIRE TRANSFER TO A FOREIGN VENDOR (MANUAL PAYMENTS). Foreign cooperators, in order to receive electronic fund or wire transfers for payment of invoices, shall provide the following information:

Name of Vendor: \_\_\_\_\_

Foreign Bank: \_\_\_\_\_

Foreign Bank Account Number: \_\_\_\_\_

Foreign Bank Address: \_\_\_\_\_

SWIFT Code: \_\_\_\_\_

Note: The Society for Worldwide Interbank Financial Telecommunications (SWIFT) provides secure financial messaging services between banks and other financial institutions, whereby the U.S. Forest Service can reimburse/advance funds to cooperators. The SWIFT Code is a unique 11 character code that allows funds to transfer between financial accounts (An 8 character code only directs to a specific bank, but the 11 character code gives the exact branch where the account is located.).

- Z. AWARD CLOSEOUT. shall close out the award within 90 days after expiration or notice of termination.

Any unobligated balance of cash advanced to \_\_\_\_\_ shall be immediately refunded to the U.S. Forest Service, including any interest earned in accordance with 7 CFR 3016.21, 7 CFR 3019.22, or other relevant law or regulation.

Within a maximum of 90 days following the date of expiration or termination of this award, all financial performance and related reports required by the terms of the award shall be submitted to the U.S. Forest Service by \_\_\_\_\_.

If this award is closed out without audit, the U.S. Forest Service reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

- A. PROGRAM PERFORMANCE REPORTS. \_\_\_\_\_ shall monitor the performance of the award activities to ensure that performance goals are being achieved.

Performance reports shall contain information on the following:

- A comparison of actual accomplishments to the goals established for the period. Where the output of the project can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information is useful.
- Reason(s) for delay if established goals were not met.
- Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

\_\_\_\_\_ shall submit select from drop-down performance reports. These reports are due

days after the reporting period. The final performance report shall be submitted either with \_\_\_\_\_'s final payment request, or separately, but not later than 90 days from the expiration date of the award.

AA. NOTIFICATION. \_\_\_\_\_ shall immediately notify the U.S. Forest Service of developments that have a significant impact on the activities supported under this award. Also, notification shall be given in case of problems, delays or adverse conditions that materially impair the ability to meet the objectives of the agreement. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

BB. CHANGES IN KEY POSITIONS AND PERSONNEL. Any revision to key positions and personnel identified in the application for this award require prior, written approval from the U.S. Forest Service. All technical positions are considered Key Personnel by the U.S. Forest Service. Failure on the part of \_\_\_\_\_ to obtain prior, written approval when required may result in the disallowance of costs.

CC. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. \_\_\_\_\_ shall retain all records pertinent to this award for a period of no less than three years from the expiration or termination date. As used in this provision, "records" includes books, documents, accounting procedures and practice, and other data, regardless of the type or format. \_\_\_\_\_ shall provide access and the right to examine all records related to this award to the U.S. Forest Service Inspector General, or Comptroller General or their authorized representative.

If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the 3-year period, the records shall be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later.

Records for nonexpendable property acquired in whole or in part, with United States Federal funds shall be retained for three years after its final disposition.

\_\_\_\_\_ shall provide access to any project site(s) to the U.S. Forest Service or any of their authorized representatives. The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are kept.

DD. FREEDOM OF INFORMATION ACT (FOIA). Public access to award records shall not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to "Freedom of Information" regulations (5 U.S.C. 552).

EE. PUBLIC NOTICES. It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. \_\_\_\_\_ is/are encouraged to give public notice of the receipt of this instrument and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:



" of the U.S. Forest Service, Department of Agriculture ."

may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. is/are requested to provide copies of notices or announcements to the U.S. Forest Service Program Manager and to the U.S. Forest Service's Office of Communications as far in advance of release as possible.

FF. RIGHT TO TRANSFER EQUIPMENT. Equipment approved for purchase under this award is available only for use as authorized. The U.S. Forest Service reserves the right to transfer title to the federal government of any equipment with a current per-unit fair market value of \$5,000 or more purchased with U.S. Forest Service funding. Upon expiration of this award, shall forward an equipment inventory to the U.S. Forest Service, listing all equipment purchased with U.S. Forest Service funding throughout the life of the project. Disposition instructions shall be issued by the U.S. Forest Service within 120 calendar days from termination date of this award.

GG. FUNDING \_\_\_\_\_. Federal funding under this instrument is not available for reimbursement of 's purchase of . Equipment is defined as having a fair market value of \$5,000 more per unit and a useful life of over one year. Supplies are those items that are not equipment.

HH. PROCUREMENT OF GOODS AND SERVICES. may use its own procurement policies and practices for the procurement of goods and services under this award, provided they conform to all of the U.S. Forest Service's requirements.

1. General Requirements:

- a. shall maintain a written code or standards of conduct that shall govern the performance of its employees engaged in the awarding and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such conflict would arise when the employee, officer or agent, or any member of the employee's immediate family, the employee's partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subagreements. However, may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of .
- b. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. shall be alert to

organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals shall be excluded from competing for such procurements. Contracts shall be made to the offeror whose offer is responsive to the solicitation and is most advantageous to , price, quality, and other factors considered. Solicitations shall clearly establish all requirements that the bidder or offeror shall fulfill in order to be evaluated by . Any and all offers may be rejected when it is in 's interest to do so.

c. All Recipients shall establish written procurement procedures. These procedures shall provide, at a minimum, that:

- (1) Avoid purchasing unnecessary items,
- (2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement, and
- (3) Solicitations for goods and services provide for all of the following:
  - i. A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
  - ii. Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
  - iii. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
  - iv. The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.
  - v. The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
  - vi. Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

- (4) The type of procurement awards used, (e.g. fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts), shall be determined by \_\_\_\_\_ but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.
- (5) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources. Contracts shall not be made with firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." The U.S. Forest Service shall provide the grantee with copy of this list upon request.
- (6) \_\_\_\_\_ shall, on request, make available for the U.S. Forest Service, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:
- i. \_\_\_\_\_'s procurement procedures or operation fails to comply with the procurement standards in this part, and
  - ii. The procurement is expected to exceed \$10,000.
- (7) \_\_\_\_\_ shall document some form of price or cost analysis in its procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, and market prices, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.
- (8) Procurement records and files for purchases in excess of \_\_\_\_\_'s own small purchase threshold shall include the following at a minimum:
- i. Basis for contractor selection;
  - ii. Justification for lack of competition when competitive bids or offers are not obtained, and;
  - iii. Basis for award cost or price.
- (9) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions, and specifications of the

contract and to ensure adequate and timely follow up of all purchases.

shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.

2. shall include, in addition to provisions to define a sound and complete contract, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.
  - a. Contracts in excess of \$10,000 shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
  - b. All contracts in excess of \$10,000 shall contain suitable provisions for termination by , including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
  - c. All negotiated contracts (except those for less than 's small purchase threshold) awarded by shall include a provision to the effect that , the U.S. Forest Service, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific program for the purpose of making audits, examinations, excerpts and transcriptions.
  - d. In all contracts for construction or facility improvement awarded for more than \$100,000, shall observe generally accepted bonding requirements.
  - e. Contracts, the principal purpose of which is to create, develop, or improve products, processes, or methods; or for exploration into fields that directly concern public health, safety, or welfare; or contracts in the fields of science or technology in which there has been little significant experience outside of work funded by the U.S. Government, shall contain a notice to the effect that matters regarding rights to inventions, intellectual property, and materials generated under the contract are subject to the regulations included in these grant provisions. The contractor shall be advised as to the source of additional information regarding these matters.

## II. TITLE TO AND CARE OF PROPERTY.

1. Except as modified by the award/agreement, title to all equipment, materials, and supplies, the cost of which is reimbursable to by the U.S. Forest Service or

by the cooperating country, shall at all times be in the name of the cooperating country or such public or private agency as the cooperating Government may designate, unless title to specified types or classes of equipment is reserved to the U.S. Forest Service under provisions set forth in the Award/agreement, but all such property shall be under the custody and control of \_\_\_\_\_ until the owner of title directs otherwise or completion of work under this award or its termination, at which time custody and control shall be turned over to the owner of title or disposed of in accordance with its instructions. All performance guarantees and warranties obtained from suppliers shall be taken in the name of the title owner.

2. \_\_\_\_\_ shall prepare and establish a program, for the receipt, use, maintenance, protection, custody, and care of equipment, materials, and supplies for which it has custodial responsibility, including the establishment of reasonable controls to enforce such program.
3. Within 90 days after completion of this award, or at such other date as may be fixed by the Program Manager, \_\_\_\_\_ shall submit an inventory schedule covering all items of equipment, materials, and supplies under \_\_\_\_\_'s custody, title to which is in the cooperating country or public or private agency designated by the cooperating country, which have not been consumed in the performance of this award. \_\_\_\_\_ shall also indicate what disposition has been made of such property.

JJ. USE OF GOVERNMENT OWNED VEHICLE. U.S. Forest Service vehicles may be used for official U.S. Forest Service business only in accordance with FSH 7109.19, ch. 60, the requirements established by the region in which performance of this agreement takes place, and the terms of this agreement.

KK. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS, AND ELECTRONIC MEDIA. \_\_\_\_\_ shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this award.

LL. PUBLICATIONS AND MEDIA RELEASES.

1. If \_\_\_\_\_ intend(s) to identify the U.S. Forest Service's contribution to any publication, video or other information/media product resulting from this grant, the product must state that the views expressed by the author(s) do not necessarily reflect those of the U.S. Forest Service. Acknowledgements must identify the U.S. Forest Service substantially as follows.

"This \_\_\_\_\_ was made possible through support provided by the USDA Forest Service, \_\_\_\_\_, under the terms of Grant No. \_\_\_\_\_. The opinions expressed in this \_\_\_\_\_ are those of the author(s) and do not necessarily reflect the views of the USDA Forest Service."

2. \_\_\_\_\_ must provide the relevant strategic objective or results package team with

one copy of all published works developed under this grant and with lists of other written work produced under the grant.

3. Except as otherwise provided in the terms and conditions of the grant, the author or is free to copyright any books, publications, or other copyrightable materials developed in the course of or under this grant, but the U.S. Forest Service reserves a royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for U.S. Government purposes.

A. TERMINATION BY MUTUAL AGREEMENT. This award may be terminated, in whole or part, as follows:

- When the U.S. Forest Service and agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

- By 30 days written notification by to the U.S. Forest Service setting forth the reasons for termination, effective date, and in the case of partial termination, the portion to be terminated.

If, in the case of a partial termination, the U.S. Forest Service determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the U.S. Forest Service may terminate the award in its entirety.

Upon termination of an award, shall not incur any new obligations for the terminated portion of the award after the effective date, and shall cancel as many outstanding obligations as possible. The U.S. Forest Service shall allow full credit to for the United States Federal share of the non-cancelable obligations properly incurred by up to the effective date of the termination. Excess funds shall be refunded within 60 days after the effective date of termination.

MM. DISPUTES.

1. Any dispute under this award shall be decided by the . The shall furnish a written copy of the decision.
2. Decisions of the shall be final unless, within 30 days of receipt of the decision of the , appeal(s) the decision to the U.S. Forest Service's Director, Acquisition Management (AQM). Any appeal made under this provision shall be in writing and addressed to the Director, AQM, USDA, Forest Service, Washington, DC 20024. A copy of the appeal shall be concurrently furnished to the .
3. In order to facilitate review on the record by the Director, AQM, shall be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.

NN. DEBARMENT AND SUSPENSION. shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should or any of their principals receive a transmittal letter or other official federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

OO. PATENT RIGHTS. Each instrument awarded to a small business firm, non-profit organization, or university which is to be performed in the United States, its possessions, or Puerto Rico and has as a purpose the performance of experimental, development, or research work, shall contain the Patents Rights Provision.

1. Definitions:

- a. Invention. Any invention or discovery which is or may be patentable, or otherwise protectable under Title 35 of the United States Code (U.S.C.), or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
- b. Subject Invention. Any invention of conceived or first actually reduced to practice in the performance of work under this instrument, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of the instrument performance.
- c. Practical Application. 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.
- d. Made. When used in relation to any invention, the conception or first actual reduction to practice of such invention.
- e. Small Business Firm. A small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the administrator of the Small Business Administration. For the purpose of this provision, the size standard for small business concerns involved in Government procurement and subgranting as 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
- f. Non-Profit Organization. A university or other institution of higher education or an organization of the type described in section 501 (c) (3) of the Internal Revenue Code of 1954 Internal Revenue Code (26 U.S.C. 501c) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

2. Allocation of Principal Rights.                      may retain the entire right, title, and interest throughout the world to each subject invention, subject to this provision and 35 U.S.C. 203. With respect to any subject invention in which                      retain(s) title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world.
  
3. Invention Disclosure, Election, of Title and Filing of Patent Applications by  
.
  - a.                      shall disclose each subject invention to the U.S. Forest Service within two months after the inventor discloses it in writing to personnel responsible for patent matters. The disclosure to the U.S. Forest Service shall be in the form of a written report and shall identify the instrument under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electric characteristics of the invention. The disclosure shall also identify any publication, on sale of 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 the U.S. Forest Service,                      shall promptly notify the U.S. Forest Service of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by                      .
  - b.                      shall elect in writing whether or not to retain title to any such invention by notifying the U.S. Forest Service within 2 years of disclosure by                      ; provided that in any case where publication, on sale or public use has initiated the 1 year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the U.S. Forest Service to a date that is no more than 60 days prior to the end of the statutory period.
  - c.                      shall file its initial patent application on an elected invention within 1 year after election or, if earlier, prior to the end of any statutory period wherein valid protection can be obtained in the United States after publication, on sale, or public use.                      shall file patent applications in additional countries within either 10 months from the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
  - d. Requests for extension of the time for disclosure to the U.S. Forest Service, election, and filing may, at the discretion of the U.S. Forest Service, be granted.
  
4. Conditions when the Government May Obtain Title.                      shall convey to the U.S. Forest Service, upon written request, title to any subject invention:



- a. If \_\_\_\_\_ fail(s) to disclose or elect the subject invention within the times specified in item c herein or elects not to retain title; provided that the U.S. Forest Service may only request title within 60 days after learning of the failure of \_\_\_\_\_ to disclose or elect within the specified times.
- b. In those countries in which \_\_\_\_\_ fail(s) to file patent applications within the times specified in item c(3) herein; provided, however, that if \_\_\_\_\_ has/have filed a patent application in a country after the times specified in item c(3), but prior to its receipt of the written request of the U.S. Forest Service, \_\_\_\_\_ shall continue to retain title in that country.
- c. In any country in which \_\_\_\_\_ decide(s) not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

5. Minimum Rights to \_\_\_\_\_ and Protection of Contractor Right to File.

- a. \_\_\_\_\_ shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if \_\_\_\_\_ fail(s) to disclose the subject invention within the times specified in item c herein. \_\_\_\_\_'s license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which \_\_\_\_\_ is/are a party and includes the right to grant sublicenses of the same scope to the extent \_\_\_\_\_ was/were legally obligated to do so at the time the instrument was awarded. The license is transferable only with approval of the U.S. Forest Service, except when transferred to the successor of that party of \_\_\_\_\_'s business to which the invention pertains.
- b. \_\_\_\_\_'s domestic license may be revoked or modified by the U.S. Forest Service to the extent necessary to achieve expeditious practical application of the subject invention, pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404. This license will not be revoked in that field of use or the geographical areas in which \_\_\_\_\_ has/have achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the U.S. Forest Service to the extent \_\_\_\_\_, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- c. Before revocation or modification of the license the U.S. Forest Service shall furnish \_\_\_\_\_ a written notice of its intention to revoke or modify the license, and \_\_\_\_\_ shall be allowed 30 days (or such other time as may be authorized by the U.S. Forest Service for good cause shown by \_\_\_\_\_) after the notice to show cause why the license should not be revoked or modified. \_\_\_\_\_ has/have the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 concerning the licensing Government-owned inventions, any decision concerning the revocation or modification of its license.

6. 's Action to Protect the Government's Interest

- a. agree(s) to execute, or to have executed, and promptly deliver to the U.S. Forest Service all instruments necessary to (a) establish or confirm the rights the Government has throughout the world in those subject inventions to which elect(s) to retain title, and (b) convey title to the U.S. Forest Service when requested under paragraph (c) herein and to enable the Government to obtain patent protection throughout the world in that subject invention.
- b. agree(s) to require, by written instrument, 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 each subject invention made under the disclosure provisions of paragraph c herein and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject invention. This disclosure format should require, as a minimum, the information required by 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. This disclosure format should require, as a minimum, the information required by paragraph (c)(1). shall instruct such employees' agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.
- c. shall notify the U.S. Forest Service of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
- d. agree(s) to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: This invention was made with the Government support under awarded by the U.S. Forest Service. The Government has certain rights in this invention.

7. Subcontracts

- a. shall include this provision, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor shall retain all rights provided for in this provision, and shall not, as part of the consideration for awarding the subgrant or subcontract under the instrument, obtain rights in the subrecipients's or subcontractor's subject inventions.

- b. shall include in all other subcontracts the patent rights provision, regardless of tier, for experimental, developmental, or research work.
- c. In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractors, and the contractor agree that the mutual obligations of the parties created by this provision constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this provision; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this provision.
- d. Reporting on Utilization of Subject Invention. agree(s) 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 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 , and such other data and information as the U.S. Forest Service may reasonably specify. also agree(s) to provide additional reports as may be requested by the U.S. Forest Service in connection with any march-in proceeding undertaken by the U.S. Forest Service in accordance with paragraph (j) of this provision. As required by 35 U.S.C. 202(c) (5), the U.S. Forest Service agrees it shall not disclose such information to persons outside the government without permission of .
9. Preference for United States Industry. Notwithstanding any other provision of this provision, agree(s) that neither it nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention will be manufactured substantially in the United States. However, in individual cases the requirement for such an agreement may be waived by the U.S. Forest Service upon a showing by 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 United States, or that under the circumstances, domestic manufacture is not commercially feasible.
10. March-in-Rights. agree(s) that with respect to any subject invention in which it has acquired title, the U.S. Forest Service has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the U.S. Forest Service to require , an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if assignee, or exclusive licensee refuses such a request, the U.S. Forest Service has the right to grant such a license itself if the U.S. Forest Service determines that:

- a. Such action is necessary because \_\_\_\_\_ or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- b. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by \_\_\_\_\_, assignee, or their licensees;
- c. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by \_\_\_\_\_, assignee, or licensees; or
- d. Such action is necessary because the agreement required by paragraph i of this provision has not been obtained or waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

11. Special Provisions for Contracts with Non-profit Organizations. If the recipient/contractor is a non-profit organization, it agrees that:

- a. Rights to a subject invention in the United States may not be assigned without the approval of the U.S. Forest Service, 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 shall be subject to the same provisions as \_\_\_\_\_.
- b. \_\_\_\_\_ shall share royalties collected on a subject invention with the inventor, including Federal employee coinventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10.
- c. The balance of any royalties or income earned by \_\_\_\_\_ with respect to subject inventions, after payment of expense (including payments to inventor) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and
- d. It shall make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it shall give preference to a small business firm when licensing a subject invention if determine(s) that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that \_\_\_\_\_ is/are also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give preference in any specific case will be at the discretion of \_\_\_\_\_. However, \_\_\_\_\_ agree(s) that the Secretary may review \_\_\_\_\_'s licensing program and decisions regarding small business applicants, and \_\_\_\_\_ shall negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that \_\_\_\_\_ could take

reasonable steps to implement more effectively the requirements of this paragraph.

## 12. Communication

- a. Communications relating to the administration of this provision and disclosure statements should be directed to:

Patent Advisor  
National Patent Program  
USDA, Forest Service  
One Gifford Pinchot Drive  
Madison, WI 53705-2398

- b. Practice statements are also made to the Patent Advisor.

NOTE: Exceptions for Not Using the Patent Rights Provision:

- a. When the instrument is for the operation of a federally funded research and development center of a government-owned production facility;
- b. In exceptional circumstances when it is determined by the U.S. Forest Service that restriction or elimination of the right to retain title to any subject invention shall better promote the policy and objective of Title 35, Chapter 18 of the United States Code; or
- c. When it is determined by a Government authority which is authorized by statute or Executive Order to conduct foreign intelligence or counter intelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities.

Any determination under this section shall be in writing and accompanied by a written statement of facts and shall contain such information as the U.S. Forest Service field office deems relevant and, at a minimum, shall:

- a. Identify the small business firm or nonprofit organization involved.
- b. Describe the extent to which U.S. Forest Service action restricted or eliminated the right to retain title to a subject invention.
- c. State the facts and rationale supporting the U.S. Forest Service action.
- d. Provide supporting documentation for those facts and rationale.
- e. Indicate the nature of any objections to the U.S. Forest Service action and provide any documentation in which those objections appear. A copy of each such determination and written statement of facts shall be sent to the Director, Fiscal and Public Safety, Washington Office, for review and forwarded to the

Comptroller General of the United States within 30 days after the award of the applicable agreement. In some cases of determinations applicable to instruments with small business firms, copies shall also be sent to the Chief Counsel for advocacy of the Small Business Administration.

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