



FS Agreement No. \_\_\_\_\_  
Cooperator Agreement No. \_\_\_\_\_

**INTERNATIONAL JOINT VENTURE AGREEMENT  
Between The  
  
And The  
USDA, FOREST SERVICE**

This Joint Venture Agreement is hereby made and entered into by and between the \_\_\_\_\_, hereinafter referred to as “\_\_\_\_\_,” and the USDA, Forest Service \_\_\_\_\_, hereinafter referred to as the “U.S. Forest Service,” under the provisions of the National Agricultural Research, Extension and Teaching Policy Act of 1977 (Pub. L. 95-113), as amended by the Food Security Act of 1985 (7 U.S.C. 3319a, Pub. L. 99-198).

Background:

Title:

- I. **PURPOSE:** The purpose of this agreement is to document the cooperation between the parties to
  
- II. **STATEMENT OF MUTUAL BENEFIT AND INTERESTS:**

In consideration of the above premises, the parties agree as follow:

**III. SHALL:**

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

Performance reports must contain information on the following:



1. 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.
2. Reason(s) for delay if established goals were not met.
3. Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

shall submit select from drop-down performance reports to the U.S. Forest Service Program Manager. These reports are due select from drop-down 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 agreement.

- C. 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-base advanced security training, and sign all applicable U.S. Forest Service statements of responsibilities.
- D.

#### IV. THE U.S. FOREST SERVICE SHALL:

- A. PAYMENT/REIMBURSEMENT. The U.S. Forest Service shall reimburse for the U.S. Forest Service's share of actual expenses incurred, not to exceed \$ , as shown in the Financial Plan. The U.S. Forest Service shall make payment upon receipt of 's invoice. Each invoice from must display the total project costs for the billing period, separated by U.S. Forest Service and 's share. In-kind contributions must be displayed as a separate line item and must not be included in the total project costs available for reimbursement. The final invoice must display 's full match towards the project, as shown in the financial plan, and be submitted no later than 90 days from the expiration date.

Each invoice must include, at a minimum:

1. 's name, address, and telephone number
2. U.S. Forest Service agreement number
3. Invoice date
4. Performance dates of the work completed (start & end)



5. Total invoice amount for the billing period
6. Statement that the invoice is a request for payment by ‘reimbursement’
7. If using SF-270, a signature is required.
8. Invoice Number, if applicable

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

EMAIL: asc\_ga@fs.fed.us

FAX: 877-687-4894

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

Send a copy to:

- B. ADVANCE PAYMENT. The U.S. Forest Service shall make advance payment upon receipt of an invoice from . The invoice must be submitted no more than monthly and the total must not exceed the U.S. Forest Service’s share of anticipated expenses as identified on the financial plan. The first invoice may request an advance based on an estimated cost not to exceed 30 days expenditures. Each subsequent invoice must display any additional advance funding for a 30 day period, if needed, as well as the total project costs to date of the invoice, separated by U.S. Forest Service and ’s share. In-kind contributions must be displayed as a separate line item and must not be included in the total project costs. If the recipient receives 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, must be returned to the U.S. Forest Service upon expiration of this agreement. The final invoice from must be submitted no later than 90 days from the expiration date.

Each invoice must include, at a minimum:

1. ’s name, address, and telephone number
2. U.S. Forest Service agreement number
3. Invoice date
4. Performance dates of the work completed (start & end)
5. Total invoice amount for the billing period
6. Statement that the invoice is a request for payment by ‘advance’
7. If using SF-270, a signature is required.
8. Invoice Number, if applicable

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



EMAIL: asc\_ga@fs.fed.us

FAX: 877-687-4894

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

Send a copy to:

C.

**V. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN THE PARTIES THAT:**

A. 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: Address: City, State, Zip: Telephone: FAX: Email:	Name: Address: City, State, Zip: Telephone: FAX: Email:

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

<b>U.S. Forest Service Program Manager Contact</b>	<b>U.S. Forest Service Administrative Contact</b>
Name: Address: City, State, Zip: Telephone: FAX: Email:	Name: Address: City, State, Zip: Telephone: FAX: Email:

B. NON-LIABILITY. The Forest Service does not assume liability for any third party claims for damages arising out of this instrument.



- C. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or \_\_\_\_\_ is/are 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 agreement.

To \_\_\_\_\_, at \_\_\_\_\_'s address shown in the agreement or such other address designated within the agreement.

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

- D. ENDORSEMENT. Any of \_\_\_\_\_'s contributions made under this agreement do not by direct reference or implication convey U.S. Forest Service endorsement of \_\_\_\_\_'s products or activities.
- E. 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 Web page, 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.
- 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 must 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 United States 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. 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.

I. TRAFFICKING IN PERSONS.

1. Provisions applicable to \_\_\_\_\_ that is a private entity.
  - a. You as \_\_\_\_\_, 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 Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 7 CFR 3017.



2. Provision applicable to \_\_\_\_\_ 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 non-profit organization, including any non-profit 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).

J. 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 instrument, or benefits that may arise therefrom, either directly or indirectly.

K. 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.

L. 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.

M. 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.

N. 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.

O. STANDARDS FOR FINANCIAL MANAGEMENT.

**1. Financial Reporting**

shall provide complete, accurate, and current financial disclosures of the project or program in accordance with any financial reporting requirements, as set forth in the financial provisions.

**2. Accounting Records**

shall continuously maintain and update records identifying the source and use of funds. The records shall contain information pertaining to the agreement, authorizations, obligations, unobligated balances, assets, outlays, and income.

**3. Internal Control**

shall maintain effective control over and accountability for all U.S. Forest Service funds, real property, and personal property assets. shall keep effective internal controls to ensure that all United States Federal funds received are separately and properly allocated to the activities described in the agreement. shall adequately safeguard all such property and shall ensure that it is used solely for authorized purposes.

**4. Source Documentation**

shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and subgrant/contract documents, and so forth.

**5. Advance Payments**

When applicable, shall establish and maintain specific procedures to minimize the time elapsing between the advance of Federal funds and their subsequent disbursement. Any advance requested by must be expended within 30 days of receipt.

- P. 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.

Q. PROGRAM INCOME – PARTNERSHIP AGREEMENTS.

1. \_\_\_\_\_ shall apply the standards set forth in this Provision to account for program income earned under the agreement.
2. If any program income is generated as a result of this agreement, the income must be applied using the deduction alternative. The deduction alternative means that program income shall be deducted from total allowable costs to determine the net allowable costs, unless otherwise approved by the signatory official. Program income must be used for current costs unless the Federal agency authorizes otherwise. Program income which \_\_\_\_\_ did not anticipate at the time of the award must be used to reduce the Federal agency and \_\_\_\_\_'s contributions rather than to increase the funds committed to the project.
3. Unless the terms and conditions of the agreement 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 agreement and they comply with the Cost Principles, if applicable.
5. Unless the terms and conditions of the agreement 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 instrument. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research awards.

R. OVERPAYMENT. Any funds paid to \_\_\_\_\_ in excess of the amount entitled under the terms and conditions of this agreement constitute a debt to the federal government. The following must also be considered as a debt or debts owed by \_\_\_\_\_ to the U.S. Forest Service:

1. Any interest or other investment income earned on advances of agreement funds;  
or
2. Any royalties or other special classes of program income which, under the provisions of the agreement, are required to be returned;

If this debt is not paid according to the terms of the bill for collection issued for the overpayment, the U.S. Forest Service may reduce the debt by:



1. Making an administrative offset against other requests for reimbursement.
2. Withholding advance payments otherwise due to \_\_\_\_\_.
3. Taking other action permitted by statute (31 U.S.C. 3716 and 7 CFR, Part 3, Subpart B).

Except as otherwise provided by law, the U.S. Forest Service may charge interest on an overdue debt.

S. 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 \_\_\_\_\_. 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).

T. INSTRUMENT CLOSEOUT. shall close out the instrument within 90 days after expiration or notice of termination.

Any unobligated balance of cash advanced to \_\_\_\_\_ must 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 instrument, all financial performance and related reports required by the terms of the instrument must be submitted to the U.S. Forest Service by \_\_\_\_\_.

If this instrument 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.



U. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. shall retain all records pertinent to this instrument for a period of no less than 3 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 instrument 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 must 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 Federal funds must be retained for 3 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.

V. FREEDOM OF INFORMATION ACT (FOIA). Public access to agreement records must 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).

W. 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.

X. PURCHASE OF EQUIPMENT. U.S. Forest Service funds may be used by to purchase equipment necessary to accomplish activities described in this agreement. The available funding is displayed in the financial plan. Title to the equipment rests with the U.S. Forest Service, but may be transferred to on completion of the project, if appropriate.

Y. 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 or more per unit and a useful life of over one year. Supplies are those items that are not equipment.

- Z. GOVERNMENT-FURNISHED PROPERTY.                      may only use U.S. Forest Service property furnished under this agreement for performing tasks assigned in this agreement.                      shall not modify, cannibalize, or make alterations to U.S. Forest Service property. A separate document, Form AD-107, must be completed to document the loan of U.S. Forest Service property. The U.S. Forest Service shall retain title to all U.S. Forest Service-furnished property. Title to U.S. Forest Service property must not be affected by its incorporation into or attachment to any property not owned by the U.S. Forest Service, nor must the property become a fixture or lose its identity as personal property by being attached to any real property.

*Cooperator Liability for Government Property.*

1. Unless otherwise provided for in the agreement,                      shall not be liable for loss, damage, destruction, or theft to the Government property furnished or acquired under this contract, except when any one of the following applies—
    - a. The risk is covered by insurance or                      is/are otherwise reimbursed (to the extent of such insurance or reimbursement).
    - b. The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of                      's managerial personnel.                      's managerial personnel, in this clause, means                      's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of                      's business; all or substantially all of                      's operation at any one plant or separate location; or a separate and complete major industrial operation.
  2.                      shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft.                      shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.
  3.                      shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.
  4. Upon the request of the Grants & Agreements Specialist,                      shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.
- AA. 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.



BB. 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 instrument.

A. REMEDIES FOR COMPLIANCE RELATED ISSUES. If materially fail(s) to comply with any term of the instrument, whether stated in a Federal statute or regulation, an assurance, the agreement, or elsewhere, the U.S. Forest Service may take one or more of the following actions:

1. Temporarily withhold cash payments pending correction of the deficiency by or more severe enforcement action by the U.S. Forest Service;
2. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
3. Wholly or partly suspend or terminate the current instrument for 's program;
4. Withhold further awards for the program, or
5. Take other remedies that may be legally available, including debarment procedures under 7 CFR part 3017.

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

1. 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.
2. 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 instrument will not accomplish the purposes for which the instrument was made, the U.S. Forest Service may terminate the instrument in its entirety.

Upon termination of an instrument, shall not incur any new obligations for the terminated portion of the instrument 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 must be refunded within 60 days after the effective date of termination.

CC. DISPUTES.

1. Any dispute under this award must be decided by the . The shall furnish the recipient a written copy of the decision.
2. Decisions of the shall be final unless, within 30 days of receipt the decision of the , the recipient appeals the decision to U.S. Forest Service's Direct, Acquisition Management (AQM). Any appeal made under this provision must be in writing and addressed to the Director, AQM, USDA, Forest Service, Washington, DC 20024. A copy of the appeal must be concurrently furnished to the .
3. In order to facilitate review on the record by the Director, AQM, the recipient shall be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.
4. A decision under this provision by the Director, AQM is final.
5. The final decision by the Director, AQM does not preclude from pursuing remedies available under the law.

DD. 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.

EE. 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.

FF. 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, must 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 non-profit scientific or educational organization qualified under a State non-profit 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 2 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 must 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 must also identify any publication, on sale or public use of the invention, and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to 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 the 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 disclose 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 non-profit 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 subgrantee'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.

8. 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 must 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 must be in writing and accompanied by a written statement of facts and must 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 non-profit 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.

GG. COPYRIGHTING. is/are granted sole and exclusive right to copyright any publications developed as a result of this agreement. This includes the right to publish and vend throughout the world in any language and in all media and forms, in whole or



in part, for the full term of copyright and all renewals thereof in accordance with this instrument.

No original text or graphics produced and submitted by the U.S. Forest Service shall be copyrighted. 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 federal government purposes. This right must be transferred to any sub-agreements or subcontracts.

This provision includes:

- The copyright in any work developed by \_\_\_\_\_ under this agreement.
- Any right of copyright to which \_\_\_\_\_ purchases ownership with any federal contributions.

- HH. U.S. FOREST SERVICE CODE OF SCIENTIFIC ETHICS. All persons performing under this agreement shall be aware of and perform according to the U.S. Forest Service Code of Scientific Ethics found at:  
[http://www.fs.fed.us/research/publications/fs\\_code\\_of%20 scientific ethics.pdf](http://www.fs.fed.us/research/publications/fs_code_of%20scientific_ethics.pdf)
- II. USDA GUIDELINES FOR QUALITY OF INFORMATION. This agreement is subject to the “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication” and the “USDA Guidelines for Quality of Information” which can be found at <http://www.fs.fed.us/qoi/>.
- JJ. MODIFICATIONS. Modifications within the scope of this instrument must 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.
- KK. COMMENCEMENT/EXPIRATION DATE. This instrument 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.
- LL. 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 instrument. In witness whereof, the parties hereto have executed this instrument as of the last date written below.



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

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

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

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

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.