



**United States  
Department of  
Agriculture**

Animal and  
Plant Health  
Inspection  
Service

Plant Protection and  
Quarantine

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**December 17, 2009**

**SUBJECT: Cooperative Agreement 10-8201-0343-CA**

**TO: William Moore, State Plant Health Director, Prattville, AL (ADODR)  
Cooperator, Alabama Department of Agriculture (through ADODR)  
Soeurette Dunn, Payments Team, MRPBS, Minneapolis, MN  
Domestic Program Assistant, Raleigh, NC  
Meghan Klingel, LPA, Riverdale, MD (Work Plan Only)**

**FROM: L. Purcell, Grants Specialist, Eastern Region, Raleigh, NC**

Please find enclosed the signed Notice of Award for Cooperative Agreement 10-8201-0343-CA, for Fiscal Year 2010, and other related documents between the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine and the Alabama Department of Agriculture.

Enclosures



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CONTINUATION  
TO THE  
NOTICE OF COOPERATIVE AGREEMENT AWARD  
BETWEEN THE  
ALABAMA DEPARTMENT OF AGRICULTURE  
AND INDUSTRIES (COOPERATOR)  
AND THE  
UNITED STATES DEPARTMENT OF AGRICULTURE  
ANIMAL AND PLANT HEALTH INSPECTION SERVICE (APHIS)  
PLANT PROTECTION AND QUARANTINE

Under the provisions of Article 19, Notice of Cooperative **Agreement** Award No. 09-8301-0343-CA, is hereby continued for Fiscal Year 2010. All terms and conditions of this **Agreement** are presented below.

ARTICLE 1 - PURPOSE

The purpose of this **Agreement** is to provide Federal financial assistance for the Cooperative Agricultural Pest Survey Program (CAPS). Program activities will provide specific information for the use of the Cooperator, APHIS, and other interested parties throughout the year with regard to CAPS. The Agreement will (1) provide a coordinated and standardized survey and detection system for program and exotic pests of agricultural significance; (2) provide data that will assist in planning, implementation, and execution of pest control activities on a local, county, State, or regional basis; (3) provide cooperation between the parties; (4) provide information to support ongoing and future exports of American agricultural products; and (5) provide a means for pest assessment and evaluation.

ARTICLE 2 - AUTHORITIES

Under the Plant Protection Act, as amended, (7 USC §§ 7701 et. seq.) (PPA), the Secretary of Agriculture is authorized to issue regulations and orders to prevent, detect, control, eradicate, suppress, or retard the spread of plant pests or noxious weeds into or within the United States and to cooperate with other Federal agencies or entities, States or political subdivisions of States, national governments, local governments of other nations, domestic or international organizations, domestic or international associations, and other persons to carry out the purposes of the PPA.

ARTICLE 3 – MUTUAL UNDERSTANDINGS AND RESPONSIBILITIES

The cooperating parties agree to/that:

a. A State CAPS Committee will be established with the purpose of providing overall program guidance. The Committee will consist of representatives from participating agencies and institutions, including but not limited to, the Cooperator, land grant colleges and Universities, and Aphis. The members of the Committee will be drawn from multi-disciplinary backgrounds such as entomology, plant pathology, nematology, and weed science.

The Chairperson of the Committee will be selected by the State Plant Health Director and State Plant Regulatory Official. The Committee will:

1. Meet at least once a year, or more frequently, as deemed necessary;
2. Provide guidance in the development of the annual **Work plan and Financial Plans for each Program/Function**, to be incorporated into this **Agreement** by reference. If APHIS initially awards a reduced level of funding during a Continuing Resolution (CR), there will be a corresponding decrease in the projected accomplishments for the funding period. Upon extension of the CR or passage of an appropriation by Congress, revisions will be executed to increase the federal share, based on available funds, not to exceed the level reflected in the annual Financial Plan.
  - b. The provisions of this **Agreement** will not replace functions that are being conducted by the **Cooperator** but will supplement those activities and increase program benefits to all parties.
  - c. The employee(s) responsible for this work will be under the general program direction of the **Cooperator and APHIS**. Supervision of personnel will be provided by their employing organization, and they will be subject to their employing organizations rules and regulations.

#### ARTICLE 4 – COOPERATOR RESPONSIBILITIES

The **Cooperator** understands and agrees to/that:

- a. Designate in writing to APHIS the **Cooperator's** authorized representative who shall be responsible for collaboratively administering the activities conducted under this **Agreement**.
- b. Furnish personnel, as required, to accomplish the activities outlined in the **Work Plan and Financial Plan**.
- c. Provide funds as partial payment of expenditures incurred in carrying out the terms of this **Agreement** in accordance with the **Work Plan and Financial Plan**.
- d. The **Cooperator's** representative designated as required in Article 4.a shall certify and submit to APHIS' authorized representative **quarterly** accomplishment reports on activities outlined in the **Work Plan and Financial Plan**. The reports will be used by APHIS to verify compliance with provisions of this **Agreement**. They are due:

<u>Reporting Period</u>	<u>Report Date Due</u>
1 January 2010 – 31 March 2010	30 April 2010
1 April 2010 – 30 June 2010	30 July 2010
1 July 2010 – 30 September 2010	30 October 2010
1 October 2010 – 31 December 2010	30 March 2011 (90 days after Agreement expires)

Any requests for an extension of time to submit the reports must be justified and made in writing to APHIS' authorized representative before expiration of the initial 30 or 90 day period allowed for submitting the report. Extensions of time to submit the reports are subject to the discretion of APHIS' authorized representative and, if

allowed, shall be provided by the authorized representative in writing. When an agreement includes multiple projects covered by multiple Work Plans and Financial Plans, each project must be reported separately.

e. Submit to APHIS' designated representative properly certified **quarterly** Federal Financial Reports (FFR). They are due:

<u>Reporting Period</u>	<u>Report Date Due</u>
1 January 2010 – 31 March 2010	30 April 2010
1 April 2010 – 30 June 2010	30 July 2010
1 July 2010 – 30 September 2010	30 October 2010
1 October 2010 – 31 December 2010	30 March 2011 (90 days after Agreement expires)

Any requests for an extension of time to submit the FFR must be justified and made in writing to APHIS' authorized representative before expiration of the initial 30 or 90 day period allowed for submitting the report. Extensions of time to submit the FFR are subject to the discretion of APHIS' authorized representative and, if allowed, shall be provided by the authorized representative in writing. In addition, APHIS requires a separate FFR for each award. When an agreement includes multiple projects covered by multiple Work Plans and Financial Plans, each project must be reported on a separate FFR. **Further, all federal funds reflected as unobligated on the final FFR will no longer be available for obligation by the Cooperator.**

f. Treat any program income derived under this **Agreement** using the Deduction Alternative in accordance with the provisions of 7 CFR 3016.25(g)(1) which provides for a decrease in the financial contributions of each cooperating party to this project.

g. Submit to APHIS a properly certified Request for Advance or Reimbursement, SF-270, when requesting payment for expenditures. A payment request may be submitted quarterly or more frequently; however, advance of funds will be made by APHIS in increments as indicated under 11.j of the SF-270 to cover monthly disbursement needs.

h. Obtain a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number by calling D&B at (800) 333-0505 (most expeditious) or visiting their website at <http://www.dnb.com/us>. This requirement does not apply to individuals applying for assistance, unless it supports a business or non-profit organization they operate. Upon obtaining the DUNS number, the **Cooperator** further agrees to register in the Central Contractor Registry (CCR) by visiting their website at <http://www.ccr.gov> (most expeditious) or calling 888-227-2423. The **Cooperator** also agrees to update the CCR information as necessary and to **renew the registration annually prior to its expiration date**. This registration will provide a means to receive electronic funds transfers of all payments requested on the SF-270. **Cooperators** without accounts at financial institutions can request waivers due to hardship because of physical or geographical barrier.

i. APHIS may withhold payments called for in Article 5.b under the conditions outlined in 7 CFR 3016.21(g), including failure to comply with project objectives, the terms and conditions of the award, and Federal reporting requirements; if the Cooperator or a sub-recipient is delinquent on debt to the United States, or such other conditions outlined in the cited regulations.

j. Comply with 7 CFR 3017, Subpart C to ensure that any subrecipients that carry out the provisions of this **Agreement** are not debarred or suspended. Subrecipients are required to disclose if they, or any of their principals, are presently excluded or disqualified.

- k. Comply with and enforce the requirements for a drug-free workplace as mandated in 7 CFR 3021, "Governmentwide Requirements for Drug-Free Workplace".
- l. Comply with and enforce the requirements in 7 CFR 3018.110 (d) (1) and (2) for completion of the Certification Regarding Lobbying and the SF-LLL, Disclosure of Lobbying Activities. Such certifications and disclosures apply to the Cooperator and any subgrants and subcontracts exceeding \$100,000.
- m. When connected to the USDA, APHIS network, comply with the security guidelines as outlined in the USDA Cyber Security Manual Series 3500; including USDA Departmental Manual (DM) 3515, "Privacy Requirements", and USDA DM 3525, "USDA Internet Use and E-Mail Security". The **Cooperator** will not download any material (i.e., pictures, movies, or music files) bearing a copyright nor access any material defined as inappropriate in these regulations and directives. The Cooperator agrees that any of its personnel that are given access to the APHIS network, any systems on the APHIS network, or any personnel using APHIS owned computer equipment will take any APHIS required security and privacy training.
- n. Work with the APHIS to ensure compliance with National Institute of Standards and Technology (NIST) system requirements and APHIS' Certification and Accreditation (C&A) standards. Specifically, the **Cooperator** will comply with NIST SP 800 – 37, "Guide for the Security Certification and Accreditation of Federal Information Systems"; NIST SP 800 – 53, "Recommended Security Controls for Federal Information Systems"; APHIS C&A Manual including APHIS C&A Templates; and any other relevant NIST and APHIS guides. Refer to the NIST website at <http://csrc.nist.gov/publications/nistpubs/index.html> to obtain copies of the NIST C&A publications.
- o. When transmit frequency determining devices (transmitters) are owned by the Federal Government, the Federal Government will have responsibility for frequency support (frequency authorizations for fixed locations). If **Cooperator**-owned devices are provided, it will be the **Cooperator's** responsibility to obtain frequency support by application to the Federal Communications Commission for use of government frequencies, or to obtain non government frequencies. All radio equipment will be maintained to original factory technical specifications. Mobile radio equipment removed from service will be kept at a central location with notification made to the designated Federal official. Notification of any changes, relocation, or removal of base stations or repeater stations in the system will be made to the APHIS Radio Communications Manager at Lakewood, Colorado, who will be available for technical guidance and, if needed, make periodic trips to monitor the system.
- p. Maintain an inventory control system of property purchased by the **Cooperator** in whole or in part with Federal funds as required in the Section entitled "Equipment" of 7 CFR 3016.32. Cooperators shall conduct a physical inventory at least every two years and make available, as requested, the required records for review by APHIS. A copy of the reconciled final inventory report will be provided to APHIS as stated in Article 10 of this Agreement.
- q. Provide an annual inventory report of any Federally-owned or Federally-leased equipment on loan to the Cooperator to include a description, manufacturer model and serial number, acquisition date and cost. A disposition request shall be made to APHIS when the property is no longer needed.
- r. When the Federal share of total project costs as reflected in the **Financial Plan** is over \$100,000 and a cumulative transfer among direct cost categories is in excess of ten percent of the current approved total budget, the **Cooperator** will request written prior approval for the budget revision. The **Cooperator** will submit a revised SF-424A, Budget Information, and detailed **Financial Plan** under a cover letter to the APHIS awarding

official containing a narrative justification for the proposed revision. Transfers of funds among programs, functions, or activities as indicated in Section B of the SF-424A is prohibited.

s. Comply with the requirements for coordination, development, and use of geospatial data as mandated in OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities".

t. Meet the reporting requirements of the Federal Funding Accountability and Transparency Act by providing the following information. Parent organization DUNS number; primary place of performance street address, city, county, state, country and zip code; indicate if performance is in multiple counties and/or states; and provide any comments that might be relevant. APHIS will provide a supplemental sheet for the Cooperator's convenience in recording this information.

u. Pursuant to 31 USC 3706 and 7 CFR 3.10 to 7 CFR 3.21, any funds paid to a cooperator in excess of the amount to which the cooperator is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by:

- (1) Making an administrative offset against other requests for reimbursements.
- (2) Withhold advance payments otherwise due to the Cooperator
- (3) Taking other action permitted by statute.

Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR, Chapter II "Federal Claims Collection Standards" and 31 USC, Chapter 37.

v. Any information furnished to APHIS under this **Agreement** is subject to the Freedom of Information Act (5 USC 552).

w. Unless otherwise specified in the Work Plan, provide vehicles and other equipment for its employee(s) while performing the activities outlined in the Work Plan.

x. Provide for prompt reporting of new pests, within 48 hours for new United States (US) records.

y. Comply with the Executive Order entitled "Federal Leadership on Reducing Text Messaging While Driving" signed by President Barack Obama on October 1, 2009, by prohibiting **Cooperator** employees, recipients, subrecipients, contractors, and subcontractors from texting while driving on official business and/or in Federally-owned, rented, or leased vehicles (collectively government owned vehicles) or privately owned vehicles when on official Government business or when performing any work for or on behalf of or in cooperation with the Federal government.

Further, APHIS encourages the **Cooperator** to implement--and to encourage its recipients, sub-recipients, contractors, and subcontractors, to implement--new rules and programs, and re-evaluate existing programs to prohibit text messaging while driving, and conduct education, awareness, and other outreach for its employees about the safety risks associated with texting while driving. These initiatives should encourage voluntary compliance with the text messaging policy while off duty.

For purposes of this requirement, the following definitions apply:

(1) "Texting" or "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of SMS texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

(2) "Driving" means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise. It does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

#### ARTICLE 5 – APHIS RESPONSIBILITIES

APHIS agrees to/that:

- a. Designate in writing to the **Cooperator** APHIS' Authorized Departmental Officer's Designated Representative who shall be responsible for collaboratively administering the activities conducted under this **Agreement**.
- b. Provide funds on an advance or reimbursable basis as **partial** payment of allowable, agreed-to costs incurred by the **Cooperator** in carrying out the terms of this **Agreement** in accordance with the **Work Plan and Financial Plan**.
- c. Make advance payments, if requested by the **Cooperator**, monthly and upon receipt of a properly certified Request for Advance or Reimbursement, SF270.
- d. Provide personnel and other resources to carry out its responsibilities as outlined in the **Work Plan and Financial Plan**.
- e. Upon receipt of the final Federal Financial Report, provide written notification to the cooperator that the balance of Federal funds reported as unobligated will no longer be available to the Cooperator.
- f. Assist the **Cooperator** in selecting qualified candidates to perform activities outlined in the **Work Plan and Financial Plan** and provide general program direction to employees assigned to the cooperative endeavor. However, the assigned employees will remain subject to the **Cooperator's** rules and regulations.
- g. Provide special training to carry out assignments, as mutually deemed necessary.

#### ARTICLE 6 – UNEMPLOYMENT COMPENSATION

Actual costs incurred for unemployment insurance or equitable contributions made to a self-insured unemployment fund are allowable. APHIS does not allow payment of costs incurred for unemployment claims.

#### ARTICLE 7 – CONGRESSIONAL RESTRICTION

Under 41 USC 22, no member of or delegate to Congress shall be admitted to any share or part of this **Agreement** or to any benefit to arise therefrom.

#### ARTICLE 8 – APPLICABLE REGULATIONS

As a condition of this award, the **Cooperator** agrees to comply and require subrecipients to comply with the requirements contained in the United States Department of Agriculture's "Uniform Federal Assistance Regulations", 7 CFR 3015; "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", 7 CFR 3016; and/or "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations", 7 CFR 3019; in addition to "Governmentwide Debarment and Suspension (Non-Procurement)", 7 CFR 3017; "Governmentwide Requirements for Drug-Free Workplace", 7 CFR 3021; "New Restrictions on Lobbying", 7 CFR 3018; and Office of Management and Budget regulations governing "Controlling Paperwork Burdens on the Public", 5 CFR 1320.

#### ARTICLE 9 – TITLE TO EQUIPMENT

APHIS reserves the right to transfer title to any equipment purchased partially or fully by the **Cooperator** under this **Agreement** with Federal funds within 120 days after the end of the Federal support of the project for which it was acquired. Upon transfer of title, the **Cooperator** will be entitled to compensation equal to its percentage of participation in the purchase of the equipment in the year purchased, applied to the fair market value in the year title is transferred.

#### ARTICLE 10 – PATENTS AND INVENTIONS

The **Cooperator** has the explicit duty of notifying APHIS' authorized representative, in writing, prior to the time of application for any patent or invention which is paid for in any manner or any percentage of funds provided by APHIS. This duty is not limited to the period during the **Agreement**, but may arise at any time during or subsequent to the **Agreement**. APHIS reserves to itself a royalty-free, nonexclusive, and irrevocable right to use and authorize others to use the product or invention produced under this **Agreement** for Government purposes. APHIS also retains the ability to force utilization of the patented invention by designating licenses in any field of use where the patentee has failed to act with reasonable diligence.

#### ARTICLE 11 – COPYRIGHTS

APHIS reserves a royalty-free, nonexclusive, and irrevocable license to exercise, and to authorize others to exercise, the rights for Federal government purposes to copyrighted materials developed under this **Agreement**. Subject to this license, the owner is free to exercise, preserve, or transfer all its rights. The **Cooperator** shall ensure that no agreement is entered into for transferring the rights which would conflict with the nonexclusive license of APHIS.



#### ARTICLE 12 – PUBLICATIONS AND AUDIOVISUALS

The final draft of any funded publication or audiovisual must be submitted by the **Cooperator** to APHIS' authorized representative prior to final printing, editing or release of the product so that APHIS can make a determination as to whether APHIS' participation in the project will be acknowledged. APHIS, furthermore, may require that the **Cooperator** modify or purge any acknowledgment of its support for activities conducted under this **Agreement** as a result of its review of a final draft. If APHIS has not responded within 30 days of receipt of the draft, the **Cooperator** will be free to proceed with publication without an acknowledgment. In the event that APHIS elects not to acknowledge the product, the **Cooperator** agrees not to attribute sponsorship by APHIS by any means including, but not limited to, publications, interviews, new releases, etc.

When an acknowledgment is desired by APHIS, unless otherwise instructed by APHIS, the statement shall read: "This material was made possible, in part, by a **Cooperative Agreement** from the United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS). It may not necessarily express APHIS' views."

Additionally, any other acknowledgment, including use of the APHIS Logo, by the **Cooperator** of APHIS support shall have the express written permission of APHIS signatory to this Agreement, which shall be requested through the APHIS representative designated under this **Agreement**.

#### ARTICLE 13 – FEDERAL VEHICLE MANAGEMENT

If using an APHIS owned or leased vehicle, the **Cooperator** agrees to comply with the requirements of 41 CFR 10138.3011 (41 CFR 10234 Subpart C) and vehicle usage policy as stated in the APHIS Motor Vehicle Fleet Management Manual. The **Cooperator** further agrees to indemnify the United States of America for any and all property damage and personal injury caused by the **Cooperator's** employees resulting from use of said vehicles, and further agrees to save and hold harmless the United States of America from any and all claims for such property damage and personal injury caused by the **Cooperator's** employees. The **Cooperator** further agrees to reimburse the United States of America by and through APHIS for any property damage to any Federally-owned or Federally-leased vehicles, less normal wear and tear, which may occur through the use of said vehicles under this **Agreement**.

#### ARTICLE 14 – BUY AMERICAN ACT

In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available under the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for the current Federal fiscal year, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

#### ARTICLE 15 – FUNDING PERIOD OBLIGATIONS AND EXTENSIONS

The funding period is the period during which this **Agreement** is in effect. Any funds not obligated by the **Cooperator** during the funding period will revert to APHIS upon the expiration or termination of this funding period. Under 7 CFR 3016.30, this **Agreement** is subject to a one-time extension of up to 12 months to complete this project. The **Cooperator** must submit a written request including an SF-424, Application for Federal Assistance, to extend the duration to be received by APHIS **at least 10 days prior to the expiration of the funding period**. The SF-424 must be accompanied by a justification explaining the reason for program delays, the program

impact without the extension, and the anticipated completion date. During the extension period, financial and progress reports will continue with the same frequency as provided in the original funding period. As stated in 7 CFR 3016.30, requests for extension purely to obligate funds will be denied by APHIS. All extensions must be approved, in writing, by APHIS prior to the expiration of the original funding period.

#### ARTICLE 16 – NON-DISCRIMINATION CLAUSE

No person in the United States shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in programs or activities funded in whole or in part by the United States Department of Agriculture based on race, color, national origin, age, disability, and, where applicable, sex, religion or political beliefs. Recipients will post a non-discrimination statement in accordance with USDA Departmental Regulation 4300-003 paragraph 7.b(2) found at <http://www.ocjo.usda.gov/directives/doc/DR4300-003.pdf>.

#### ARTICLE 17 – TRAFFICKING IN PERSONS

APHIS, as the Federal awarding agency, hereby advises the **Cooperator**, as the recipient, that they are subject to the provisions of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 USC 7104(g)), as follows:

**a. Provisions applicable to a recipient that is a private entity.**

(1) You, as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not –

(a) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

(b) Procure a commercial sex act during the period of time that the award is in effect; or

(c) Use forced labor in the performance of the award or subawards under the award.

(2) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –

(a) Is determined to have violated a 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 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.

**b. 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 –

- (1) Is determined to have violated an applicable 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 an applicable prohibition in paragraph a.(1) of this award term through conduct that is either –

- (a) Associated with performance under this award; or

- (b) 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.

**c. Provisions applicable to any recipient.**

- (1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.(1) of the award term.

- (2) Our right to terminate unilaterally that is described in paragraph a.(2) or b of this section:

- (a) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 USC 7104(g)), and

- (b) Is in addition to all other remedies for noncompliance that are available to use under this award.

- (3) You must include the requirements of paragraph a.(1) of this award term in any subaward you make to a private entity.

**d. Definitions.** For purposes of this award term:

- (1) “Employee” means either:

- (a) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

- (b) 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.

- (2) “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.

- (3) “Private entity”:

- (a) 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.

(b) 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.

(4) "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 USC 7102).

#### ARTICLE 18 – FLY AMERICAN ACT

The Cooperator organization shall comply with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 1517 (Fly American Act), which requires:

a. Any air transportation to, from, between, or within a country, other than the U.S., of persons or property, the expense of which will be assisted by USDA funding, will be performed on a United States flag carrier if service provided by such carrier is "available."

b. For the purposes of the requirement:

(1) Passenger or freight service by a certified air carrier is considered "available" even though:

(a) Comparable or a different kind of service by a non-certificated air carrier costs less; or

(b) Service by a non-certificated air carrier can be paid for in excess foreign currency; or

(c) Service by a non-certificated air carrier is preferred by the recipient organization contractor or traveler needing air transportation.

(2) Passenger service by a certificated air carrier is considered to be "unavailable":

(a) When the traveler, while enroute, has to wait 6 hours or more for an available United States carrier: or

(b) When any flight by a U.S. carrier interrupted by a stop anticipated to be 6 hours or more for refueling, reloading, repairs, and so forth, and no other flight by a United States carrier is available during the 6 hour period: or

(c) When the flight by a United States carrier takes 12 or more hours longer than a foreign carrier.