

**Forest Service Handbook
National Headquarters - Washington Office
Washington, DC**

**Forest Service Handbook 1509.11 – Grants, Cooperative Agreements, and Other Agreements
Handbook
Chapter 90 - Standard and Discretionary Provisions and Assurances**

Amendment: 1509.11-2020-2

Effective date: July 7, 2020

Duration: This amendment is effective until superseded or removed.

Superseded Directive: 1509.11_90, Amendment 1509.11-2018-2, May 16, 2018

Approved by: Claudette Fernandez, Deputy Chief, OPS

Date approved: July 2, 2020

Responsible Staff:

Explanation of changes: Following is an explanation of the changes throughout the directive by section.

Revises sections 91.1 and 91.2 and incorporates a new standard provision related to the Forest Service provision of workers' compensation, tort pursuant to the Federal Tort Claims Act, and/or personal property damage or loss coverage for a mutual benefit cooperator's volunteers in accordance with Forest Service Manual 1830.

91.1: Adds a new clause to Exhibit 01 the List of Provisions Identified in the Matrix of Provisions for Various Instruments.

91.2: Updates Exhibit 01 to reflect the current clause and the addition of a new clause, resulting in two options to choose from for the Provision at A.17, due to an amendment to the Volunteers in National Forest Act of 1972.

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This chapter prescribes uniform administrative requirements applicable to all U.S. Department of Agriculture (USDA) Forest Service Grants, Cooperative Agreements, Collection Agreements, Interagency Agreements, Memorandum of Understanding (MOU), and Partnership Agreements (Challenge Cost-share, Participating, Joint Venture, Cost Reimbursable, and Cooperative Research and Development Agreements).

90.1 - Authority

Certain Code of Federal Regulations (CFR) and Office of Management and Budget (OMB) administrative provisions located at 2 CFR Part 200, as implemented by U.S. Department of Agriculture (USDA) regulations located at 2 CFR Part 400, must be incorporated and made a part of any new domestic grant or cooperative agreement award entered into after December 26, 2014. The new regulations in 2 CFR Part 400 must also be incorporated and made a part of a domestic grant or cooperative agreement award when a modification is made to add funding to an existing award on or after December 26, 2014. Any existing award executed prior to December 26, 2014, may remain under the old circulars cited in the existing provisions of the award or the recipient may choose to move to the new 2 CFR Part 400 regulation. See FSH 1509.11, chapter 20, section 20.1, number 6 for more information.

For profit organizations are subject to the Federal Acquisition Regulations, Part 31, Contract Cost Principles and Procedures. Administrative provisions of subparts A through D of 2 CFR Part 215 apply to for profit organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations (2 CFR 415.0 (b)(4)).

Many Government-wide authorities require compliance with various instruments and authorities, such as U.S. Department of Treasury financial requirements, and Forest Service requirements created from delegated authority from USDA. These must be complied with whether or not they are specifically mentioned in FSM 1580 and FSH 1509.11, et. seq., or mentioned in the instruments used by the parties.

90.4 - Responsibility

Authorized personnel shall use the information contained in this chapter in conjunction with FSM 1580 and chapters 10 through 80 of this Handbook, when developing Forest Service Grants, Cooperative Agreements, Collection Agreements (CO), Interagency Agreements (IA), Memorandum of Understanding (MOU), and Partnership Agreements (Challenge Cost-share, Participating, Joint Venture, Cost Reimbursable, and Cooperative Research and Development Agreements).

91 - Mandatory, Conditional, and Optional Provisions

Provisions are terms and conditions prescribed by law, regulation, or policy and applied to grants, cooperative agreements, and all other FSM 1580 agreements.

91.1 - Matrix of Provisions for Various Instruments

Use the matrix (see ex. 01, B) to determine the required provisions for each instrument type and incorporate them into all award letters/agreements. The provisions must not be altered, except as permitted following the requirements in FSM 1580.35, Deviations, or, in the case of MOUs, IAs, and COs, where the intent of the provision is maintained. Note: all forms require an approved form number, and each approved form contains the mandatory provisions, but may incorporate conditional and optional provisions. Cooperative Law Enforcement Agreements, Fire Protection, Forest Road Agreements, Cooperative Research and Development Agreements, Material Transfer Agreements, and Non Disclosure Agreements are not included on this matrix (see sec. 91.3 through sec. 91.6 for more information).

To use the matrix, either:

1. Locate the instrument type, by its corresponding abbreviation (for example, 'DG' is Domestic Grant"; see ex. 01, A for the legend listing all abbreviations), along the top row, then move down along the column containing the instrument type abbreviation to all "M, C and O"s. From each identified letter, move along that row to the far left until the required provision title is identified. After identifying all corresponding provisions, then incorporate them (as appropriate) in the award/agreement; or,
2. Locate the desired provision, move along the row to the column for the desired instrument type. The letters "M, C, or O" located at the intersection of the provision row and instrument type column, indicate whether the provision is Mandatory, Conditional or Optional. For example, the provision titled "Access Records" is always mandatory in Partnership Agreements (Challenge Cost-share, Participating, and Joint Venture Agreements), but not mandatory in financial assistance awards (Grants or Cooperative Agreements). Include mandatory provisions applicable to Grants and Cooperative Agreements in the award letter. Incorporate provisions applicable to all other agreements (as appropriate) as part of the agreement.

91.1 - Exhibit 01
Matrix of Provisions for Various Instruments

A. Legend.

| Agreement Type Alpha Codes | Instrument Type | FSH 1509.11 Chapter Reference |
|---------------------------------------|-------------------------------------------------------------------|------------------------------------------|
| CA | Cooperative Agreement | 20 |
| CO | Collection Agreement | 40 |
| CR | Cost-Reimbursement Agreement | 70 |
| CS | Challenge Cost-Share Agreement | 70 |
| DG | Domestic Grant | 20 |
| IA | Interagency Agreement | 50 |
| IC | International Cooperative Agreements | 20 |
| IG | International Grants | 20 |
| IJ | International Joint Venture Agreement | 70 |
| JV | Joint Venture Agreement | 70 |
| MU | Memorandum of Understanding | 60 |
| PA | Participating Agreement | 70 |
| RU | Master Regional, Station, Areawide Memorandum of Understanding | 60 |
| SU | Master Servicewide Memorandum of Understanding | 60 |
| SA | Stewardship Agreement | 70 |

91.1 - Exhibit 01--Continued
Matrix of Provisions for Various Instruments

B. Title Provisions.

| Instrument Type Provision Number/Title | CA | CO | CR | CS | DG | IA | IC | IG | IJ | JV | MU RU SU | PA | SA |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|----|----|----|----|----|----|----|----|----|----------------|----|----|
| | Part A: GENERAL PROVISIONS | | | | | | | | | | | | |
| A.1. Legal Authority | M | M | M | M | M | | M | M | M | M | | M | M |
| A.2. Collaborative Arrangements | C | | | | C | | C | C | C | | | | |
| A.3. Statement of Substantial Involvement | M | | | | | | M | | | | | | |
| A.4. Forest Service Liability to the Recipient | M | | | | M | | M | M | | | | | |
| A.5. Forest Service Liability to the Cooperator | | C | | | | | | | | | | | |
| A.6. Notices | M | M | M | M | M | M | M | M | M | M | M | C | M |
| A.7. Principal Contacts | M | M | M | M | M | M | M | M | M | M | M | M | M |
| A.8. Participation in Similar Activities | | M | M | M | | | | | | M | M | M | M |
| A.9. Endorsement | | M | | M | | | | | M | M | C | M | M |
| A.10. Collaboration | | O | | | | | | | | | | | |
| A.11. Subrecipient Notification | C | | | | C | | | | | | | | |
| A.12. Nonbinding Agreement | | | | | | | | | | | M | | |
| A.13. Use of Forest Service Insignia | C | C | C | C | C | C | C | C | C | C | C | C | C |
| A.14. Prior Approval for Subrecipients | | | | | | | C | C | | | | | |
| A.15. Waiver of Prior Approval for Subawards | | | | | | | C | C | C | | | | |
| A.16. Metric System of Measurement | C | | | | C | | C | C | C | | | | |
| A.17. Non-Federal Status for Cooperator Participants (Option 1); or Non-Federal Status for Cooperator Volunteers Except as Provided for Mutual Benefit Cooperators (Option 2) | | | | M | | | | | | | | M | C |
| | | | | C | | | | | | | | C | C |

M = Mandatory Provision, that is, the provision is always required when using that particular instrument type.

C = Conditional Provision, that is, the provision is mandatory only when specific criteria are met that are described in the provision's prescription.

O = Optional Provision, that is, the provision is not mandatory, but can be negotiated by the parties for inclusion into the grant/agreement.

91.1 - Exhibit 01--Continued
Matrix of Provisions for Various Instruments

B. Title Provisions (Cont'd).

| Instrument Type | CA | CO | CR | CS | DG | IA | IC | IG | IJ | JV | MU RU SU | PA | SA |
|---------------------------------------------------------------------------------------------|--------------|-----------|-----------|-----------|--------------|-----------|-----------|-----------|-----------|-----------|-------------------------|-----------|-----------|
| Provision Number/Title | | | | | | | | | | | | | |
| A.18. Availability for Consultation | | | | C | | | | | | | | C | |
| A.19. Supplemental Project Agreements | | | | C | | | | | | | | C | |
| A.20. Building and Computer Access by Non-Forest Service Personnel | C | | | C | C | C | C | C | C | C | | C | |
| A.21. Information Security | | | | | | C | | | | | | | |
| Part B: GENERAL ASSURANCES | | | | | | | | | | | | | |
| B.1. Members of Congress | M | O | M | M | M | O | M | M | M | M | O | M | M |
| B.2. Safeguarding U.S. Funds | | | | | | | M | M | M | | | | |
| B.3. Trafficking in Persons | M | | | | M | | M | M | M | | | | |
| B.4. Drug-Free Workplace | M | | | | M | | M | M | | | | | M |
| B.5. Nondiscrimination | ¹ | | M | M | ² | | | | | M | | C | M |
| B.6. Tribal Employment Rights Ordinance (TERO) | O | O | O | O | O | O | O | O | O | O | O | O | O |
| B.7. Eligible Workers | M | | M | M | M | | | | | M | | C | M |
| B.8. Environmental Standards | | | | | | | | | | M | | | |
| B.9. Positions of Influence | | | | | | | M | M | M | | | | |
| B.10. U.S. Government Employment Status | | | | | | | M | M | M | | | | |
| B.11. Nondiscrimination in International Programs | | | | | | | C | C | C | | | | |
| B.12. Implementation of E.O. 13224 -- Executive Order on Terrorist Financing | | | | | | | M | M | M | | | | |
| B.13. Text Messaging While Driving | M | | M | M | M | | M | M | M | M | M | M | M |
| B.14. Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Entities | C | | C | C | C | | | | | C | C | C | C |

¹ CAs are not required to have this provision, since the applicant must submit the SF-424B or D to the Forest Service, which becomes part of the award letter.

² DGs are not required to have this provision, since the applicant must submit the SF-424B or D to the Forest Service, which becomes part of the award letter.

91.1 - Exhibit 01--Continued
Matrix of Provisions for Various Instruments

B. Title Provisions (Cont'd).

| Instrument Type Provision Number/Title | CA | CO | CR | CS | DG | IA | IC | IG | IJ | JV | MU RU SU | PA | SA |
|----------------------------------------------------------------------------------------------------------|----|----|----|----|----|----|----|----|----|----|----------------|----|----|
| Part C: FINANCIAL REQUIREMENTS | | | | | | | | | | | | | |
| C.1. Standards for Financial Management | | | M | M | | | | | M | M | | M | M |
| C.2. Limitation of Funds | C | | C | C | C | C | C | C | C | C | | C | |
| C.3. Pre-Award Costs for Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations | C | | | | C | | O | O | | | | | |
| C.4. Pre-Award Costs for State, Local, and Indian Tribal Governments | C | | | | C | | O | O | | | | | |
| C.5. Indirect Costs and Tuition Remission | C | | | | | | | | | M | | | |
| C.6. Indirect Costs | | | M | | | | | | | | | | |
| C.7. Indirect Cost Rates – Financial Assistance | C | | | | C | | C | C | | | | | |
| C.8. Indirect Cost Rates - Partnership | | | | C | | | | | | C | | C | |
| C.8A. Indirect Cost Rates - Cooperative Fire Protection | | | | | | | | | | | | | |
| C.9. Program Income- Financial Assistance | C | | | | C | | C | C | | | | | |
| C.10. Program Income- Partnership Agreement | | | C | C | | | | | C | C | | C | |
| C.11. Revision of Budget | | | | | | | M | M | | | | | |
| C.12. Allowable Costs | | | | | | | M | M | | | | | |

91.1 - Exhibit 01--Continued
Matrix of Provisions for Various Instruments

B. Title Provisions (Cont'd).

| Instrument Type Provision Number/Title | CA | CO | CR | CS | DG | IA | IC | IG | IJ | JV | MU RU SU | PA | SA |
|-------------------------------------------------------------------------------------|--------------------------------------------------------------------|----|----|----|----|----|----|----|----|----|----------------|----|----|
| | Part D: FINANCIAL REPORTING, ACCOUNTING, AUDIT, AND RECORDS | | | | | | | | | | | | |
| D.1. Health & Human Services Payment Management System (HHS PMS) | C | | C | C | C | | | | | C | | C | |
| D.2. Financial Status Reporting | M | | | | M | | M | M | | | | | |
| D.3. Accounting, Audit, and Records | | | | | | | M | M | | | | | |
| D.4. System for Award Management Registration and Universal Identifier Requirements | M | | | | M | | | | | | | | |
| D.5. System for Award Management Registration Requirements (SAM) | | | M | M | | | M | M | M | M | | M | |

91.1 - Exhibit 01--Continued
Matrix of Provisions for Various Instruments

B. Title Provisions (Cont'd).

| Instrument Type | CA | CO | CR | CS | DG | IA | IC | IG | IJ | JV | MU RU SU | PA | SA |
|------------------------------------------------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-------------------------|-----------|-----------|
| Provision Number/Title | | | | | | | | | | | | | |
| Part E: BILLING, PAYMENT, AND CLOSE-OUT REQUIREMENTS | | | | | | | | | | | | | |
| E.1. Special Billing Requirements – Financial Documentation (Incoming Funds) | | O | | | | O | | | | | | | |
| E.2. Special Billing Requirements – Financial Documentation (Outgoing Funds) | | | | | | C | | | | | | | |
| E.3. Special Billing Requirements – Program Documentation | | C | | | | C | | | | | | | |
| E.4. Billing – IA (FS Servicing Agency) | | | | | | C | | | | | | | |
| E.5. Billing – IA (FS Requesting Agency) | | | | | | C | | | | | | | |
| E.6. Advance Billing | | C | | | | | | | | | | | |
| E.7. Reimbursable Billing | | C | | | | | | | | | | | |
| E.8. Advance/Reimbursable Payments – Financial Assistance | M | | | | M | | M | M | | | | | |
| E.9. Payment/Reimbursement | | | C | C | | | | | C | C | | C | |
| E.10. Advance Payment | | | | | | | | | C | C | | C | C |
| E.11. Overpayment | | | C | C | | | | | C | C | | C | C |
| E.12. Refunds | | C | | | | | | | | | | | C |
| E.13. Payment Bond | | C | | | | | | | | | | | |
| E.14. Wire Transfer to a Foreign Cooperator (Manual Payments) | | | | | | | C | C | C | | | | |
| E.15. Award/Agreement Close-out | M | | M | M | M | | M | M | M | M | | C | M |

91.1 - Exhibit 01--Continued
Matrix of Provisions for Various Instruments

B. Title Provisions (Cont'd).

| Instrument Type | CA | CO | CR | CS | DG | IA | IC | IG | IJ | JV | MU RU SU | PA | SA |
|-----------------------------------------------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-------------------------|-----------|-----------|
| Provision Number/Title | | | | | | | | | | | | | |
| Part F: PROGRAMMATIC PROVISIONS | | | | | | | | | | | | | |
| F.1. Program Monitoring and Program Performance Reports | M | | M | M | M | | M | M | M | M | | C | M |
| F.2. Programmatic Changes | M | | | | M | | M | M | | | | | |
| F.3. Notification | M | | | | M | | M | M | | | | | |
| F.4. Changes in Key Positions and Personnel | M | | | | M | | M | M | | | | | |
| F.5. Training, Evaluation, and Certification of Sawyers used by Cooperators | | C | | C | | | | | | | | C | C |
| Part G: RECORD RETENTION AND ACCESS PROVISIONS | | | | | | | | | | | | | |
| G.1. Retention and Access Requirements for Records | | | M | M | | | M | M | M | M | | M | M |
| G.2. Freedom of Information Act | M | M | M | M | M | | M | M | M | M | C | M | M |
| G.3. Public Notices | O | O | O | O | O | O | O | O | O | O | O | O | O |
| Part H: PROCUREMENT AND PROPERTY PROVISIONS | | | | | | | | | | | | | |
| H.1. Purchase of Equipment | C | | | | C | | | | | | | | |
| H.2. Purchase of Equipment with Right to Transfer | C | | | | C | | C | C | | | | | C |
| H.3. Right to Transfer Equipment and Supplies | | | | | | | | | | | | | C |
| H.4. Government-Furnished Equipment | C | | | | C | | | | | | | | |
| H.5. Funding Equipment and Supplies | C | | C | C | C | | C | C | C | C | | C | C |
| H.6. Property Improvements | | C | | C | | | | | | C | | C | C |
| H.7. Government-Furnished Property | | | | O | | | | | O | O | | O | O |
| H.8. Purchase of Assets | | O | | | | | | | | | | | O |
| H.9. Contract Requirements | | | | C | | | | | | C | | C | C |
| H.10. Procurement of Goods and Services | | | | | | | C | C | | | | | |
| H.11. Title to and Care of Property | | | | | | | C | C | | | | | |

91.1 - Exhibit 01--Continued
Matrix of Provisions for Various Instruments

B. Title Provisions (Cont'd).

| Instrument Type | CA | CO | CR | CS | DG | IA | IC | IG | IJ | JV | MU RU SU | PA | SA |
|--------------------------------------------------------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-------------------------|-----------|-----------|
| Provision Number/Title | | | | | | | | | | | | | |
| H.12. Offsets, Claims, and Rights | | O | | O | | | | | | | | O | O |
| H.13. Purchase of Equipment | | | | O | | | | | O | O | | O | |
| H.14. Use of Government Owned Vehicles | C | | | C | C | C | C | C | C | C | | C | |
| Part I: PUBLICATIONS, AUDIOVISUAL, AND ELECTRONIC MEDIA PROVISIONS | | | | | | | | | | | | | |
| I.1. Forest Service Acknowledged in Publications, Audiovisuals, and Electronic Media | C | C | C | C | C | C | C | C | C | C | C | C | C |
| I.2. Nondiscrimination Statement – Printed, Electronic, or Audiovisual Material | C | | C | C | C | C | | | | C | C | C | C |
| I.3. Publications and Media Releases | | | | | | | C | C | | | | | |
| Part J: REMEDIES AND TERMINATION PROVISIONS | | | | | | | | | | | | | |
| J.1. Remedies for Compliance Related Issues | | | M | M | | | | | M | M | | M | M |
| J.2. Termination by Mutual Agreement | M | | M | M | M | | M | M | M | M | | C | M |
| J.3. Termination | | | | | | | | | | | M | | |
| J.4. Termination for Collection Agreements | | M | | | | | | | | | | | |
| J.5. Termination for Interagency Agreements | | | | | | M | | | | | | | |
| J.6. Alternate Dispute Resolution – Partnership Agreement | | | M | M | | | | | | M | | M | M |
| J.7. Alternate Dispute Resolution - Interagency | | | | | | M | | | | | | | |
| J.8. Disputes | M | | | | M | | M | M | M | | | | |
| J.9. Debarment and Suspension | M | M | M | M | M | | M | M | M | M | C | M | M |
| J.10. Federal Tort Claims Act | | | | | | | | | | | | C | |
| Part K: TRANSPORTATION PROVISIONS | | | | | | | | | | | | | |
| K.1. Fly America Act | C | | C | C | C | | C | C | C | C | | C | |

91.1 - Exhibit 01--Continued
Matrix of Provisions for Various Instruments

B. Title Provisions (Cont'd).

| Instrument Type | CA | CO | CR | CS | DG | IA | IC | IG | IJ | JV | MU RU SU | PA | SA |
|-------------------------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-------------------------|-----------|-----------|
| Provision Number/Title | | | | | | | | | | | | | |
| Part L: PATENT RIGHTS AND COPYRIGHT PROVISIONS | | | | | | | | | | | | | |
| L.1. Patent Rights | C | | | | C | | C | C | | | | | |
| L.2. Copyrighting | C | | | C | C | C | C | C | C | C | | C | C |
| L.3. Publication Sale | | | | C | | | | | | | | C | C |
| L.4. Forest Service Code of Scientific Ethics | | | | | | | | | M | M | | | |
| L.5. USDA Guidelines for Quality of Information | | | | | | | | | M | M | | | |
| Part M: CONDITIONAL PROVISIONS | | | | | | | | | | | | | |
| M.1. Modifications | M | M | M | M | M | M | M | M | M | M | M | M | M |
| M.2. Commencement/Expiration Date | M | | M | M | M | C | M | M | M | M | M | M | M |
| M.3. Commencement/Expiration Date (Collection) | | M | | | | | | | | | | | |
| M.4. Authorized Representatives | M | C | M | M | M | C | M | M | M | M | M | M | M |

91.1 - Exhibit 01--Continued
Matrix of Provisions for Various Instruments

| Instrument Type | MSA | SA | SA SPA |
|---------------------------------------------------------|------------|-----------|-------------------|
| Provision Number/Title | | | |
| Part N: STEWARDSHIP PROVISIONS | | | |
| N.1. Limited Liability for Operations Fires-Stewardship | C | C | C |
| N.2. Availability for Consultation | M | M | |
| N.3. Annual Meeting | M | M | M |
| N.4. Supplemental Project Agreements | M | | |
| N.5. Performance | M | | |
| N.6. Exchange of Goods for Services | M | | |
| N.7. Technical and Cost Evaluation | M | | |
| N.8. Methods of Appraisal | M | C | C |
| N.9. Technical Proposal | | M | M |
| N.10. Environmental Management System (EMS) | | M | M |
| N.11. NEPA Compliance | | M | M |
| N.12. Acceptance of Completed Work | | M | M |
| N.13. Credit for Service Work | | C | C |
| N.14. Earned Stewardship Credits | | C | C |
| N.15. Electronic Tracking System | | C | C |
| N.16. Monthly Reporting | | C | C |
| N.17. Service Work | | C | C |
| N.18. Timber Removal | | C | C |
| N.19. Technical Proposal Review | | M | M |
| N.20. Technical Proposal Evaluation | | M | M |
| N.21. Payment/Reimbursement (no funds) | | C | C |
| N.22. Payment/Reimbursement (funds) | | C | C |
| N.23. Payment/Reimbursement | | C | C |

91.2 - List of Provisions Identified in the Matrix of Provisions for Various Instruments

Exhibit 01 is a complete inventory of approved mandatory, conditional, and optional provisions as provided.

91.2 - Exhibit 01

List of Provisions Identified in the Matrix of Provisions for Various Instruments

1. Numbering for Provisions. Titled provisions are numbered and arranged by subject matter. The title should remain as part of the provision and should not be altered. Grants and Agreements (G&A) Specialists should number provisions sequentially when assembling agreements; however, the numbering scheme used in this chapter is not required. Note: all forms require an approved form number, and each approved form contains the mandatory provisions, but may incorporate conditional and optional provisions.

2. Text of Provisions. The titled provisions listed in exhibit 01, section B are provided in full text in this section. Some of the provisions may require either filling in the blank(s) or selecting an option provided in parentheses within the blank. If there is any doubt as to whether the type of activity addressed in a provision applies to the proposed agreement, then the provision must be included. The terms “Cooperator,” “Recipient,” and “Recipient/Cooperator” may be changed from one term to another on a form, if needed for consistency and exactness, or replaced with the name(s) of the Cooperator(s). Any of these terms may refer to a party that is performing, requesting, or both. The terms “grant,” “agreement,” and “instrument” may be changed from one term to another on a form, if needed for consistency and exactness, or replaced with the name of the instrument type, for example, “MOU.”

The following provisions under Parts A through M do not apply to Cooperative Law Enforcement Agreements, Fire Protection Agreements, Forest Road Agreements, Cooperative Research and Development Agreements, Material Transfer Agreements, and Non-Disclosure Agreements. For provisions applicable to these agreements, see sections 91.3 through 91.6.

Part A: GENERAL PROVISIONS

A.1. LEGAL AUTHORITY

The Cooperator 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 non-Federal share of project costs, when applicable.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments, except IA and MU/RU/SU.)

A.2. COLLABORATIVE ARRANGEMENTS

Where permitted by terms of the award and Federal law, a Recipient/Cooperator may enter into collaborative arrangements with other organizations to jointly carry out activities with Forest Service funds available under this agreement/award.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all DG/CA, IG/ IC, and IJ, IF the Forest Service anticipates that the Recipient will enter into collaborative arrangements with third parties.)

A.3. STATEMENT OF SUBSTANTIAL INVOLVEMENT

The Forest Service anticipates involvement in this Cooperative Agreement and intends on being substantially involved in the following way(s): *(Insert a list detailing the Forest Service's involvement).*

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all CA and IC (31 USC 6301, et seq.). Insert a list detailing the Forest Service's involvement that substantiates "substantial involvement" as defined in FSH 1509.11, ch. 20.)

91.2 - Exhibit 01--Continued

A.4. FOREST SERVICE LIABILITY TO THE RECIPIENT.

The United States shall not be liable to the Recipient for any costs, damages, claims, liabilities, and judgments that arise in connection with the performance of work under this award, including damage to any property owned by the Recipient or any third party.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all Federal financial assistance awards, which is all DG/CA and IG/IC.)

A.5. FOREST SERVICE LIABILITY TO THE COOPERATOR.

The United States shall not be liable to the Cooperator for any costs, damages, claims, liabilities, and judgments that arise in connection with the performance of work by the Forest Service or its Contractors under this agreement, including but not limited to damage to any property owned by the Cooperator or any third party.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all COs authorized by Section 5 of the Granger-Thye Act or by the Intergovernmental Cooperation Act.)

A.6. NOTICES

Any communications affecting the operations covered by this agreement given by the Forest Service or the Grantee/Cooperator is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

1. To the Forest Service Program Manager, at the address specified in the grant/agreement.
2. To Grantee/Cooperator, at the address shown in the grant/agreement or such other address designated within the grant/agreement.

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

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments, except PA for Fuels or Noxious Weed Treatment, FS-1500-16F.)

91.2 - Exhibit 01--Continued

A.7. PRINCIPAL CONTACTS

Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal Cooperator Contacts:

| Cooperator Program Contact | Cooperator Administrative Contact |
|------------------------------------------------------------------------|------------------------------------------------------------------------|
| Name: Address: City, State, Zip: Telephone: FAX: Email: | Name: Address: City, State, Zip: Telephone: FAX: Email: |

Principal Forest Service Contacts:

| Forest Service Program Manager | Forest Service Administrative Contact |
|------------------------------------------------------------------------|------------------------------------------------------------------------|
| Name: Address: City, State, Zip: Telephone: FAX: Email: | Name: Address: City, State, Zip: Telephone: FAX: Email: |

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments. This provision may be changed to accommodate listing of additional contacts, if necessary. Insert all the requested information in the spaces. If the information is immediately unavailable, then make good faith attempts to obtain it prior to submission to G&A.)

A.8. PARTICIPATION IN SIMILAR ACTIVITIES

This agreement in no way restricts the Forest Service or the Cooperator(s) from participating in similar activities with other public or private agencies, organizations, and individuals.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CO, CR, CS, JV, MU/ RU/ SU, PA and SA)

91.2 - Exhibit 01--Continued

A.9. ENDORSEMENT

Any Cooperator contributions made under this agreement do not by direct reference or implication convey Forest Service endorsement of the Cooperator's products or activities.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CO, CS, IJ, JV, MU/RU/SU, PA and SA. The parties may negotiate the following, additional, text: "... and does not by direct reference or implication convey the Cooperative's endorsement of the Forest Service's products or activities." If the Cooperative is a Federal party under an MU/RU/SU, then the provision is not required.)

A.10. COLLABORATION

The Forest Service and the Cooperator may mutually agree to collaborate in the review of draft publications, interpretive signs, manuscripts, and other printed material and audiovisuals prior to completion. This agreement, in and of itself, does not authorize the Cooperator's participation in the project.

[END OF PROVISION]

(APPLICABILITY: Optional for CO.)

91.2 - Exhibit 01--Continued

A.11. SUBRECIPIENT NOTIFICATION

The Recipient shall notify Subrecipients under this award that they are subject to the terms and conditions herein, except with respect to the Recipient's OMB Uniform Administrative Requirements and Cost Principles. In the case of Subrecipient Uniform Administrative Requirements and Cost Principles, Subrecipients shall be notified that they are subject to the following:

| SUBRECIPIENT TYPE | APPLICABLE ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES | |
|--------------------------------------------------------------|------------------------------------------------------------|-----------------|
| | Administrative Requirements | Cost Principles |
| Non-profits | 2 CFR 215 | 2 CFR 230 |
| Local and Tribal governments (when Recipient is a State) | State & Federal laws, regulations | 2 CFR 225 |
| Local and Tribal governments (when Recipient is a non-State) | 7 CFR 3016 | 2 CFR 225 |
| State agencies | State & Federal laws, regulations | 2 CFR 225 |
| Universities | 2 CFR 215 | 2 CFR 220 |
| Profit-makers | 2 CFR 215 | 48 CFR 31.2 |

[END OF PROVISION]

*(APPLICABILITY: This provision is mandatory for DG/CA, **IF** the Recipient anticipates any subgrants under the award.)*

A.12. NONBINDING AGREEMENT

This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate, coordinated, and mutually beneficial manner to meet the purposes(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer funds. Specific projects or activities that involve the transfer of funds, services, or property among the parties require execution of separate agreements and are contingent upon the availability of appropriated funds.

91.2 - Exhibit 01--Continued

These activities must be independently authorized by statute. This MOU does not provide that authority. Negotiation, execution, and administration of these agreements must comply with all applicable laws. Each party operates under its own laws, regulations, and policies, subject to the availability of appropriated funds. Nothing in this MOU is intended to alter, limit, or expand the statutory and regulatory authority of the parties.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for MU/RU/SU.)

A.13. USE OF FOREST SERVICE INSIGNIA

In order for the Cooperator/Recipient to use the Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted by the Forest Service's Office of Communications (Washington Office). A written request will be submitted by Forest Service Region/Station/Area to the Office of Communications Assistant Director, Visual Information and Publishing Services prior to use of the insignia. The Forest Service Region/Station/Area will notify the Cooperator/Recipient when permission is granted.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments, IF the Cooperative anticipates producing any media with the Forest Service shield. This provision does not apply to PA for Fuels or Noxious Weed Treatment, FS-1500-16F. The proposed use should be described in the Scope of Work. When the request is submitted to the Office of Communications for approval, a copy of the fully executed agreement is required. See also FSM 1660.)

A.14. PRIOR APPROVAL FOR SUBRECIPIENTS

All Subrecipients shall be approved by the Forest Service prior to award unless this requirement is waived in the award letter.

1. Subawards must be made only with responsible Recipients who possess the potential ability to perform successfully under the terms and conditions of a proposed agreement. Consideration must be given to such matters as integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources. Awards must not be made to firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." The Forest Service will provide the grantee with a copy of this list upon request.

91.2 - Exhibit 01--Continued

2. All subawards must, 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 subaward, the Recipient shall insert a statement in the subaward that in all instances where Forest Service is mentioned, the Recipient's name is substituted. If subawards are being made to United States organizations, a suggested subaward format incorporating 7 CFR 3015, et. seq., is provided.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IG and IC, IF subgrants or cooperative agreements are financed under the award.)

A.15. WAIVER OF PRIOR APPROVAL FOR SUBAWARDS

The Forest Service waives the approval requirements for subawards under the provision, "PRIOR APPROVAL FOR SUBAWARDS."

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all IG/IC, and IJ, IF subgrants or subcontracts are financed under the award and prior approval for subgrants/subcontracts is waived by the Forest Service Program Manager.)

A.16. 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 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.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all DG/CA, IG/IC, and IJ, IF the use of measurements is anticipated; unless authorized otherwise by the Forest Service Program Manager.)

91.2 - Exhibit 01--Continued

A.17. NON-FEDERAL STATUS FOR COOPERATOR PARTICIPANTS

Option 1 - If partner willingly assumes responsibility to provide coverage for all participants, including their volunteers, choose Option 1 listed below.

The Cooperator agrees that any Cooperator employees, volunteers, and program participants shall not be deemed to be Federal employees for any purposes including Chapter 171 of Title 28, United States Code (Federal Tort Claims Act) and Chapter 81 of Title 5, United States Code (OWCP), as the Cooperator has hereby willingly agreed to assume these responsibilities.

Further, the Cooperator shall provide any necessary training to Cooperator employees, volunteers, and program participants to ensure that such personnel are capable of performing tasks to be completed. The Cooperator shall also supervise and direct the work of its employees, volunteers, and participants performing under this agreement.

[END OF PROVISION]

Option 2 - If the Volunteers in National Forest Act of 1972 (P.L. 92-300) As Amended Through P.L. 114-24 (National Forest System Trails Stewardship Act of 2016), applies and the partner does not assume responsibility to provide OWCP, tort liability and personal property damage or loss coverage for their volunteers (i.e. the partner wants their volunteer(s) covered by the Forest Service), and the partner meets established criteria (as defined in FSM 1830), choose Option 2 listed below):

As authorized through the Volunteers in National Forest Act of 1972 (P.L. 92-300) As Amended Through P.L. 114-24 (National Forest System Trails Stewardship Act of 2016):

NON-FEDERAL STATUS FOR COOPERATOR LIABILITY. Cooperator agree(s) that any of Cooperator's employees and program participants shall not be deemed to be Federal employees for any purposes including Chapter 171 of Title 28, United States Code (Federal Tort Claims Act) and Chapter 81 of Title 5, United States Code (OWCP), and Cooperator hereby willingly agree(s) to assume these responsibilities.

Cooperator agree(s) that, except as otherwise provided in this provision below, any of the Cooperator's volunteers shall not be deemed to be Federal employees and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits. When the Cooperator's volunteers are performing approved tasks identified under this agreement, the following applies:

- a. For the purpose of the tort claim provisions of Title 28 of the United States Code, any of the Cooperator's volunteers shall be considered a federal employee.

91.2 - Exhibit 01--Continued

- b. For the purpose of subchapter I of Chapter 81 of Title 5 of the United States Code, relating to compensation to Federal employees for work injuries, Cooperator's volunteers shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply.
- c. For the purposes of claims relating to damage to, or loss of, personal property of Cooperator's volunteer incident to volunteer service, a volunteer shall be considered a Federal employee, and the provisions of 31 U.S.C 3721 shall apply.

Further, Cooperator shall provide any necessary training and support to Cooperator's employees, volunteers, and program participants, to ensure that such personnel are capable of performing tasks to be completed. The Cooperator shall also supervise and direct the work of its employees, volunteers, and program participants performing under this Agreement.

[END OF PROVISION]

(APPLICABILITY: This provision, option 1 or 2, is mandatory for CS, PA, and SA.)

A.18. AVAILABILITY FOR CONSULTATION

Both parties agree to be available at mutually agreeable times, for continuing consultation to discuss the conditions covered by this agreement and agree to actions essential to fulfill its purposes.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CS, IF the agreement is a Master CS; and for PA, IF the agreement is with an Interpretative Association; or is a Master PA.)

A.19. SUPPLEMENTAL PROJECT AGREEMENTS (SPA)

Nothing in this agreement obligates either party to offer or accept any project proposals under this agreement. Any projects added to this agreement must be by mutual consent of the parties through a specific SPA.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CS, IF the agreement is a Master CS, or for PA IF the agreement is a Master PA.)

91.2 - Exhibit 01—Continued

A.20. BUILDING AND COMPUTER ACCESS BY NON-FOREST SERVICE PERSONNEL

The Cooperator may be granted access to 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 Forest Service facilities and computer systems shall have background checks following the procedures established by USDA Directives 3800 series. Those granted computer access must fulfill all Forest Service requirements for mandatory security awareness and role-based advance security training, and sign all applicable Forest Service statements of responsibilities.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments, except CO, CR, or MU/RU/SU, IF it is anticipated that the Recipient/Cooperative will have unescorted access to Forest Service facilities or computer systems. Prior to granting access to the computer system, the name of each person requesting access must be entered into the EmPower Person Model database for review and approval by OCIO. This provision does not apply to PA for Fuels or Noxious Weed Treatment, FS-1500-16F.)

A.21. INFORMATION SECURITY

By accepting this agreement, the servicing agency agrees to comply with all Federal information laws, regulations and requirements, and shall be responsible for properly protecting all information used, gathered, or developed as a result of work under this agreement.

If information is stored, developed, or transmitted electronically, the servicing agency shall, upon request, provide to the Forest Service Information Security staff for review and examination documentation which supports the servicing agency's assertion that adequate information technology (IT) security controls are in place to protect Forest Service information and data which it holds. Documentation may include, but is not limited to, certification and accreditation documentation, security testing results, audit and assessment results, and risk documentation.

The servicing agency shall notify the Forest Service Computer Incident Response Team (CIRT), by e-mail, at CIRT@fs.fed.us, within 1 business day of any security incidents which affected or may affect the confidentiality, integrity, or availability of the Forest Service information and data which it holds, and include an analysis of the extent of the incident and summary of preliminary corrective actions.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all IAs with FS outgoing funds, IF Federal IT system access or use is anticipated.)

91.2 - Exhibit 01--Continued

Part B: GENERAL ASSURANCES

B.1. MEMBERS OF CONGRESS

Pursuant to 41 U.S.C. 22, no member of, or delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments, except CO, IA, or MU/RU/SU with Federal Cooperatives.)

B.2. SAFEGUARDING U.S. FUNDS

Recipients shall establish safeguards to ensure that U.S. Federal funds are properly spent. The Recipient 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, or 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.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all IG/IC, and IJ.)

B.3. 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:

91.2 - Exhibit 01--Continued

(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).”

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—

91.2 - Exhibit 01--Continued

- (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 Government-wide Debarment and Suspension (Nonprocurement).”
3. Provisions applicable to any Recipient.
 - a. You shall 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 shall 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.

91.2 - Exhibit 01--Continued

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).

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for DG/CA, IG/ IC, and IJ.)

B.4. DRUG-FREE WORKPLACE

1. The Recipient agrees that it will publish a drug-free workplace statement and provide a copy to each employee who is 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 the Recipient will take against employees for violating that prohibition; and

c. Let each employee know that, as a condition of employment under any award, the employee:

(1) Shall abide by the terms of the statement, and

(2) Shall notify the Recipient in writing if they are convicted for a violation of a criminal drug statute occurring in the workplace, and shall do so no more than 5 calendar days after the conviction.

91.2 - Exhibit 01--Continued

2. The Recipient agrees that it will establish an ongoing drug-free awareness program to inform employees about
 - a. The dangers of drug abuse in the workplace;
 - b. The established policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation and employee assistance programs;
and
 - d. The penalties that may be impose upon the employee for drug abuse violations occurring in the workplace.
3. Without the Program Manager'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 award, whichever occurs first.
4. The Recipient agrees to immediately notify the Program Manager 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 award number of each award on which the employee worked. The notification must be sent to the Program Manager within 10 calendar days after the Recipient learns of the conviction.
5. Within 30 calendar days of learning about an employee's conviction, the Recipient shall 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.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for DG/CA, IC/IG and SA.)

91.2 - Exhibit 01—Continued

B.5. NONDISCRIMINATION

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, and so forth.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CR, CS, JV, PA, and SA. However, this provision does not apply to PA for Fuels or Noxious Weed Treatment, FS-1500-16F. Note: Tribal employment rights ordinances, TEROs, are permissible, allowing tribes to carry out hiring and contracting/granting practices to the advantage of tribal members. Note: DG and CA are not required to have this provision, since the applicant shall submit the SF-424B or D (Assurances) to the Forest Service, which becomes part of the award letter.)

B.6. TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO)

The Forest Service recognizes and honors the applicability of the Tribal laws and ordinances developed under the authority of the Indian Self-Determination and Educational Assistance Act of 1975 (PL 93-638).

[END OF PROVISION]

(APPLICABILITY: This provision is optional for any agreement when the Recipient/Partner is a Tribal organization covered by PL 93-638. Use this provision in addition to all applicable nondiscrimination provisions. It does not replace any of the nondiscrimination provisions.)

91.2 - Exhibit 01—Continued

B.7. ELIGIBLE WORKERS

The Cooperator shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). The Cooperator shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract or supplemental agreement awarded under this agreement.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CR, CS, DG/CA, JV, PA, and SA. This provision does not apply to PA for Fuels or Noxious Weed Treatment, FS-1500-16F.)

B.8. ENVIRONMENTAL STANDARDS

The Cooperator shall comply with environmental standards pursuant to the notification of violating facilities in E.O. 11738.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for JV.)

B.9. POSITIONS OF INFLUENCE

Recipients 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.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IG/IC, and IJ.)

B.10. U.S. GOVERNMENT EMPLOYMENT STATUS

In no event must the Recipient or Subrecipients be considered as employees of the U.S. Government, unless authorized by Federal Statute.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IG/IC, and IJ.)

91.2 - Exhibit 01--Continued

B.11. 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, sex, age, or disability.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IG/IC, and IJ, IF work under the award is performed in the United States or IF employees are recruited in the United States.)

B.12. IMPLEMENTATION OF E.O. 13224 -- EXECUTIVE ORDER ON TERRORIST FINANCING

The Recipient is 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 the Recipient to ensure compliance with these Executive orders and laws. This provision must be included in all subawards issued under this agreement.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IG/IC, and IJ.)

B.13. TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All Cooperatives, their Employees, Volunteers, and Contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.

[END OF PROVISION]

(APPLICABILITY: This Provision is mandatory for all instruments except CO and IA.)

91.2 - Exhibit 01--Continued

B.14. ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENT STATUS FOR CORPORATE ENTITIES

This agreement is subject to the provisions contained in the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2012, P.L. No. 112-74, Division E, Section 433 and 434 as continued by Consolidated and Further Continuing Appropriations Act, 2013, P.L. No. 113-6, Division F, Title I, Section 1101(a)(3) regarding corporate felony convictions and corporate Federal tax delinquencies. Accordingly, by entering into this agreement the Cooperator acknowledges that it: 1) does not have a tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal violation under any Federal law within 24 months preceding the agreement, unless a suspending and debarring official of the U.S. Department of Agriculture has considered suspension or debarment is not necessary to protect the interests of the Government. If the Cooperator fails to comply with these provisions, the Forest Service will annul this agreement and may recover any funds The Cooperator has expended in violation of sections 433 and 434.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for use in all funded and non-funded agreements entered into with an entity that is a corporation: CA, CR, CS, DG, JV, MU, PA, SA. IF the entity receiving the award is not a corporation, you do not need to include this provision. A corporation is any entity, for-profit or non-profit, that has filed articles of incorporation in one of fifty states, the District of Columbia, or the various territories of the United States.)

Part C: FINANCIAL REQUIREMENTS

C.1. STANDARDS FOR FINANCIAL MANAGEMENT

1. Financial Reporting

The Cooperator 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

The Cooperator 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

The Cooperator shall maintain effective control over and accountability for all Forest Service funds. The Cooperator shall keep effective internal controls to ensure that all U.S. Federal funds received are separately and properly allocated to the activities described in the award/agreement and used solely for authorized purposes.

4. Source Documentation

The Cooperator shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, and contract documents. These documents must be made available to the Forest Service upon request.

5. Advance Payments

When applicable, the Cooperator 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 the Cooperator must be expended within 30 days of receipt.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CR, CS, IJ, JV, PA, and SA. This provision does not apply to PA for Fuels or Noxious Weed Treatment, FS-1500-16F. If advance payments are not authorized under the instrument, then remove section 5, Advance Payments.)

91.2 - Exhibit 01—Continued

C.2. LIMITATION OF FUNDS

Forest Service funds in the amount of \$ (insert amount here) are currently available for performance of this agreement through (insert date). The Forest Service's ability to provide additional funding is contingent upon the availability of appropriated funds from which payment can be made. There is no legal liability on the part of the Forest Service for any payment above this amount until the Cooperator receives notice of availability confirmed in a written modification by the Forest Service.

[END OF PROVISION]

APPLICABILITY: This provision is mandatory for CR, CS, DG/CA, IA (when the Forest Service is the requesting agency only,) IG/IC, IJ, JV, and PA, ONLY IF Forest Service funding for the project is NOT available for the life of the instrument OR only partial funding is obligated for a larger project identified in the Scope of Work and Financial Plan.

C.3. 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 (insert date), are hereby authorized under this award.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for DG/CA and optional for IG/IC, when appropriate, IF the Forest Service elects to allow pre-award costs to institutions of higher education, hospitals, and other non-profit organization. Insert the date the Recipient is allowed to begin incurring costs.)

C.4. PRE-AWARD COSTS FOR STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS

Pursuant to OMB Circular 2 CFR Part 225, Attachment B, No. 31, pre-award costs incurred as of (insert date), are hereby authorized under this award.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for DG/CA - and optional for IG/IC, when appropriate, IF the Forest Service elects to allow pre-award costs to State, local, and Indian tribal governments. Insert the date the Recipient is allowed to begin incurring costs.)

91.2 - Exhibit 01—Continued

C.5. INDIRECT COSTS AND TUITION REMISSION

In accordance with 7 U.S.C. 3319, indirect costs and tuition remission are not reimbursable to a State cooperative institution, as defined in 7 U.S.C. 3103 (18), under this agreement. Indirect costs and tuition remission, however, may be used by a State cooperative institution as part of their matching or cost-sharing requirements.

[END OF PROVISION]

(APPLICABILITY: The provision is mandatory for JV with a State cooperative institution, as defined by 7 USC 3103 (18). This provision is mandatory for CAs with a State cooperative institution, IF the Recipient was selected for an award through a non-competitive process and the primary purpose of the award is research or teaching activities.)

C.6. INDIRECT COSTS

In accordance with 7 U.S.C. 3319a, the Cooperator shall not be reimbursed for indirect costs exceeding 10 percent of the total direct costs.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CR with a State cooperative institution, as defined by 7 USC 3103 (18).)

C.7. INDIRECT COST RATES- FINANCIAL ASSISTANCE

Indirect cost rates must be formalized in a written agreement between the cognizant agency and Recipient and have an effective period applicable to the term of this award.

1. If the Recipient does not have a previously established indirect cost rate with a Federal agency, the Recipient shall submit its initial indirect cost proposal to its cognizant audit agency no later than 3 months after the effective date of the award. The Recipient will be reimbursed for indirect costs at the tentative rate reflected in the budget until the rate is formalized in a negotiated indirect cost rate agreement (NICRA) at which time, reimbursements for prior indirect costs may be subject to adjustment.
2. As new NICRAs are agreed to between the Recipient and their cognizant audit agency, the revised provisional or final rate(s) are automatically incorporated into this award, as appropriate, and must specify (1) the agreed upon 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 award obligation will not increase as a result of indirect cost rate increases. Updates to NICRAs will not affect the total funds available for this award unless documented in a formally executed modification.

91.2 - Exhibit 01—Continued

3. If the NICRA is for a provisional rate, the Recipient shall be reimbursed at the established provisional rate(s), subject to appropriate adjustment when the final rate(s) for the fiscal year are established.
4. Failure to provide a revised provisional or final NICRA could result in disallowed costs and repayment to the Forest Service.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for DG/CA, IG/IC, IF the Recipient claims indirect costs for reimbursement or as a matching or cost-share requirement.)

C.8. INDIRECT COST RATES- PARTNERSHIP

Indirect costs are approved for reimbursement or as a cost-share requirement and have an effective period applicable to the term of this agreement.

1. If the Cooperator has never received or does not currently have a negotiated indirect cost rate, they are eligible for a de minimis indirect cost rate up to 10 percent of modified total direct costs (MTDC). MTDC is defined as all salaries and wages, fringe benefits, materials and supplies, services, travel, and contracts up to the first \$25,000 of each contract.
2. For rates greater than 10percent and less than 25percent, the Cooperator shall maintain documentation to support the rate. Documentation may include, but is not limited to, accounting records, audit results, cost allocation plan, letter of indirect cost rate approval from an independent accounting firm, or other Federal agency approved rate notice applicable to agreements.
3. For a rate greater than 25percent, the Forest Service may require that the Cooperator request a federally approved rate from the Cooperator's cognizant audit agency no later than 3 months after the effective date of the agreement. The Cooperator will be reimbursed for indirect costs or allowed to cost-share at the rate reflected in the agreement until the rate is formalized in the negotiated indirect cost rate (NICRA) at which time, reimbursements for prior indirect costs or cost-sharing may be subject to adjustment.

91.2 - Exhibit 01--Continued

4. Failure to provide adequate documentation supporting the indirect cost rate, if requested, could result in disallowed costs and repayment to the Forest Service.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CS, JV, and PA IF the Cooperative claims indirect costs for reimbursement or as a matching or cost-share requirement.)

C.8A. INDIRECT COST RATES - COOPERATIVE FIRE PROTECTION

When indirect cost rates are applied to Federal reimbursements, the Parties agree to the following:

1. If the payment recipient has never received or does not currently have a negotiated indirect cost rate, they are eligible for a de minimis indirect cost rate up to 10% of Modified Total Direct Costs (MTDC). MTDC is defined as all salaries and wages, fringe benefits, materials and supplies, services, travel, and contracts up to the first \$25,000 of each contract.
2. For rates greater than 10%, the payment recipient shall provide either an applicable negotiated indirect cost rate agreement (NICRA) from a cognizant Federal agency, or an indirect cost rate summary in a format that clearly defines the indirect cost rate and MTDC.
3. The payment recipient shall maintain adequate documentation to support the methodology and computation of the indirect cost rate. Documentation must be made available to the Federal agency upon request.
4. Failure to provide adequate documentation supporting the indirect cost rate could result in disallowed costs and repayment to the Federal agency.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for Cooperative Fire Protection Agreements.)

91.2 - Exhibit 01--Continued

C.9. PROGRAM INCOME – FINANCIAL ASSISTANCE

1. The Recipient shall apply the standards set forth in this Provision to account for program income earned under the award.
2. If any program income is generated as a result of this award, the income must be applied using the (choose one: addition, deduction, or cost sharing/matching) alternative as described in 7 CFR 3016.25 and 3019.24; the deductive alternative is the preferred method, unless specifically authorized by the Signatory Official.
3. Unless the terms and conditions of the award/agreement provide otherwise, Recipients 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/agreement provide otherwise, Recipients 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.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for DG/CA, and IG/IC, IF Program Income is anticipated. Be sure to select one of the alternatives - addition, deduction, or cost sharing/matching - as described in 7 CFR 3016.25 and 3019.24; the deduction alternative is the preferred method, unless specifically authorized by the Signatory Official.)

91.2 - Exhibit 01--Continued

C.10. PROGRAM INCOME – PARTNERSHIP AGREEMENTS

1. The Cooperator 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 must 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 the grantee did not anticipate at the time of the award must be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.
3. Unless the terms and conditions of the agreement provide otherwise, the Cooperator 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, Cooperators 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.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CR, CS, IJ, JV, and PA, IF Program Income is anticipated.)

91.2 - Exhibit 01--Continued

C.11. REVISION OF BUDGET

1. The approved award budget is the financial expression of the Recipient's program as approved during the award process.
2. The Recipient is 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 percent reduction in time devoted to the project.
 - c. Additional funding is needed.
 - d. Where indirect costs have been authorized, the Recipient plans 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. The Recipient intends to make subawards any of the work under this award, and such subawards were not included in the approved award budget.
3. Forest Service is under no obligation to reimburse the Recipient/Cooperator for costs incurred in excess of the total amount obligated under the award. If the total obligated amount under the award has increased, a written modification signed and dated by all properly authorized signatory officials will be executed specifying the new total obligated amount prior to incurring additional costs.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IG/IC.)

91.2 - Exhibit 01--Continued

C.12. ALLOWABLE COSTS

1. The Recipient shall be reimbursed for costs incurred in carrying out the purposes of this award which are determined by the G&A 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 2 CFR 220; for all other non-profit organizations use 2 CFR 230; and for profit making firms use Federal Acquisition Regulation 31.2.). The Recipient may obtain a copy of the applicable cost principles from the G&A Specialist. Brief definitions of what may be considered as reasonable, allocable, and allowable costs are provided below, however, it is the Recipient's responsibility to ensure that costs incurred are in accordance with the applicable set of Cost Principles.

a. Reasonable. Means 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. Means those that are incurred specifically for the award.

c. Allowable Costs. Means those costs that conform to any limitations in the award.

2. Prior to incurring a questionable or unique cost, the Recipient shall obtain the G&A Specialist's written determination on whether costs are allowable.

3. It is Forest Service policy that no funds must be paid as profit or fee to a Recipient under this award or any Subrecipient. This restriction does not apply to contractual relationships under this award.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all IG/IC.)

91.2 - Exhibit 01--Continued

Part D: FINANCIAL REPORTING, ACCOUNTING, AUDIT, AND RECORDS

**D.1. HEALTH & HUMAN SERVICES PAYMENT MANAGEMENT SYSTEM
(HHS PMS)**

Recipients/Cooperators identified for use of this payment system shall designate a financial institution or an authorized payment agent through which a direct deposit may be made in accordance with current HHS PMS system requirements. The Albuquerque Service Center is responsible for soliciting initial enrollment in the HHS PMS. Any questions concerning payments should be addressed to the Albuquerque Service Center at **(insert phone number)**. Please ask for the Grants and Agreements Payments section. Any subsequent changes to banking information are made by the Recipient/Cooperator through the HHS PMS.

The HHS sub-account number(s) for this Agreement is/are:

| PROGRAM | HHS SUB-ACCOUNT | AMOUNT |
|---------|-----------------|--------|
| | G | \$ |
| | G | \$ |

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments involving a payment to a Cooperative/Recipient, except foreign Cooperatives, IF awarded by NA S&PF or NRS. Enter the Recipient/Cooperator Sub-Account Numbers. This number is the Obligation FFIS Doc ID #, or MO# Use the following format GXXXXXXXXXX#YYY -where G is always the first alpha-numeric, the Xs represent the FFIS ID No. and Y is the Line No., for example, G24012345001. If there are multiple line numbers, then add as many table lines as necessary to accommodate each sub-account number. NOTE: Each Obligation Line number is a separate Sub-Account number with the only change being the line number (e.g. G24012345002, \$8,000, G24012345003, \$30,500). Then, enter the line amount (funding) associated with each FFIS Doc ID (for example, \$10,000).)

91.2 - Exhibit 01--Continued

D.2. FINANCIAL STATUS REPORTING

A Federal Financial Report, form SF-425 (and Federal Financial Report Attachment, SF-425A, if required for reporting multiple awards), must be submitted (quarterly, semi-annually, annually). These reports are due 30 days after the reporting period ending March 31, June 30, September 30, December 31 (select all that apply). 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 award. These forms may be found at www.whitehouse.gov/omb/grants_forms.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for DG/CA and IG/ IC. Select the appropriate reporting period and delete the others. Be sure to select one of the alternatives - quarterly, semi-annually, annually - as appropriate for proper monitoring.)

D.3. ACCOUNTING, AUDIT, AND RECORDS

1. The Recipient 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 United States, 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 must, 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, the Recipient records and Subrecipient records which pertain to this award must be retained for a period of 3 years from the date of submission of the final expenditure report and may be audited by 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 "Forest Service awards," that is, as Recipients or Subrecipients of Forest Service grants or cooperative agreements, or as cost reimbursable subcontractors of 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 Forest Service Inspector General.
3. Foreign for-profit and non-profit organizations expending less than \$500,000 per their fiscal year under 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 Forest Service officials or their designees.

91.2 - Exhibit 01--Continued

4. Forest Service shall retain the right to conduct a financial review, require an audit, or otherwise ensure adequate accountability of organizations expending Forest Service funds regardless of the audit requirement.
5. Foreign organizations that provide Forest Service resources to other organizations to carry out the Forest Service program and activities shall be responsible for monitoring their Subrecipients. Allowable costs for limited scope Subrecipient audits charged to Forest Service funds must 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 must be submitted to Forest Service within 30 days after completion of the audit; the audit must be completed, and the report submitted, not later than 9 months after the close of the Recipient's fiscal year. The 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, 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 must 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 must, at a minimum, incorporate paragraph (d) of this Provision. Subawards of grants and cooperative agreements made to U.S. organizations must state that the U.S. organization is subject to the audit requirements contained in OMB Circular A-133.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IG/IC.)

91.2 - Exhibit 01--Continued

D.4. SYSTEM FOR AWARD MANAGEMENT REGISTRATION AND UNIVERSAL IDENTIFIER REQUIREMENTS

1. Requirement for System for Award Management Registration (SAM – formerly Central Contractor Registration or CCR). The Recipient shall maintain the currency of information in the SAM until submission of the final financial report required under this award or receipt of the final payment, whichever is later. This requires that a review and update of the information at least annually after the initial registration, and more frequently if required by changes in information or another award term.
2. Requirement for Data Universal Numbering System (DUNS) Numbers. If authorized to make subawards under this award:
 - a. The Recipient must notify potential Subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward unless the entity has provided its DUNS number to you.
 - b. The Recipient may not make a subaward to an entity unless the entity has provided its DUNS number.
3. Definitions. For purposes of this award term:
 - a. *System for Award Management Registration (SAM)* means the Federal repository into which an entity must provide information required for the conduct of business as a Recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <https://www.sam.gov>).
 - b. *Data Universal Numbering System (DUNS) number* means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866–705–5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
 - c. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - i. A Governmental organization, which is a State, local government, or Indian Tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;

91.2 - Exhibit 01--Continued

- iv. A domestic or foreign for-profit organization; and
- v. A Federal agency, but only as a Subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

- a. This term means a legal agreement to provide support for the performance of any portion of the substantive project or program covered by this award and that are subsequently awarded to an eligible Subrecipient.
- b. The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see Sec. II .210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).
- c. A subaward may be provided through any legal agreement, including an agreement that may be considered a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward under this award; and
- b. Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for DG/CA.)

91.2 - Exhibit 01—Continued

D.5. SYSTEM FOR AWARD MANAGEMENT REGISTRATION REQUIREMENT (SAM)

The Cooperator shall maintain current information in the System for Award Management (SAM) until receipt of final payment. This requires review and update to the information at least annually after the initial registration, and more frequently if required by changes in information or agreement term(s). For purposes of this agreement, *System for Award Management (SAM)* means the Federal repository into which an entity must provide information required for the conduct of business as a Cooperative. Additional information about registration procedures may be found at the SAM Internet site (currently at <https://www.sam.gov>).

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CR, CS, IG/IC, IJ, JV, and PA. Do not include in Master Agreement but mandatory in the SPA.)

Part E: BILLING, PAYMENT, AND CLOSE-OUT REQUIREMENTS

E.1. SPECIAL BILLING REQUIREMENTS – FINANCIAL DOCUMENTATION (Incoming Funds)

Reimbursable billings must be issued at the prescribed frequency based on expenditures recorded in the Forest Service accounting system for work performed. Bills for Collection reflect an aggregate amount for the billing period. Forest Service Transaction Register listing itemized expenses will be provided in accordance with the billing cycle. Provision of the Transaction Register or other supporting documentation accompanying individual bills will be limited to agreements over \$2,500, and only when Cooperative requirements are clearly defined within this provision.

The special billing requirements are: (insert special billing requirements)

(APPLICABILITY: Optional for CO or IA (with incoming funds), if the Cooperative requires financial documentation with each bill. This provision alerts ASC-RACA that the Forest Service shall provide transaction registers with any billing to the Cooperative under this agreement. Insert special billing requirements, such as whether the billing requirements are either with each bill, upon project completion, or annually after the statement: “The special billing requirements are:”)

91.2 - Exhibit 01--Continued

E.2. SPECIAL BILLING REQUIREMENTS – FINANCIAL DOCUMENTATION (Outgoing Funds)

The Cooperator shall provide an itemized statement of actual expenditures to the Forest Service with each bill.

Send the itemized statement to:

| |
|-------|
| |
| Attn: |
| |
| |

[END OF PROVISION]

(APPLICABILITY: Mandatory for IA IF the Forest Service is the REQUESTING agency AND provides funds to the performing agency. The performing agency shall provide a detailed/itemized statement to the Forest Service program manager with a copy of each bill. Choose one of the following: with each bill, upon project completion, or annually.)

E.3. SPECIAL BILLING REQUIREMENTS – PROGRAM DOCUMENTATION

The Forest Service Program Manager shall provide the Cooperator with a written report that meets the Cooperator's specific documentation requirements.

[END OF PROVISION]

(APPLICABILITY: Include for IA and CO ONLY if the Cooperative requires an accomplishment or program report with each Bill for Collection. This provision alerts ASC-RACA that the Forest Service shall coordinate Bills for Collection with the program manager for submission to the Cooperative. If the Cooperative requires a specific form to be completed or other information, insert the requirement into the provision.)

E.4. BILLING (FS Servicing Agency) – IA

The maximum total cost liability to the (insert name of requesting agency) for this agreement is \$(insert amount). Overhead is assessed at (insert overhead rate) percent. Transfer of funds to the Forest Service must be through an Interagency Payment and Collection System (IPAC) billing or, if Federal partner is a USDA agency, payments is made through FMFI. A detailed list of charges incurred must be made available upon request. The IPAC billing document which the Forest Service prepares must contain the following information:

91.2 - Exhibit 01--Continued

| BILLING DATA | REQUESTING AGENCY | FOREST SERVICE |
|-----------------------------------------------|-------------------|----------------|
| Obligation Document Number (PO# from FMFI) | | N/A |
| Agency Location Code (ALC) | | 12-40-1100 |
| Treasury Account Symbol (TAS) | | |
| Account/Cost Structure | | |
| Budget Object Code (BOC) | | 2510 |
| Document Agreement Number | | |
| Data Universal Numbering System number (DUNS) | | 92-9332484 |
| Business Event Type Code (BETC) | DISB | COLL |

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IA, IF the Forest Service is the servicing agency, unless the information can be captured on a form such as the 7600B Substitute the name of the Federal requesting agency for (Agency). Insert the name of the requesting agency and the total dollar amount in the first sentence. In the second sentence, add the applicable Forest Service burden rate/overhead.)

91.2 - Exhibit 01--Continued

E.5. BILLING (FS Requesting Agency) – IA

The maximum total cost liability to the Forest Service for this agreement is **\$(insert amount)**. Transfer of funds to the (insert name of performing agency) must be through the Interagency Payment and Collection (IPAC) billing system or, if Federal partner is a USDA agency, payments is made through FMFI. To facilitate the IPAC billing, the MO Number and Line Number should be placed in the Purchase Order Number block on the IPAC bill in the following format: MOXXXXXXXX#YYY (where X is the MO# and Y is the Line #).

The IPAC billing document which the (Agency) prepares must contain the following information:

| BILLING DATA | FOREST SERVICE | PERFORMING AGENCY |
|---------------------------------------------|----------------|-------------------|
| Obligation Document Number (PO# from FMFI) | | N/A |
| Agency Location Code (ALC) | 12-40-1100 | |
| Treasury Account Symbol (TAS) | | |
| Account/Cost Structure or Job Code/Override | | |
| Budget Object Code (BOC) | 2510 | |
| Document Agreement Number | | |
| Data Universal Numbering System (DUNS) | 92-9332484 | |
| Business Event Type Code (BETC) | DISB | COLL |

Send a copy of the bill to:

| |
|---------------------|
| USDA Forest Service |
| Attn: |
| |
| |

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IA, IF the Forest Service is 7900B. Insert the total dollar amount to be obligated in the first sentence. Insert the name of the performing agency in the second sentence. For the Forest Service, PO Number from FMFI)

91.2 - Exhibit 01--Continued

E.6. ADVANCE BILLING

The maximum total cost liability to the (insert name of Cooperative) for this agreement is **\$(insert amount)**. The Forest Service shall bill the Cooperator prior to commencement of work for deposits sufficient to cover the estimated costs (including overhead) for the specific payment period. Overhead is assessed at the rate of (insert overhead rate) percent.

Billing Method: (Choose either lump sum advance bill, scheduled billing, or upon request by the hosting unit at an applicable time).

Billings must be sent to:

| |
|--|
| |
| |
| |
| |

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CO, IF issued under Granger-Thye, unless exempted under FSH 1509.11, section 42.21 2d(2). This section exempts (1) States or local governments from advance payment if advance payment is prohibited by law or statute, or (2) An emergency situation authorized under Section 5c of the Granger-Thye Act where work must be performed in advance of deposit of funds and Forest Service appropriations are available. Insert the applicable Forest Service burden/overhead rate. If the rate is not applicable, then remove the overhead rate sentence and enter "Overhead shall not be assessed."

After 'Billing Method', Choose and insert one of the following 3 methods:

1. A single lump sum advance bill. (PREFERRED)

Or, if the Cooperator requires interval billing, then:

2. Scheduled billing. If selected, include a complete list of dates and amounts:
3. Upon request by the hosting unit at an applicable time (allowing at least 30 days for collection).

This provision may also be used for CO issued under the Cooperative Funds Act of June 30, 1914, or the Forest and Rangeland Renewable Resources Research Act of 1978. This provision is mandatory under the Cooperative Funds Act, IF total collection is \$25,000 or more and the Cooperative cannot secure a payment bond (refer to Provision E.13. PAYMENT BOND.)

Remove the entire provision from the agreement, if using the Reimbursable Billing Provision.)

91.2 - Exhibit 01—Continued

E.7. REIMBURSABLE BILLING

The maximum total cost liability to the (insert name of Cooperative) for this agreement is **\$(insert amount)**. The Forest Service shall bill the Cooperator (monthly, quarterly, semi-annually or annually) as of (enter dates for quarterly (December 31, March 31, June 20, and September 30 or earlier if earlier fiscal year cutoff in September is established by Forest Service), semi-annually (March 31, and September 30 or earlier) or annually (September 30 or earlier); for funds sufficient to cover the costs for the specific payment period. All reimbursement billings must be completed within the same fiscal year as Forest Service expenditures. Overhead is assessed at the rate of (insert the Forest Service burden/overhead rate) percent.

Billings must be sent to:

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The Forest Service is required to issue bills for expenditures incurred under reimbursable agreements at the end of or prior to the end of each fiscal year. Therefore, an out-of-cycle bill may be received by the Cooperator.

If payment is not received to the satisfaction of the Forest Service by the date specified on the Bill for Collection (form FS-6500-89), the Forest Service shall exercise its rights regarding the collection of debts owed to the United States. Conditions specified in an associated payment bond guaranteeing payment must also be met.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CO if not billing in Advance. Select the proper billing cycle - monthly, quarterly, or annually. ASC RACA will automatically bill on a monthly cycle unless another cycle is identified in the agreement. Complete the applicable overhead statement, in accordance with FSH 1909.13, ch. 40 by selecting either “shall be assessed at the rate of ___ percent,” or “shall not be assessed.” Delete the other choice. When assessing overhead be sure to include the Forest Service rate. If a payment bond is NOT required, delete the last sentence (refer to Provision E.13. PAYMENT BOND).)

91.2 - Exhibit 01--Continued

E.8. ADVANCE/REIMBURSABLE PAYMENTS – FINANCIAL ASSISTANCE

Advance/Reimbursable (choose one) 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 must be submitted on Standard Form 270 (SF-270), Request for Advance or Reimbursement or 271 (SF-271), Request for Reimbursement Construction, and must be submitted no more than monthly. In order to approve a Request for Advance Payment or Reimbursement, the Forest Service shall review such requests to ensure advances or payments for reimbursement are in compliance and otherwise consistent with OMB, USDA, and Forest Service regulations.

Advance payments must not exceed the minimum amount needed or no more than is needed for a 30-day period, whichever is less. 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 Forest Service can approve the request for payment. Any funds advanced, but not spent, upon expiration of this award must be returned to the Forest Service.

To avoid delays in payment approval, supporting documentation describing expenditures that correspond to the Object Class Categories identified in Section B of the SF 424A Budget, and a brief status update must accompany each payment request or be provided directly to the Program Manager. The Program Manager reserves the right to request additional information prior to approving a payment.

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| The invoice must be sent by one of three methods (email is preferred): | Send a copy to: |
| EMAIL: asc_ga@fs.fed.us FAX: 877-687-4894 POSTAL: Albuquerque Service Center Payments – Grants & Agreements 101B Sun Ave NE Albuquerque, NM 87109 | |

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for DG/CA and IG/IC. Select the type of payment option for the instrument and if advance payment is not authorized, delete the second paragraph. Delete the second column if you do not require a courtesy copy of the invoice to assist with processing. Choose either the SF-270 or SF-271, as appropriate. The 3rd paragraph referencing supporting documentation may be deleted at the discretion of the Program Manager. The referring provision found on the WO IG, IC, DG, and CA templates is required.)

91.2 - Exhibit 01--Continued

E.9. PAYMENT/REIMBURSEMENT

The Forest Service shall reimburse the Cooperator for the Forest Service's share of actual expenses incurred, not to exceed **\$(insert amount)**, as shown in the Financial Plan. In order to approve a Request for Reimbursement, the Forest Service shall review such requests to ensure payments for reimbursement are in compliance and otherwise consistent with the terms of the agreement. The Forest Service shall make payment upon receipt of the Cooperator's (monthly, quarterly, semi-annual, lump-sum) invoice. Each invoice from the Cooperator shall display the total project costs for the billing period, separated by Forest Service and Cooperator 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 the Cooperator'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. Cooperator name, address, and telephone number.
2. Forest Service agreement number.
3. Invoice date.
4. Performance dates of the work completed (start & end).
5. Total invoice amount for the billing period, separated by Forest Service and Cooperator share with in-kind contributions displayed as a separate line item.
6. Display all costs, both cumulative and for the billing period, by separate cost element as shown on the financial plan.
7. Cumulative amount of Forest Service payments to date.
8. Statement that the invoice is a request for payment by "reimbursement."
9. If using SF-270, a signature is required.
10. Invoice Number, if applicable.

91.2 - Exhibit 01—Continued

The invoice shall be forwarded to:

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|--------------------------------|
| 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:

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[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CR, CS, IJ, JV, and PA when reimbursable payments must be made by the Forest Service. This provision should be located under the “Forest Service Shall” section of the template. Insert the total amount that the Forest Service agreed to reimburse the Cooperative in the financial plan in the first sentence. Choose the agreed upon invoice submission period - monthly, quarterly, semi-annual, or lump-sum.)

E.10. ADVANCE PAYMENT

The Forest Service shall make advance payment upon receipt and review of an invoice from the Cooperator. The invoice must be submitted no more than monthly, and the total must not exceed the 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 Forest Service and Cooperator 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 Forest Service can approve the request for payment. Any funds advanced, but not spent, must be returned to the Forest Service upon expiration of this agreement. The final invoice from the Cooperator must be submitted no later than 90 days from the expiration date.

91.2 - Exhibit 01—Continued

Each invoice must include, at a minimum:

1. Cooperator name, address, and telephone number.
2. Forest Service agreement number.
3. Invoice date.
4. Performance dates of the advance period (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 forwarded to:

| |
|--------------------------------|
| 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:

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| |

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IJ, JV, PA and SA IF the Forest Service approves advance payments.)

91.2 - Exhibit 01--Continued

E.11. OVERPAYMENT

Any funds paid to the Cooperator 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 the Cooperator to the 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 Forest Service may reduce the debt by:

1. Making an administrative offset against other requests for reimbursement.
2. Withholding advance payments otherwise due to the Cooperator.
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 Forest Service may charge interest on an overdue debt.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CR, CS, IJ, JV, PA, and SA, IF the Forest Service is reimbursing or advancing funds to the Cooperative.)

E.12. REFUNDS

Funds collected in advance by the Forest Service, which are not spent or obligated for the project(s) approved under this agreement, may be refunded to the Cooperator, authorized for use for a new agreement by the Cooperator, or waived by the Cooperator. A DUNS number and registration in the Central Contractor Registry (CCR) by the Cooperator may be necessary to process a refund. Due to processing costs, any balance less than \$25 shall not be refunded to the Cooperator.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CO when funds are advanced.)

91.2 - Exhibit 01--Continued

E.13. PAYMENT BOND

The Cooperator shall furnish and maintain a payment bond acceptable to the Forest Service in the amount of \$ (insert amount of bond) before any work commences under this agreement.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CO, IF issued under the Cooperative Funds Act and if the total collection is \$25,000 or more in the form of reimbursable payments. Insert total amount of bond, which should equal the Forest Service's estimated cost of performing the agreed upon activity/project. Secure collection agreement payment bonds with corporate sureties, deposited securities, or irrevocable letters of credit. This does not apply if the Cooperative is a governmental entity, that is, a member, division, or affiliate of a Federal, State, local government, or a federally recognized Indian Tribe –as defined by the Federally Recognized Indian Tribe List Act of 1994- OR another organization funding a Forest Service agreement with pass through funding from an entity that is, a member, division, or affiliate of a Federal, State, local government, or a federally recognized Indian Tribe – as defined by the Federally Recognized Indian Tribe List Act of 1994 .)

E.14. WIRE TRANSFER TO A FOREIGN COOPERATOR (MANUAL PAYMENTS)

Foreign Cooperators, in order to receive 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 Forest Service may reimburse/advance funds to Cooperatives. 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.).

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all IG/IC, and IJ, IF a manual payment is anticipated. Be sure to complete each line with the information being requested.)

91.2 - Exhibit 01—Continued

E.15. AWARD/AGREEMENT CLOSE-OUT

Within 90 days after expiration or notice of termination the parties shall close out the award/agreement.

Any unobligated balance of cash advanced to the Recipient/Cooperator must be immediately refunded to the Forest Service, including any interest earned in accordance with 7CFR3016.21/2CFR 215.22.

Within a maximum of 90 days following the date of expiration or termination of this grant, all financial performance and related reports required by the terms of the agreement must be submitted to the Forest Service by the Recipient/Cooperator.

If this agreement is closed out without audit, the 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.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments, except CO, IA, MU/RU/SU, and PA for Fuels or Noxious Weed Treatment, FS-1500-16F.)

Part F: PROGRAMMATIC PROVISIONS

F.1. PROGRAM MONITORING AND PROGRAM PERFORMANCE REPORTS

The parties to this agreement shall monitor the performance of the grant/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, if applicable.
2. Reason(s) for delay if established goals were not met.
3. Additional pertinent information.

The Recipient/Cooperator shall submit (quarterly, semi-annual, or annual) performance reports to the Forest Service Program Manager. These reports are due 30 days after the reporting period. The final performance report must be submitted either with the Recipient/Cooperator's final payment request, or separately, but not later than 90 days from the expiration date of the grant/agreement.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments (including SPA), EXCEPT CO, IA, MU/RU/SU, Master Agreements, and PA for Fuels or Noxious Weed Treatment, FS-1500-16F. Additional language may be added which outlines specific report requirements. Be sure to choose quarterly, semi-annual, or annual.)

F.2. PROGRAMMATIC CHANGES

The Recipient shall obtain prior approval for any change to the scope or objectives of the approved project, key personnel, or transfer of substantive programmatic work to another party.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all DG/CA and IG/IC.)

91.2 - Exhibit 01--Continued

F.3. NOTIFICATION

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

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all DG/CA and IG/IC.)

F.4. 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 Forest Service Program Manager. All technical positions are considered Key Personnel by the Forest Service. Failure on the part of the Recipient to obtain prior, written approval when required may result in the disallowance of costs.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all DG/CA and IG/IC.)

F.5. TRAINING, EVALUATION, AND CERTIFICATION OF SAWYERS USED BY COOPERATORS.

Any of the cooperator's employees, and any participants and volunteers engaged on behalf of the cooperator and Forest Service, who will use chain saws or crosscut saws on National Forest System lands to conduct the program of work contained in this agreement must be trained, evaluated, and certified in accordance with Forest Service Manual 2358 and Forest Service Handbook 6709.11, section 22.48b. The cooperator is responsible for providing this training, evaluation, and certification, unless the Forest Service and the cooperator determine it is not in the best interest of the partnership. In these circumstances, the Forest Service, upon request and based on availability of Agency funding and personnel, may assist with developing and conducting training, evaluation, and certification of the cooperator's employees, and any volunteers and participants engaged on behalf of the cooperator and the Forest Service, who will use chain saws or cross cut saws on National Forest System lands.

91.2 - Exhibit 01--Continued

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for new collection, challenge cost-share, participating, and stewardship agreements where the cooperator anticipates that its employees or participants and volunteers engaged on behalf of the cooperator and Forest Service will use chain saws or crosscut saws to conduct the program of work contained within the agreement. This provision is also mandatory when modifications to existing agreements of this type are necessary, e.g., for additional funding or extensions. Where mandatory, this provision must be inserted in the agreement and will become effective July 19, 2017.

Part G: RECORD RETENTION AND ACCESS PROVISIONS

G.1. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS

The Cooperator shall retain all records pertinent to this agreement for a period of no less than 3 years from the expiration or termination date. As used in this provision, records include books, documents, accounting procedures and practice, and other data, regardless of the type or format. The Cooperator shall provide access and the right to examine all records related to this agreement to the Forest Service, Inspector General, or Comptroller General or their authorized representative. The rights of access in this section must not be limited to the required retention period but must last as long as the records are kept.

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.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CR, CS, IG/IC, IJ, JV, PA, and SA.)

G.2. FREEDOM OF INFORMATION ACT

Public access to award or 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). Requests for research data are subject to 2 CFR 215.36.

Public access to culturally sensitive data and information of Federally-recognized Tribes may also be explicitly limited by P.L. 110-234, Title VIII Subtitle B §8106 (2008 Farm Bill).

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments, except for IA and MU/RU/SU with Federal Cooperatives. Delete the second to last sentence for all agreements except JV. Delete the last sentence for all agreements except when cooperating with a tribal partner/Recipient.)

91.2 - Exhibit 01--Continued

G.3. PUBLIC NOTICES

It is Forest Service's policy to inform the public as fully as possible of its programs and activities. The Recipient/Cooperator is encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments. Press releases or other public notices should reference the Agency as follows:

"(Insert program name) of the Forest Service, U.S. Department of Agriculture"

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

[END OF PROVISION]

(APPLICABILITY: Optional for all instruments, if the Forest Service program manager anticipates that the project/activity is of public interest and requests that the provision be included in the award. Be sure to insert the program name, for example, "International Programs.")

Part H: PROCUREMENT AND PROPERTY PROVISIONS

H.1. PURCHASE OF EQUIPMENT

Equipment approved for purchase under this award is available only for use as authorized. Title to the equipment rests with the Recipient as long as the equipment is used for its intended purpose. The Forest Service reserves an interest in any equipment where the Forest Service's proportionate share of the per-unit value is \$5,000 or greater. Valuation is based on current fair-market value. The equipment may not be used as collateral, sold, or otherwise transferred to another party without the written permission of the Forest Service.

The Recipient shall inventory equipment acquired in part or in whole with Forest Service funds **annually/biannually (select one)** and shall submit a copy of the inventory to the Program Manager. A final inventory shall be submitted for closeout. The Recipient may use Tangible Personal Property Report Standard Forms (SF) 428 and SF-428-S, Supplemental Sheet, or Recipient's equivalent inventory report. The **annual/biannual (select one)** report must be filed December 31, due within 90 days, but no later than March 31 of the following year. The final report must be due within 90 days from the expiration date of the award.

91.2 - Exhibit 01--Continued

The Recipient shall use the Tangible Personal Property Report Standard Forms (SF) 428 and SF-428-C, Disposition Request, should the Recipient determine any item of equipment is no longer needed or has been lost, destroyed, or stolen. After receipt of the SF-428-C, the Forest Service shall issue disposition instructions within 120 days.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for DG/CA IF the Forest Service does NOT invoke the right to transfer equipment to the Recipient purchased with Federal funds. This provision does not apply to State Recipients who will use, manage, and dispose of equipment in accordance with State laws and procedures. Refer to FSH 1509.11, ch. 20 for disposition instructions.)

H.2. PURCHASE OF EQUIPMENT WITH RIGHT TO TRANSFER

Equipment approved for purchase under this award is available only for use as authorized. Title to the equipment rests with the Recipient as long as the equipment is used for its intended purpose. The Forest Service reserves the right to transfer title to the Federal Government or to an eligible third party of any equipment where the Forest Service's proportionate share of the per-unit value is \$5,000 or greater, and the equipment is no longer needed for its intended purpose. Valuation is based on current fair-market value. The equipment may not be used as collateral, sold, or otherwise transferred to another party without the written permission of the Forest Service.

The Recipient shall inventory equipment acquired in part or in whole with Forest Service funds **annually/biannually (select one)** and shall submit a copy of the inventory to the Program Manager. A final inventory must be submitted for closeout. The Recipient may use Tangible Personal Property Report Standard Forms (SF) 428 and SF-428-S, Supplemental Sheet, or Recipient's equivalent inventory report. The **annual/biannual (select one)** report must be filed December 31, due within 90 days, but no later than March 31 of the following year. The final report must be due within 90 days from the expiration date of the award.

The Recipient shall use the Tangible Personal Property Report Standard Forms (SF) 428 and SF-428-C, Disposition Request, should the Recipient determine any item of equipment is no longer needed or has been lost, destroyed or stolen. After receipt of the SF-428-C, the Forest Service shall issue disposition instructions within 120 days.

(APPLICABILITY: This provision is mandatory for DG/CA and IG/IC IF the Forest Service intends to invoke the right to transfer equipment purchased with Federal funds. Refer to FSH 1509.11, ch. 20 for disposition instructions.)

[END OF PROVISION]

91.2 - Exhibit 01--Continued

H.3. RIGHT TO TRANSFER EQUIPMENT AND SUPPLIES.

Equipment approved for purchase under this Master Stewardship Agreement is available only for use as authorized. The 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 Forest Service funding. Upon expiration of this Master Stewardship Agreement, the Cooperative shall forward an equipment inventory to the Forest Service, listing all equipment purchased with Forest Service funding throughout the life of the project. Disposition instructions must be issued by the Forest Service within 120 calendar days from termination date of this Master Stewardship Agreement.

[END OF PROVISION]

*(APPLICABILITY: This provision is mandatory for MSA **IF** the Forest Service intends to invoke the right to transfer equipment purchased with Federal funds, Refer to FSH 1509.11, ch. 20 for disposition instructions.)*

H.4. GOVERNMENT-FURNISHED EQUIPMENT

In the event a Recipient is provided federally-owned equipment by the Forest Service, title will remain vested in the Federal Government. The equipment must not be modified, cannibalized, or altered; used as collateral, sold, or otherwise transferred to another party without the written permission of the Forest Service. Recipients will manage the equipment in accordance with Forest Service rules and procedures. A separate document, Form AD-107, must be completed to document the loan of Forest Service equipment.

The Recipient shall use the Tangible Personal Property Report Standard Forms (SF) 428 and SF-428-A, Annual Report, to track the equipment. The SF-428-A will be filed each December 31, due within 90 days, but no later than March 31 of the following year. The Recipient shall use SF-428-B, Final Report, for award closeout. Should the Recipient determine any item of Forest Service –furnished equipment is no longer needed or has been lost, destroyed or stolen, the Recipient shall use SF 428-C, Disposition Request, to notify the Forest Service of the incident. After receipt of the SF-428-B and/or SF-428-C, the Forest Service shall issue disposition instructions within 120 days.

[END OF PROVISION]

*(APPLICABILITY: This provision is mandatory for DG and CA **IF** the Forest Service is loaning Forest Service equipment to the Recipient. An AD-107 must be completed. Instructions may be found in FSM 6400.)*

91.2 - Exhibit 01--Continued

H.5. FUNDING EQUIPMENT AND SUPPLIES

Federal funding under this award/agreement is not available for reimbursement of Recipient/Cooperator purchase of equipment and supplies. Equipment is defined as having a fair market value of \$5,000 or more per unit and a useful life of over 1 year.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CR, CS, DG/CA, IG/IC, IJ, JV, PA, and SA, IF equipment and/or supplies is not approved for purchase using Federal funds. This provision does not apply to PA for Fuels or Noxious Weed Treatment, FS-1500-16F. Only include “equipment” or “and supplies,” if applicable.)

H.6. PROPERTY IMPROVEMENTS

Improvements placed by the Cooperator on National Forest System land at the direction or with the approval of the Forest Service become property of the United States. These improvements are subject to the same regulations and administration of the Forest Service as would other national forest improvements of a similar nature. No part of this agreement entitles the Cooperator to any interest in the improvements, other than the right to use them under applicable Forest Service regulations.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CO, CS, JV, PA, and SA, if property improvements result from a project on National Forest System lands. Do not use this provision if those improvements are owned by the Cooperative and covered under another instrument such as a Special Use Permit or license.)

H.7. GOVERNMENT-FURNISHED PROPERTY

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

91.2 - Exhibit 01--Continued

Cooperator Liability for Government Property.

1. Unless otherwise provided for in the agreement, the Cooperator 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 the Cooperator is 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 the Cooperator's managerial personnel. Cooperator's managerial personnel, in this provision, means the Cooperator's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Cooperator's business; all or substantially all of the Cooperator's operation at any one plant or separate location; or a separate and complete major industrial operation.
2. The Cooperator shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. The Cooperator 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. The Cooperator 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 G&A Specialist, the Cooperator shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of agreements of assignment in favor of the Government in obtaining recovery.

[END OF PROVISION]

(APPLICABILITY: Optional for CS, IJ, JV, PA, and SA. This provision does not apply to PA for Fuels or Noxious Weed Treatment, FS-1500-16F, since the Forest Service won't loan equipment under the agreement.

This provision is available for use ONLY when the Forest Service is loaning Forest Service property to the Cooperative necessary for the completion of the project. An AD-107 must be completed. Instructions may be found in FSM 6400.

91.2 - Exhibit 01--Continued

H.8. PURCHASE OF ASSETS

Any assets (such as equipment, property, or improvements) purchased by the Forest Service with Cooperator contributions must become the property of the Forest Service.

[END OF PROVISION]

(APPLICABILITY: This provision is optional for CO and SA. When the Forest Service purchases property, equipment, or improvements with funds contributed by a Cooperative, it is appropriate to use this provision to clarify the intent of the parties regarding disposition of assets. Coordination with local and ASC Property staff is essential to ensure property purchase of assets and accountability. If the asset is purchased with advanced funds, a special job code for purchase of an asset must be set up at ASC-RACA in coordination with ASC-Property. If the asset is purchased with reimbursed funds, form FS-6500-245 must be completed to bring the asset into the Forest Service property records.)

H.9. CONTRACT REQUIREMENTS

Any contract under this agreement must be awarded following the Cooperator's established procurement procedures, to ensure free and open competition, and avoid any conflict of interest (or appearance of a conflict). The Cooperator shall maintain cost and price analysis documentation for potential Forest Service review. The Cooperator is encouraged to utilize small businesses, minority-owned firms, and women's business enterprises.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CS, JV, PA, and SA, IF the Cooperative will be awarding a contract using any Forest Service funding. Davis Bacon and the Service Contract Act has been determined by review not to apply to the current scope of G&A authorities.)

H.10. PROCUREMENT OF GOODS AND SERVICES

The Recipient/Cooperator may use its own procurement policies and practices for the procurement of goods and services under this award, provided they conform to all of Forest Service's requirements.

1. General Requirements:

a. The Recipient/Cooperator shall maintain a written code or standards of conduct that must 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 the Recipient/Cooperator shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors or parties to subagreements. However, Recipient/Cooperators 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 must provide for disciplinary actions to be applied for violations of such standards by Officers, Employees, or Agents of the Recipient/Cooperator.

b. All procurement transactions must be conducted in a manner to provide, to the maximum extent practical, open and free competition. The Recipient/Cooperator 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 must be made to the Offeror whose offer is responsive to the solicitation and is most advantageous to the Recipient/Cooperator, price, quality, and other factors considered. Solicitations must clearly establish all requirements that the bidder or Offeror shall fulfill in order to be evaluated by the Recipient/Cooperator. Any and all offers may be rejected when it is in the Recipient/Cooperator's interest to do so.

91.2 - Exhibit 01--Continued

c. All Recipient/Cooperators shall establish written procurement procedures. These procedures must provide, at a minimum, that:

- (1) Recipients 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 must 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 instruments used, (for example, fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts), must be determined by the Recipient/Cooperator but must 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 must not be used.
- (5) Contracts must be made only with responsible Contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration must be given to such matters as contractor integrity, record of past performance, financial and technical resources, or

91.2 - Exhibit 01--Continued

accessibility to other necessary resources. Contracts must not be made with firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." Forest Service shall provide the grantee with copy of this list upon request.

(6) Recipients shall, on request, make available for Forest Service, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, and so forth, when any of the following conditions apply:

- i. A Recipient/Cooperator'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) The Recipient/Cooperator 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 the Recipient/Cooperator's own small purchase threshold must 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 must 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. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.

91.2 - Exhibit 01--Continued

2. The Recipient/Cooperator shall include, in addition to provisions to define a sound and complete contract, the following provisions in all contracts. The following provisions must also be applied to subcontracts.

- a. Contracts in excess of \$10,000 must 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 must contain suitable provisions for termination by the Recipient/Cooperator, including the manner by which termination will be effected and the basis for settlement. In addition, such contracts must 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 the Recipient/Cooperator's small purchase threshold) awarded by the Recipient/Cooperator must include a provision to the effect that the Recipient/Cooperator, the Forest Service, the Comptroller General of the United States, or any of their duly authorized representatives, must 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, the Recipient/Cooperator 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, must 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.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IG/IC when the procurement element of an award is over \$10,000.)

91.2 - Exhibit 01--Continued

H.11. 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 the Recipient/Cooperator by Forest Service or by the cooperating country, must 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 Forest Service under provisions set forth in the award/agreement, but all such property must be under the custody and control of Recipient/Cooperator until the owner of title directs otherwise or completion of work under this award or its termination, at which time custody and control must be turned over to the owner of title or disposed of in accordance with its instructions. All performance guarantees and warranties obtained from suppliers must be taken in the name of the title owner.
2. The Recipient/Cooperator 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, the Recipient/Cooperator shall submit an inventory schedule covering all items of equipment, materials, and supplies under the Recipient/Cooperator'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. The Recipient/Cooperator shall also indicate what disposition has been made of such property.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IG/IC when an award is funded under an agreement between Forest Service and the Host Country, or when the award provides for property titled in the name of the Host Country or such public or private agency as the Host Country Government may designate to be furnished to or acquired by the Recipient/Cooperative.)

91.2 - Exhibit 01—Continued

H.12. OFFSETS, CLAIMS and RIGHTS

Any and all activities entered into or approved by this agreement will create and support afforestation/ reforestation efforts within the National Forest System without generating carbon credits. The Forest Service does not make claims of permanence or any guarantees of carbon sequestration on lands reforested or afforested through partner assistance. The Forest Service will provide for long-term management of reforested and afforested lands, according to applicable Federal statute, regulations, and forest plans.

[END OF PROVISION]

(APPLICABILITY: Optional for CO, CS, PA and SA, where reforestation activities are anticipated on NFS lands. This provision does not apply to PA for Fuels or Noxious Weed Treatment, FS-1500-16F, or any PA with Interpretative Association.)

H.13. PURCHASE OF EQUIPMENT

Forest Service funds may be used by the Cooperator 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 Forest Service, but may be transferred to the Cooperator on completion of the project, if appropriate.

[END OF PROVISION]

(APPLICABILITY: Optional for CS, IJ, JV, and PA, IF the Forest Service is providing funding to the Cooperative for purchase of equipment and agrees that the equipment will remain with the Cooperative after the agreement is closed. See, FSH 1509.11, ch. 70 for more direction. This must be accomplished and documented in coordination with property.)

H.14. USE OF GOVERNMENT OWNED VEHICLE

Forest Service vehicles may be used for official Forest Service business only in accordance with FSH 7109.19, chapter 60, the requirements established by the region in which performance of this agreement takes place, and the terms of this agreement.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments, except CA, CO, CR, DG, IC, IG, MU/RU/SU, IF the Cooperative or their volunteers will be using a Forest Service vehicle. See FSH 7109.19, ch. 60 for more information. This provision does not apply to PA for Fuels or Noxious Weed Treatment, FS-1500-16F.)

Part I: PUBLICATIONS, AUDIOVISUAL, AND ELECTRONIC MEDIA PROVISIONS

I.1. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS, AND ELECTRONIC MEDIA

The Recipient/Cooperator shall acknowledge Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this award/agreement.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments, IF development of publications or production of audiovisuals, or if information is shared via electronic format (including websites), is anticipated.

I.2. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL

The Recipient/Cooperator shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

"In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

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

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

"This institution is an equal opportunity provider."

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments, except CO, IG/IC, and IJ, IF the agreement contemplates the development or publication of any printed, on-line, or audiovisual material.)

91.2 - Exhibit 01--Continued

I.3. PUBLICATIONS AND MEDIA RELEASES

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

This (publication, video, or other information/media product) was made possible through support provided by the Forest Service, (insert name of program), U.S. Department of Agriculture, under the terms of Award No. (insert award number). The opinions expressed in this (publication, video, or other information/media product) are those of the author(s) and do not necessarily reflect the views of the Forest Service.

2. The Recipient shall provide the relevant strategic objective or results package team with one copy of all published works developed under this award and with lists of other written work produced under the award.

3. Except as otherwise provided in the terms and conditions of the award, the author or the Recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of or under this award, but 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.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IG/IC when publications are financed under the grant. Be sure to choose either “publication,” “video” or “other information/media product” in both places of the text. Also, insert the applicable program, for example, “International Programs” and insert the applicable grant number.)

Part J: REMEDIES AND TERMINATION PROVISIONS

J.1. REMEDIES FOR COMPLIANCE RELATED ISSUES

If the Cooperator materially fails to comply with any term of the agreement, whether stated in a Federal statute or regulation, an assurance, or the agreement, the Forest Service may take one or more of the following actions:

1. Temporarily withhold cash payments pending correction of the deficiency by the Cooperator or more severe enforcement action by the 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 agreement for the Cooperator's program;
4. Withhold further funding for the program, or
5. Take other remedies that may be legally available, including debarment procedures under 2 CFR Part 417.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CR, CS, IJ, JV, PA, and SA. However, this provision does not apply to PA for Fuels or Noxious Weed Treatment, FS-1500-16F.)

J.2. TERMINATION BY MUTUAL AGREEMENT

This award/agreement may be terminated, in whole or part, as follows:

1. When the Forest Service and Recipient/Cooperator 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 the Recipient/Cooperator to the Forest Service setting forth the reasons for termination, effective date, and in the case of partial termination, the portion to be terminated. If the Forest Service decides that the remaining portion of the award/agreement does not accomplish the purpose for which the award/agreement was made, the Forest Service may terminate the award upon 30 days written notice in its entirety.

91.2 - Exhibit 01--Continued

Upon termination of an award/agreement, the Recipient/Cooperator shall not incur any new obligations for the terminated portion of the award/agreement after the effective date, and shall cancel as many outstanding obligations as possible. The Forest Service shall allow full credit to the Recipient/Cooperator for the Forest Service share of obligations that cannot be cancelled and were properly incurred by the Recipient/Cooperator up to the effective date of the termination. Excess funds must be refunded within 60 days after the effective date of termination.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments, except CO, IA, and MU/RU/SU. For PA for Fuels or Noxious Weed Treatment, FS-1500-16F, remove the last sentence from #2 and remove the last paragraph.)

J.3. TERMINATION

Any of the parties, in writing, may terminate this agreement in whole, or in part, at any time before the date of expiration.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for MU/RU/SU.)

J.4. TERMINATION FOR COLLECTION AGREEMENTS

Either party, in writing, may terminate this agreement in whole, or in part, at any time before the date of expiration. The Forest Service shall not incur any new obligations for the terminated portion of this agreement after the effective date of termination and shall cancel as many obligations as possible. Full credit must be allowed for Forest Service expenses and all non-cancelable obligations properly incurred up to the effective date of termination. (Excess funds must be refunded within 60 days after the effective termination date, OR Excess funds must be refunded in accordance with the REFUND provision of the agreement.).

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CO. If receiving advance funds, be sure to select either 'Excess funds must be refunded within 60 days after the effective termination date, OR Excess funds must be refunded in accordance with the REFUND provision of the agreement'.)

91.2 - Exhibit 01--Continued

J.5. TERMINATION FOR INTERAGENCY AGREEMENTS

This Interagency Agreement (IA) may be terminated upon (insert number of calendar days) calendar days written notice by either party. If this agreement is cancelled, any implementing contract/order may also be cancelled. If the IA is terminated, the agencies shall agree to the terms of the termination, including costs attributable to each party and the disposition of awarded and pending actions. If the Servicing Agency incurs costs due to the Requesting Agency's failure to give the requisite notice of its intent to terminate the IA, the Requesting Agency shall pay any actual costs incurred by the Servicing Agency as a result of the delay in notification, provided such costs are directly attributable to the failure to give notice.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IA.)

J.6. ALTERNATE DISPUTE RESOLUTION – PARTNERSHIP AGREEMENT

In the event of any issue of controversy under this agreement, the parties may pursue Alternate Dispute Resolution procedures to voluntarily resolve those issues. These procedures may include, but are not limited to conciliation, facilitation, mediation, and fact finding.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CR, CS, JV, PA and SA.)

J.7. ALTERNATE DISPUTE RESOLUTION - INTERAGENCY

The parties to this agreement shall settle any disputes that may arise under this agreement by following direction in the Treasury Financial Manual, Volume 1, Bulletin 2011-04, Section VII (“Resolving Intra-governmental Disputes and Major Differences”).

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IA.)

91.2 - Exhibit 01--Continued

J.8. DISPUTES

1. Any dispute under this award must be decided by the Forest Service Program Manager. The Program Manager shall furnish the Recipient a written copy of the decision.
2. Decisions of the Forest Service Program Manager shall be final unless, within 30 days of receipt of the decision of the Program Manager, the Recipient appeals the decision to Forest Service's Director, 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 Program Manager.
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 the Cooperator from pursuing remedies available under the law.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for DG/CA, IG/IC, and IJ.)

J.9. DEBARMENT AND SUSPENSION

The Recipient/Cooperator shall immediately inform the 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 the Recipient/Cooperator or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, they shall notify the Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments, except IA and MU/RU/SU where the Cooperative(s) is/are other Federal entities. Prior to entering into an arrangement with a Cooperative, the Forest Service shall verify that they are not debarred or suspended from entering into a non-procurement transaction with the Federal Government. This list is maintained by GSA and located at www.epls.gov.)

91.2 - Exhibit 01--Continued

J.10. FEDERAL TORT CLAIMS ACT

The United States, acting by and through the Forest Service, hereby agrees to bear any and all liabilities of any kind related to the exercise of the Forest Service's rights under the Federal Tort Claims Act (FTCA), 28 U.S.C. 2671 et. seq., or any other applicable act wherein Congress specifically waived sovereign immunity of the United States.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for PA for Fuels or Noxious Weed Treatment, FS-1500-16F.)

Part K: TRANSPORTATION PROVISIONS

K.1. FLY AMERICA ACT

The Fly America Act of 1974 (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 and when no Federal, statutory exceptions apply. 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.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all agreements, except CO, IA or MU/RU/SU when costs for travel or transportation are funded by the Forest Service. This provision is not applicable if the Recipient/Cooperative is providing for travel with private funds as part of a cost-sharing requirement, or with program income generated under the award.)

Part L: PATENT RIGHTS AND COPYRIGHT PROVISIONS

L.1. PATENT RIGHTS

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 the Recipient conceived or first actually reduced to practice in the performance of work under this award, 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 award 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 clause, 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.

91.2 - Exhibit 01--Continued

2. Allocation of Principal Rights. The Recipient may retain the entire right, title, and interest throughout the world to each subject invention, subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains 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 the Recipient.

a. The Recipient shall disclose each subject invention to the Forest Service within 2 months after the inventor discloses it in writing to personnel responsible for patent matters. The disclosure to the Forest Service shall be in the form of a written report and must identify the award 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 Forest Service, the Recipient shall promptly notify the Forest Service of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.

b. The Recipient shall elect in writing whether or not to retain title to any such invention by notifying the Forest Service within 2 years of disclosure by Recipient; 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 Forest Service to a date that is no more than 60 days prior to the end of the statutory period.

c. The Recipient 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. The Recipient 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.

91.2 - Exhibit 01--Continued

d. Requests for extension of the time for disclosure to the Forest Service, election, and filing may, at the discretion of the Forest Service, be granted.

4. Conditions when the Government May Obtain Title. The Recipient shall convey to the Forest Service, upon written request, title to any subject invention:

a. If the Recipient/Cooperator fails to disclose or elect the subject invention within the times specified in item c herein or elects not to retain title; provided that the Forest Service may only request title within 60 days after learning of the failure of the grantee or Cooperative to disclose or elect within the specified times.

b. In those countries in which the Recipient/Cooperator fails to file patent applications within the times specified in item 3C herein; provided, however, that if the Recipient/Cooperator has filed a patent application in a country after the times specified in item 3C but prior to its receipt of the written request of the Forest Service, the Recipient/Cooperator shall continue to retain title in that country.

c. In any country in which the Recipient/Cooperator decides 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 Recipient/Cooperator and Protection of the Contractor Right to File.

a. The Recipient/Cooperator shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient/Cooperator fails to disclose the subject invention within the times specified in item c herein. The Recipient's/Cooperative's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient/Cooperator is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient/Cooperator was legally obligated to do so at the time the agreement was awarded. The license is transferable only with approval of the Forest Service, except when transferred to the successor of that party of the Recipient's/Cooperative's business to which the invention pertains.

b. The Recipient's/Cooperative's domestic license may be revoked or modified by the 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 the Recipient/Cooperator has achieved practical application and continues to make the benefits of

91.2 - Exhibit 01--Continued

the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Forest Service to the extent the Recipient/Cooperator, 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 Forest Service shall furnish the Recipient/Cooperator a written notice of its intention to revoke or modify the license, and the Recipient/Cooperator shall be allowed 30 days (or such other time as may be authorized by the Forest Service for good cause shown by the Recipient/Cooperator) after the notice to show cause why the license should not be revoked or modified. The Recipient/Cooperative has 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. Recipient/Cooperator Action to Protect the Government's Interest.

a. The Recipient/Cooperator agrees to execute, or to have executed, and promptly deliver to the Forest Service all agreements necessary to (a) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Recipient/Cooperator elects to retain title, and (b) convey title to the 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. The Recipient/Cooperator agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient/Cooperator 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 3 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 3a. The Recipient/Cooperator 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.

91.2 - Exhibit 01--Continued

- c. The Recipient/Cooperator shall notify the 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. The Recipient/Cooperator agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a subject invention, the following statement: This invention was made with the Government support under (insert the Forest Service grant/agreement number) awarded by the Forest Service. The Government has certain rights in this invention.
7. Subcontracts.
- a. The Recipient/Cooperator shall include this clause, 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 the Recipient/Cooperator in this clause, and the Recipient/Cooperator shall not, as part of the consideration for awarding the subgrant or subcontract under the agreement, obtain rights in the Subgrantee's or Subcontractor's subject inventions.
 - b. The Recipient/Cooperator shall include in all other subcontracts the patent rights clause, 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 clause constitute a contract between the Subcontractor and the Federal agency with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph 10 of this clause.
8. Reporting on Utilization of Subject Invention. The Recipient/Cooperator agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient/Cooperator 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 the Recipient/Cooperator, and such other data and information as the Forest Service may reasonably specify. The Recipient/Cooperator also agrees to provide additional reports as may be requested by the Forest Service in connection with

91.2 - Exhibit 01--Continued

any march-in proceeding undertaken by the Forest Service in accordance with paragraph 10 of this clause. As required by 35 U.S.C. 202(c)(5), the Forest Service agrees it shall not disclose such information to persons outside the government without permission of the Recipient/Cooperator/Recipient/Cooperator.

9. Preference for United States Industry. Notwithstanding any other provision of this clause, the Recipient/Cooperator agrees 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 Forest Service upon a showing by the Recipient/Cooperator 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. The Recipient/Cooperator agrees that with respect to any subject invention in which it has acquired title, the Forest Service has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the Forest Service to require the Recipient/Cooperator, 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 the Recipient/Cooperator Assignee, or exclusive Licensee refuses such a request, the Forest Service has the right to grant such a license itself if the Forest Service determines that:

- a. Such action is necessary because the Recipient/Cooperator 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 the Recipient/Cooperator, 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 the Recipient/Cooperator, Assignee, or Licensees; or
- d. Such action is necessary because the agreement required by paragraph 9 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.

91.2 - Exhibit 01--Continued

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 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 the Recipient/Cooperator.
- b. The Recipient/Cooperator shall share royalties collected on a subject invention with the Inventor, including Federal employee Co-Inventors (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 the Recipient/Cooperator 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 the Recipient/Cooperator determines 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 the Recipient/Cooperator is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give preference in any specific case will be at the discretion of the Recipient/Cooperator. However, the Recipient/Cooperator agrees that the Secretary may review the Recipient's/Cooperator's licensing program and decisions regarding small business applicants, and the Recipient/Cooperator shall negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the Recipient/Cooperator could take reasonable steps to implement more effectively the requirements of this paragraph.

91.2 - Exhibit 01--Continued

12. Communication.

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

Patent Advisor
National Patent Program
Forest Service, USDA
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:

- (1) When the agreement is for the operation of a federally funded research and development center of a Government-owned production facility;
- (2) In exceptional circumstances when it is determined by the 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
- (3) 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 Forest Service field office deems relevant and, at a minimum, must:

- (1) Identify the small business firm or non-profit organization involved.
- (2) Describe the extent to which Forest Service action restricted or eliminated the right to retain title to a subject invention.
- (3) State the facts and rationale supporting the Forest Service action.
- (4) Provide supporting documentation for those facts and rationale.

91.2 - Exhibit 01--Continued

(5) Indicate the nature of any objections to the Forest Service action and provide any documentation in which those objections appear. A copy of each such determination and written statement of facts must be sent to the Washington Office Director, Fiscal and Public Safety, for review and forwarded to the Comptroller General of the United States within 30 days after the award of the applicable grant or cooperative agreement. In some cases of determinations applicable to agreements with small business firms, copies must also be sent to the Chief Counsel for advocacy of the Small Business Administration.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for DG/CA and IG/IC, IF patents may result. Each instrument must be 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 this provision. Be sure to insert the Forest Service agreement number.)

L.2. COPYRIGHTING

The Recipient/Cooperator is 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 award/agreement.

No original text or graphics produced and submitted by the Forest Service must be copyrighted. The 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:

1. The copyright in any work developed by the Recipient/Cooperator under this agreement.
2. Any right of copyright to which the Recipient/Cooperator purchases ownership with any Federal contributions.

91.2 - Exhibit 01--Continued

[END OF PROVISION]

*(APPLICABILITY: This provision is mandatory for CS, DG/CA, IA, IG/IC, IJ, JV, PA, and SA, **IF** the agreement contemplates development or publication of any printed, audiovisual, or electronic material. For IA, add the following sentence to the end of the first paragraph: “However, the Cooperative shall not sell or grant copyrights to a 3rd party designee who intends to sell the document as a profit making venture.”)*

L.3. PUBLICATION SALE

The Cooperator may sell any publication developed as a result of this agreement. The publication may be sold at fair market value, which is initially defined in this agreement to cover the costs of development, production, marketing, and distribution. After the costs of development and production have been recovered, fair market value is defined in this agreement to cover the costs of marketing, printing, and distribution only. Fair market value must exclude any in-kind or Federal Government contributions from the total costs of the project.

[END OF PROVISION]

*(APPLICABILITY: This provision is mandatory for CS PA and SA, **IF** Cooperative publications are anticipated.)*

L.4. FOREST SERVICE CODE OF SCIENTIFIC ETHICS

All persons performing under this agreement shall be aware of and perform according to the Forest Service Code of Scientific Ethics found at:

http://www.fs.fed.us/research/publications/fs_code_of%20scientific_ethics.pdf

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IJ and JV.)

L.5. 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 are found at <http://www.fs.fed.us/goi/>.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for IJ and JV.)

91.2 - Exhibit 01--Continued

Part M: CONDITIONAL PROVISIONS

M.1. MODIFICATIONS

Modifications within the scope of this award/agreement 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 (insert a notification period that is no less than 30 days) days prior to implementation of the requested change. The Forest Service is not obligated to fund any changes not properly approved in advance.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments. For CO, MU/RU/SU delete the last sentence. Insert a notification period that is no less than 30 days.)

M.2. COMMENCEMENT/EXPIRATION DATE

This award/agreement is executed as of the date of the last signature and is effective through (insert expiration date; no greater than 5 years from the date of last signature) at which time it will expire. The expiration date is the final date for completion of all work activities under this agreement.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments, except for IA forms that already contain commencement/expiration date data fields/provisions, for example, the AD-672. Insert the expiration date. For PA for Fuels or Noxious Weed Treatment, FS-1500-16F, the period of performance can only be one year, and is tied directly to the Treatment Plan, Burn Plan, or Operating Plan. A time extension, via modification, is permitted if the line officer reissues the "Plan".) For CO, use provision M.3. For SA, agreement period cannot be greater than 10 years.

91.2 - Exhibit 01--Continued

M.3. COMMENCEMENT/EXPIRATION DATE (Collection)

This agreement is executed as of the date of the last signature, and has an expiration date of (insert expiration date; no greater than 5 years from the date of last signature). The expiration date is the final date for completion of all work activities under this agreement.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for CO, except for CO forms that already contain commencement/expiration date data field/provisions. Insert an expiration date that is no greater than 5 years from date of last signature.)

M.4. 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/agreement.

In witness whereof, the parties hereto have executed this agreement as of the last date written below.

Signatory Official
Forest Service

Signatory Official
Cooperator

Date

Date

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all instruments, except CO and IA forms that already contain commencement/expiration date data fields/provisions, for example, the 7600A and 7600B. This provision may be changed to accommodate listing of additional signatories, if necessary.)

91.2 - Exhibit 01--Continued

Part N: STEWARDSHIP PROVISIONS

N.1. LIMITED LIABILITY FOR OPERATIONS FIRES- STEWARDSHIP

Maximum Amount of Cooperator Obligation per Operation's Fire. Entry should be determined as follows and rounded up to the nearest \$100. The minimum amount will be \$1,000. If State statute or law defines limited liability, use that determination (for example, Oregon), otherwise calculate the amount using the following formula:

$[(1) \times (2) + (3) \times (4)] \times (5) = \text{Maximum Amount of Cooperator's Obligation per Operations Fire. Round up to the next \$100.}$

(1) Equals the number of workers normally required to operate the size of proposed project.

_____ Workers

(2) Equals the daily (12 hour) wage rate for semi-skilled (AD-C) firefighter.

\$_____/Hr. x 12 hours = \$_____

(3) Equals the number of pieces of equipment normally required to operate the size of proposed project that can effectively cut and clear fire lines.

_____ Pieces of equipment

(4) Average daily rate for each piece of equipment, including cost of operator, from current local engineering cost guide.

\$_____/Hr. x 12 hours = \$_____/12hr.

(5) Equals the number of days normally required to control and mop up such fires to a point where control lines can reasonably be expected to hold under foreseeable conditions. Minimum is one day and maximum is 10.

_____ days

Cooperator's Obligation per Operations Fire,

Maximum

Amount: \$_____

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for all SA and SA SPAs using Appendix F (Timber Removal) that includes work noted in the definitions)

91.2 - Exhibit 01--Continued

N.2. AVAILABILITY FOR CONSULTATION

Both parties will make themselves available at mutually agreeable times, for continuing consultation to discuss the conditions covered by this Master Stewardship Agreement and agree to actions essential to fulfill its purposes.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for SA and MSA)

N.3. ANNUAL MEETING

At a minimum, the parties will meet annually to discuss potential stewardship projects and jointly review the active stewardship project proposal list.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for SA, MSA and SA SPAs)

N.4. SUPPLEMENTAL PROJECT AGREEMENTS

Nothing in this Master Stewardship Agreement obligates either party to offer or accept any project proposals under this Master Stewardship Agreement. Any projects added to this Master Stewardship Agreement must be by mutual consent of the parties through a specific SPA. At a minimum, a supplemental project agreements (SPA) must:

1. Include language stating that the SPA will be made a part of this Master Stewardship Agreement thereby subjecting it to the terms of this Master Stewardship Agreement.
2. Include a map and description of the project area, treatment activities and corresponding treated acres, and other activities which may include other resource related projects.
3. Specify a method of designating trees for removal.
4. Describe the desired end result of the project(s).
5. Specify the exchange of goods for services. The Forest Service may apply the value of timber or other forest products removed as an offset against the cost of services received by the Cooperative.
6. Designate a Forest Service and the Cooperative's official to monitor their respective responsibilities outlined in the SPA.

91.2 - Exhibit 01--Continued

7. Include a financial plan to identify each parties contributions for projects identified in the SPA.
8. Identify appropriate bonding requirements.
9. Include any necessary forest restrictions and closure dates to allow the Cooperative to implement and complete the project(s) within the specified timeframes.
10. Provide necessary direction to the Cooperative to ensure compliance with appropriate laws and regulations to fulfill the terms of the SPA.
11. Identify any reporting requirements.
12. Be reviewed and approved by a delegated timber contracting officer when forest products will be disposed.
13. Be reviewed and approved by a Forest Service Grants & Agreements Specialist.

Be mutually agreed to, in writing, by both parties and executed by the designated Forest Supervisor.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for MSA)

N.5. PERFORMANCE

The parties will perform in accordance with the approved SPAs.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for MSA)

N.6. EXCHANGE OF GOODS FOR SERVICES

SPA(s) may be completed where Forest Service goods are exchanged for the Cooperative's services; Forest Service funds are exchanged for the Cooperative's services; or a combination thereof.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for MSA)

N.7. TECHNICAL AND COST EVALUATION

TECHNICAL AND COST EVALUATION. Best approach determination is the evaluation method used by the Forest Service to approve stewardship agreement technical proposals. Such consideration shall primarily consider criteria other than cost. These non-price criteria include, but are not limited to:

1. The extent of mutual interest and benefit.
2. The advantages and effectiveness of mutual participation.
3. Joint expertise.
4. Past performance.
5. Technical approach
6. Factors relevant to cost such as volunteer participation, contribution from other parties, cost sharing, and so forth.
7. Ability to utilize, educate and/or train a local workforce.
8. Benefits to the local community.
9. Ability to complete work in a timely manner.
10. Experience in performing similar work.

Ability to conduct work in an environmentally sound manner.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for MSA.)

N.8. METHODS OF APPRAISAL

The value of timber and other forest products must be determined using Forest Service standard guidelines, methods and techniques.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for MSA and conditional for SA and SPA.)

91.2 - Exhibit 01--Continued

N.9. TECHNICAL PROPOSAL

In coordination with the Forest Service, prepare and submit for review a Technical Proposal, which will be attached as Appendix B when finalized. This Technical Proposal must address agreed upon land management activities within in the Stewardship Project Area displayed in Appendix C, for the proposed operating period. The Technical Proposal must abide by all laws and regulations pertaining to the management and protection of National Forest System (NFS) lands and adhere to the National Environmental Policy Act (NEPA) document and all mitigation identified therein. The Technical Proposal will be used to make an evaluation and arrive at a determination as to whether the proposal will meet the requirements of the Forest Service. Therefore, the Technical Proposal must present sufficient information to reflect a thorough understanding of the requirements and a detailed description of the techniques, procedures, and program for achieving the objectives of the specifications/statement of work. Technical Proposals will be evaluated on the basis of the following criteria. As a minimum, the Technical Proposal must clearly provide the following:

1. A plan of operations for both timber harvest and stewardship project work. Include a timeline and the rationale for the work activities identified to ensure activities will be completed by the expiration date of the SPA.
2. Quality control plan for both the harvesting and stewardship projects.

The approved Technical Proposal will become part of this SPA without necessity of a formal modification.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for SA and SA SPAs.)

N.10. ENVIRONMENTAL MANAGEMENT SYSTEM (EMS)

The parties will comply with the Forest Service's environmental management system (EMS) which is a systematic approach to improving environmental performance by identifying activities and environmental impacts that occur on National forest System (NFS) lands. The Forest Service will provide the Cooperative with details for compliance.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for SA and SA SPAs.)

91.2 - Exhibit 01--Continued

N.11. NEPA COMPLIANCE

The Forest Service will assure that this Stewardship Agreement incorporates necessary design criteria and standards for operation to comply with the NEPA document. The Cooperative will work with the Forest Service to comply with these terms on the ground.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for SA and SA SPAs.)

N.12. ACCEPTANCE OF COMPLETED WORK

No less than monthly, the Cooperative will notify the Forest Service of any completed work that is ready for inspection. The Forest Service may accept all, or a reasonable portion of any specific activity.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for SA and SA SPAs.)

N.13. CREDIT FOR SERVICE WORK

Stewardship credits will be established for the number of service units (on the Schedule of Items) of each activity that has been completed and accepted by the Forest Service. Stewardship credits will not be earned for work that is in progress that has not been accepted by the Forest Service. The cooperator's costs, excluding project development costs, attributable to service work will be incorporated into the Schedule of Items unit rate.

[END OF PROVISION]

(APPLICABILITY: This provision is conditional for SA and SA SPAs.)

N.14. EARNED STEWARDSHIP CREDITS

Earned stewardship credits are exchanged for forest products received by the Cooperative at the value designated in the Stewardship Agreement Financial Plan, Appendix D. Earned stewardship credits may also be funded with Federal funds which will be obligated and reimbursed through NRM.

[END OF PROVISION]

(APPLICABILITY: This provision is conditional for SA and SA SPAs.)

N.15. ELECTRONIC TRACKING SYSTEM

An Integrated Resource Statement of Account (IRSA) which is an Automated Timber Sales Statement of Account (TSSA) and Progress Reports of Stewardship Credits and Payments (PRSP/PRSC) will be used as a tracking system for payments, stewardship credits, cash deposits and work progress. The Forest Service project contacts identified in Provision V-A is responsible for communicating on-the-ground accomplishments to Forest Service resource staff for input into the IRSA.

[END OF PROVISION]

(APPLICABILITY: This provision is conditional for SA and SA SPAs.)

N.16. MONTHLY REPORTING

When the project is active, the Forest Service will enter the value of the completed and accepted work into the Automated Timber Sale Accounting system (ATSA) monthly, and provide the Cooperative with a copy of the Statement of Account.

[END OF PROVISION]

(APPLICABILITY: This provision is conditional for SA and SA SPAs.)

N.17. SERVICE WORK

In coordination with the Cooperative, complete a Schedule of Items and Specifications, Appendix E.

[END OF PROVISION]

(APPLICABILITY: This provision is conditional for SA and SA SPAs.)

N.18. TIMBER REMOVAL

TIMBER REMOVAL. Coordinate with the Cooperative to provide a completed Appendix F, Timber Removal Specifications, when forest products are exchanged for services. This Appendix may include:

1. Location of Stewardship Project Area.
2. Volume estimates and Utilization Standards.
3. Timber Designations, such as, timber marking, silvicultural prescriptions or unit boundaries.

91.2 - Exhibit 01--Continued

4. Timber Payment rates.
5. Stump height.
6. Specified and temporary roads.
7. Measurement instructions (scaled or pre-measurement).
8. Advance payment requirements.

[END OF PROVISION]

(APPLICABILITY: This provision is conditional for SA and SA SPAs.)

N.19. TECHNICAL PROPOSAL REVIEW

Review the Technical Proposal and work with the Cooperative to make any necessary changes.
See related Provision II-A.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for SA and SA SPAs.)

N.20. TECHNICAL PROPOSAL EVALUATION

Evaluate the Technical Proposal on technical and cost evaluation criteria, such as, but not limited to:

1. Timber Harvest.
2. Slash Treatment - Capable of the greatest utilization of Non-sawtimber and Biomass.
3. Weed Treatment.
4. Quality Control.
5. Utilization of Local Work Force.

[END OF PROVISION]

(APPLICABILITY: This provision is mandatory for SA and SA SPAs.)

91.2 - Exhibit 01--Continued

N.21. PAYMENT/REIMBURSEMENT (NO FUNDS)

It is not anticipated that funds will be exchanged in the performance of this agreement. The value of goods will offset the value of the work to be performed.

[END OF PROVISION]

(APPLICABILITY: This provision is conditional for SA and SA SPAs.)

N.22. PAYMENT/REIMBURSEMENT (FUNDS)

It is anticipated that funds will be exchanged in the performance of this SPA when the value of the timber will not cover the value of the services performed.

The Forest Service will make payment upon receipt of the Cooperative's monthly billings. Each invoice from the Cooperative must display the total project costs to date of the invoice, separated by Forest Service and the Cooperative share. In-kind contributions must be displayed as a separate line item and will not be included in the total project costs. The final invoice from the Cooperative will be submitted no later than 90 days from the expiration date.

The invoice must include, at a minimum:

1. The Cooperative's name, address, and telephone number.
2. Forest Service SPA number.
3. Invoice date.
4. Dates of performance period.
5. Total invoice amount.
6. Detail by Schedule of Items.

The invoice must be sent to:

Forest Service, Albuquerque Service Center

Payments – Grants & Agreements

101B Sun Ave NE

Albuquerque, NM 87109

E-mail: asc_ga@fs.fed.us FAX: (877) 687-4894

[END OF PROVISION]

(APPLICABILITY: This provision is conditional for SA and SA SPAs.)

91.2 - Exhibit 01—Continued

N.23. PAYMENT/REIMBURSEMENT

The Forest Service shall reimburse the Cooperator for the Forest Service's share of actual expenses incurred, not to exceed **\$(insert amount)**, as shown in the Financial Plan. In order to approve a Request for Reimbursement, the Forest Service shall review such requests to ensure payments for reimbursement are in compliance and otherwise consistent with the terms of the agreement. The Forest Service shall make payment upon receipt of the Cooperator's (monthly, quarterly, semi-annual, lump-sum) invoice. Each invoice from the Cooperator must display the total project costs for the billing period, separated by Forest Service and Cooperator 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 the Cooperator'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. Cooperator name, address, and telephone number.
2. Forest Service agreement number.
3. Invoice date.
4. Performance dates of the work completed (start & end).
5. Total invoice amount for the billing period, separated by Forest Service and Cooperator share with in-kind contributions displayed as a separate line item.
6. Display all costs, both cumulative and for the billing period, by separate cost element as shown on the financial plan.
7. Cumulative amount of Forest Service payments to date.
8. Statement that the invoice is a request for payment by "reimbursement."
9. If using SF-270, a signature is required.
10. Invoice Number, if applicable.

91.2 - Exhibit 01--Continued

The invoice must be forwarded to:

| |
|---------------------------------------------------------------|
| 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:

| |
|--|
| |
| |
| |

[END OF PROVISION]

(APPLICABILITY: This provision is conditional for SA and SA SPAs.)

91.3 - Matrix of Provisions for Cooperative Law, Forest Road, and Fire Protection Agreements

1. Legend.

| Agreement Type Alpha Codes | Instrument Type | FSH 1509.11 Chapter Reference |
|-------------------------------|------------------------------------------|-------------------------------------|
| LE | Cooperative Law Enforcement Agreement | 30 |
| RO | Cooperative Forest Road Agreement | 30 |
| FI | Cooperative Fire Protection Agreement | 30 |

2. Title Provisions.

For exempted agreements, use the most current, Washington Office approved forms (these forms contain the latest, approved provisions). These forms can be found at: <http://fsweb.wo.fs.fed.us>.

91.4 - List of Provisions for Cooperative Law, Forest Road, and Fire Protection Agreements

For Cooperative Law Enforcement, Forest Road, and Fire Protection Agreements, use the most current, Washington Office approved forms (these forms contain the latest, approved provisions). These forms can be found at: <http://fsweb.wo.fs.fed.us>.

91.5 - Matrix of Provisions (“Articles”) for Cooperative Research and Development Agreements

1. Legend.

| Agreement Type Alpha Codes | Instrument Type | FSH 1509.11 Chapter Reference |
|----------------------------------|------------------------------------------------------|-------------------------------------|
| RD | Cooperative Research and Development Agreement | 70 |

2. Title Provisions.

For Cooperative Research and Development Agreements, the title provisions are considered “Articles,” and can be found in section 91.6.

91.6 - List of Provisions (“Articles”) for Cooperative Research and Development Agreements

The following exhibit is a complete inventory of approved mandatory provisions for a Cooperative Research Development Agreement (CRDA).

91.6 - Exhibit 01
Articles

Article 1. Definitions

- 1.1 Forest Service means the USDA Forest Service.
- 1.2 (Insert name of Cooperative) means COOPERATOR.
- 1.3 Agreement means this Cooperative Research and Development Agreement.
- 1.4 Confidential Information means trade secrets or commercial or financial information that is privileged or confidential under the meaning of 5 USC 552(b)(4).
- 1.5 Subject Invention means any invention or other intellectual property conceived or first reduced to practice under this Agreement which is patentable or otherwise protectable under Title 35 of the United States Code, under 7 USC 2321, et seq., or under the patent laws of a foreign country. Specifically not included in the definition of Subject Inventions are inventions made outside the Scope of Agreement or prior to the execution of this Agreement.
- 1.6 Record means any book, document, accounting procedure and practice, or other data, regardless of type and regardless of form.
- 1.7 Scope of Agreement means those activities set forth in Schedule 2, entitled "Statement of Work."
- 1.8 Period of the Agreement means that period set forth under the Period of Agreement on the cover form for this agreement.

91.6 - Exhibit 01--Continued

Article 2. Publications

- 2.1 Subject to the requirements of confidentiality and preservation of rights in Subject Inventions, either party may publish the results of this Agreement, PROVIDED:
 - a. The manuscript is provided to the other party's Authorized Agent for review at least 60 days prior to submission for publication.
 - b. The publication must acknowledge this Agreement and the contributions of each party's personnel.
 - c. The final decision as to the publication content rests with the party that writes the publication.
- 2.2 Publication and/or other disclosure of the results of this Agreement must be delayed as necessary to preserve both United States of America and foreign patent rights in a Subject Invention.
 - a. Such a delay will only be granted if requested in writing; and.
 - b. The requesting party demonstrates promptness and diligence in seeking patent protection on the Subject Invention.
- 2.3 Forest Service reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, any Cooperator's published work resulting from this cooperative project for Government purposes.

Article 3. Confidentiality

- 3.1 Confidential Information, which is owned by one party to this Agreement and disclosed to the other, must be labeled "CONFIDENTIAL" by the Submitter and must not be disclosed by the Recipient without permission of the owner, or for the period as defined per article 3.2.
- 3.2 Confidential Information, provided by the Cooperator, shall remain confidential for a period of (insert period in year and months, for example, 2 years, 8 months) following agreement termination.
- 3.3 To the extent either party orally submits its Confidential Information to the other party, the submitting party shall prepare a document marked "CONFIDENTIAL" embodying or identifying in reasonable detail such orally submitted Confidential Information and provide the document to the other party within 30 days of disclosure.

91.2 - Exhibit 01--Continued

- 3.4 Neither party shall be bound by confidentiality if the Confidential Information received from the other party:
- a. Already is available to the public or known to the Recipient;
 - b. Becomes available to the public through no fault of the Recipient; or
 - c. Is nonconfidentially received from another party legally entitled to it.
- 3.5 All information developed under this Agreement falling within the scope of the Agreement must be considered by both Cooperator and Forest Service as confidential for a period of (insert period in year and months, for example, 2 years, 8 months) commencing on the date that the Agreement expires or is terminated.

Article 4. Meetings, Reports and Records

- 4.1 Frequent and effective communication is essential to the successful accomplishment of the objectives of this Agreement. To this end, the scientific representative for the Forest Service will contact the Cooperator to discuss dates/times/frequency for any agreed-to meetings. Meetings must be coordinated by the Forest Service.
- 4.2 Any such plan or recommendation that is outside the Scope of Agreement must be reduced to writing and referred to the Authorized Agent of each party for appropriate action. Any such plan or recommendation so referred must not be binding upon either party unless incorporated into this Agreement by written amendment.
- 4.3 Each party shall keep complete records relating to this research. All such records must be available for inspection by the Cooperator, Forest Service, Comptroller General, or any authorized representative at reasonable times. The records, or true copies of them, must be delivered upon request.
- 4.4 The results of this Agreement and research data that are collected, compiled, and evaluated under this Agreement must be shared and mutually interchanged by the Cooperator and the Forest Service.
- 4.5 Interim or a final report summarizing all data will not be submitted. The Forest Service technical representative shall provide the Cooperator with verbal reports on an as-needed basis, and a copy of the manuscript prior to any publishing.

91.6 - Exhibit 01--Continued

Article 5. Ownership of Inventions

- 5.1 All rights, title, and interest in any Subject Invention made solely by employee(s) of the Forest Service must be owned by Forest Service.
- 5.2 All rights, title, and interest in any Subject Invention made solely by employee(s) of the Cooperator must be owned by the Cooperator.
- 5.3 All rights, title, and interest in any Subject invention made jointly by at least one employee of the Forest Service and at least one employee of the Cooperator must be jointly owned by the Forest Service and the Cooperator.

Article 6. Subject Invention Licenses

- 6.1 Patent rights obtained on joint Subject Inventions made by two or more persons must be owned in accordance with the obligations of the persons making such inventions to assign their interest therein, and both the Forest Service and Cooperator shall jointly own an undivided interest in the patent rights on all Subject Inventions which jointly involve an employee of the Forest Service and Cooperator. The undivided interest of the Forest Service in such patent rights must be subject to the option and right of first refusal in paragraph 6.3, below.
- 6.2 The Cooperator is granted an option to negotiate an exclusive license in each Subject Invention owned or co-owned by the Forest Service for one or more field(s) of use encompassed by the Scope of Agreement. This license must be consistent with the requirements of 35 USC 209(a), 209(b) (manufactured substantially in the U.S.), and 209(f) and other such terms and conditions as may be reasonable under the circumstances, as agreed upon through good faith negotiations between the Cooperator and the Forest Service.
- 6.3 This option to negotiate an exclusive license must terminate whenever the Cooperator fails to:
 - a. Submit a complete application for an exclusive license within 60 to 120 days of being notified the Forest Service of an Inventions availability for licensing; or
 - b. Submit a good faith written response to a written proposal of licensing terms within 45 to 60 days of such proposal.

91.6 - Exhibit 01--Continued

- 6.4 The Cooperator grants the Forest Service, on behalf of the U.S. Government, a royalty free, nonexclusive, worldwide, irrevocable, nontransferable license for any Cooperator solely owned Subject Invention. The purpose of this license must be to practice the Subject Invention or have it practiced, by or on behalf of the U.S. Government, for research or other U.S. Government purposes. 15 USC 3710a(b)(2).

Article 7. Subject Invention Information

- 7.1 The Authorized Agents or designees of each party shall promptly make written disclosure to each other of each Subject Invention.
- 7.2 This information must be treated in confidence by the receiving party, EXCEPT: it may be shared with those having a need to know.
- 7.3 Each party shall provide, when requested by the other, all information in its possession, or true copies thereof, pertaining to a Subject Invention which may be necessary or useful in the preparation, filing, and prosecution of patent applications covering the Subject Invention.

Article 8. Intellectual Property Protection Applications

- 8.1 The Cooperator shall have the first option to prepare and prosecute patent applications, foreign and domestic, on Subject Inventions owned or co-owned by the U.S. Government, subject to the following conditions:
- a. All documents must be submitted to the Forest Service sufficiently in advance to filing to allow the Forest Service a reasonable opportunity to review and make recommendations thereon;
 - b. Copies of all correspondence from the U.S. Patent and Trademark Office and foreign equivalent offices must be provided promptly to the Forest Service;
- 8.2 The act of preparing and/or filing documents, per se, must not entitle the Cooperator to any rights in such Inventions or the reimbursement of costs incident to patent prosecution.
- 8.3 Forest Service shall have the right at any time, at its sole discretion, concerning Inventions solely owned by the U.S. Government, to: (1) assume responsibility for prosecuting any such application; and (2) permit any application to become abandoned or issued patent/certificate to expire, subject to the provisions of any license agreement relating to the subject matter.

91.6 - Exhibit 01—Continued

- 8.4 Forest Service agrees to provide Cooperator consultation and advice in the preparation, filing, and prosecution of patent applications on Subject Inventions.
- 8.5 The assignee of record for all patents owned by the Forest Service shall be "The United States of America as represented by the Secretary of Agriculture, Washington, D.C." Joint ownership by the Government must be set forth in patents.

Article 9. Use of Name or Endorsements

Cooperator shall not in any way state or imply that this Agreement or the results of this Agreement are an endorsement of its organizational units, employees, products, or services except to the extent permission is specifically granted by the Forest Service.

Article 10. Regulatory Compliance with Government Rules & Regulations

- 10.1 Cooperator is responsible for obtaining appropriate opinions, permits, or licenses from Federal or State agencies, which regulate research materials or commercial products that may arise from the research work performed within the Scope of Agreement.
- 10.2 In carrying out its responsibilities under this Article, the Cooperator shall:
 - a. Consult and coordinate regulatory approval actions with the Forest Service; and
 - b. Give Forest Service's Authorized Agent or designee a copy of any applications and opinions, permits, or licenses issued.
- 10.3 Both parties acknowledge and agree to comply with all applicable laws and regulations of the Animal Plant Health and Inspection Service, The Center for Disease Control, and/or Export Control Administration pertaining to possession or transference of technical information, biological materials, pathogens, toxins, genetic elements, genetically engineered microorganisms, vaccines, and the like.
- 10.4 Both parties shall adhere to the U.S. Export Administration Laws and Regulations and shall not export or re-export any of the other party's technical data or products received under this Agreement or the direct product of such technical data to any proscribed country listed in the U.S. Export Administration Laws and Regulation unless properly authorized by the U.S. Government.

91.6 - Exhibit 01—Continued

Article 11. Liability

It is understood and agreed that neither party to this Agreement shall be responsible for any damages or injuries arising out of the conduct of activities governed by this Agreement, except to the extent that such damages and/or injuries were caused by the negligent or wrongful acts or omissions of its Employees, Agents or Officers. Forest Service liability must be limited by the Federal Tort Claims Act, 28 USC 2671, et seq.

Article 12. Termination

- 12.1 Either party may unilaterally terminate this entire Agreement at any time by giving the other party written notice not less than 60-calendar days prior to the desired termination date.
- 12.2 Articles 2. “Publications,” 3. “Confidentiality,” 5. “Ownership,” 6. “Subject Invention Licenses,” 9. “Use of Name or Endorsements,” and 11. “Liability” must survive the expiration or termination of this Agreement.
- 12.3 If either party unilaterally terminates this Agreement pursuant to Article 12.1, each party shall return to the other or destroy, as shall be then agreed, any and all data and materials originated or provided by one party to the other that is still in the receiving party’s possession within 30 days of termination.

Article 13. Legal Authority

- 13.1 Cooperator has the legal authority to enter into this agreement, and sufficient institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project.
- 13.2 Forest Service is entering into the Agreement under the authority of the Federal Technology Transfer Act of 1986 (15 U.S.C. § 3710a).

Article 14. Disputes

- 14.1 Any dispute arising under this Agreement, which cannot be readily resolved, must be submitted jointly to the Authorized Agents, identified in Article 15 of these General Provisions.
- 14.2 Each party agrees to seek in good faith to resolve the issue through negotiation or other forms of nonbinding dispute resolution processes mutually acceptable to the parties.
- 14.3 Pending the resolution of any dispute or claim pursuant to Article 14, the parties agree that performance of all obligations shall be pursued diligently.

91.6 - Exhibit 01--Continued

Article 15. Notices and Authorized Agents

All notices pertaining to or required by this Cooperative Research and Development Agreement that interpret or may have a bearing on the legal effect of this Agreement's terms and conditions must be in writing and must be signed by the authorized business representative shown below.

Forest Service Authorized Agent

Cooperator's Authorized Agent

Name: _____

Name: _____

US Forest Service

Tel:

Tel:

Fax:

Fax:

E-mail:

E-mail:

Article 16. Limitation on Forest Service Scientific Representative's Authority

Forest Service's Scientific Representative is authorized to perform the research and development falling within the Scope of Agreement. Neither the Scientific Representative nor their staff is authorized to change or interpret with authority the terms and conditions of this Agreement.

Article 17. Assignments

- 17.1 Neither this Agreement nor any rights or obligations of the parties hereto must be assigned or otherwise transferred by either party without the prior written consent of the other party, which consent must not be unreasonably withheld.
- 17.2 Forest Service is an agency of the U.S. Government and any rights or obligations created under this Agreement are freely transferable within the U.S. Government and must not be deemed an "assignment" as contemplated by this Article 17.

91.6 - Exhibit 01—Continued

Article 18. Relationship of Parties

- 18.1 Forest Service and Cooperator act in their independent capacities in the performance of their respective functions under this Agreement and neither party is to be considered the Officer, Agent, or Employee of the other.
- 18.2 Each party shall allow, consistent with policies and procedures of the Forest Service and the Cooperator, access to their facilities, as needed.
- 18.3 Each party shall separately assign personnel, equipment, supplies, transportation, and facilities, as needed and available, to meet respective responsibilities hereunder, such resources to remain the property of the assignor.

Article 19. Force Majeure

- 19.1 Neither party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such party:
 - a. Which causes the party to be unable to perform its obligations under this Agreement; and
 - b. Which it has been unable to overcome by the exercise of due diligence.
 - c. This includes, but is not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strikes, labor dispute, failure, or sabotage of either party's facilities or any order or injunction made by a court or public agency.
- 19.2 In the event of the occurrence of such force majeure event, the party unable to perform shall promptly notify the other party. It must also:
 - a. Use its best efforts to resume performance as quickly as possible;
 - b. Suspend performance only for such period of time as is necessary as a result of the force majeure event.

Article 20. Severability

The illegality or invalidity of any provision of this Agreement must not impair, affect, or invalidate the other provisions of this Agreement.

91.6 - Exhibit 01--Continued

Article 21. Ambiguities

Forest Service and Cooperator agree that each party has reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party must not apply to the interpretation of this Agreement.

Article 22. Subcontracting Approval

- 22.1 A party hereto desiring to obtain and use the services of a third party via contract or otherwise shall give prior notice to the other party, including details of the contract or other arrangement.
- 22.2 This requirement is to assure that confidentiality is not breached and rights in Subject Inventions are not compromised

Article 23. Governing Law

The construction, validity, performance, and effect of this entire Agreement must be governed by the laws applicable to the Government of the United States of America as practiced in the Federal Courts located in the District of Columbia.

Article 24. Entire Agreement

- 24.1 This Agreement constitutes the entire agreement between the Cooperator and the Forest Service and supersedes all prior agreements and understandings between them with respect to its subject matter.
- 24.2 Any representatives, promise, or condition in connection with such subject matter, which is not incorporated in this Agreement, must not be binding upon either party.
- 24.3 No modifications, renewal, extension, waiver, or termination of this Agreement or any of its provision must be binding upon the party against whom enforcement of such modification, renewal, extension, waiver, or termination is sought, unless made in writing and signed on behalf of such party by that party's Authorized Agent.
- 24.4 As used herein, the word 'termination' includes any and all means of bringing to an end prior to its expiration by its own terms of this agreement, or any provision thereof, whether by release, discharge, abandonment, or otherwise.

91.6 - Exhibit 01—Continued

Article 25. Modifications

Modifications within the scope of the agreement must be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by the Authorized Agents of both parties, prior to any changes being performed.

Article 26. Overpayment

Any funds paid to the Cooperator 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 the Cooperator to the 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 Forest Service may reduce the debt by:

1. Making an administrative offset against other requests for reimbursement.
2. Withholding advance payments otherwise due to the Cooperator.
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 Forest Service may charge interest on an overdue debt.

92 - Certifications, Assurances, and Other Statements of Recipient

92.1 - Federal Financial Assistance - Domestic

Follow the requirements described in chapter 20 of this handbook on Federal Financial Assistance. Chapter 20 directs the user to the appropriate locations for relevant certifications and assurances.

92.2 - Federal Financial Assistance – International

92.21 - Certifications and Assurances

1. Assurance of Compliance with Laws and Regulations Governing Non-Discrimination in Federally Assisted Programs.

a. The Recipient hereby assures that no person in the United States shall, on the bases set forth below, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity receiving financial assistance from Forest Service, and that with respect to the grant for which application is being made, it will comply with the requirements of:

(1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. 2000-d), which prohibits discrimination on the basis of race, color or national origin, in programs and activities receiving Federal financial assistance;

(2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance;

(3) The Age Discrimination Act of 1975, as amended (Pub. L. 95-478), which prohibits discrimination based on age in the delivery of services and benefits supported with Federal funds;

(4) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution); and

b. If the Recipient is an institution of higher education, the Assurances given herein extend to admission practices and to all other practices relating to the treatment of students or clients of the institution, or relating to the opportunity to participate in the provision of services or other benefits to such individuals, and must be applicable to the entire institution unless the Recipient establishes to the satisfaction of the Forest Service Administrator that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which financial assistance is sought, or the beneficiaries of, or participants in, such programs.

c. This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the Recipient by the Agency, including installment payments after such date on account of applications for Federal financial assistance which are approved before such date. The Recipient recognizes and agrees that such Federal financial assistance is extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the Recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Recipient.

2. Certification Regarding Drug-Free Workplace Requirements.

a. Instructions for Certification.

(1) By signing and/or submitting this application or grant, the Recipient is providing the certification set out below.

(2) The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the Recipient knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

(3) For Recipients other than individuals, Alternate I applies.

(4) For Recipients who are individuals, Alternate II applies.

b. Certification Regarding Drug-Free Workplace Requirements.

Alternate I

(1) The Recipient certifies that it will provide a drug-free workplace by:

(A) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Applicant's/Recipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(B) Establishing a drug-free awareness program to inform employees about--

1. The dangers of drug abuse in the workplace;
2. The Recipient's policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation, and employee assistance programs;
and

4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(C) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (b)(1)(A);

(D) Notifying the employee in the statement required by paragraph (b)(1)(A) that, as a condition of employment under the grant, the employee will--

1. Abide by the terms of the statement; and

2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(E) Notifying the agency within 10 days after receiving notice under subparagraph (b)(1)(D)1, from an employee or otherwise receiving actual notice of such conviction;

(F) Taking one of the following actions, within 30 days of receiving notice under subparagraph (b)(1)(D)2., with respect to any employee who is so convicted--

1. Taking appropriate personnel action against such an employee, up to and including termination; or

2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(G) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (b)(1)(A), (b)(1)(B), (b)(1)(C), (b)(1)(D), (b)(1)(E) and (b)(1)(F).

(1) The Recipient shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, state, county, zip code)

Alternate II

The Recipient certifies that, as a condition of the grant, they shall not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

3. Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions.

a. Instructions for Certification.

(1) By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

(2) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation is considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation must disqualify such person from participation in this transaction.

(3) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

(4) The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(5) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meaning set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. Contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

(6) The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, that they shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

(7) The prospective primary participant further agrees by submitting this proposal that they will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification,

in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

(8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that they are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless they know that the certification is erroneous. A participant may decide the methods and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

(9) Nothing contained in the foregoing must be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealing.

(10) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

b. Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, the Recipient and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(B) of this certification;

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

4. Certification Regarding Lobbying.

The undersigned certifies, to the best of their knowledge and belief, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, United States Code, section 1352,. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance.

The undersigned states, to the best of their knowledge and belief, that: If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by Title 31, United States Code, section 1352. Any person who fails to file the required statement

shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

5. Prohibition on Assistance to Drug Traffickers for Covered Countries and Individuals.

Forest Service reserves the right to terminate this grant, to demand a refund or take other appropriate measures if the Recipient/Cooperator is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR part 140.

If there are covered participants: Forest Service reserves the right to terminate assistance to, or take other appropriate measures with respect to, any participant approved by Forest Service who is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR part 140.

The Recipient has reviewed and is familiar with the proposed grant format and the applicable regulations, and takes exception to the following (use a continuation page as necessary):

Solicitation No. _____

Application/Proposal No. _____

Date of Application/Proposal _____

Name of Recipient _____

Typed Name and Title _____

Signature _____ Date _____

a. When these Certifications, Assurances, and Other Statements of Recipient are used for cooperative agreements, the term "Grant" means "Cooperative Agreement."

b. The Recipient shall obtain from each identified Subgrantee and (sub) Contractor, and submit with its application/proposal, the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Transactions, set forth in Attachment A hereto. The Recipient should reproduce additional copies as necessary.

For Forest Service, this clause is entitled "Debarment, Suspension, Ineligibility, and Voluntary Exclusion" and is set forth in the grant standard provision entitled "Debarment, Suspension, and Related Matters."

6. Certification Regarding Terrorist Financing Implementing E. O. 13224.

By signing and submitting this certification, the prospective Recipient provides the certification set out below:

a. The Recipient has not provided, and will take all reasonable steps to ensure that they do not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts.

b. Specifically, in order to comply with Recipient obligations under paragraph 1, the Recipient will take the following steps:

(1) Before providing any material support or resources to an individual or entity, the Recipient will verify that the individual or entity does not appear:

(a) On the master list of Specially Designated Nationals and Blocked Persons, which list is maintained by the U.S. Treasury's Office of Foreign Assets Control (OFAC) and is available online at OFAC's website : <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>, or

(b) On any supplementary list of prohibited individuals or entities that may be provided by Forest Service to the Recipient.

The Recipient also will verify that the individual or entity has not been designated by the United Nations Security (UNSC) sanctions committee established under UNSC Resolution 1267 (1999) (the "1267 Committee") [individuals and entities linked to the Taliban, Usama bin Laden, or the Al Qaida Organization]. To determine whether there has been a published designation of an individual or entity by the 1267 Committee, the Recipient should refer to the consolidated list available online at the Committee's website: <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>.

(2) Before providing any material support or resources to an individual or entity, the Recipient will consider all information about that individual or entity of which it is aware or that is available to the public.

(3) The Recipient will implement reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support terrorist activity.

c. For purposes of this Certification:

(1) "Material support and resources" means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance,

safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

(2) "Terrorist act" means:

(a) An act prohibited pursuant to one of the 12 United Nations Conventions and Protocols related to terrorism (see UN terrorism conventions Internet site: http://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml or

(b) An act of premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents; or

(c) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

d. "Entity" means a partnership, association, corporation, or other organization, group or subgroup.

This Certification is an express term and condition of any agreement issued as a result of this application, and any violation of it must be grounds for unilateral termination of the agreement by Forest Service prior to the end of its term.

APPLICANT:

Name: _____

Signature: _____

Title: _____

Date: _____

92.22 - Other Statements of Recipient

1. Authorized individuals.

The Recipient represents that the following persons are authorized to negotiate on its behalf with the Government and to bind the Recipient in connection with this application or grant:

| Name | Title | Telephone No. | Facsimile No. |
|-------|-------|---------------|---------------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

2. Procurement Information.

(a) Applicability. This applies to the procurement of goods and services planned by the Recipient (that is, contracts, purchase orders, and so forth) from a supplier of goods or services for the direct use or benefit of the Recipient in conducting the program supported by the grant, and not to assistance provided by the Recipient (that is, a subgrant or subagreement) to a Subgrantee or Subrecipient in support of the Subgrantee's or Subrecipient's program. Provision by the Recipient of the requested information does not, in and of itself, constitute Forest Service approval.

(b) Amount of Procurement. Please indicate the total estimated dollar amount of goods and services which the Recipient plans to purchase under the grant:

\$ _____

(c) Nonexpendable Property. If the Recipient plans to purchase nonexpendable equipment which would require the approval of the agreement officer, please indicate below (using a continuation page, as necessary) the types, quantities of each, and estimated unit costs. Nonexpendable equipment for which the agreement officer's approval to purchase is required is any article of nonexpendable tangible personal property charged directly to the grant, having a useful life of more than 1 year and an acquisition cost of \$5,000 or more per unit.

| TYPE/DESCRIPTION (Generic) | QUANTITY | ESTIMATED UNIT COST |
|----------------------------|----------|---------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

(d) Source, Origin, and Componentry of Goods. If the Recipient plans to purchase any goods/commodities which are not of United States source and/or United States origin, please indicate below (using a continuation page, as necessary) the types and quantities of each, estimated unit costs of each, and probable source and/or origin. "Source" means the country from which a commodity is shipped to the cooperating country or the cooperating country itself if the commodity is located therein at the time of purchase. However, where a commodity is shipped from a free port or bonded warehouse in the form in which received therein, "source" means the country from which the commodity was shipped to the free port or bonded warehouse. Any commodity whose source is a non-Free World country is ineligible for Forest Service financing. The "origin" of a commodity is the country or area in which a commodity is mined, grown, or produced. A commodity is produced when, through manufacturing, processing, or substantial and major assembling of components, commercially recognized new commodity results, which is substantially different in basic characteristics or in purpose or utility from its components. Merely packaging various items together for a particular procurement or relabeling items does not constitute production of a commodity. Components" are the goods which go directly

into the production of a produced commodity. Any component from a non-Free World country makes the commodity ineligible for Forest Service financing.

| TYPE/ PROBABLE DESCRIPTION ORIGIN (Generic) | QUANTITY EST. UNIT COST | GOODS COMPONENTS | PROBABLE SOURCE | GOODS COMPONENTS |
|---------------------------------------------------------|-------------------------------|---------------------|--------------------|---------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

(e) Restricted Goods. If the Recipient plans to purchase any restricted goods, please indicate below (using a continuation page, as necessary) the types and quantities of each, estimated unit costs of each, intended use, and probable source and/or origin. Restricted goods are Agricultural Commodities, Motor Vehicles, Pharmaceuticals, Pesticides, Rubber Compounding Chemicals and Plasticizers, Used Equipment, U.S. Government-Owned Excess Property, and Fertilizer.

| TYPE/ DESCRIPTION (Generic) | QUANTITY | ESTIMATED UNIT COST | PROBABLE SOURCE | PROBABLE ORIGIN | INTENDED USE |
|-----------------------------------|----------|------------------------|--------------------|--------------------|-----------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

(f) Supplier Nationality. If the Recipient plans to purchase any goods or services from suppliers of goods and services whose nationality is not in the United States, please indicate below (using a continuation page, as necessary) the types and quantities of each good or service, estimated costs of each, probable nationality of each non-United States supplier of each good or service, and the rationale for purchasing from a non-United States supplier. Any supplier whose nationality is a non-Free World country is ineligible for Forest Service financing.

| TYPE/ DESCRIPTION (Generic) | QUANTITY | ESTIMATED UNIT COST | PROBABLE SUPPLIER (Non-US Only) | NATIONALITY | RATIONALE for NON-US |
|-----------------------------------|----------|------------------------|------------------------------------------|-------------|-------------------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

(g) Proposed Disposition. If the Recipient plans to purchase any nonexpendable equipment with a unit acquisition cost of \$5,000 or more, please indicate below (using a continuation page, as necessary) the proposed disposition of each such item. Generally, the Recipient may either retain the property for other uses and make compensation to Forest Service (computed by applying the percentage of Federal participation in the cost of the original program to the current fair market value of the property), or sell the property and reimburse Forest Service an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original program (except that the Recipient may deduct from the Federal share \$500 or 10 percent of the proceeds, whichever is greater, for selling and handling expenses), or donate the property to a host country institution, or otherwise dispose of the property as instructed by Forest Service.

| TYPE/DESCRIPTION (Generic) | QUANTITY | ESTIMATED UNIT COST | PROPOSED DISPOSITION |
|-------------------------------|----------|------------------------|-------------------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

3. Past Performance References.

On a continuation page, please provide a list of the ten most current U.S. Government and/or privately-funded contracts, grants, cooperative agreements, and so forth, and the name, address, and telephone number of the Contract/Agreement Officer or other contact person.

4. Type of Organization.

The Recipient, by checking the applicable box, represents that -

(a) If the Recipient is a United States entity, it operates as ☐ a corporation incorporated under the laws of the State of, ☐ an individual, ☐ a partnership, ☐ a non-governmental non-profit organization, ☐ a State or local governmental organization, ☐ a private college or university, ☐ a public college or university, ☐ an international organization, or ☐ a joint venture; or

(b) If the Recipient is a non-United States entity, it operates as ☐ a corporation organized under the laws of _____ (country), ☐ an individual, ☐ a partnership, ☐ a nongovernmental non-profit organization, ☐ a nongovernmental educational institution, ☐ a governmental organization, ☐ an international organization, or ☐ a joint venture.

5. Estimated Costs of Communications Products.

The following are the estimate(s) of the cost of each separate communications product (that is, any printed material [other than non-color photocopy material], photographic services, or video production services) which is anticipated under the grant. Each estimate must include all the costs associated with preparation and execution of the product. Use a continuation page as necessary.

Attachment A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

(a) Instructions for Certification:

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, has the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. Contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, they shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that they will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A Participant in a covered transaction may rely upon a certification of a prospective Participant in a lower tier covered transaction that they are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless they know that the certification is erroneous. A Participant may decide the method and frequency by which they determine the eligibility of its principals. Each Participant may, but is not required to, check the Non procurement List.

8. Nothing contained in the foregoing must be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a Participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

(b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

1. The prospective lower tier Participant certifies, by submission of this proposal, that neither they nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier Participant is unable to certify to any of the statements in this certification, such prospective Participant shall attach an explanation to this proposal.

Solicitation No. _____

Application/Proposal No. _____

Date of Application/Proposal _____

Name of Applicant/Subgrantee _____

Typed Name and Title _____

Signature _____

NOTE: For Forest Service, this clause is entitled "Debarment, Suspension, Ineligibility, and Voluntary Exclusion" and is set forth in the Forest Service grant standard provision.

KEY INDIVIDUAL CERTIFICATION NARCOTICS OFFENSES AND DRUG TRAFFICKING

I hereby certify that within the last 10 years:

1. I have not been convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States or any other country concerning narcotic or psychotropic drugs or other controlled substances.
2. I am not and have not been an illicit trafficker in any such drug or controlled substance.
3. I am not and have not been a knowing assistor, abettor, conspirator, or colluder with others in the illicit trafficking in any such drug or substance.

Signature: _____

Date: _____

Name: _____

Title/Position: _____

Organization: _____

Address: _____

Date of Birth: _____

NOTICE:

1. You are required to sign this Certification under the provisions of 22 CFR part 140, Prohibition on Assistance to Drug Traffickers. These regulations were issued by the Department of State and require that certain key individuals of organizations shall sign this Certification.

2. If you make a false Certification you are subject to United States criminal prosecution under 18 U.S.C. 1001.

PARTICIPANT CERTIFICATION NARCOTICS OFFENSES AND DRUG TRAFFICKING

1. I hereby certify that within the last 10 years:
 - a. I have not been convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States or any other country concerning narcotic or psychotropic drugs or other controlled substances.
 - b. I am not and have not been an illicit trafficker in any such drug or controlled substance.
 - c. I am not or have not been a knowing assistor, abettor, conspirator, or colluder with others in the illicit trafficking in any such drug or substance.
2. I understand that Forest Service may terminate my training if it is determined that I engaged in the above conduct during the last 10 years or during my Forest Service training.

Signature: _____

Name: _____

Date: _____

Address: _____

Date of Birth: _____

NOTICE:

1. You are required to sign this Certification under the provisions of 22 CFR part 140, Prohibition on Assistance to Drug Traffickers. These regulations were issued by the Department of State and require that certain participants must sign this Certification.
2. If you make a false Certification you are subject to United States criminal prosecution under 18 U.S.C. 1001.

When these Certifications, Assurances, and Other Statements of Recipient are used for cooperative agreements, the term "Grant" means "Cooperative Agreement". The Recipient shall obtain from each identified Subgrantee and (sub) Contractor, and submit with its application/proposal, the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Transactions, set forth in Attachment A hereto. The Recipient should reproduce additional copies as necessary.

For Forest Service, this clause is entitled "Debarment, Suspension, Ineligibility, and Voluntary Exclusion (March 1989)" and is set forth in the grant standard provision entitled "Debarment, Suspension, and Related Matters" if the Recipient is a United States non-governmental organization, or in the grant standard provision entitled "Debarment, Suspension, and Other Responsibility Matters" if the Recipient is a non-United States nongovernmental organization.

CERTIFICATION REGARDING MATERIAL SUPPORT AND RESOURCES

As a condition of entering into the referenced grant, _____ (insert name of Recipient/Cooperator) hereby certifies that it has not provided and will not provide material support or resources to any individual or entity that they know, or have reason to know, is an individual or entity that advocates, plans, sponsors, engages in, or has engaged in terrorist activity, including but not limited to the individuals and entities listed in the Annex to Executive Order 13224 and other such individuals and entities that may be later designated by the United States under any of the following authorities: § 219 of the Immigration and Nationality Act, as amended (8 U.S.C. § 1189), the International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.), the National Emergencies Act (50 U.S.C. § 1601 et seq.), or § 212(a)(3)(B) of the Immigration and Nationality Act, as amended by the USA Patriot Act of 2001, Pub. L. 107-56 (October 26, 2001)(8 U.S.C. §1182). _____ (insert name of Recipient/Cooperator) further certifies that they will not provide material support or resources to any individual or entity that they know, or have reason to know, is acting as an agent for any individual or entity that advocates, plans, sponsors, engages in, or has engaged in, terrorist activity, or that has been so designated, or will immediately cease such support if an entity is so designated after the date of the referenced agreement.

For purposes of this certification, "material support and resources" includes currency or other financial securities, financial services, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

For purposes of this certification, "engage in terrorist activity" must have the same meaning as in section 212(a)(3)(B)(iv) of the Immigration and Nationality Act, as amended (8 U.S.C. § 1182(a)(3)(B) (iv)).

For purposes of this certification, "entity" means a partnership, association, corporation, or other organization, group, or subgroup.

This certification is an express term and condition of the agreement and any violation of it must be grounds for unilateral termination of the agreement by Forest Service prior to the end of its term.

Signature: _____

Name: _____

Date: _____

Address: _____

NOTICE: If you make a false Certification you are subject to United States criminal prosecution under 18 U.S.C. 1001.

92.3 - Cooperative Research and Development Agreements

1. Schedule 1. The following exhibit 01 displays Schedule 1 that is required for all Cooperative Research and Development Agreements.
2. Schedule 2. The following exhibit 02 displays Schedule 2 that is required for all Cooperative Research and Development Agreements.

92.3 - Exhibit 01

Schedule 1 **Certifications**

COOPERATOR certifies that it:

1. Has not paid or agreed to pay any company or person (other than a bona fide employee working solely for Cooperator) any fee, commission, percentage, or brokerage fee, contingent upon the award of this Agreement, and if so, agrees to furnish information relating thereto, as requested, by the authorized departmental officer.
2. Has not employed or retained any company or person (other than a full-time bona fide employee working solely for Cooperator) to solicit or secure this Agreement.
3. Its principal officers are not listed on the U.S. Government's list of debarred and suspended organizations and individuals; shall notify the authorized departmental officer if so listed; and shall not subcontract or otherwise award to any organization or individual so listed.
4. Agrees to comply with the provisions of the Civil Rights Act of 1964, as amended, and Executive Order 11246, addressing equal opportunity and affirmative action.
5. Agrees to comply with the provisions of Title IX of the Education Amendment of 1972, 20 USC 1681, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794; Age Discrimination Act of 1975, 42 USC 6101-6107; Clean Air Act, 42 USC 7401, et seq.; and Drug-Free Workplace Act of 1988, 41 USC 701, et seq.
6. Is in a position to undertake, perform, and complete this Agreement and shall diligently perform work in accordance with its provisions.

92.3 - Exhibit 02

Schedule 2

Project Information.

A. Background:

B. Scope of Agreement:

C. Program Stages:

D. Research Objectives:

E. Program Objectives:

F. Forest Service Shall:

G. Cooperator Shall:

1. Pay any shipping charges to and from the Forest Products Laboratory (FPL) associated with this research, including waste disposal charges generated by this study in excess of those considered normal by FPL.

2. Advance/Reimbursable payment to the Forest Service in the total amount of: \$(insert total amount the Forest Service will reimburse or advance the Cooperator) with a payment schedule as follows:

(a) _____ payments upon receipt of a bill of collection(s) (invoice).

(b) First bill of collection will be issued _____ following the date of agreement execution, and _____ thereafter.

(c) Final payment within 15 days upon receipt of a final bill of collection.

(d) The address to which each Bills for Collection (Invoices) must be sent to:

92.3 - Exhibit 02--Continued

(e) Nothing herein must be construed as obligating the Forest Service to expend or as involving the United States in any contract or other obligation for the future payment of money in excess of funding approved and made available for payment under this agreement and modifications thereto

(f) Cooperator may pay the travel and per diem of Forest Service scientific representatives traveling pursuant to this Agreement if such payment receives the prior approval of the Forest Service station director.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last date written below.

COOPERATOR:

By: _____

Name: _____

Title: _____

Date: _____

FOREST SERVICE:

By: _____

Name: _____

Title: _____

Date: _____