

Attachment D - National Ground-Water Monitoring Network Terms and Conditions

1. Acceptance

Acceptance of a Federal Financial Assistance award from the Department of the Interior (DOI) carries with it the responsibility to be aware of and comply with the terms and conditions of award. Acceptance is defined as the start of work, drawing down funds, or accepting the award by signature or electronic means. Awards are based on the application submitted to and approved by DOI and are subject to the terms and conditions incorporated either directly or by reference below.

2. USGS Involvement

Substantial involvement is anticipated through the terms of this Agreement between the USGS and the Recipient. A summary of the involvement is as follows:

(For work under Objective 1: Applicable to awards to new data providers or data providers expanding sites/services) The USGS NGWMN staff will work closely with the data providers on well selection and classification to ensure that the process is carried out in a similar and consistent manner with other data providers to the NGWMN. The USGS NGWMN staff will also be involved by providing guidance in setting up web services to provide the data providers data to the NGWMN portal. The USGS NGWMN staff will coordinate with the data provider to map the data in the web services to the NGWMN portal.

(For work under Objective 2: Applicable to awards to support persistent data service for existing data providers) In projects funded for persistent data service support, interaction between the data provider and the NGWMN staff will be needed to keep data flowing from the web services maintained by the provider to the NGWMN Portal. USGS staff will monitor data from each data provider and inform the data provider when problems are encountered. The NGWMN staff will work with the data providers to resolve any issues. Any updates to the web services required for the Portal will be communicated to the data providers.

(For work under Objective 3: Applicable to awards to fill gaps in information at NGWMN sites) The USGS staff will provide guidance to data providers on methods to collect site information to fill metadata gaps at existing NGWMN sites. The goal of this interaction is to have site information data collected in a similar manner at all NGWMN sites. USGS staff will also work with data providers to make sure the new data are available to the NGWMN through web services or the NGWMN Data Portal.

(For work under Objective 4: Applicable to awards for well maintenance) The USGS staff will provide guidance to data providers on techniques for well maintenance activities at existing NGWMN sites. The goal of this interaction is to have well maintenance activities performed in a similar manner at all NGWMN sites. USGS staff will also work with data providers to make sure the new data are available to the NGWMN through web services or the NGWMN Data Portal.

(For work under Objective 5: Applicable to awards for well drilling) The USGS staff will provide guidance on well drilling methods so that consistent methods are used across the NGWMN. The USGS will also be available to identify gaps in NGWMN coverage to ensure that new wells are filling NGWMN gaps.

(For work under Objective 6: Applicable to awards for equipment purchases for continuous water-level monitoring) The USGS staff will provide guidance on continuous monitoring and help identify gaps in the water-level Trend network.

3. Funding

- (a) The total estimated cost of the USGS share for the performance of this Agreement is (insert total amount of the agreement) inclusive of any renewal years.
- (b) The amount of federal funds obligated under this Agreement, presently the sum of (insert obligated amount), shall be available for payment of costs incurred by the Recipient in performance of this Agreement from (insert date) through (insert date). In no event shall costs be incurred in performance of this Agreement in excess of the funds currently obligated.
- (c) The budget period is from (insert date) through (insert date). The project period is from (insert date) through (insert date).

4. Pre-Agreement Costs

The Recipient is not authorized to incur costs prior to the award of this Agreement. Costs incurred prior to the award of this agreement are not allowable.

5. Reporting Requirements

(a) Required reports/documents. The Principal Investigator or Director, Sponsored Research Office is required to submit the following reports or documents.

(b) Report preparation instructions. The Recipient shall prepare the reports/documents in accordance with the following instructions:

(1) Progress Reports. The Recipient shall submit two copies of each Progress Report to the USGS NGWMN staff (jmfine@usgs.gov) and one copy of the transmittal letter to the USGS Grant Specialist (sroser@usgs.gov). Unless otherwise specified in this Agreement, annual progress reports should be submitted sixty (60) days after the end of the current project year to allow adequate time for the designated office to review the report. For Agreements with a total anticipated performance period of twelve months (12) months or less, only a Final Technical Report will be required. A progress report is not required in the final budget year, unless the Recipient requests an extension to the project period.

The progress reports shall include the following information:

- (i) A comparison of actual accomplishments to the objectives of the Agreement established for the budget period and overall progress in response to the performance metrics.
- (ii) The reasons why established goals were not met, if appropriate.
- (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- (iv) An outline of anticipated activities and adjustments to the program during the next budget period.

Between the required reporting dates, events may occur which have significant impact upon the project or program. In such cases, the Recipient shall inform the USGS as soon as the following types of conditions become known:

- (i) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Agreement. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
- (ii) Problems or issues with sites which do not materially impact the objectives of the project, but which may require adjustments to the scope of the project
- (iii) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

(2) Final Technical Report

Final Technical Reports shall describe in detail the work performed and results obtained during the grant period. Final Technical Reports are due 120 days after the conclusion of the project period. Any information contained in a previously submitted progress report shall be repeated or restated in the Final Technical Report.

- (i) Submit the Final Technical Report as an Adobe Acrobat PDF file. Submit the report as an e-mail attachment to:

Jason Fine

jmfine@usgs.gov

- (ii) The Final Technical report should consist of the following sections:

A. Cover page

The cover page should include the following information:

- Award Number
- Agency Name
- Title
- Author(s) and Affiliation(s) with address and zip code
- Author's Telephone numbers and email address
- Term covered by award (start and end dates)
- Date of final report

B. Main body of the report

The main body of the report should include:

- Overview of work planned and accomplished during the project
- Detailed description of work accomplished under each objective

For new data providers

- Description of existing water-level and/or water-quality networks including the objectives of the networks
- Description of site selection criteria and process
- Description of process used to assign Subnetworks and Monitoring Categories for both water-level and water-quality networks (as appropriate for your Network)
- Description or link to Field techniques for water-level measurement and water-quality sample collection (as appropriate for your network)
- Description of data management procedures in place. Describe data quality and quality assurance processes
- List of Minimum Data elements and how they are provided to the Data Portal (via the Well Registry or web services)
- Notes on any sites that have missing required data elements
- Notes on any sites that do not meet requirements in Table 4.5.1.1 and/or 4.5.2.1 of the Framework Document
- A description of the web services used or installed for the project
- Analyte list used for water-quality sampling networks
- List of laboratories and their accreditation for analyzing properties and constituents included in the monitoring program if water-quality data are served
- Describe any work done under Objectives 2 or 3 as part of the initial project

For existing data providers

- Description of work done to support the NGWMN as a data provider for each objective
- Description of data-collection, well-maintenance, or well-drilling activities completed during the project.
- Description of methods used for data collection during the project
- Description of procedures used to quality assure any data collected during the project
- Table listing any new or replacement wells added to the NGWMN. Include the Principal Aquifer, well depth, and the NGWMN site number. If the well is a replacement well, list the site number for the previous well
- Well construction diagrams for any new wells
- Description of any updates made to web services during period of award
- Description of any problems encountered in serving data to the NGWMN data portal

(3) Annual Financial Reports

- (i) The Recipient will submit an annual SF 425, Federal Financial Report, for each individual USGS award. The SF 425 is available at <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>. The annual SF 425 will be due within 90 days following the end of the budget period.
- (ii) The SF 425 must be submitted electronically through GrantSolutions (<https://www.home.grantsolutions.gov/home>) or by e-mail to SF425@usgs.gov with a cc to the Grant Specialist (sroser@usgs.gov). Recipient must include the USGS award number in the subject line of all correspondence. If, after 90 days, the Recipient has not submitted a report, the Recipient's account in ASAP will be placed in a manual review status until the report is submitted.

(4) Final Financial Report

- (i) The Recipient will liquidate all obligations incurred under the award and submit a final SF 425, Federal Financial Report in accordance with Section 5(b)(3)(ii) no later than 120 calendar days after the Agreement completion date.
- (ii) Recipient will promptly return any unexpended federal cash advances or will complete a final draw from ASAP to obtain any remaining amounts due. Once 120 days have passed since the Agreement completion date, USGS shall unilaterally deobligate federal funds as reflected in the Final SF425.
- (iii) Subsequent revision to the final SF 425 will be considered only as follows:
 - A. When the revision results in a balance due to the Government, the Recipient must submit a revised final SF 425, Federal Financial Report, and refund the excess payment whenever the overcharge is discovered, no matter how long the lapse of time since the original due date of the report.
 - B. When the revision represents additional reimbursable costs claimed by the Recipient, a revised final SF 425 may be submitted to the USGS Contracting Officer with an explanation. If approved, the USGS will either request and pay a final invoice or reestablish the ASAP subaccount to permit the Recipient to make a revised final draw. Any revised final report representing additional reimbursable amounts must be submitted no later than 1 year from the due date of the original report, i.e., 16 months following the Agreement completion date. USGS will not accept any revised SF 425 covering additional expenditures after that date and will return any late request for additional payment to the Recipient.

6. Publications

(a) Acknowledgment of Support

Recipient is responsible for assuring that an acknowledgment of USGS support:

- (1) is made in any publication (including World Wide Web pages) of any material based on or developed under this Agreement, in the following terms:

This material is based upon work supported by the U.S. Geological Survey under Cooperative Agreement No. (*insert agreement number*).

- (2) is orally acknowledged during all news media interviews, including popular media such as radio, television and news magazines.

(b) Disclaimer

Recipient is responsible for assuring that every publication of material (including World Wide Web pages) based on or developed under this Agreement, contains the following disclaimer:

The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Geological Survey. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Geological Survey.

(c) USGS Logo

Use of the USGS logo (also known as "visual identity" or "identifier") constitutes the recipient's agreement to and acceptance of the following terms:

- The USGS identifier is trademarked and not in the public domain.
- Use of the trademarked USGS identifier is authorized by USGS for use only by recipients of USGS funding.
- Use is authorized on information products that result from research funded by the financial assistance award.
- Use the USGS identifier for any other purpose without written permission from USGS is prohibited; doing so constitutes trademark infringement.
- Recipient will adhere to the design requirements, which are as follows:
 - The USGS identifier must appear in black, white, or green only.
 - The USGS identifier cannot be modified in any way except for proportional sizing.
 - The USGS identifier should appear at the same size as logos of other agencies, if any.
 - If used on a digital product, the USGS identifier should link to www.usgs.gov

(d) Publication

Publication of the results of any project carried out under this assistance award is authorized in professional journals, trade magazines, or may be made by the USGS. Such manuscripts or publications submitted to journals or professional publications for publication shall be accompanied by the following notation:

This manuscript is submitted for publication with the understanding that the United States Government is authorized to reproduce and distribute reprints for Governmental purposes.

(e) Copies for USGS

Recipient is responsible for assuring that the USGS Project Office is provided access to, either electronically or in paper form, a copy of every publication planned for publication simultaneously with its submission for publication. One reprint of each published article shall be submitted to the USGS Project Office immediately following publication.

(f) Department of the Interior Requirements

Two copies of each publication produced under a Cooperative Agreement shall be sent to the Natural Resources Library with a transmittal that identifies the sender and the publication. The address of the library is:

U.S. Department of the Interior
Natural Resources Library
Division of Information and Library Services
Gifts and Exchange Section
18th and C Streets, NW
Washington, DC 20240

7. Payment

Payments under financial assistance awards must be made using the Department of the Treasury Automated Standard Application for Payments (ASAP) system (www.asap.gov).

- (a) The Recipient agrees that it has established or will establish an account with ASAP. USGS will initiate enrollment in ASAP. If the Recipient does not currently have an ASAP account, they must designate an individual (name, title, address, phone and e-mail) who will serve as the Point of Contact (POC).
- (b) With the award of each grant/cooperative agreement, a sub-account will be set up from which the Recipient can draw down funds. After Recipients complete enrollment in ASAP and link their banking information to the USGS ALC (14080001), it may take up to 10 days for sub-accounts to be activated and for funds to be authorized for drawdown in ASAP.

- (c) Inquiries regarding payment should be directed to ASAP at 855-868-0151.
- (d) Payments may be drawn in advance only as needed to meet immediate cash disbursement needs.

8. Revisions and Prior Approvals

Modifications to this Agreement shall generally be executed by mutual written consent of the parties, with the exception of certain purely administrative changes that may be executed unilaterally by the USGS. Recipients may make certain limited budgetary and programmatic changes without prior USGS approval as outlined in 2 CFR 200.308 and 200.407. Any proposed change which requires prior written approval of the USGS shall be submitted in writing to the USGS point of contact on the award cover sheet at least thirty (30) days prior to the requested effective date of the proposed change. The USGS will respond to the change request within thirty (30) days of receipt.

- (a) Extensions. Recipients are specifically advised that requests for extension or other change to the budget or project period(s) require prior written approval. Such requests must be submitted as outlined above and be accompanied by a statement supporting the extension and a revised budget indicating the planned use of all unexpended funds during the proposed extension period.
- (b) Transfer of Funds. Recipients are specifically advised that prior written approval of the USGS Contracting Officer is not required for transfer of funds between direct cost categories when the cumulative amount of the transfer during the performance period does not exceed ten percent (10%) of the total USGS award. Prior written approval is required from the USGS Contracting Officer for transfers of funds in excess of the ten percent limitation.
- (c) Carry Forward of Funds. Recipients are specifically advised that prior written approval by the USGS Contracting Officer is required to carry forward unobligated balances to subsequent budget periods. It is expected that funds be expended during the budget period for which they are obligated. The request must include the amount of funds to be carried over, why the carry-over of funds is necessary, and for how long the funds should be carried over.

9. General Provisions

- (a) Department of the Interior Standard Terms and Conditions

The Recipient shall be subject to the Department of the Interior Standard Terms and Conditions which are incorporated herein by reference and available on the Internet at:
<https://www.doi.gov/grants/doi-standard-terms-and-conditions>

(b) Additional Terms and Conditions

(1) Research Integrity

- (i) USGS requires that all grant or cooperative agreement Recipient organizations adhere to the Federal Policy on Research Misconduct, Office of Science and Technology Policy, December 6, 2000, 65 Federal Register (FR) 76260. The Federal Policy on Research Misconduct outlines requirements for addressing allegations of research misconduct, including the investigation, adjudication, and appeal of allegations of research misconduct and the implementation of appropriate administrative actions.
- (ii) The Recipient must promptly notify the USGS Project Office when research misconduct that warrants an investigation pursuant to the Federal Policy on Research Misconduct is alleged.

(2) Data Availability

- (i) Applicability. The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.
- (ii) Use of Data. The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- (iii) Availability of Data. The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third-party evaluation and reproduction of the following:
 - A. The scientific data relied upon;
 - B. The analysis relied upon; and
 - C. The methodology, including models, used to gather and analyze the data.

(c) Conflict of Interest

(1) Applicability.

- (i) This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
- (ii) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.

(2) Requirements.

- (i) Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
- (ii) In addition to any other probations that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.
- (iii) No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.

(3) Notification.

- (i) Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of Interest.
- (ii) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the USGS Contracting Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.

(4) Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.

(5) Review Procedures. The USGS Contracting Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop and appropriate means for resolving it.

(6) Enforcement. Failure to resolve conflicts of interest in a matter that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

d) Program Income

- 1) If the Recipient is an educational institution or nonprofit research organization, any other program income will be added to funds committed to the project by the Federal awarding agency and Recipient and be used to further eligible project or program objectives, as described in 2 CFR 200.307(e)(2).
- 2) For all other types of Recipients, any other program income will be deducted from total allowable costs to determine the net allowable costs before calculating the Government's share of reimbursable costs, as provided in 2 CFR 200.307(e)(1).

e) Government Furnished Equipment or Equipment Authorized for Purchase

Title to equipment acquired wholly or in part with Federal funds shall be vested in the Recipient unless otherwise specified in the award document. The Recipient shall retain control and maintain an inventory of such equipment as long as there is a need for such equipment to accomplish the purpose of the project, whether or not the project continues to be supported by Federal funds. When there is no longer a need for such equipment to accomplish the purpose of the project, the Recipient shall use the equipment in connection with other Federal awards the Recipient has received. Disposal of equipment shall be in accordance with 2 CFR 200.313.

Insert the following if no equipment will be provided or purchased:

No equipment is provided or authorized for purchase on this grant/cooperative agreement.

Insert the following if property will be provided or purchased:

The following equipment will be vested with the Recipient: (list equipment)

Insert the following award term if the recipient is an individual, small business, non-profit organization, university or other institution of higher education. This award term does not apply to State, Local or Tribal governments or foreign entities.

f) Patent Rights (37 CFR § 401.14)

Unless otherwise provided in the Agreement, if this Agreement is for experimental, developmental, or research work, the following clause (implementing the Bayh-Dole Act, [35 U.S.C. § 200 et seq.]) shall apply. The recipient shall include this clause in all subawards for experimental, developmental, or research activities.

a. *Definitions*

1. INVENTION means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the USC, to any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. § 2321 et seq.).

2. SUBJECT INVENTION means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this Agreement, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d)) must also occur during the period of performance.
3. PRACTICAL APPLICATION means 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.
4. MADE when used in relation to any invention means the conception or first actual reduction to practice of such invention.
5. SMALL BUSINESS FIRM means a small business concern as defined at section 2 of Pub. L. 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 standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
6. NON-PROFIT ORGANIZATION means a domestic 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 (26 U.S.C. § 501(c)) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 U.S.C. § 501(a)) or any domestic non-profit scientific or educational organization qualified under a State non-profit organization statute.

b. *Allocation of Principal Rights*

1. The recipient may retain the entire right, title, and interest throughout the world to each subject invention solely made by recipient subject to the provisions of this Patent Rights clause, including (2) below, 35 U.S.C. §§ 202, 203 and 37 CFR § 401.14. Inventions made under this Agreement jointly by USGS and recipient will be jointly owned by both parties. However, where a USGS employee is a coinventor, the USGS may, for the purpose of consolidating rights in the invention and if it finds that it would expedite the development of the invention:
 - (a) license or assign whatever rights it may acquire in the subject invention to the nonprofit organization, small business firm, or non-Federal inventor in accordance with the provisions of this chapter; or
 - (b) acquire any rights in the subject invention from the nonprofit organization, small business firm, or non-Federal inventor, but only to the extent the party from whom the rights are acquired voluntarily enters into the transaction and no other transaction under this chapter is conditioned on such acquisition.

With respect to any subject invention in which the recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world. If the Agreement indicates it is subject to an identified international agreement or treaty, the U.S. Geological Survey (USGS) also has the right to direct the recipient to convey to any foreign participant such patent rights to subject inventions as are required to comply with that agreement or treaty.

2. If the recipient performs services at a Government owned and operated laboratory or at a Government owned and recipient operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the Government may require the recipient to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the recipient makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the recipient undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the recipient agrees to grant the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

If a known CRADA exists between the USGS and the recipient, include the CRADA as an attachment and include the following paragraph following b.2.:

USGS has determined that use of alternate paragraph (b) in the preceding clause is required to meet USGS' obligations under (identify CRADA). This determination may be appealed in accordance with 37 CFR 401.4. Recipient agrees that the work performed under this Agreement is directed by USGS to meet the obligations under the CRADA. Recipient further agrees to grant licenses to the government and (insert additional CRADA partner names, if applicable) as necessary to meet USGS' obligations under the CRADA.

- c. *Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient*
 1. The recipient will disclose each subject invention to USGS within two months after the inventor discloses it in writing to recipient personnel responsible for the administration of patent matters. The disclosure to USGS shall be in the form of a written report and shall identify the Agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention, 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 USGS, the recipient will promptly notify USGS of the acceptance of any manuscript describing the invention for publication, or of any on sale or public use planned by the recipient.
 2. The recipient will elect in writing whether or not to retain title to any such invention by notifying USGS within two years of disclosure to USGS. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the U.S., the period for election of title may be shortened by USGS to a date that is no more than 60 days prior to the end of the statutory period.
 3. The recipient will file its initial patent application on an invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any

- statutory period wherein valid patent protection can be obtained in the U.S. after a publication, on sale, or public use. The recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.
4. Requests for extension of the time for disclosure to USGS, election, and filing under subparagraphs 1., 2., and 3. may, at the discretion of USGS, be granted.
- d. *Conditions When the Government May Obtain Title*
- The recipient will convey to USGS, upon written request, title to any subject invention:
1. if the recipient fails to disclose or elect the subject invention within the times specified in paragraph c. above, or elects not to retain title, provided that USGS may only request title within 60 days after learning of the failure of the recipient to disclose or elect within the specified times;
 2. in those countries in which the recipient fails to file patent applications within the times specified in paragraph c. above, but prior to its receipt of the written request of USGS, the recipient shall continue to retain title in that country; or in any country in which the recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.
- e. *Minimum Rights to Recipient*
1. The recipient will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the recipient fails to disclose the subject invention within the times specified in paragraph c. above. The recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the recipient is a party and includes the right to grant sublicenses of the same scope to the extent the recipient was legally obligated to do so at the time the Agreement was made. The license is transferable only with the approval of USGS except when transferred to the successor of that part of the recipient's business to which the invention pertains.
 2. The recipient's domestic license may be revoked or modified by USGS 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 has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at discretion of USGS to the extent the recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
 3. Before revocation or modification of the license, USGS will furnish the recipient a written notice of its intention to revoke or modify the license, and the recipient will be allowed thirty days (or such other time as may be authorized by USGS for good cause shown by the recipient) after the notice to show cause why the license should not be revoked or modified. The recipient has the right to appeal, in accordance with

applicable regulations in 37 CFR Part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

f. *Recipient Action to Protect Government's Interest*

1. The recipient agrees to execute or to have executed and promptly deliver to USGS all instruments necessary to: (i) establish or confirm the rights the Government has throughout the world in those subject inventions for which the recipient retains title; and (ii) convey title to USGS when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.
2. The recipient 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 each subject invention made under this Agreement in order that the recipient can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by paragraph c.1 above. The recipient shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
3. The recipient will notify USGS of any decision not to continue 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.
4. The recipient 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 Government support under (identify the Agreement) awarded by the U.S. Geological Survey. The Government has certain rights in this invention."
5. The recipient or its representative will complete, execute and forward to USGS a confirmation of a License to the U.S. Government and the page of a United States patent application that contains the Federal support clause within two months of filing any domestic or foreign patent application.

g. *Subcontracts*

1. The recipient will include this Patent Rights clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work. The subcontractor will retain all rights provided for the recipient in this Patent Rights clause, and the recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractors' subject inventions.
2. In the case of subcontracts, at any tier, when the prime award by USGS was a contract (but not a cooperative agreement), USGS, subcontractor, and contractor agree that the mutual obligations of the parties created by this Patent Rights clause

constitute a contract between the subcontractor and the Foundation with respect to those matters covered by this Patent Rights clause.

h. *Reporting on Utilization of Subject Inventions*

The recipient 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 or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the recipient and such other data and information as USGS may reasonably specify. The recipient also agrees to provide additional reports in connection with any march-in proceeding undertaken by USGS in accordance with paragraph j. of this Patent Rights clause. As required by 35 U.S.C. § 202(c)(5), USGS agrees it will not disclose such information to persons outside the Government without the permission of the recipient.

i. *Preference for United States Industry*

Notwithstanding any other provision of this Patent Rights clause, the recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the U.S. unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the U.S. However, in individual cases, the requirement for such an agreement may be waived by USGS upon a showing by the recipient or its assignee that reasonable but unsuccessful efforts have been made to award licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U.S. or that under the circumstances domestic manufacture is not commercially feasible.

j. *March-in Rights*

The recipient agrees that with respect to any subject invention in which it has acquired title, USGS has the right in accordance with procedures at 37 CFR § 401.6 and USGS regulations at 45 CFR § 650.13 to require the recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, 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, assignee, or exclusive licensee refuses such a request, USGS has the right to grant such a license itself if USGS determines that:

1. such action is necessary because the recipient 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;
2. such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the recipient, assignee, or their licensees;
3. such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the recipient, assignee, or licensee; or
4. such action is necessary because the agreement required by paragraph i. of this Patent Rights clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the U.S. is in breach of such agreement.

k. *Special Provisions for Agreements with Non-profit Organizations*

If the recipient is a nonprofit organization, it agrees that:

1. rights to a subject invention in the U.S. may not be assigned without the approval of USGS, 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 will be subject to the same provisions as the recipient;
2. the recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when USGS deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. § 202(e) and 37 CFR § 401.10;
3. the balance of any royalties or income earned by the recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific or engineering research or education; and
4. it will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give preference to a small business firm if the recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally 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 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 a preference in any specific case will be at the discretion of the recipient. However, the recipient agrees that the Secretary of Commerce may review the recipient's licensing program and decisions regarding small business applicants, and the recipient will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the recipient could take reasonable steps to implement more effectively the requirements of this paragraph k.4.

l. *Communications*

All communications required by this Patent Rights clause must be submitted through the Office of Policy and Analysis (OPA), U.S. Geological Survey, Reston, VA 20192, gs_usgs_patents@usgs.gov.

10. Special Provisions

Use this section to insert any special provisions that may be applicable to this Agreement. Otherwise put NONE.

11. Documents Incorporated by Reference and Order of Precedence

(a) Documents Incorporated by Reference

The following documents are hereby incorporated into this Agreement by reference:

- 1) The Recipient's proposal ([insert title and date](#))

- 2) The Recipient's application for financial assistance (SF424, SF424A, SF424B), dated (insert date)

(b) Order of Precedence

In the event of any inconsistency within this Agreement, the following order of precedence shall be followed:

- 1) The cover page.
- 2) Sections A through F of this Agreement.
- 3) Documents incorporated by reference (see 11.a) in the order in which they are incorporated.

– END OF ASSISTANCE AWARD DOCUMENT –