

2024 EHP AWARD TERMS AND CONDITIONS

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.

1. Method of 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.

Payment for Foreign Recipients

A waiver has been granted by the Associate Director for Administrative Policy and Services because this award involves payments to a foreign Recipient.

- (a) Payment will be made by wire transfer utilizing the International Treasury Services through Treasury upon receipt of a properly prepared SF 270, Request for Advance or Reimbursement. Foreign recipients are required to provide bank wiring instructions in order to facilitate payments. Submit the SF 270 form to the address specified in D.1. Requests should be submitted on a quarterly basis. Request for the entire award amount will be denied.
- (b) Payments may be drawn in advance only as needed to meet immediate cash disbursement needs.

2. Assistance Administrative Information

(a) Contracting Officer

This Assistance Award will be administered by:

U.S. Geological Survey
Office of Acquisition and Grants
12201 Sunrise Valley Drive, MS205
Reston, VA 20192
Margaret Eastman, Contracting Officer
Phone: (703) 648-7366
E-mail: mrussell@usgs.gov

Written communications shall make reference to the Assistance Award number and shall be mailed (or emailed) to the above address.

(b) External Grants Coordinator

- (1) The External Grants Coordinator will work closely with the Principal Investigator to ensure that all technical requirements are being met. The External Grants Coordinator's responsibilities include, but are not limited to, providing technical advice on the accomplishment of the proposal's objectives; reviewing the technical content of reports and the other information delivered to the USGS; determining the adequacy of technical reports; and conducting site visits, in coordination with the Regional/Topical Coordinator and the Contracting Officer, as frequently as practicable.
- (2) The External Grants Coordinator is Jill Franks, External Research Associate Coordinator, Earthquake Hazards Program, U.S. Geological Survey, 905 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192. The External Grants Coordinator does not have the authority to issue any technical direction which constitutes an assignment of additional work outside the scope of the award; in any manner causes a change in the total cost or the time required for performance of the award; or change any of the terms, conditions, or general provisions of the award.

(c) Regional/Topical Coordinator

- (1) Regional and Topical Coordinators oversee conducting the peer review panels with the External Grants Coordinator to evaluate both internal USGS and external research proposals in their region or area of expertise. A Regional Coordinator will work closely with the External Grants Coordinator and the Principal Investigator to ensure coordination with other appropriate Principal Investigators and appropriate USGS project scientists working in the same region for overall conformance with USGS program goals and objectives within that region. The Regional Coordinator's responsibilities include, but are not limited to, providing technical advice on the accomplishment of the proposal's objectives; reviewing the technical content of reports and other information delivered to the USGS; determining the adequacy of the technical reports; and conducting site visits,

in coordination with the External Grants Coordinator and contract personnel, as frequently as practicable.

- (2) The Regional/Topical Coordinator does not have the authority to issue any technical direction which constitutes an assignment of additional work outside the scope of the award; in any manner causes a change in the total cost or the time required for performance of the award; or changes any of the terms, conditions, or general provisions of the award.

3. Dissemination of Results and Reporting Requirements

The Grantee is strongly encouraged to disseminate research results promptly to the scientific community and appropriate professional organizations; local, state, regional and federal agencies; and the general public. It is the expectation of the USGS that Grantees will publish the results of any funded project in peer-reviewed scientific or technical journals. In addition, all data products and computer codes must be made readily available to the public. In accordance with 43 CFR 12.936(a) and 2 CFR 200.315(b), the Federal Government is hereby granted a royalty- free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

Data generated as a part of work funded under this program must be made readily available; there is no provision for Grantees to have exclusive access to data for a proprietary period of time. In accordance with 43 CFR 12.936(a) and 2 CFR 200.315(b), the Federal Government is hereby granted the right to receive, reproduce, publish, or otherwise use all data developed as a result of this award in any manner and for any purpose, without limitation, and may authorize others to do the same for federal purposes. Any project funded under the Earthquake Hazards External Research Associate Program Coordinator shall fall under this clause. Should any questions arise, both the USGS Contracting Officer and the Recipient will determine which data fall in this category.

A Data Management Plan is required for all grants. The Data Management Plan should describe standards and intended actions for acquiring, processing, analyzing, preserving, publishing and other means of sharing data, and should describe data and metadata, identify how quality will be maintained, address how data will be backed up, and how data holdings will be secured. More information about Data Management can be found at <https://www.usgs.gov/products/data-and-tools/data-management/data-management-plans>. The data management plan is often satisfied by specifying where data will be permanently stored (e.g., the IRIS DMC, GitHub, applicant's webpage, etc.), with the intention that the archived data set is complete enough to allow the work to be reproduced by others. The location of the archived data should be listed in the award recipient's Final Technical Report and in all publications resulting from the work.

Grantees are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements." Grantee agrees to disclose every subject invention which may be patentable or otherwise protectable within 60 days of the time

that an inventing party reports such invention to the person(s) responsible for patent matters in the inventing organization. These disclosures should be in sufficient enough detail to enable a reviewer to make and use the invention. Grantees 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 Grantee 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 the subject invention throughout the world.

If Grantees enters into an Award with a contractor, consultant, grantee, or third-party collaborator to perform any portion of this Project, such Grantee shall notify all parties to the Project and provide information about the third-party involvement within 7 days of engagement. The Grantee agrees that they will comply with and advise any contractors, consultants, or third-party collaborators to comply with all applicable Executive Orders, statutes, and regulations related to this Award.

A. **Required reports/documents.** The Principal Investigator or Director, Sponsored Research Office is required to submit the following reports or documents:

Report/ Document	No. of Copies and Method of Transmittal	Submit To	When Due
(1) Publication*	Adobe Acrobat PDF file as an email attachment (or 1 reprint if PDF not possible)	Grants Coordinator	Immediately following publication. See Section 4.B(1).
(2) Final Technical Report **	Send Adobe Acrobat PDF file as an email attachment; Maximum size: 25 MB	Grants Coordinator	Within 90 calendar days after the end of the award project period See details of formatting in section 4.B(2) below.
(3) Annual Financial Reports, SF 425, Federal Financial Report	Electronic submission	USGS Contracting Officer at email address at 2.A above	See Section 4.B(3)
(4) Final SF 425 Federal Financial Report	Electronic submission	USGS Contracting Officer at email address at 2.A above	See Section 4.B(4)

* Publication means any book, report, photograph, map, chart, or recording published or disseminated to the scientific community. Preprints of articles accepted for publications will be accepted as final reports.

** One Final Technical Report is to be submitted for each set of collaborative research grants with all PIs, Institutions, and grant numbers cited.

B. **Report preparation instructions.** The Recipient shall prepare the reports/documents in accordance with the following instructions:

(1) **All Publications**

(a) Acknowledgment of Support

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

1. is made in the Final Technical Report and 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 Grant No. *(insert award number)*.”

2. is orally acknowledged during all news media interviews, including popular media such as radio, television and newsmagazines.

(b) Disclaimer

Recipient is responsible for assuring that every Final Technical report and also every publication of material (including World Wide Web pages) based on or developed under this grant, 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

One copy of each article planned for publication shall be submitted to the USGS Project Officer simultaneously with its submission for publication. One reprint of each published article shall be submitted to the USGS Project Office immediately following publication.

Submit an Adobe Acrobat PDF file of publications to: gd-erp-coordinator@usgs.gov

(f) Department of the Interior Requirements

Two copies of each publication produced under a Grant or 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

(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 90 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. Please note that one Final Technical Report is to be submitted for each set of collaborative research grants.

(a) Submit the Final Technical Report as an Adobe Acrobat PDF file with all figures, photographs, maps, and illustrations embedded, and all pages numbered. Submit the report as an e-mail attachment in PDF format to:

gd-erp-coordinator@usgs.gov

Maximum size; 25 MB

(b) Final Technical reports shall consist of the following sections:

(1) **Cover page** with the following information:

Award Number

Title. For collaborative projects the title should be in the form

"Title: Collaborative Research with First Institution name, and Second Institution name."

Author(s) and Affiliation(s) with Address and zip code

Author's Telephone numbers, fax numbers and E-mail address

Term covered by the award (start and end dates)

(2) **Abstract**

(3) **Main body of the report.** The main body of the report and all illustrations and figures shall be single-spaced on 8 ½" x 11" paper.

(4) **Project Data.** Describe the final data management plan and how the data is publicly available. Data generated as a part of work funded by the Earthquake Hazards Program is not subject to a proprietary period of exclusive data access. Any data generated must be made available to the USGS at the time the Final Technical Report is due. The USGS reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, data for government purposes. See Appendix D, Section 4 [and https://www.usgs.gov/products/data-and-tools/data-management/data-management-plans](https://www.usgs.gov/products/data-and-tools/data-management/data-management-plans) for more information on Data Management Planning. Should any questions arise, both the USGS Contracting Officer and the Recipient will determine which data fall in this category.

(5) **Bibliography** of all publications resulting from the work performed under the award. One copy of each publication is required if the Recipient has not previously submitted them to the Grants Program Manager.

(6) **Acknowledgement of Support and Disclaimer.** See Attachment D, Section 4, Part B. 1(a) and 1(b) for directions on acknowledgement and disclaimer requirements.

(3) Annual Financial Reports

The recipient will submit annual STANDARD FORM 425, FEDERAL FINANCIAL REPORT(S) for each individual USGS award. The SF-425 is available at - <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>. The SF-425 will be due ninety (90) calendar days after the grant year (i.e., 12 months after the approved effective date of the grant agreement and every 12 months thereafter until the expiration date of the grant agreement). USGS acknowledges that this annual reporting schedule may not always correspond with a specific budget period. The SF-425 must be submitted electronically to the Contracting Officer at the address in Section 2.A above. 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.

(a) The recipient will liquidate all obligations incurred under the award and submit a final STANDARD FORM 425, FEDERAL FINANCIAL REPORT to the Contracting Officer at the email address in 2.A above no later than 90 calendar days after the grant completion date. The SF-425 is available at - <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>. 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 has passed since the grant completion date, the ASAP subaccount for this award may be closed by USGS at any time.

(b) Subsequent revision to the final SF 425 will be considered only as follows

- (i) When the revision results in a balance due to the Government, the recipient must submit a revised final Federal Financial Report (SF 425) 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.
- (ii) When the revision represents additional reimbursable costs claimed by the recipient, a revised final SF 425 may be submitted to the 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., 15 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.

(C) Adherence to Reporting Requirement. A Recipient's failure to submit the required Final Technical Report and/or final financial report by the due dates noted above will likely result in delay or non-issuance of new awards. Failure to submit a Progress Report for multi-year awards will likely result in delayed renewal of funds.

4. Continuation Proposal for Second-Year Funding

Required Continuation proposal documents. The Recipient, approved for two-year funding, shall submit the following documents for continued funding in year 2:

Document	No. of Copies	Submit To	Due Date
Progress Report	Send Adobe Acrobat PDF file as an email attachment	Grants Coordinator	At least 60 calendar days prior to the end of the budget period.

Progress Report. Recipients of two-year awards shall submit a report that summarizes the progress of the project during the first funding period. Collaborative awardees should submit one report for all collaborators. Work that was proposed for the first year should have been completed in that year. **Please note** that Progress Report will not be published on the USGS website, so all research data described in a Progress Report must be repeated or restated in the Final Technical Report. Submit a Word or PDF file (maximum size: 10 MB) with embedded graphics as an E- mail attachment to:

gd-erp-coordinator@usgs.gov

The subject of your email should be “**Progress Report - *insert your grant / project number here***”.

Format the Progress Report as follows:

- Single spaced and formatted for 8 ½ x 11” paper
- Number all pages
- Embed figures in the Word or PDF file
- Place figure captions directly under figures
- 2 to 5 pages.

At the top of the first page the heading should be centered and include:

- Title of the project, as stated on the original proposal
- External Grant award number (see your award documents)
- Investigator(s) name(s)
- Institution
- Address
- Telephone number, FAX number, E-mail address, and website
- Term covered by the report.

The body of the report should consist of the following:

- Investigations undertaken
- Accomplishments to date
- Problems encountered
- Reports published
- Funding expended for the term covered by the report.

5. Adherence to Original Research Objective and Budget Estimate

(a) Any commitments or expenditures incurred by the Recipient in excess of the funds provided by this award shall be the responsibility of the Recipient. Expenditures incurred prior to the effective date of this award cannot be charged against award funds.

(b) The following requests for change **require advance written approval by the Contracting Officer shown on your award. Your request must be submitted to the Contracting Officer at least 45 calendar days prior to the requested effective date of the change:**

- (1) Changes in the scope, objective, or key personnel referenced in the Recipient's proposal.
- (2) Request for supplemental funds.
- (3) Transfer of funds between direct cost categories when the cumulative amount of transfers during the project period exceeds 10 percent of the total award.
- (4) Acquisition of nonexpendable personal property (equipment) not approved at time of award.
- (5) Creation of any direct cost line item not approved at time of award.
- (6) Any other significant change to the award.
- (7) No-cost Extensions to the Project Period. **No cost extensions are discouraged.** The Earthquake Hazards Program (EHP) awards grants and cooperative agreements for research that extends or supplements ongoing research within the USGS. The timely conduct of funded projects is of great importance to the achievement of EHP goals. Applicants should consider their time commitments at the time of application for a grant. Requests for no cost extensions will be considered on a case-by-case basis. **The USGS reserves the right to limit the length of time and number of no-cost extensions.** Please note that no- cost extensions are not intended to be used merely for the purpose of expending unobligated balances. Applicants must supply documentation supporting their request for an extension.

The Recipient **shall include** in the request:

- the cause of the needed extension,
- a description of the remaining work to be completed,
- the proposed new end date, and
- the amount of funds remaining.

A request for an extension that is received by the Contracting Officer after the expiration date shall **not** be honored. Requests for no-cost extensions shall be submitted to the Contracting Officer **at least 45 days** before the grant end date.

(c) The Contracting Officer will notify the Recipient in writing within 30 calendar days after receipt of the request for revision or adjustment whether the request has been approved.

(6) 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

(A) 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.

(B) 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

(A) *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.

(B) *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.

(C) *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, use to gather and analyze the data.

(3) Conflict of Interest

(A) Applicability.

- a. 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.
- b. 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.

(B) Requirements.

- a. 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.
- b. 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.
- c. 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.

(C) Notification.

- a. 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.
- b. 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 Grants Management Official in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.

(D) 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.

(E) *Review Procedures.* The USGS Grants Management Official 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.

(F) *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).

(4) Program Income

(A) 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).

(B) 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).

(5) 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.

(6) 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 The recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Patent Rights 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 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.

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.

1. *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.

– END OF ASSISTANCE AWARD DOCUMENT –