

United States Department of Agriculture General Provisions Research Support Agreement

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1. DEFINITIONS

The following terms shall have the meaning set forth below:

- a. **Agency** - the REE Agency entering into the RSA with the Cooperator; Agricultural Research Service (ARS).
- b. **Authorized Departmental Officer (ADO)** - the Agency's official authorized to negotiate, award, administer, suspend, and terminate the RSA.
- c. **Authorized Departmental Officer Designated Representative (ADODR)** - the Agency's technical representative, acting within the scope of delegated authority, who is responsible for participating with the

- d. **Code of Federal Regulations (CFR)** – is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.
- e. **Cooperator** – is any State Cooperative Institution, college or university responsible for supplying goods and/or services to the Agency under the RSA.
- f. **Electronic Funds Transfer (EFT)** – is a method of electronic payment through bank wire transfer of funds to a Cooperator's bank account. (Includes HHS/PMS)
- g. **Federal Acquisition Regulations (FAR)** - the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds.
- h. **Department of Health and Human Services/Payment Management System (DHHS/PMS)** - a method of receiving payment by electronic draw down.
- i. **Indirect Cost Rate (ICR)** – is a device for determining the proportion of indirect costs each program should bear. It is the ratio (expressed as a percent) of the indirect costs to a direct cost base.
- j. **Management Report (MR)** – an itemized report of expenditures submitted by the Cooperator to the ADO and the ADODR. The ADO and ADODR verify receipt of goods and/or services for the Agency.
- k. **Office of Management and Budget (OMB)** – oversees the preparation of the federal budget and supervises its administration in Executive Branch agencies.
- l. **Research Support Agreement (RSA)** – a cost reimbursable agreement with a college or university for the acquisition of goods and/or services without regard to Federal competition and other acquisition regulations.
- m. **Scientific Year (SY)** – refers to an ARS research scientist.
- n. **United States Code (U.S.C)** - is the codification by subject matter of the general and permanent laws of the United States.

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2. LEGAL AUTHORITY CERTIFICATION

The Cooperator certifies that it has legal authority to enter into this agreement.

3. AUTHORIZED USES

The ADO is responsible for ensuring that goods and personal services allowed under this Agreement meet the following authorized uses:

- Acquisition of personal services
- Direct use of Cooperator's employees by Agency personnel in support of research except as prohibited under "limitations and restrictions" (section 4).

Agency employees may objectively refer potential employees to a Cooperator's employment office but shall not direct the hiring of a potential employee; and

Furnish the Cooperator, opinions and recommendations on the performance of a Cooperator's employee, including the impact of requested leave on work schedules and research in progress.
- Purchase of supplies and consumable items costing \$10,000 or less (or 10% percent of the Simplified Acquisition Procedures threshold) and directly related to the supported research.
- General support costs to facilitate research activities when Agency employees are located in or contiguous to the Cooperator's facility.

4. LIMITATIONS AND RESTRICTIONS

Cooperator employees may work alongside Agency employees and may perform tasks similar to Agency employees. Agency employees plan the work to be completed, directs work in progress, and inspects performance tasks.

Agency employees are not allowed to participate in the following personnel actions:

- Non-competitive Federal employment procedures selecting Cooperator's employees
- Giving a particular person a temporary or intermittent appointment in anticipation of Federal appointment
- Requiring the services of a specific person
- Establishing employment agreements
- Establishing wage levels
- Administering payrolls (including certifying employees' time and attendance)
- Administering awards, discipline, or adverse actions
- Directly approving or disapproving leave
- Evaluating Cooperator's employees' performance
- Administering Cooperator's employees' benefits program
- Practicing nepotism
- Obtaining professional employees (Postdoc's and/or SY's)
- Obtaining personnel to do a full-time continuous job

The following personnel acquisitions are unauthorized:

- SY categories 1- Research Scientist , 2 – Nonpermanent Research/Service Scientist, and 4 – Service Scientist, lasting longer than 90 days in a fiscal year
- Postdoctoral scientists or research associates in direct support of Agency scientists
- Direct clerical, secretarial, or receptionist support help for Agency personnel
- Administrative officers/technicians in direct support of Agency personnel
- Purchasing, fiscal, and property personnel in support of Federal operations
- Visiting and/or foreign SY

This agreement cannot be used to avoid established Federal procurement or property procedures. Specifically:

- Acquisition, use, or disposing of real

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property

- Construction modifications, alterations, or capital improvements of either Federal or Cooperator facilities
- Architectural and engineering services
- Equipment purchases
- Printing and binding

The Agency may not intervene in the employer-employee relationship between the Cooperator and its employees.

The administrative supervision of Cooperator employee's must remain the sole responsibility of the Cooperator.

5. OTHER ADMINISTRATIVE RESPONSIBILITIES AND CONSIDERATIONS

The following clarifications are provided on the Agency's authority and responsibility under this agreement:

- It is within the Agency's authority to reduce, discontinue or eliminate personal services or goods ordered under a RSA when the Agency determines funds are no longer available or work is no longer needed.
- The responsibility for disability payments for Cooperator's employees who are on long-term disability status resides with the Cooperator, not the Agency.
- The responsibility for informing Cooperator's employees that RSA positions are subject to annual renewals and approvals resides with the Cooperator.
- The responsibility for determining citizenship status of Cooperator employees resides with the Cooperator.

6. ASSURANCES

The Cooperator hereby assures compliance with the following:

- a. Air Transportation. International Air Transportation Fair Competitive Practices Act of 1975, Section 5 (49 U.S.C 1517). Costs for foreign travel and related transportation of

property are allowable only to the extent that United States flag air carriers are used.

- b. Nondiscrimination Requirements. Rehabilitation Act of 1973 – Section 504; Sex Discrimination – Title IX of the Education Amendments of 1972, as amended; Age Discrimination Act of 1975; Civil Rights Act of 1964 – Title VI (42 U.S.C. 200d).

- c. Protection of Human Subjects Requirements. The Cooperator will comply with the following provisions regarding the rights and welfare of human subjects:

- (1) The Cooperator is responsible for safeguarding the rights and welfare of any human subjects involved in research, development, and related activities supported by this Agreement. The Cooperator may conduct research involving human subjects only as prescribed in the statement of work and as approved by the Cooperator's Cognizant Institutional Review Board. Prior to conducting such research, the Cooperator shall obtain and document a legally sufficient informed consent from each human subject involved. No such informed consent shall include any exculpatory language through which the subject waives, or appears to waive, any of his or her legal rights, including any release of the Cooperator or its agents from liability for negligence.

- (2) The Cooperator agrees to comply with U.S. Department of Health and Human Services regulations regarding human subjects, appearing in 45 CFR Part 46 (as amended).

- (3) The Cooperator will comply with USDA policy, which is to assure that the risks do not outweigh either potential benefits to the subjects or the expected value of the knowledge sought.

- (4) Selection of subject or groups of

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subjects shall be made without regard to sex, race, color, religion, or national origin unless these characteristics are factors to be studied.

d. **Animal Welfare Act Requirements.**

The Cooperator agrees that it will comply with the Animal Welfare Act, as amended, 7 U.S.C. 2131, et seq., and the regulations promulgated hereunder by the Secretary of Agriculture (9 CFR, Subchapter A) pertaining to the care, handling, and treatment of warm-blooded animals held or used for research, teaching, or other activities supported by Federal funds. The Cooperator may request registration of facilities and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the Region in which their facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this requirement, may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, 4700 River Road, Riverdale, Maryland 20737.

e. **Recombinant DNA Research Requirements.**

The Cooperator will assume primary responsibility for implementing proper conduct on recombinant DNA research and it will comply with the National Institute of Health Guidelines for Recombinant DNA Research, as revised.

If the Cooperator wishes to send or receive registered recombinant DNA material which is subject to quarantine laws, permits to transfer this material into the U.S. or across state lines may be obtained by contacting USDA/APHIS/PPQ, Scientific Services-Biotechnology Permits, 4700 River Road, Unit 133, Riverdale, Maryland 20737. In the event that the Cooperator has not established the necessary biosafety committee, a request for guidance or assistance may be made to the USDA Recombinant DNA Research Officer.

f. The Cooperator will assist the Agency in complying with the National Historic

Preservation Act of 1966 - Section 106, as amended, (16 U.S.C. 470, Executive Order 11593); Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.);

g. The Cooperator will comply with Federal regulations regarding equal opportunity, unsegregated facilities and affirmative action (41 CFR, Chapter 60);

h. The Cooperator will comply with the Single Audit Act (Public Law 98-502), as implemented by OMB Circular A-133;

i. **Environmental Requirements.** National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 et seq.), and 7 CFR Part 1b; Clean Air Act (42 U.S.C. 7401 et seq.); Water Pollution Control Act (33 U.S.C. 1251 et seq.); Flood Disaster Protection Act of 1973, Public Law 93-234 (42 U.S.C. 4001 et seq.);

j. **Questionnaires and Survey Plans:** The Cooperator will comply with the Paperwork Reduction Act of 1980 and 5 CFR 1320.

k. **Drug Free Work Place.** The Cooperator will comply with Government wide requirements for Drug-Free Workplace (7 CFR 3021).

l. **Agriculture Bioterrorism Protection Act Requirements.** The Cooperator assures compliance with the Agriculture Bioterrorism Protection Act, as implemented at 7 CFR 331 and 9 CFR 121, December 13, 2002, by agreeing that it will not possess, use, or transfer any select agent or toxin without a certificate of registration issued by the Agency.

7. INTANGIBLE PROPERTY

a. The Cooperator may copyright any work that is subject to copyright and was developed, by the Cooperator, or jointly by the Federal Government and the Cooperator, or for which ownership was

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- purchased, under a cooperative agreement REE Agencies reserve 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 for Federal purposes.
- b. Cooperators 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."
- c. The Agency has the right to:
- (1) obtain, reproduce, publish or otherwise use the data first produced under a cooperative agreement; and
 - (2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- d. (1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a cooperative agreement that were used by the Federal Government in developing an Agency action that has the force and effect of law, the REE Agency shall request, and the Cooperator shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the REE Agency obtains the research data solely in response to a FOIA request, the Agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Agency, the Cooperator, and applicable subrecipients. This fee is in addition to any fees the Agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).
- (2) The following definitions apply for purposes of paragraph (d) of this section:
- (a) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:
 - (i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and
 - (ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.
 - (b) Published is defined as either when:
 - (i) Research findings are published in a peer-reviewed scientific or technical journal; or
 - (ii) A Federal Agency publicly and officially cites the research findings in support of an Agency action that has the force and effect of law.
 - (iii) Used by the Federal Government in developing an

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Agency action that has the force and effect of law is defined as when an Agency publicly and officially cites the research findings in support of an Agency action that has the force and effect of law.

8. COOPERATOR RESPONSIBILITIES

The Cooperator agrees to furnish the Agency goods and services, including personal services, as ordered in writing by the ADO. Billing shall not exceed the amount authorized in the RSA. The Cooperator is not to continue performance under this Agreement or otherwise incur costs in excess of the amount of this agreement, unless authorized by a duly signed amendment to the RSA. Unallowable costs will not be approved in any case. (See Paragraph 11, for allowable costs.)

9. PRIOR APPROVALS

Written approval from the ADO is required for the following:

- Reimbursement of travel costs.
- Operation of government-owned vehicles by Cooperator employees.
- Amendments to an existing RSA.

Unilateral amendments to this agreement may be issued by the ADO for changes, which are purely administrative in nature.

10. FUNDING AVAILABILITY

The Agency's participation shall be subject to passage, by the Congress of the United States, of an appropriation of funds for the fiscal year from which expenditures may be legally made.

11. ALLOWABLE COSTS

Payments, up to the amount specified in this Agreement, shall be made only for allowable, allocable, reasonable, and necessary costs in accordance with the cost principles in effect on the date of the award. (See OMB Circular A-21, Cost Principles for Educational Institutions)

12. INDIRECT COSTS

Indirect costs may be reimbursed by the Agency at a negotiated indirect cost rate not to exceed 10 percent of total direct costs. (7 U.S.C. 3319a)

13. PAYMENTS

Payments shall be made by either EFT or the DHHS/PMS method. (See Form REE-451, Page 1, for the applicable method of payment).

If payment is by EFT, the following apply:

- The Cooperator agrees to receive payment via USDA's Vendor Express Program (VXP). Instructions and forms are available on the USDA, National Finance Center's website. www.usda.nfc.gov
- Payments to the Cooperator will be made on a reimbursable basis as reflected on the Cooperator's invoices or vouchers. Invoices shall be submitted directly to the ADO on a quarterly basis. The following information is required to assure payments are received in a timely manner:
 - Agreement number
 - VXP identification number
 - Itemized listing of costs being reimbursed
 - Specific time period covered by the invoice
 - Signature and contact information of the Cooperator's Authorized Organizational Representative

Questions and Instructions for obtaining payment through the HHS/PMS should be directed to:

Chief, Financial Assistance Financing
Branch
PO Box 6021
Rockville, Maryland 20852
(301)443-1660

14. DEBT COLLECTION

Any monies that are payable or may become payable under this Agreement may be subject to administrative offset for the collection of

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delinquent debt to the person or legal entity owed to the United States under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 USC 3701, 3711, 3716-3719); 4 CFR Part 102 and 7 CFR Part 3. Information on the person's or legal entity's responsibility for a commercial debt or delinquent consumer debt owed to the United States will be disclosed to consumer or commercial crediting reporting agencies.

15. AMENDMENTS

A duly signed amendment is required any time the Agreement requires a change in duration, funds or personnel.

16. REPORTING REQUIREMENTS

The Cooperator agrees to furnish a detailed Management Report to the ADO (See Form REE-451, Page 1, for reporting frequency). Monthly, quarterly or semi-annual reports are due 30 calendar days after the reporting period. The final report is due within 90 days after the expiration or termination of the agreement.

The following minimum information is required:

- Name of Institution
- Agreement Number
- Reporting period draw down (If paid through HHS/PMS)
- Details of reporting period expenses: (Salary and Non-Salary)
- Cumulative (Year-to-Date) totals

17. TECHNICAL SUPERVISION

Agency employees may technically supervise the work of Cooperator employees assigned to this agreement at Agency facilities.

However, Agency employees may not intervene in the employer-employee relationship between the Cooperator and its' employees, including but not limited to issues regarding:

- Leave (sick/ annual)
- Vacation benefits
- Holiday pay
- Incontinent weather dismissals
- Salary increases

In addition, the Agency is not authorized to hire or otherwise engage in the personnel management practices of the Cooperator's institution.

18. RULES OF THE WORKPLACE

Cooperator employees, while engaged in work at the Agency's facilities, will abide by the Agency's standard operating procedures regarding the maintenance of laboratory notebooks, dissemination of information, equipment operation standards, hours of work, conduct, and other incidental matters stated in the rules and regulations of the Agency.

19. LABOR DISPUTES

Whenever the Cooperator has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this agreement, the cooperator shall immediately notify the ADO and ADODR and provide all relevant information with respect thereto.

20. TRAVEL

Travel may only be performed by Cooperator personnel to provide direct benefits to the research projects supported by this agreement and must be authorized in the RSA.

Travel costs are limited to those allowed by the Cooperator's formal travel policies. If the Cooperator has no formal travel policy, Federal travel regulations shall be applied in determining the amount of travel chargeable to Agency.

Surface travel or less than first-class air accommodations shall be used where and when available for travel charged to Agency.

United States flag air carrier must be used for foreign air travel when available.

Reimbursement to the Cooperator for payment of travel expenses of Agency personnel is unallowable.

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21. LIABILITY INSURANCE

The Cooperator agrees to provide its' personnel with liability insurance such as Worker's Compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage), and/or such other insurance as deemed necessary by the Cooperator.

The Cooperator is responsible for determining the types and amounts of insurance coverage needed to provide adequate protection for its employees, taking into account the nature and scope of services to be performed under this agreement. Insurance procured for the sole purpose of covering work under this agreement may be charged to the agreement as a direct cost.

22. MOTOR VEHICLE ACCIDENT LIABILITY

A Cooperator's employee may operate Federal Government-owned motor vehicles in furtherance of this agreement only when specifically authorized to do so in writing by the ADO.

The Agency will assume responsibility for damage to Federal Government's vehicles driven by a Cooperator's employee when it is determined by the Agency that the Cooperator's employee was properly authorized to operate the vehicle, the vehicle was used within the scope of the authorization, and was not negligent in causing the damage.

The Agency will assume no responsibility for damage to the Federal Government's motor vehicles driven by a Cooperator's employee when it is determined by the Agency that the Cooperator's employee was not properly authorized to drive the vehicle or that the employee was negligent and the Agency will seek to legally recover losses resulting from such damages.

Negligence for the purposes of this Agreement is defined as follows:

"The performance of some act which a person of ordinary prudence would not have done under similar circumstances, the failure to do what a person of ordinary prudence would have done under similar circumstances, or conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm."

23. CAPITAL IMPROVEMENT

Federal funds made available to the Cooperator under this agreement shall not be expended for capital improvements of Agency or Cooperator facilities.

24. ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER

The following acknowledgment of Agency support must appear in the publications of any material, which is based upon or developed under this Agreement (whether or not copyrighted):

"This material is based upon work supported by the U.S. Department of Agriculture, under Agreement No. (Cooperator must enter the applicable agreement number here)."
All such materials must also contain the following disclaimer **unless** the publication is formally cleared by USDA:

"Any opinions, findings, conclusion, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the U.S. Department of Agriculture."

Public Information

Any public information concerning work carried out under this Agreement will describe the contributions of both parties to the work effort. In the event of a dispute, a separate publication may be made with effective statements of acknowledgment and disclaimer.

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Technical Publication

Any technical publication resulting from this Agreement shall be submitted by the developing party to the other for advice and comment. The Agency shall provide the Cooperator with comments regarding any technical publications within 30 days of receipt. Such requirement shall not be imposed upon the filing of student thesis or dissertations. In event of dispute, a separate publication may be made, with effective statements of acknowledgment and disclaimer.

25. SUSPENSION AND TERMINATION

The RSA maybe suspended or terminated in whole or in part, upon 60 days written notification, if a., b., or c. applies:

- a. The Agency may terminate the award, if a Cooperator materially fails to comply with the terms of this provision and conditions of the agreement.
- b. The Agency with the consent of the Cooperator, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
- c. If costs are allowed under an award, the Cooperator's responsibilities, including those for property management as applicable, shall be considered in the termination of the award, and provisions shall be made for continuing responsibilities of the Cooperator after termination, as appropriate.

In the event that the RSA is terminated, the Cooperator shall reimburse the Agency for all expenses incurred and non-cancelable commitments entered into in accordance with the terms of this RSA prior to the date of termination.

26. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS

Financial records, supporting documents, statistical records, and all other records pertinent to this agreement shall be retained for the life of

the Agreement and 3 years following expiration and/or termination of the agreement, except in the following instances:

- If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.
- Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.
- When records are transferred to or maintained by the Agency, the 3-year retention requirement is not applicable to the Cooperator.
- Indirect cost rate proposals, cost allocations plans, etc.

Copies of original records may be substituted for the original if authorized by the Agency.

The Agency shall request transfer of certain records to its custody from Cooperators when it determines that the records possess long-term retention value. However, in order to avoid duplicate records keeping, an Agency may make arrangements for Cooperators to retain any records that are continuously needed for joint use.

The Agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of Cooperators that are pertinent to the Agreement, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a Cooperator's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

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Unless required by statute, no Agency shall place restrictions on Cooperators that limit public access to the records of Cooperators that are pertinent to an award, except when the Agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Agency.