

Foundation for Earth Science Information Partners

Project Partner Memorandum of Understanding

- 1) This memorandum is made between George A. Seielstad, serving as president of the Federation of Earth Science Information Partners and the Foundation for Earth Science Information Partners, Inc. (hereinafter "Foundation"), effective July 26, 2001.
- 2) As used herein, the term "FEDERATION" refers to the Federation of Earth Science Information Partners. The FEDERATION is a confederation of Earth science information partners that are affiliated through their use of and dissemination of earth science research data and information.
- 3) The purpose of this memorandum is to specify and clarify all arrangements and operating guidelines applicable to the Foundation's activities in support of FEDERATION operations. FEDERATION operations that are supported through funds that are controlled by the Foundation will become Projects of the Foundation.
- 4) The Foundation is not a membership organization. The FEDERATION is a membership organization. This memorandum is binding on FEDERATION members only insofar as they are already bound by their current membership obligations to the FEDERATION, and then as they are recipients of funds from Foundation accounts. Federation members that are recipients of said funds must agree to reasonable requests for compliance to accounting standards and other usual administrative practices. It is, however, the responsibility of the FEDERATION organization to limit its organizational operations to those proper and appropriate activities for an organization that is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code of the United States. This responsibility is the same as that the FEDERATION would hold if it were itself a tax-exempt entity (see: below).
- 5) The Board of Directors of the Foundation has agreed to be the fiscal sponsor for FEDERATION activities and to make these Projects of the Foundation, because these activities are beneficial to and consonant with the charitable and educational goals of the Foundation. It is agreed that the FEDERATION's prospects will be enhanced by the Foundation's administrative support. All parties acknowledge and recognize the responsibility of the Foundation to exercise fiscal control over the projects that receive funds from the Foundation. This control in no way prevents the FEDERATION from selecting the activities that are to be funded nor from naming the recipients of these funds (within limitations outlined below).
- 6) Should the FEDERATION fail to comply with provisions of this memorandum and reasonable requests or requirements of the Foundation, the Foundation will assume full managerial control over the projects that are currently funded, and may refuse to accept further Projects until and unless the dispute is resolved.
- 7) Should the Foundation fail to comply with provisions of this memorandum and reasonable requests or requirements of the FEDERATION, the FEDERATION can request in writing that the Foundation transfer all uncommitted funds and all assets it holds on behalf of the FEDERATION to another 501(c)3 Entity of the FEDERATION's choosing.

- 8) FEDERATION agrees to the following terms and conditions:
- a) FEDERATION member organizations and other contractors on FEDERATION business that receive funds through Foundation accounts will communicate with the Foundation in writing on a regular schedule (to be agreed upon by the parties, but no less frequently than quarterly) regarding project progress and revenue and expenditures. This is in addition to verbal communication the parties are expected to engage in on a regular basis.
 - b) FEDERATION members that receive funds through Foundation accounts will comply with all financial and administrative practices and procedures that the Foundation reasonably requests of these FEDERATION members in order to satisfy the reporting requirements of fund donors.
 - c) At the current time the FEDERATION does not anticipate that it will have any employees, nor will it pay individuals directly for services rendered. However, if the occasion should arise where the FEDERATION makes payment to individuals, it will do so only for individuals who can be and are classified as independent contractors in accord with Internal Revenue Service guidelines.
 - d) All of the FEDERATION's activities funded through monies provided by the Foundation will be activities generally recognized as proper and appropriate activities for an organization that is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code of the United States. (Hereinafter, the term "501(c)(3) Entity" shall mean an organization that is tax exempt pursuant to section 501(c)(3) of the Internal Revenue Code.) Apart from activities that are duly reported as Projects of other, i.e., for-profit, entities for which they may provide services, FEDERATION members, when acting on behalf of the FEDERATION, shall not carry on any other activities not permitted to be carried on by (1) a 501(c)(3) Entity or (2) an organization contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code. The FEDERATION shall not engage in any attempt to influence legislation and it shall not intervene in any political campaign.
- 9) The Foundation shall provide the following services to the FEDERATION for the duration of this memorandum:
- a) Accounting services with respect to all revenue and expenditures of the FEDERATION where these are for Projects of the Foundation, including receivables, payables and fund accounting.
 - b) Reasonably prudent liability insurance and directors and officers insurance at the discretion of the board of directors of the Foundation.
 - c) Fund development activities and fund management on behalf of the FEDERATION as requested by the FEDERATION.
 - d) Research-project management on behalf of the FEDERATION as requested by the FEDERATION.

- e) Dispute resolution assistance between the FEDERATION organization and FEDERATION members where this dispute might jeopardize the continuance of this MOU, as this service is requested by the FEDERATION organization.
- 10) All revenue of and paid to the FEDERATION may be deposited with Foundation for the benefit of the FEDERATION. The Foundation shall be entitled to retain predetermined revenues (including, without limitation, grants and receipts for services rendered) received or payable to the FEDERATION for FEDERATION activities that are Projects of the Foundation, in order to cover its administrative costs in providing services under this memorandum. The Foundation's Board will negotiate with the FEDERATION the initial administrative costs, which may include a start-up fee. The administrative cost shall be adjusted no less frequently than once per year.
 - 11) Except for the payments to the Foundation specified herein, all other cash, cash equivalents, deposits and assets held by the Foundation for the benefit of or on account for the FEDERATION shall be dedicated exclusively for the use of FEDERATION so long as the FEDERATION exists and continues to act as if it were 501(c)(3) Entity. If at any time the Foundation no longer acts as the FEDERATION's fiscal sponsor (i.e., this memorandum is no longer in force) by reason of the FEDERATION either (1) have obtained recognition by the Internal Revenue Service that it is a 501(c)(3) Entity or (2) having moved its activities to another fiscal sponsor that is itself a 501(c)(3) Entity, upon request of the FEDERATION, the Foundation will transfer all of the assets it holds for the benefit of the FEDERATION (less a reasonable fee to cover unpaid expenses and liabilities pursuant to this memorandum, expenses, the surplus of which after all expenses and liabilities are paid shall be forwarded to the FEDERATION or its designated agent) to the FEDERATION or its designated agent.
 - 12) If the Foundation no longer acts as the FEDERATION's fiscal sponsor and if at that time the FEDERATION would no longer qualify to become a 501(c)(3) Entity of the Internal Revenue Code, or is not itself a 501(c)(3) Entity, or does not have a fiscal sponsor that is itself a 501(c)(3) Entity, then the Foundation shall distribute the assets it was holding for the benefit of the FEDERATION. This distribution will be made in compliance with the Foundation Bylaws, Internal Revenue Service rules, and applicable provisions of the District of Columbia Nonprofit Corporation Law.
 - 13) Other than upon the occurrence of the conditions described in the immediately preceding paragraph, the FEDERATION shall retain beneficial interest and title to all assets obtained by it or by the Foundation for the benefit of the FEDERATION and the Foundation shall have no right and title to said assets except as a trustee for the benefit of the FEDERATION and pursuant to the District of Columbia Nonprofit Corporation Law and other applicable laws of the District of Columbia, and pursuant to requirements of the Internal Revenue Service applicable to 501(c)(3) Entities.
 - 14) If at any time the FEDERATION elects to become an independent tax exempt organization, the Foundation shall provide all reasonable assistance to the FEDERATION in support of such endeavor. On or after such date that the FEDERATION receives recognition from the Internal Revenue Service that it is a

501(c)(3) Entity, the Foundation shall transfer title in all assets it holds for the benefit of the FEDERATION to the FEDERATION; provided, however, that the FEDERATION makes representations acceptable to the Foundation that such assets will be utilized for tax exempt purposes in accord with the FEDERATION's tax exemption recognition letter.

- 15) This memorandum shall be governed by the laws of the District of Columbia. If litigation is deemed required by either party to enforce any provision of this memorandum, the prevailing party in any such action shall be entitled to recover its reasonable attorney fees and costs expended in that litigation from the non-prevailing party. The failure of either party to assert any rights provided herein shall not serve as a waiver against that party's assertion of those or any other rights at any future occasion. This memorandum represents the entire agreement between the parties. Any changes or modifications in the terms of my representation of you must be in writing to be effective.
- 16) In signing this Memorandum of Understanding, the FEDERATION agrees that its members will abide by all operating policies and procedures of the Foundation whenever and wherever they receive funding through the auspices of the Foundation.

IN WITNESS THEREOF and without reservation the parties execute this Memorandum of Understanding.

FEDERATION

FOUNDATION ORGANIZATION

George A. Seielstad, Date
Its President

By: _____
Its: _____