ENVIRONMENT

Cooperation

Agreement Between the
UNITED STATES OF AMERICA
and the UNITED NATIONS
ENVIRONMENT PROGRAMME

Signed at Washington December 21, 2004

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

UNITED NATIONS
ENVIRONMENT PROGRAMME

Environment: Cooperation

Agreement signed at Washington December 21, 2004;
Entered into force December 21, 2004.

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP)
TO COOPERATE ON ACTIVITIES AND FACILITIES TO SUPPORT THE UNEP DIVISION OF EARLY WARNING AND ASSESSMENT IN NORTH AMERICA

WHEREAS the United Nations Environment Programme (hereinafter referred to as "UNEP") was established by United Nations General Assembly resolution 2997 (XXVII) of 15 December 1972;

NOTING that UNEP's Division of Early Warning and Assessment (DEWA) has the mandate to provide the world community with access to timely, usable environmental data and to provide access to geographic information system (GIS) and satellite image processing technology,

NOTING ALSO that UNEP/DEWA has designed a network of centers in various regions of the world with a growing number of regional and sub-regional assessment centers forming a globally distributed data and information system, through which data are provided for global science applications, wise resource management and sustainable development planning;

RECOGNIZING the role of agencies of the Government of the United States of America in pursuing opportunities for beneficial co-operation with UNEP and supporting existing domestic and international agreements for data management, dissemination, and analysis; and

RECOGNIZING further that universities and private-sector firms are involved in and benefit from global research and data collection efforts and that it is important that data from the groups supported by interested U.S. agencies flow to UNEP/DEWA in an open fashion and that, in turn, UNEP/DEWA data flow to these institutions and organizations in an open fashion.

NOW THEREFORE, the Government of the United States of America and UNEP (hereinafter, the "Parties") have agreed as follows:

ARTICLE 1- OBJECTIVES AND PURPOSE

1. The objectives of this cooperative effort are to facilitate the flow of high-quality regional, continental, and global environmental and other affiliated data sets; to provide support to environment-related projects requiring GIS and satellite image processing technology; to provide support for training and capacity building in such technology, particularly for developing countries' experts and institutions; and to provide for the cooperative operation of a UNEP-designated DEWA facility in North America.

2. The purpose of this Agreement is to provide the framework for cooperative UNEP/DEWA work in North America and collaboration with participating U.S. Government agencies (hereinafter, the "Participants"). This Agreement provides a framework for the exchange of scientific resources, personnel, technical data and information, and scientific knowledge between UNEP/DEWA and the Participants.

ARTICLE 2 - AREAS OF SHARED INTEREST AND COOPERATION

Forms of cooperation under this Agreement may consist of, but are not limited to, exchanges of technical information, visits, training, and cooperative research consistent with ongoing programs of UNEP/DEWA and the Participants. Specific areas of cooperation may include, but are not limited to, such areas of mutual interest as:

- Reducing loss of life and property from natural and anthropogenic disasters;
- Understanding environmental factors affecting human health and well being;
- Improving management of energy resources;
- Understanding, assessing, predicting, and adapting to climate variability and change;
- Improving water resource management through better understanding of the water cycle;
- Improving the management and protection of terrestrial, coastal, and marine ecosystems;
- Combating desertification;
- Understanding, monitoring, and conserving biodiversity.

Activities under this Agreement shall be undertaken in accordance with the laws, regulations, orders and procedures of the United States of America and the procedures of the United Nations Environment Programme.

ARTICLE 3 - MODALITIES OF COOPERATION

1. UNEP will use reasonable efforts to meet the following responsibilities:

   a) To operate DEWA North American facilities, under the auspices of the United Nations and under the coordination of the UNEP Director, Division of Early Warning and Assessment;

   b) Coordinate DEWA cooperative research and development activities with Participants, as well as cooperating universities and organizations;

   c) Provide resources for the operating costs of DEWA activities in the United States;

   d) Collaborate, through DEWA, with Participants, to provide the world community with timely, useable environmental data;

   e) Promote opportunities for scientists/technicians from developing countries to work in residence at DEWA facilities in North America and the facilities of Participants. Such scientists technicians are to provide support to Participants on projects of mutual interest and to support specific DEWA activities in capacity building in developing countries; and,

   f) To ensure adequate coordination of its activities and advisory committee meetings with Participants.

2. The United States, through relevant Participant(s), will use reasonable efforts, in accordance with Article 5 of this Agreement and the terms and conditions of any relevant supporting annexes, to meet the following responsibilities:

   a) Provide networking and communication links between UNEP/DEWA and Participant(s), as appropriate and as may be agreed by UNEP/ DEWA and Participant(s).

   b) Provide research and development support to UNEP/DEWA's global scientific and technical activities, as appropriate.

c) Provide expert support, as deemed appropriate, in the development and use of ecosystem modeling approaches, information acquisition, transmission, processing, analysis, communication, storage, and archiving technologies, and software systems which facilitate DEWA operations.

d) Provide, by agreement with UNEP, suitable workspace and facilities for DEWA staff and visiting scientists (including appropriate associates/trainees) engaged in cooperative activities under this Agreement at Participant facilities under mutually beneficial arrangements.

e) Consult as appropriate with and acceptable to UNEP/DEWA staff and affiliates in order to (i) assist Participant(s) in their improvement of the design, implementation, presentation, and delivery of appropriate environmental data and information to the global scientific and decision making community, and (ii) assist DEWA and its affiliates to better utilize such data and information for environmental applications.

ARTICLE 4 – MANAGEMENT

Technical points of contact for this Agreement are:

Office of Environmental Policy
Bureau of Oceans and International
Environmental and Scientific Affairs
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520 U.S.A.

Director
Division of Early Warning
and Assessment
UNEP
P.O. Box 30552
Nairobi, Kenya

ARTICLE 5 – IMPLEMENTATION, FUNDING ARRANGEMENTS, AND RISK ALLOCATION

1. UNEP, in consultation with the relevant Participants, will develop projects to implement this Agreement.

2. Any activities under this Agreement shall be subject to the availability of personnel, resources, funds, and continued program support by UNEP and the Participants. Furthermore, this Agreement shall not be construed to obligate any particular expenditure or commitment of resources or personnel. The Participants

shall agree in accordance with Articles 7 and 8 below upon specific Agency and Project Annexes in writing before the commencement of any activity. UNEP and the United States, through the relevant Participant(s), will bear the costs of discharging their respective responsibilities as defined in Article 3. In the event funds are exchanged, UNEP will provide adequate reporting of expenditures to the relevant Participant(s) under terms negotiated specifically for the project or using generally accepted accounting principles.

3. As part of an Agency or Project Annex undertaken pursuant to this Agreement, UNEP and the relevant Participant(s), to the extent consistent with the laws, regulations, directives, and policies of the United States, may include provisions relating to the allocation of risks and responsibility for losses, injuries, casualties, and damages that may occur in the course of cooperative activities undertaken pursuant to this Agreement.

ARTICLE 6 – FACILITY ANNEX

Provisions for the cooperative operation of UNEP-designated DEWA facilities in North America shall be set forth in Facility Annexes to this Agreement. In the case of any inconsistency between the terms of this Agreement and the terms of a Facility Annex, the terms of this Agreement shall control.

ARTICLE 7 - AGENCY ANNEX

Any Participant interested in participating in co-operative activities with UNEP DEWA with respect to its facilities in North America under this Agreement shall work with UNEP to prepare a written Agency Annex. Agency Annexes to this Agreement shall set forth in terms appropriate to the level of interaction, aspects such as a work plan, staffing requirements, cost estimates, funding sources, and other undertakings, obligations, or conditions not included in this Agreement. In the case of any inconsistency between the terms of this Agreement and the terms of an Agency Annex, the terms of this Agreement shall control.

ARTICLE 8 - PROJECT ANNEXES

Any cooperative activity carried out under this Agreement shall be agreed upon in advance by UNEP and the appropriate Participant in writing. Whenever more than the exchange of technical information or visits of individuals is contemplated, such activity shall be described in an agreed Project Annex to this Agreement, which

shall set forth in terms appropriate to the activity, a work plan, staffing requirements, cost estimates, funding sources, and other undertakings, obligations, or conditions not included in this Agreement or the relevant Agency Annex. In the case of any inconsistency between the terms of this Agreement and the terms of a Project Annex, the terms of this Agreement shall control. Likewise, in the case of any inconsistency between the terms of a relevant Agency Annex and the terms of a Project Annex, the terms of the relevant Agency Annex shall control.

ARTICLE 9 - PARTICIPATION OF OTHER ENTITIES IN COOPERATIVE ACTIVITIES

1. The Parties shall encourage and facilitate, where appropriate, the development of direct contacts and cooperation among government agencies, universities, research centers, institutions, private sector companies, and other entities or agencies of the United States and United Nations.

2. UNEP and the relevant Participant(s) may, with the consent of the other and to the extent permitted by laws and/or policies or procedures of UNEP and the United States, invite other entities or agencies of the United States and United Nations, and other individuals and entities, including scientists, technical experts, governmental agencies and institutions of other countries or international organizations, to participate in cooperative activities undertaken pursuant to an Agency or Project Annex, subject to such terms and conditions as UNEP and the relevant Participant(s) may specify.

ARTICLE 10 - INTELLECTUAL PROPERTY

1. Nothing in the Agreement shall be construed as granting or implying rights to, or interest in, patents or inventions of the Parties or their contractors or subcontractors.

2. The Parties do not foresee the creation of intellectual property under the Agreement. Other than those rights described in Article 10.3, in the event that intellectual property that can be protected is created, the Parties shall consult to determine the allocation of the rights to that intellectual property.

3. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation

under this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.

4. Any purported assignment of rights referred to in this Article should acknowledge the rights of the Parties to this Agreement to the underlying works assigned.

ARTICLE 11 - PUBLIC INFORMATION, DATA ACCESS AND DISTRIBUTION

1. Release of public information resulting from activities under this Agreement may be made by the appropriate Party for its own portion of the program as desired, and insofar as participation of the other Party is involved, after suitable consultation. Recognizing the collaborative nature of the work contemplated by this Agreement, recognition of in-kind and actual support will be given to the relevant Participants by UNEP and other Participants on or in any reports, data sets, or other documents involving UNEP/DEWA data that are distributed or made available.

2. The Participants will facilitate full and open access to data in support of global change research and applications. Participants will provide, according to agency practice, appropriate data sets to UNEP, which, in turn, will be responsible for maintenance, archiving, access, and distribution. UNEP will provide Participants access to data sets acquired or generated in support of UNEP's function of monitoring global resources.

3. Participants will advise UNEP of any statutory, regulatory, contractual, or other restrictions regarding use or disclosure of any information (including data) provided by Participants under this Agreement. UNEP shall be subject to such restrictions, and may make such information available to others subject to the conditions that the relevant Participant acknowledges agreement in writing and any recipients agree to abide by the same restrictions.

4. Data archives developed and maintained by UNEP/DEWA will include easily accessible information about data holdings, including quality assessments, supporting ancillary information, and guidance and aids for locating and obtaining data. Geospatial and Metadata standards promulgated by the International Standards Organization (ISO) will be used to the greatest extent possible for media and for processing and communication of global data sets.

5. UNEP/DEWA will make available UNEP/DEWA data on a public, non-discriminatory basis. There will be no exclusive period of use by investigators for data obtained from UNEP/DEWA.

6. UNEP/DEWA will use its best efforts to ensure that information, including analyzed data, directly arising from cooperation under this Agreement will be made available to the international scientific community through publication in appropriate scientific and technical journals, articles, reports, books, or electronic networks or through presentations at scientific or other appropriate conferences, as soon as possible and in a manner consistent with good scientific practices.

7. Software exchanged between the Parties under this Agreement will be used only in a manner consistent with applicable intellectual property laws and for the purposes of performing their respective responsibilities pursuant to this Agreement.

8. The responsibilities of the Parties under this Agreement, including the furnishing of data, software, related services, and protection of intellectual property, will be subject to the applicable laws and regulations of the United States.

ARTICLE 12 - EXCHANGE OF ITEMS AND TECHNICAL DATA

1. The Parties are obligated to transfer only those technical data and items necessary to fulfill their respective responsibilities under this Agreement and only to the extent consistent with applicable laws and regulation, in accordance with the following provisions:

a) Any item or technical data transferred under this Agreement shall be used exclusively for the purposes of fulfilling the Parties' responsibilities under this Agreement.

b) Interface, integration, and safety data (excluding detailed design, development, production, and manufacturing data, and associated software) shall be exchanged by the Parties without restrictions as to use or disclosure, except as specifically required by U.S. law and regulation.

c) In the event a Party finds it necessary to transfer technical data or items other than those specified in paragraph (a) above in carrying out its responsibilities under this Agreement, the provisions of this subparagraph shall apply. Any items or technical data that are either

proprietary in nature or that are subject to U.S. laws or regulations relating to export controls shall be transferred to UNEP with a notice marking such items or data as proprietary or subject to export control laws or regulations. Such items or technical data shall be specifically identified to indicate that they shall be used and disclosed by UNEP, institutions acting on its behalf, and its contractors and subcontractors only for the purposes of fulfilling UNEP's responsibilities under this Agreement, and that the marked technical data and identified goods shall not be disclosed or re-transferred to any other individual or entity without prior written permission of the United States. UNEP shall abide by the terms of the notice, and shall protect any such marked items or technical data from unauthorized use and disclosure. Nothing in this Article requires the United States to transfer items or technical data contrary to U.S. laws, regulations, and directives relating to export control or control of classified information.

d) UNEP is under no obligation to protect any unmarked items or technical data. In the event that unmarked items or technical data which are known or believed to require appropriate marking are identified in the course of cooperative activities pursuant to this Agreement, it shall be brought immediately to the attention of the appropriate officials of the Parties and UNEP shall take steps to prevent the further disclosure of such items or data.

2. In the event that a Party deems information confidential under applicable laws, or identifies information in a timely fashion as "business-confidential," which is furnished or created under the Agreement, each Party and its participants shall protect such information from disclosure in accordance with the applicable laws, regulations, and administrative practices. For the purposes of this Agreement, information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.

3. The Parties agree that no information or equipment requiring protection in the interest of national security, defense, or foreign relations and classified in accordance with the applicable laws, regulations, and directives of the United States shall be provided under this Agreement. In the event that information or

equipment which is known or believed to require such protection is identified in the course of cooperative activities pursuant to this Agreement, it shall be brought immediately to the attention of the appropriate officials of the United States and the Parties shall consult to identify appropriate security measures to be agreed upon by the Parties in writing and applied to this information and equipment.

ARTICLE 13 - CUSTOMS

The United States will use its best efforts, to the extent permitted by U.S. laws and regulations, to arrange for free customs clearance of supplies, equipment, and material necessary to carry out cooperative activities under this Agreement.

ARTICLE 14 – CONSULTATIONS

All questions or disputes related to the interpretation or implementation of this Agreement and its annexes shall be settled by mutual agreement of the Parties.

ARTICLE 15 - ENTRY INTO FORCE, AMENDMENT, AND TERMINATION

This Agreement shall enter into force upon signature and shall remain in force for ten years. It may be modified or extended by mutual agreement of the Parties in writing. It may be terminated by either Party upon 180 days' written notice. Unless otherwise agreed by the Parties, the termination of this Agreement shall not affect the completion of any cooperative activity undertaken under this Agreement and not yet completed at the time of the termination of this Agreement.

DONE in duplicate at Washington this twenty-first day of December 2004, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE UNITED NATIONS ENVIRONMENT PROGRAMME: