



**Mississippi Forestry Commission's
Mississippi Invasive Plant Control Program
Terms and Conditions Agreement
For Herbicide Application**



By signing up for the cogon grass control program, I agree to the following;

- I. Warranty-The MFC neither expresses, nor implies any warranty by this Agreement. Landowner by executing this Agreement accepts and understands that his/her/its invasive noxious non-native plant infestation may, or may not, be treated hereunder. Whether or not treatment is deemed strategically, logistically, biologically, or financially appropriate shall be at the sole discretion of the MFC. Further, landowner understands and accepts that the MFC makes no guaranty of the results of herbicide treatment to invasive noxious non-native plants and MFC shall in no way be liable in the event that mortality does not occur after treatment/s and further landowner waives any warranty either express or implied that might be asserted or claimed in connection with this agreement.
- II. Should the MFC undertake to treat the invasive noxious non-native plant infestation covered herein the following shall apply:

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- 1) The MFC shall at its own expense:
 - a) Provide all labor, products, materials, vehicles, and equipment necessary to apply herbicide onto the landowner's property.
 - b) Manage application of the herbicide such that all label instructions, state and federal laws are followed.
 - c) Use subcontractors as may be needed to provide herbicide application treatments in accordance with this agreement.
 - 2) Landowner Obligations
 - a) The landowner conveys and grants to the MFC the right of ingress and egress onto and across landowner's property to make said herbicide treatments and check the effectiveness of the eradication efforts and plan for future treatments (if needed).
 - b) Clearly identify boundaries of the landowner's property to be treated. Landowner shall accurately identify and point out all property boundaries and warrants that the area to be treated with herbicide is within those boundaries and not on adjacent ownerships and assumes all risks associated with same and agrees to hold harmless and indemnify the MFC from any and all claims related to same.
 - c) Landowner will provide access means such as keys or combinations for locks on gates.
 - d) Landowners do not have to be present when crews are treating cogongrass; however, after two failed attempts to gain entry to the property, the landowner's application will be moved to the bottom of the waiting list.
 - e) The landowner will notify the MFC of any known hazards on the property.
 - f) Landowners with livestock on areas to be treated with herbicide agree to do one of the two (2) following options:
 - i) Remove livestock one (1) day before herbicide treatment and keep all livestock out of treated area for at least 30 days following treatment. OR,
 - ii) Leave livestock in area to be treated, but warrant that livestock will not be slaughtered for processing until at least 30 days following treatment. Landowner further warrants, that any new livestock introduced into treated areas before 30 days following herbicide application will not be slaughtered for processing until at least 30 days after their introduction into treated areas.
 - g) Landowner agrees to not produce hay from treated areas for at least 30 days following herbicide application.
 - h) Landowner acknowledges that certain Federal and/or State mandated labeling restrictions apply to herbicide application and these restrictions, and their interpretation, are subject to change. Landowner agrees to follow any instructions or directions of the MFC in matters pertaining to herbicide application restrictions, whether said restrictions are specifically listed herein or not.
 - i) Landowner agrees to assume and does so assume any and all risk of injury, damage, or loss to any such livestock and any liability in any way associated with said livestock.
 - j) By signing this application, landowner agrees that he/she will not disturb the treated areas for at least eight (8) weeks. This includes mowing, bush hogging, tilling, burning, soil work, etc. Treated areas disturbed during this time will not be retreated.
 - 3) Cancellation of agreement – either party may cancel this agreement by written notification. The MFC may also cancel this agreement anytime if ARRA or other Grant funds become unavailable. After cancellation the MFC shall have no obligation whatsoever regarding performance of items herein and under this Agreement. However, the MFC shall have a reasonable time within which to retrieve any equipment or property that the MFC may have left on the property for the purpose of the herbicide application.
 - 4) General Conditions of this Agreement are set forth as follows:
 - a) Landowner hereby grants to MFC a license and permission to enter the property to provide herbicide treatments as provided in this agreement in the manner MFC deems appropriate. And further, MFC shall have the right to inspect treated areas periodically for follow-up treatments, or research assessments.

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- b) Indemnity, Release, and Hold Harmless. Landowner hereby warrants that Landowner is free to enter into and perform this agreement. Landowner further agrees to indemnify the MFC for and to release and hold harmless from any and all claims, demands, rights, and causes of action of whatever kind or nature arising from and related to any and all foreseen and unforeseen injuries, damages, and/or losses in any way related to this agreement and the work or activities related to same.
- c) Choice of Law. Regardless of the place of execution of this Agreement, the parties submit to the exclusive jurisdiction and venue of the Circuit Court of Hinds County, Mississippi, for the purpose of enforcing this agreement or for any dispute arising from and/or in anyway related to it. This agreement will be governed by the laws of Mississippi, excluding any conflicts or choice of law rule, which might otherwise refer its construction or interpretation to foreign law.
- d) Entire Agreement. This Agreement constitutes the entire agreement with respect to the subject matter contained herein and supersedes all previous communications between the Parties pertaining to the subject matter hereof.
- e) Relationship of Parties. This Agreement shall neither be deemed nor construed to create a joint venture or partnership between MFC and Landowner, nor shall this Agreement be deemed or construed as making either Party the agent or representative of the other Party. Neither Party shall have the authority to bind the other Party in any respect.
- f) Modifications. The terms of this Agreement may not be modified, waived, amended, discharged, terminated or supplemented, or otherwise changed, except by a mutually agreed upon written document executed by an authorized representative of each Party.
- g) Severability. If any provision of this Agreement, as applied to either party or to any circumstance, shall be adjudged by a court to be void or unenforceable, whether at law or in equity, the same shall in no way affect any other provision of this Agreement, or the validity or enforceability of this Agreement.
- h) Successors and Assigns. This Agreement shall be binding upon the Parties, their successors and assigns. This Agreement is not assignable without the written approval of the other party.
- i) Construction of Agreement. Each Party acknowledges participating in the negotiation of this Agreement and further acknowledges that no provision of this Agreement shall be construed against or be interpreted to the disadvantage of any Party hereto by any court or other governmental or judicial authority by reason of such Party having, or being deemed to have, structured, dictated or drafted such provision.
- j) Execution of Additional Documents. Landowner and MFC agree to execute such other and additional documents reasonably requested to affect the intent of the matters set forth herein.
- k) No Assignment. Except as provided in Section II, Paragraph 1-c of the agreement, neither the MFC nor Landowner shall assign this Agreement in whole or in part, without the prior express and unequivocal written consent of the non-assigning Party, which consent may be withheld for any reason whatsoever. Any such attempted assignment without prior written consent of the non-assigning Party shall be void. In the case of any authorized assignments, the assignor and assignee shall remain liable with respect to all duties and obligations hereunder, unless the non-assigning Party shall agree otherwise in writing. Notwithstanding the above, the MFC may, without prior consent, assign the rights hereunder to another state entity with requisite power to carry out the duties and obligations of the MFC.
- l) Notice. All notices shall be in writing and shall be given by personal delivery, registered or certified mail, or by fax or electronic mail, at the addresses shown below. Notice to MFC shall be directed to:

Garron Hicks
Assistant Forest Management Chief
70 FD Buddy East Parkway
Oxford, Mississippi 38655
Cell: (662) 791-9747