

COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

0 [REDACTED]-RD-11 [REDACTED] - [REDACTED]

COVER PAGE

1. Project Title:

2. Period of Performance:

3. Parties:

A. USDA FOREST SERVICE

[REDACTED], hereinafter referred to as "FOREST SERVICE"

U.S. Tax Identification Number: 72-0564834

DUNS Number : 929332484

**FOREST SERVICE Authorized
Business Representative**

Name: [REDACTED]
Title: [REDACTED]
Address: [REDACTED]

Phone: [REDACTED]
FAX: [REDACTED]
E-Mail: [REDACTED]

**FOREST SERVICE Authorized Business
Representative**

Name: [REDACTED]
Title: [REDACTED]
Address: [REDACTED]

Phone: [REDACTED]
FAX: [REDACTED]
E-Mail: [REDACTED]

B. COOPERATOR

[REDACTED], hereinafter referred to as "COOPERATOR."

**COOPERATOR Authorized Business
Representative**

Name: [REDACTED]
Title: [REDACTED]
Address: [REDACTED]

Phone: [REDACTED]
FAX: [REDACTED]
E-Mail: [REDACTED]

**COOPERATOR Authorized Business
Representative**

Name: [REDACTED]
Title: [REDACTED]
Address: [REDACTED]

Phone: [REDACTED]
FAX: [REDACTED]
E-Mail: [REDACTED]

4. Agreement Format
 - A. Cover Page
 - B. Articles
 - C. Schedule 1 – Certifications
 - D. Schedule 2 – Statement of Work
 - E. Schedule 3 – Financial Plan

ARTICLES

Article 1. Definitions

1. Agreement means this Cooperative Research and Development Agreement.
2. Confidential Information means trade secrets or commercial or financial information that is privileged or confidential under the meaning of 5 USC 552(b) (4).
3. Subject Invention means any invention or other intellectual property conceived or first reduced to practice under this Agreement, which is patentable or otherwise protectable under Title 35 of the United States Code, under 7 USC 2321, et seq., or under the patent laws of a foreign country. Specifically not included in the definition of Subject Inventions are inventions made outside the Scope of Agreement or prior to the execution of this Agreement.
4. Record means any book, document, accounting procedure and practice, or other data, regardless of type and regardless of form.
5. Scope of Agreement means those activities set forth in Schedule 2, entitled “Statement of Work.”
6. Period of the Agreement means that period set forth under the Period of Agreement on the cover form for this agreement.

Article 2. Publications

1. Subject to the requirements of confidentiality and preservation of rights in Subject Inventions, either party may publish the results of this Agreement, PROVIDED:
 - a. The manuscript is provided to the other party’s Authorized Agent for review at least sixty (60) days prior to submission for publication.
 - b. The publication shall acknowledge this Agreement and the contributions of each party’s personnel.
 - c. The final decision as to the publication content rests with the party that writes the publication.
2. Publication and/or other disclosure of the results of this Agreement shall be delayed as necessary to preserve both United States of America and foreign patent rights in a Subject Invention.

- a. Such a delay will only be granted if requested in writing; and.
 - b. The requesting party demonstrates promptness and diligence in seeking patent protection on the Subject Invention.
3. FOREST SERVICE reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, any COOPERATOR's published work resulting from this cooperative project for Government purposes.

Article 3. Confidentiality

1. Confidential Information, which is owned by one party to this Agreement and disclosed to the other, shall be labeled "CONFIDENTIAL" by the submitter and shall not be disclosed by the recipient without permission of the owner.
2. To the extent either party orally submits its Confidential Information to the other party, the submitting party will prepare a document marked "CONFIDENTIAL" embodying or identifying in reasonable detail such orally submitted Confidential Information and provide the document to the other party within thirty (30) days of disclosure.
3. Neither party shall be bound by confidentiality if the Confidential Information received from the other party:
 - a. Already is available to the public or known to the recipient;
 - b. Becomes available to the public through no fault of the recipient; or
 - c. Is nonconfidentially received from another party legally entitled to it.
4. All information developed under this Agreement falling within the scope of the Agreement shall be considered by both COOPERATOR and FOREST SERVICE as confidential for a period of [REDACTED] years, [REDACTED] months) following the date the discovery was first communicated between both parties.

Article 4. Meetings, Reports and Records

1. Frequent and effective communication is essential to the successful accomplishment of the objectives of this Agreement. To this end, the scientific representatives of the FOREST SERVICE and COOPERATOR shall meet (meetings need not be in person if agreed upon) at least once every six (6) months to exchange results, perform critiques, and make plans and recommendations. Meeting frequency can be changed, as agreed to by both parties. Written progress reports shall be supplied by each party to the other at least fifteen (15) calendar days prior to meeting(s) scheduled for [REDACTED].
2. Any such plan or recommendation that is outside the Scope of Agreement shall be reduced to writing and referred to the Authorized Agent of each party for appropriate action. Any such plan or recommendation so referred shall not be binding upon either party unless incorporated into this Agreement by written amendment.
3. Each party shall keep complete records relating to this research. All such records shall be available for inspection by COOPERATOR, FOREST SERVICE, Comptroller General, or any authorized

representative at reasonable times. The records, or true copies of them, shall be delivered upon request.

4. The results of this Agreement and research data that are collected, compiled, and evaluated under this Agreement shall be shared and mutually interchanged by COOPERATOR and FOREST SERVICE.
5. A final report summarizing all data shall be submitted by each party, separately or jointly, to both party's Authorized Agents within sixty (60) days of the completion of this Agreement.

Article 5. Ownership of Inventions

1. All rights, title, and interest in any Subject Invention made solely by employee(s) of the FOREST SERVICE shall be owned by FOREST SERVICE.
2. All rights, title, and interest in any Subject Invention made solely by employee(s) of the COOPERATOR shall be owned by the COOPERATOR.
3. All rights, title, and interest in any Subject invention made jointly by at least one (1) employee of the FOREST SERVICE and at least one (1) employee of the COOPERATOR shall be jointly owned by the FOREST SERVICE and COOPERATOR.

Article 6. Subject Invention Licenses

1. Patent rights obtained on joint Subject Inventions made by two or more persons shall be owned in accordance with the obligations of the persons making such inventions to assign their interest therein, and both the FOREST SERVICE and COOPERATOR shall jointly own an undivided interest in the patent rights on all Subject Inventions which jointly involve an employee of the FOREST SERVICE and COOPERATOR. The undivided interest of the FOREST SERVICE in such patent rights shall be subject to the option and right of first refusal in Art. 6, paragraph 3, below.
2. COOPERATOR is granted an option to negotiate an exclusive license in each Subject Invention owned or co-owned by the FOREST SERVICE for one or more field(s) of use encompassed by the Scope of Agreement. This license shall be consistent with the requirements of 35 USC 209(a), 209(b) (manufactured substantially in the U.S.), and 209(f) and other such terms and conditions as may be reasonable under the circumstances, as agreed upon through good faith negotiations between COOPERATOR and FOREST SERVICE.
3. This option to negotiate an exclusive license shall terminate whenever the COOPERATOR fails to:
 - a. Submit a complete application for an exclusive license within sixty to one hundred twenty (60-120) days of being notified the FOREST SERVICE of an Inventions availability for licensing; or
 - b. Submit a good faith written response to a written proposal of licensing terms within forty five to sixty (45-60) days of such proposal.
4. COOPERATOR grants the FOREST SERVICE, on behalf of the U.S. Government, a royalty free, nonexclusive, worldwide, irrevocable, nontransferable license for any COOPERATOR solely owned Subject Invention. The purpose of this license shall be to practice the Subject Invention or have it practiced, by or on behalf of the U.S. Government, for research or other U.S. Government purposes. 15 USC 3710a(b)(2).

Article 7. Subject Invention Information

1. The Authorized Agents or designees of each party shall promptly make written disclosure to each other of each Subject Invention.
2. This information shall be treated in confidence by the receiving party, EXCEPT: it may be shared with those having a need to know.
3. Each party shall provide, when requested by the other, all information in its possession, or true copies thereof, pertaining to a Subject Invention, which may be necessary or useful in the preparation, filing, and prosecution of patent applications covering the Subject Invention.

Article 8. Intellectual Property Protection Applications

1. COOPERATOR shall have the first option to prepare and prosecute patent applications, foreign and domestic, on Subject Inventions owned or co-owned by the U.S. Government, subject to the following conditions:
 - a. All documents shall be submitted to the FOREST SERVICE sufficiently in advance to filing to allow the FOREST SERVICE a reasonable opportunity to review and make recommendations thereon;
 - b. Copies of all correspondence from the U.S. Patent and Trademark Office and foreign equivalent offices shall be provided promptly to the FOREST SERVICE;
2. The act of preparing and/or filing documents, per se, shall not entitle COOPERATOR to any rights in such Inventions or the reimbursement of costs incident to patent prosecution.
3. FOREST SERVICE shall have the right at any time, at its sole discretion, concerning Inventions solely owned by the U.S. Government, to: (1) assume responsibility for prosecuting any such application; and (2) permit any application to become abandoned or issued patent/certificate to expire, subject to the provisions of any license agreement relating to the subject matter.
4. FOREST SERVICE agrees to provide COOPERATOR consultation and advice in the preparation, filing, and prosecution of patent applications on Subject Inventions.
5. The assignee of record for all patents owned by the FOREST SERVICE shall be "The United States of America as represented by the Secretary of Agriculture, Washington, D.C." Joint ownership by the Government shall be set forth in patents.

Article 9. Use of Name or Endorsements

COOPERATOR shall not in any way state or imply that this Agreement or the results of this Agreement are an endorsement of its organizational units, employees, products, or services except to the extent permission is specifically granted by the FOREST SERVICE.

Article 10. Regulatory Compliance with Government Rules & Regulations

1. COOPERATOR is responsible for obtaining appropriate opinions, permits, or licenses from Federal or State agencies, which regulate research materials, or commercial products that may arise from the research work performed within the Scope of Agreement.
2. In carrying out its responsibilities under this Article, COOPERATOR shall:
 - a. Consult and coordinate regulatory approval actions with the FOREST SERVICE; and
 - b. Give FOREST SERVICE's Authorized Agent or designee a copy of any applications and opinions, permits, or licenses issued.
3. Both parties acknowledge and agree to comply with all applicable laws and regulations of the Animal Plant Health and Inspection Service, The Center for Disease Control, and /or Export Control Administration pertaining to possession or transference of technical information, biological materials, pathogens, toxins, genetic elements, genetically engineered microorganisms, vaccines, and the like.
4. Both parties shall adhere to the U.S. Export Administration Laws and Regulations and shall not export or re-export any of the other party's technical data or products received under this Agreement or the direct product of such technical data to any proscribed country listed in the U.S. Export Administration Laws and Regulation unless properly authorized by the U.S. Government.

Article 11. Liability

It is understood and agreed that neither party to this Agreement shall be responsible for any damages or injuries arising out of the conduct of activities governed by this Agreement, except to the extent that such damages and/or injuries were caused by the negligent or wrongful acts or omissions of its employees, agents or officers. FOREST SERVICE liability shall be limited by the Federal Tort Claims Act, 28 USC 2671, et. seq.

Article 12. Termination

1. Either party may unilaterally terminate this entire Agreement at any time by giving the other party written notice not less than sixty (60) calendar days prior to the desired termination date.
2. Articles 2. "Publications", 3. "Confidentiality", 5. "Ownership", 6. "Subject Invention Licenses", 9. "Use of Name or Endorsements," and 11. "Liability" shall survive the expiration or termination of this Agreement.
3. If either party unilaterally terminates this Agreement pursuant to Article 12.1, each party shall return to the other or destroy, as shall be then agreed, any and all data and materials originated or provided by one party to the other that is still in the receiving party's possession within thirty (30) days of termination.

Article 13. Legal Authority

1. COOPERATOR has the legal authority to enter into this instrument, and sufficient institutional, managerial and financial capability (including funds sufficient to pay the nonfederal share of project costs) to ensure proper planning, management, and completion of the project.
2. FOREST SERVICE is entering into the Agreement under the authority of the Federal Technology Transfer Act of 1986 (15 U.S.C. § 3710a).

Article 14. Disputes

1. Any dispute arising under this Agreement, which cannot be readily resolved, shall be submitted jointly to the Authorized Agents, identified in Article 15 of these General Provisions.
2. Each party agrees to seek in good faith to resolve the issue through negotiation or other forms of nonbinding dispute resolution processes mutually acceptable to the parties.
3. Pending the resolution of any dispute or claim pursuant to Article 14, the parties agree that performance of all obligations shall be pursued diligently.

Article 15. Notices and Authorized Agents

All notices pertaining to or required by this Cooperative Research and Development Agreement that interpret or may have a bearing on the legal effect of this Agreement's terms and conditions shall be in writing and shall be signed by the authorized business representative shown below.

**FOREST SERVICE's Authorized
Business Representative**

Name: [REDACTED]
Title: [REDACTED]
Address: [REDACTED]

Phone: [REDACTED]
FAX: [REDACTED]
E-Mail: [REDACTED]

**COOPERATOR's Authorized Business
Representative**

Name: [REDACTED]
Title: [REDACTED]
Address: [REDACTED]

Phone: [REDACTED]
FAX: [REDACTED]
E-Mail: [REDACTED]

Article 16. Limitation on FOREST SERVICE Scientific Representative's Authority

FOREST SERVICE's Scientific Representative is authorized to perform the research and development falling within the Scope of Agreement. Neither the Scientific Representative nor their staff is authorized to change or interpret with authority the terms and conditions of this Agreement.

Article 17. Assignments

1. Neither this Agreement nor any rights or obligations of the parties hereto shall be assigned or otherwise transferred by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld.
2. FOREST SERVICE is an agency of the U.S. Government and any rights or obligations created under this Agreement are freely transferable within the U.S. Government and shall not be deemed an "assignment" as contemplated by this Article 17.

Article 18. Relationship of Parties

1. FOREST SERVICE and COOPERATOR act in their independent capacities in the performance of their respective functions under this Agreement and neither party is to be considered the officer, agent, or employee of the other.
2. Each party shall allow, consistent with policies and procedures of the FOREST SERVICE and the COOPERATOR, access to their facilities, as needed.
3. Each party shall separately assign personnel, equipment, supplies, transportation, and facilities, as needed and available to meet respective responsibilities hereunder, such resources to remain the property of the assignor.

Article 19. Force Majeure

1. Neither party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such party:
 - a. Which causes the party to be unable to perform its obligations under this Agreement; and
 - b. Which it has been unable to overcome by the exercise of due diligence.
 - c. This includes, but is not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strikes, labor dispute, failure, or sabotage of either party's facilities or any order or injunction made by a court or public agency.
2. In the event of the occurrence of such force majeure event, the party unable to perform shall promptly notify the other party. It shall also:
 - a. Use its best efforts to resume performance as quickly as possible;

- b. Suspend performance only for such period of time as is necessary as a result of the force majeure event.

Article 20. Severability

The illegality or invalidity of any provision of this Agreement shall not impair, affect, or invalidate the other provisions of this Agreement.

Article 21. Ambiguities

FOREST SERVICE and COOPERATOR agree that each party has reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

Article 22. Subcontracting Approval

1. A party hereto desiring to obtain and use the services of a third party via contract or otherwise shall give prior notice to the other party, including details of the contract or other arrangement.
2. This requirement is to assure that confidentiality is not breached and rights ins Subject Inventions are not compromised.

Article 23. Governing Law

The construction, validity, performance, and effect of this entire Agreement shall be governed by the laws applicable to the Government of the United States of America as practiced in the Federal Courts located in the District of Columbia.

Article 24. Entire Agreement

1. This Agreement constitutes the entire agreement between COOPERATOR and the FOREST SERVICE and supersedes all prior agreements and understandings between them with respect to its subject matter.
2. Any representatives, promise, or condition in connection with such subject matter, which is not incorporated in this Agreement, shall not be binding upon either party.
3. No modifications, renewal, extension, waiver, or termination of this Agreement or any of its provision shall be binding upon the party against whom enforcement of such modification, renewal, extension, waiver, or termination is sought, unless made in writing and signed on behalf of such party by that party's Authorized Agent.

4. As used herein, the word 'termination' includes any and all means of bringing to an end prior to its expiration by its own terms of this agreement, or any provision thereof, whether by release, discharge, abandonment, or otherwise.

Article 25. Modifications

Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by the Authorized Agents of both parties, prior to any changes being performed.

Article 26. Conduct of COOPERATOR's Employee(s)

1. COOPERATOR's employee(s) while engaged in work upon or in a FOREST SERVICE facility shall abide by the FOREST SERVICE's "rules of the workplace."
2. Such rules address conduct, hours of work, laboratory procedures, equipment operating standards, research notebooks, etc.
3. FOREST SERVICE's Scientific Representative shall respond to COOPERATOR when queried concerning the details of FOREST SERVICE's "rules of the workplace."

Article 27. Supervision of COOPERATOR's Employee(s)

1. FOREST SERVICE may supervise the technical work of COOPERATOR's employee(s) while at the FOREST SERVICE facility and while engaged in work within the scope of this Agreement.
2. FOREST SERVICE may not interfere in the employer/employee relationship between COOPERATOR and its employee(s).

NOTE: ARTICLES 1, 2, 3, 6, 7 AND 8 OF SCHEDULE 1 ARE NOT USED IN AGREEMENTS WITH A FOREIGN ORGANIZATIONS.

SCHEDULE 1 CERTIFICATIONS

COOPERATOR certifies that it:

1. is, is not, a small business.
2. is, is not, a minority business.
3. Operates as:
 - an individual
 - a partnership
 - a corporation

- limited liability corporation
- public institution
- private institution
- educational institution

and is incorporated in the State of [REDACTED].

4. Has not paid or agreed to pay any company or person (other than a bona fide employee working solely for COOPERATOR) any fee, commission, percentage, or brokerage fee, contingent upon the award of this Agreement, and if so, agrees to furnish information relating thereto, as requested, by the Authorized Departmental Officer.
5. Has not employed or retained any company or person (other than a full-time bona fide employee working solely for COOPERATOR) to solicit or secure this Agreement.
6. Its Principal Officers are not listed on the U.S. Government's list of debarred and suspended organizations and individuals; shall notify the Authorized Departmental Officer if so listed; and shall not subcontract or otherwise award to any organization or individual so listed.
7. Agrees to comply with the provisions of the Civil Rights Act of 1964, as amended, and Executive Order 11246, addressing equal opportunity and affirmative action.
8. Agrees to comply with the provisions of Title IX of the Education Amendment of 1972, 20 USC 1681, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794; Age Discrimination Act of 1975, 42 USC 6101-6107; Clean Air Act, 42 USC 7401, et seq.; and Drug-Free Workplace Act of 1988, 41 USC 701, et seq.
9. Is in a position to undertake, perform, and complete this Agreement and will diligently perform work in accordance with its provisions.

SCHEDULE 2

STATEMENT OF WORK

- A. Introduction/Background. Give description.
- B. Objective.
- C. Approach and Methodology.
- D. FOREST SERVICE's Responsibilities
 1. Conduct these portions of the research project or perform the following tasks (List):
 - a.
 - b.
 - c.
 - d.

2. (USE D.2.a. and D.2.b., only if applicable.)

- a. Provide [] square feet of [] space in Building [], Room [], at the [] ARS location for those COOPERATOR personnel assigned to this project.
- b. Provide utilities, services, and general support to COOPERATOR'S personnel, as needed and available.

E. COOPERATOR'S Responsibilities

1. Perform these portions of the research effort(List):

- a.
- b.
- c.
- d.
- e.

2. Pay \$ [] in total funding to the FOREST SERVICE, over the course of this agreement, with the payment schedule as follows:

- a. \$ [] by [];
- b. \$ [] on before []; etc.
- c. Nothing herein shall be construed as obligation the FOREST SERVICE to expend or as involving the United States in any contract or other obligation for the future payment of money in excess of funding approved and made available for payment under this instrument and modifications thereto
- d. COOPERATOR may pay the travel and per diem of FOREST SERVICE scientific representatives traveling pursuant to this Agreement if such payment receives the prior approval of the FOREST SERVICE Area Director or Forest Supervisor.

F. FOREST SERVICE & COOPERATOR's Joint or Mutual Responsibilities

1. Perform these portions of the effort jointly:

- a.
- b.
- c.

SCHEDULE 3 FINANCIAL PLAN

BURDEN AND NONDISCRIMINATION STATEMENTS

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-NEW. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.