



Cooperator Agreement No. _____ FS Agreement No. _____ - - -

**JOINT VENTURE AGREEMENT
Between The
And The
USDA, FOREST SERVICE**

This JOINT VENTURE AGREEMENT is hereby made and entered into by and between the _____, hereinafter referred to as “ _____,” and the USDA, Forest Service _____, hereinafter referred to as the “U.S. Forest Service,” under the provisions of the National Agricultural Research, Extension and Teaching Policy Act of 1977 (Pub. L. 95-113), as amended by the Food Security Act of 1985 (7 U.S.C. 3319a, Pub. L. 99-198).

Background:

Title:

I. PURPOSE: The purpose of this agreement is to document the cooperation between the parties to

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

In consideration of the above premises, the parties agree as follow:

III. SHALL:

A. LEGAL AUTHORITY: _____ shall have the legal authority to enter into this agreement, and the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project, which includes funds sufficient to pay the nonfederal share of project costs, when applicable.

B. PROGRAM PERFORMANCE REPORTS: _____ shall monitor the performance of the agreement activities to ensure that performance goals are being achieved.

Performance reports shall contain information on the following:



- A comparison of actual accomplishments to the goals established for the period. Where the output of the project can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information is useful.

- Reason(s) for delay if established goals were not met.

- Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

shall submit select from drop-down performance reports to the U.S. Forest Service Program Manager. These reports are due select from the drop down days after the reporting period. The final performance report must be submitted either with 's final payment request, or separately, but not later than 90 days from the expiration date of the agreement.

- C. ENVIRONMENTAL STANDARDS. shall comply with environmental standards pursuant to the notification of violating facilities in E.O. 11738.
- D. USE OF GOVERNMENT OWNED VEHICLES. U.S. Forest Service vehicles may be used for official U.S. Forest Service business only accordance with FSH 7109.19, ch. 60, the requirements established by the region in which performance of this agreement takes place, and the terms of this agreement.
- E. BUILDING AND COMPUTER ACCESS BY NON-U.S. FOREST SERVICE PERSONNEL. may be granted access to U.S. Forest Service facilities and/or computer systems to accomplish work described in the Operating Plan or Statement of Work. All non-government employees with unescorted access to U.S. Forest Service facilities and computer systems must have background checks following the procedures established by USDA Directives 3505 and Departmental Manual 4620-02. Those granted computer access must fulfill all U.S. Forest Service requirements for mandatory security awareness and role-base advanced security training, and sign all applicable U.S. Forest Service statements of responsibilities.
- F.

IV. THE U.S. FOREST SERVICE SHALL:

- A. PAYMENT/REIMBURSEMENT. The U.S. Forest Service shall reimburse for the U.S. Forest Service's share of actual expenses incurred, not to exceed \$, as shown in the Financial Plan. The U.S. Forest Service shall make payment upon receipt of 's invoice. Each invoice from must display the total project costs for the billing period, separated by U.S. Forest Service and 's share. In-kind contributions must be displayed as a separate line item and shall not be included in the total project costs available for reimbursement. The final invoice must display 's full match towards the project, as shown in the financial plan, and be submitted no later than 90 days from the expiration date.



Each invoice must include, at a minimum:

1. _____'s name, address, and telephone number
2. U.S. Forest Service agreement number
3. Invoice date
4. Performance dates of the work completed (start & end)
5. Total invoice amount for the billing period
6. Statement that the invoice is a request for payment by 'reimbursement'
7. If using SF-270, a signature is required.
8. Invoice Number, if applicable

The invoice must be sent by one of three methods (email is preferred):

EMAIL: asc_ga@fs.fed.us

FAX: 877-687-4894

POSTAL: USDA Forest Service
Albuquerque Service Center
Payments – Grants & Agreements
101B Sun Ave NE
Albuquerque, NM 87109

Send a copy to:

- B. ADVANCE PAYMENT. The U.S. Forest Service shall make advance payment upon receipt of an invoice from _____. The invoice must be submitted no more than monthly and the total must not exceed the U.S. Forest Service's share of anticipated expenses as identified on the financial plan. The first invoice may request an advance based on an estimated cost not to exceed 30 days expenditures. Each subsequent invoice must display any additional advance funding for a 30 day period, if needed, as well as the total project costs to date of the invoice, separated by U.S. Forest Service and _____'s share. In-kind contributions must be displayed as a separate line item and must not be included in the total project costs. If the recipient receives an advance payment and subsequently requests an advance or reimbursement payment, then the request must clearly demonstrate that the previously advanced funds have been fully expended before the U.S. Forest Service can approve the request for payment. Any funds advanced, but not spent, must be returned to the U.S. Forest Service upon expiration of this agreement. The final invoice from _____ must be submitted no later than 90 days from the expiration date.

Each invoice must include, at a minimum:

1. _____'s name, address, and telephone number
2. _____ U.S. Forest Service agreement number
3. _____ Invoice date
4. _____ Performance dates of the work completed (start & end)



- 5. Total invoice amount for the billing period
- 6. Statement that the invoice is a request for payment by 'advance'
- 7. If using SF-270, a signature is required.
- 8. Invoice Number, if applicable

The invoice must be sent by one of three methods (email is preferred):

EMAIL: asc_ga@fs.fed.us

FAX: 877-687-4894

POSTAL: USDA Forest Service
 Albuquerque Service Center
 Payments – Grants & Agreements
 101B Sun Ave NE
 Albuquerque, NM 87109

Send a copy to:

C.

V. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN THE PARTIES THAT:

- A. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this instrument.

Principal Cooperator Contacts:

| Cooperator Program Contact | Cooperator Administrative Contact |
|--|--|
| Name: Address: City, State, Zip: Telephone: FAX: Email: | Name: Address: City, State, Zip: Telephone: FAX: Email: |

Principal U.S. Forest Service Contacts:

| U.S. Forest Service Program Manager Contact | U.S. Forest Service Administrative Contact |
|--|--|
| Name: Address: City, State, Zip: Telephone: FAX: | Name: Address: City, State, Zip: Telephone: FAX: |



| | |
|--------|--------|
| Email: | Email: |
|--------|--------|

- B. NON-LIABILITY. The U.S. Forest Service does not assume liability for any third party claims for damages arising out of this instrument.
- C. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or _____ is/are sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the agreement.

To _____, at _____'s address shown in the agreement or such other address designated within the agreement.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- D. PARTICIPATION IN SIMILAR ACTIVITIES. This agreement in no way restricts the U.S. Forest Service or _____ from participating in similar activities with other public or private agencies, organizations, and individuals.
- E. ENDORSEMENT. Any of _____'s contributions made under this agreement do not by direct reference or implication convey U.S. Forest Service endorsement of _____'s products or activities.
- F. USE OF U.S. FOREST SERVICE INSIGNIA. In order for _____ to use the U.S. Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.
- G. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no United States member of, or United States delegate to, Congress shall be admitted to any share or part of this instrument, or benefits that may arise therefrom, either directly or indirectly.
- H. NONDISCRIMINATION. _____ shall comply with all applicable federal statutes relating to nondiscrimination. This includes all applicable requirements of all other Federal laws, regulations, and policies. These include but are not limited to Title VI of the Civil Rights Act of 1964 as amended, which prohibits discrimination on the bases of race, color and national origin; Title IX of the Education Amendments of 1972 which prohibits discrimination based on sex in educational programs and activities; Age Discrimination Act of 1975, as amended, prohibiting age



discrimination; and 504 of the Rehabilitation Act of 1973 as amended, which prohibits discrimination on the basis of disability.

I. ELIGIBLE WORKERS. shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract awarded under this instrument.

J. STANDARDS FOR FINANCIAL MANAGEMENT.

1. Financial Reporting

shall provide complete, accurate, and current financial disclosures of the project or program in accordance with any financial reporting requirements, as set forth in the financial provisions.

2. Accounting Records

shall continuously maintain and update records identifying the source and use of funds. The records shall contain information pertaining to the agreement, authorizations, obligations, unobligated balances, assets, outlays, and income.

3. Internal Control

shall maintain effective control over and accountability for all U.S. Forest Service funds, real property, and personal property assets. shall keep effective internal controls to ensure that all United States Federal funds received are separately and properly allocated to the activities described in the agreement. shall adequately safeguard all such property and shall ensure that it is used solely for authorized purposes.

4. Source Documentation

shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and subgrant/contract documents, and so forth.

5. Advance Payments

When applicable, shall establish and maintain specific procedures to minimize the time elapsing between the advance of federal funds and their subsequent disbursement. Any advance requested by must be expended within 30 days of receipt.



- K. AVAILABILITY OF FUNDS. U.S. Forest Service funds in the amount of \$ _____ are currently available for performance of this instrument through _____. The U.S. Forest Service's obligation for performance of this instrument beyond this date is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the U.S. Forest Service for any payment may arise for performance under this instrument beyond _____ until funds are made available to the U.S. Forest Service for performance and until _____ receive(s) notice of availability to be confirmed in a written modification by the U.S. Forest Service.
- L. INDIRECT COSTS AND TUITION REMISSION. In accordance with 7 U.S.C. 3319, indirect costs and tuition remission are not reimbursable to a State Cooperative Institution, as defined in 7 U.S.C. 3103 (17), under this agreement. Indirect costs, however, may be used by a State Cooperative Institution to satisfy matching or cost-sharing requirements.
- M. PROGRAM INCOME – PARTNERSHIP AGREEMENTS.
1. _____ shall apply the standards set forth in this Provision to account for program income earned under the agreement.
 2. If any program income is generated as a result of this agreement, the income must be applied using the deduction alternative. The deduction alternative means that program income must be deducted from total allowable costs to determine the net allowable costs, unless otherwise approved by the signatory official. Program income must be used for current costs unless the Federal agency authorizes otherwise. Program income which _____ did not anticipate at the time of the award must be used to reduce the Federal agency and _____'s contributions rather than to increase the funds committed to the project.
 3. Unless the terms and conditions of the agreement provide otherwise, _____ shall have no obligation to the U.S. Government regarding program income earned after the end of the project period.
 4. Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the agreement and they comply with the Cost Principles, if applicable.
 5. Unless the terms and conditions of the agreement provide otherwise, _____ shall have no obligation to the U.S. Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an instrument. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research awards.



N. HEALTH & HUMAN SERVICES PAYMENT MANAGEMENT SYSTEM (HHS PMS). identified for use of this payment system shall designate a financial institution or an authorized payment agent through which a direct deposit may be made in accordance with current HHS PMS system requirements. The Albuquerque Service Center is responsible for soliciting initial enrollment in the HHS PMS. **Any questions concerning payments should be addressed to the Albuquerque Service Center at (877) 372-7248.** Please ask for the Grants and Agreements Payments section. Any subsequent changes to banking information are made by through the HHS PMS. The HHS sub-account number(s) for this Agreement is/are:

| HHS SUB-ACCOUNT | AMOUNT |
|-----------------|--------|
| G | \$ |
| G | \$ |

O. OVERPAYMENT. Any funds paid to in excess of the amount entitled under the terms and conditions of this agreement constitute a debt to the Federal Government. The following must also be considered as a debt or debts owed by to the U.S. Forest Service:

- Any interest or other investment income earned on advances of agreement funds; or
- Any royalties or other special classes of program income which, under the provisions of the agreement, are required to be returned;

If this debt is not paid according to the terms of the bill for collection issued for the overpayment, the U.S. Forest Service may reduce the debt by:

1. Making an administrative offset against other requests for reimbursement.
2. Withholding advance payments otherwise due to .
3. Taking other action permitted by statute (31 U.S.C. 3716 and 7 CFR, Part 3, Subpart B).

Except as otherwise provided by law, the U.S. Forest Service may charge interest on an overdue debt.

P. INSTRUMENT CLOSEOUT. shall close out the instrument within 90 days after expiration or notice of termination.

Any unobligated balance of cash advanced to must be immediately refunded to the U.S. Forest Service, including any interest earned in accordance with 7 CFR 3016.21, 7 CFR 3019.22, or other relevant law or regulation.

Within a maximum of 90 days following the date of expiration or termination of this instrument, all financial performance and related reports required by the terms of the instrument must be submitted to the U.S. Forest Service by .



If this instrument is closed out without audit, the U.S. Forest Service reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

- Q. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. shall retain all records pertinent to this instrument for a period of no less than 3 years from the expiration or termination date. As used in this provision, "records" includes books, documents, accounting procedures and practice, and other data, regardless of the type or format. shall provide access and the right to examine all records related to this instrument to the U.S. Forest Service Inspector General, or Comptroller General or their authorized representative.

If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the 3-year period, the records must be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later.

Records for nonexpendable property acquired in whole or in part, with Federal funds must be retained for 3 years after its final disposition.

shall provide access to any project site(s) to the U.S. Forest Service or any of their authorized representatives. The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are kept.

- R. FREEDOM OF INFORMATION ACT (FOIA). Public access to agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- S. PUBLIC NOTICES. It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. is/are encouraged to give public notice of the receipt of this instrument and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:

" of the U.S. Forest Service, Department of Agriculture ."

may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. is/are requested to provide copies of notices or announcements to the U.S. Forest Service Program Manager and to the U.S. Forest Service's Office of Communications as far in advance of release as possible.

- T. PURCHASE OF EQUIPMENT. U.S. Forest Service funds may be used by to purchase equipment necessary to accomplish activities described in this agreement. The available funding is displayed in the financial plan. Title to the equipment rests with the U.S. Forest Service, but may be transferred to on completion of the project, if appropriate.



- U. FUNDING _____. Federal funding under this instrument is not available for reimbursement of _____'s purchase of _____. Equipment is defined as having a fair market value of \$5,000 or more per unit and a useful life of over one year. Supplies are those items that are not equipment.
- V. PROPERTY IMPROVEMENTS. Improvements placed on National Forest System land at the direction or with the approval of the U.S. Forest Service becomes property of the United States. These improvements are subject to the same regulations and administration of the U.S. Forest Service as would other National Forest improvements. No part of this instrument entitles _____ to any interest in the improvements, other than the right to use them under applicable U.S. Forest Service Regulations.
- W. CONTRACT REQUIREMENTS. Any contract under this agreement must be awarded following _____'s established procurement procedures, to ensure free and open competition, and avoid any conflict of interest (or appearance of a conflict). _____ must maintain cost and price analysis documentation for potential U.S. Forest Service review. _____ is/are encouraged to utilize small businesses, minority-owned firms, and women's business enterprises.

Additionally, federal wage provisions (Davis-Bacon or Service Contract Act) are applicable to any contract developed and awarded under this instrument where all or part of the funding is provided with U.S. Forest Service funds. Davis-Bacon wage rates apply on all public works contracts in excess of \$2,000 and Service Contract Act wage provisions apply to service contracts in excess of \$2,500.

- X. GOVERNMENT-FURNISHED PROPERTY. _____ may only use U.S. Forest Service property furnished under this agreement for performing tasks assigned in this agreement. _____ shall not modify, cannibalize, or make alterations to U.S. Forest Service property. A separate document, Form AD-107, must be completed to document the loan of U.S. Forest Service property. The U.S. Forest Service shall retain title to all U.S. Forest Service-furnished property. Title to U.S. Forest Service property must not be affected by its incorporation into or attachment to any property not owned by the U.S. Forest Service, nor must the property become a fixture or lose its identity as personal property by being attached to any real property.
Cooperator Liability for Government Property.
1. Unless otherwise provided for in the agreement, _____ shall not be liable for loss, damage, destruction, or theft to the Government property furnished or acquired under this contract, except when any one of the following applies—
 - a. The risk is covered by insurance or _____ is/are otherwise reimbursed (to the extent of such insurance or reimbursement).



- b. The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of _____'s managerial personnel. _____'s managerial personnel, in this clause, means _____'s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of _____'s business; all or substantially all of _____'s operation at any one plant or separate location; or a separate and complete major industrial operation.
2. _____ shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. _____ shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.
3. _____ shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.
4. Upon the request of the Grants & Agreements Specialist, _____ shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.
- Y. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS, AND ELECTRONIC MEDIA. _____ shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this instrument.
- Z. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. _____ shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:



"This institution is an equal opportunity provider."

AA. REMEDIES FOR COMPLIANCE RELATED ISSUES. If materially fail(s) to comply with any term of the instrument, whether stated in a Federal statute or regulation, an assurance, the agreement, or elsewhere, the U.S. Forest Service may take one or more of the following actions:

1. Temporarily withhold cash payments pending correction of the deficiency by or more severe enforcement action by the U.S. Forest Service;
2. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
3. Wholly or partly suspend or terminate the current instrument for _____'s program;
 - a. Withhold further awards for the program, or
 - b. Take other remedies that may be legally available, including debarment procedures under 7 CFR part 3017.

BB. TERMINATION BY MUTUAL AGREEMENT. This instrument may be terminated, in whole or part, as follows:

1. When the U.S. Forest Service and _____ agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
2. By 30 days written notification by _____ to the U.S. Forest Service setting forth the reasons for termination, effective date, and in the case of partial termination, the portion to be terminated.

If, in the case of a partial termination, the U.S. Forest Service determines that the remaining portion of the instrument will not accomplish the purposes for which the instrument was made, the U.S. Forest Service may terminate the instrument in its entirety.

Upon termination of an instrument, _____ shall not incur any new obligations for the terminated portion of the instrument after the effective date, and shall cancel as many outstanding obligations as possible. The U.S. Forest Service shall allow full credit to _____ for the United States Federal share of the non-cancelable obligations properly incurred by _____ up to the effective date of the termination. Excess funds shall be refunded within 60 days after the effective date of termination.

CC. ALTERNATE DISPUTE RESOLUTION – PARTNERSHIP AGREEMENT. In the event of any issue of controversy under this agreement, the parties may pursue



Alternate Dispute Resolution procedures to voluntarily resolve those issues. These procedures may include, but are not limited to conciliation, facilitation, mediation, and fact finding.

- DD. DEBARMENT AND SUSPENSION. shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- EE. INTERNATIONAL TRAVEL. When U.S. Forest Service funds are used, and no Federal, statutory exceptions apply, shall ensure that any air transportation of passengers and property is provided by a carrier holding a United States Government issued certificate in compliance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 40118 (Fly American Act).
- FF. PATENT RIGHTS. Each instrument awarded to a small business firm, non-profit organization, or university which is to be performed in the United States, its possessions, or Puerto Rico and has as a purpose the performance of experimental, development, or research work, must contain the Patents Rights Provision.

1. Definitions:

- a. Invention. Any invention or discovery which is or may be patentable, or otherwise protectable under Title 35 of the United States Code (U.S.C.), or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
- b. Subject Invention. Any invention of conceived or first actually reduced to practice in the performance of work under this instrument, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of the instrument performance.
- c. Practical Application. To manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations available to the public on reasonable terms.
- d. Made. When used in relation to any invention, the conception or first actual reduction to practice of such invention.



- e. Small Business Firm. A small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the administrator of the Small Business Administration. For the purpose of this provision, the size standard for small business concerns involved in Government procurement and subgranting as 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
 - f. Non-Profit Organization. A university or other institution of higher education or an organization of the type described in section 501 (c) (3) of the Internal Revenue Code of 1954 Internal Revenue Code (26 U.S.C. 501c) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.
2. Allocation of Principal Rights. may retain the entire right, title, and interest throughout the world to each subject invention, subject to this provision and 35 U.S.C. 203. With respect to any subject invention in which retain(s) title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world.
3. Invention Disclosure, Election of Title and Filing of Patent Applications by
- a. shall disclose each subject invention to the U.S. Forest Service within 2 months after the inventor discloses it in writing to personnel responsible for patent matters. The disclosure to the U.S. Forest Service shall be in the form of a written report and must identify the instrument under which the invention was made and the inventor(s). It must be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electric characteristics of the invention. The disclosure must also identify any publication, on sale of public use of the invention, and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the U.S. Forest Service, shall promptly notify the U.S. Forest Service of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by .
 - b. shall elect in writing whether or not to retain title to any such invention by notifying the U.S. Forest Service within 2 years of disclosure by ; provided that in any case where publication, on sale or public use has initiated the 1 year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the U.S. Forest Service to a date that is no more than 60 days prior to the end of the statutory period.



- c. shall file its initial patent application on an elected invention within 1 year after election or, if earlier, prior to the end of any statutory period wherein valid protection can be obtained in the United States after publication, on sale, or public use. shall file patent applications in additional countries within either 10 months from the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- d. Requests for extension of the time for disclosure to the U.S. Forest Service, election, and filing may, at the discretion of the U.S. Forest Service, be granted.
4. Conditions when the Government May Obtain Title. shall convey to the U.S. Forest Service, upon written request, title to any subject invention:
- a. If fail(s) to disclose or elect the subject invention within the times specified in item c herein or elects not to retain title; provided that the U.S. Forest Service may only request title within 60 days after learning of the failure of to disclose or elect within the specified times.
- b. In those countries in which fail(s) to file patent applications within the times specified in item c(3) herein; provided, however, that if has/have filed a patent application in a country after the times specified in item c(3), but prior to its receipt of the written request of the U.S. Forest Service, shall continue to retain title in that country.
- c. In any country in which decide(s) not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.
5. Minimum Rights to and Protection of the Contractor Right to File.
- a. shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if fail(s) to disclose the subject invention within the times specified in item c herein. 's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which is/are a party and includes the right to grant sublicenses of the same scope to the extent was/were legally obligated to do so at the time the instrument was awarded. The license is transferable only with approval of the U.S. Forest Service, except when transferred to the successor of that party of 's business to which the invention pertains.
- b. 's domestic license may be revoked or modified by the U.S. Forest Service to the extent necessary to achieve expeditious practical application of the subject invention, pursuant to an application for an exclusive license



submitted in accordance with applicable provisions at 37 CFR Part 404. This license will not be revoked in that field of use or the geographical areas in which _____ has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the U.S. Forest Service to the extent _____, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

- c. Before revocation or modification of the license the U.S. Forest Service shall furnish _____ a written notice of its intention to revoke or modify the license, and _____ shall be allowed 30 days (or such other time as may be authorized by the U.S. Forest Service for good cause shown by _____) after the notice to show cause why the license should not be revoked or modified. _____ has/have the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 concerning the licensing Government-owned inventions, any decision concerning the revocation or modification of its license.

6. Action to Protect the Government's Interest

- a. _____ agree(s) to execute, or to have executed, and promptly deliver to the U.S. Forest Service all instruments necessary to (a) establish or confirm the rights the Government has throughout the world in those subject inventions to which _____ elect(s) to retain title, and (b) convey title to the U.S. Forest Service when requested under paragraph (c) herein and to enable the Government to obtain patent protection throughout the world in that subject invention.
- b. _____ agree(s) to require, by written instrument, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by _____ each subject invention made under the disclose provisions of paragraph c herein and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject invention. This disclosure format should require, as a minimum, the information required by paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1). _____ shall instruct such employees' agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.
- c. _____ shall notify the U.S. Forest Service of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a



reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

- d. agree(s) to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: This invention was made with the Government support under awarded by the U.S. Forest Service. The Government has certain rights in this invention.

7. Subcontracts

- a. shall include this provision, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor shall retain all rights provided for in this provision, and shall not, as part of the consideration for awarding the subgrant or subcontract under the instrument, obtain rights in the subgrantee's or subcontractor's subject inventions.
 - b. shall include in all other subcontracts the patent rights provision, regardless of tier, for experimental, developmental, or research work.
 - c. In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractors, and the contractor agree that the mutual obligations of the parties created by this provision constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this provision; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this provision.
8. Reporting on Utilization of Subject Invention. agree(s) to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by or its licensees or assignees. Such reports must include information regarding the status of development, date of first commercial sale or use, gross royalties received by , and such other data and information as the U.S. Forest Service may reasonably specify. also agree(s) to provide additional reports as may be requested by the U.S. Forest Service in connection with any march-in proceeding undertaken by the U.S. Forest Service in accordance with paragraph (j) of this provision. As required by 35 U.S.C. 202(c)(5), the U.S. Forest Service agrees it shall not disclose such information to persons outside the government without permission of .
9. Preference for United States Industry. Notwithstanding any other provision of this provision, agree(s) that neither it nor any assignee shall grant to



any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention will be manufactured substantially in the United States. However, in individual cases the requirement for such an agreement may be waived by the U.S. Forest Service upon a showing by _____ or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States, or that under the circumstances, domestic manufacture is not commercially feasible.

10. March-in-Rights. _____ agree(s) that with respect to any subject invention in which it has acquired title, the U.S. Forest Service has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the U.S. Forest Service to require _____, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if _____ assignee, or exclusive licensee refuses such a request, the U.S. Forest Service has the right to grant such a license itself if the U.S. Forest Service determines that:
 - a. Such action is necessary because _____ or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
 - b. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by _____, assignee, or their licensees;
 - c. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by _____, assignee, or licensees; or
 - d. Such action is necessary because the agreement required by paragraph i of this provision has not been obtained or waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
11. Special Provisions for Contracts with Non-profit Organizations. If the recipient/contractor is a non-profit organization, it agrees that:
 - a. Rights to a subject invention in the United States may not be assigned without the approval of the U.S. Forest Service, except where such assignment is made to an organization which has as one of its primary functions the management of inventions provided that such assignee shall be subject to the same provisions as _____.
 - b. _____ shall share royalties collected on a subject invention with the inventor, including Federal employee coinventors (when the agency deems



it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10.

- c. The balance of any royalties or income earned by _____ with respect to subject inventions, after payment of expense (including payments to inventor) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and
- d. It shall make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it shall give preference to a small business firm when licensing a subject invention if _____ determine(s) that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that _____ is/are also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give preference in any specific case will be at the discretion of _____. However, _____ agree(s) that the Secretary may review _____'s licensing program and decisions regarding small business applicants, and _____ shall negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that _____ could take reasonable steps to implement more effectively the requirements of this paragraph.

12. Communication

- a. Communications relating to the administration of this provision and disclosure statements should be directed to:

Patent Advisor
National Patent Program
USDA, Forest Service
One Gifford Pinchot Drive
Madison, WI 53705-2398

- b. Practice statements are also made to the Patent Advisor.

NOTE: Exceptions for Not Using the Patent Rights Provision:

- (1) When the instrument is for the operation of a federally funded research and development center of a government-owned production facility;
- (2) In exceptional circumstances when it is determined by the U.S. Forest Service that restriction or elimination of the right to retain title to any subject invention shall better promote the policy and objective of Title 35, Chapter 18 of the United States Code; or



- (3) When it is determined by a Government authority which is authorized by statute or Executive Order to conduct foreign intelligence or counter intelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities.
- c. Any determination under this section must be in writing and accompanied by a written statement of facts and must contain such information as the U.S. Forest Service field office deems relevant and, at a minimum, must:
- (1) Identify the small business firm or nonprofit organization involved.
 - (2) Describe the extent to which U.S. Forest Service action restricted or eliminated the right to retain title to a subject invention.
 - (3) State the facts and rationale supporting the U.S. Forest Service action.
 - (4) Provide supporting documentation for those facts and rationale.
 - (5) Indicate the nature of any objections to the U.S. Forest Service action and provide any documentation in which those objections appear. A copy of each such determination and written statement of facts must be sent to the Director, Fiscal and Public Safety, Washington Office, for review and forwarded to the Comptroller General of the United States within 30 days after the award of the applicable agreement. In some cases of determinations applicable to instruments with small business firms, copies must also be sent to the Chief Counsel for advocacy of the Small Business Administration.

GG. COPYRIGHTING. is/are granted sole and exclusive right to copyright any publications developed as a result of this agreement. This includes the right to publish and vend throughout the world in any language and in all media and forms, in whole or in part, for the full term of copyright and all renewals thereof in accordance with this instrument.

No original text or graphics produced and submitted by the U.S. Forest Service shall be copyrighted. The U.S. Forest Service reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for federal government purposes. This right must be transferred to any sub-agreements or subcontracts.

This provision includes:

1. The copyright in any work developed by _____ under this agreement.
2. Any right of copyright to which _____ purchase(s) ownership with any federal contributions.



- HH. U.S. FOREST SERVICE CODE OF SCIENTIFIC ETHICS. All persons performing under this agreement shall be aware of and perform according to the U.S. Forest Service Code of Scientific Ethics found at: [http://www.fs.fed.us/research/publications/fs_code_of%20 scientific_ethics.pdf](http://www.fs.fed.us/research/publications/fs_code_of%20scientific_ethics.pdf)

- II. USDA GUIDELINES FOR QUALITY OF INFORMATION. This agreement is subject to the “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication” and the “USDA Guidelines for Quality of Information” which can be found at <http://www.fs.fed.us/qoi/>.

- JJ. MODIFICATIONS. Modifications within the scope of this instrument must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least _____ days prior to implementation of the requested change. The U.S. Forest Service is not obligated to fund any changes not properly approved in advance.

- KK. COMMENCEMENT/EXPIRATION DATE. This instrument is executed as of the date of the last signature and is effective through _____ at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.

- LL. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this instrument. In witness whereof, the parties hereto have executed this instrument as of the last date written below.

Date

Date

U.S. Forest Service,



The authority and format of this instrument have been reviewed and approved for signature.

_____ Date

U.S. Forest Service Grants & Agreements Specialist

Burden Statement

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 0596-0217. The time required to complete this information collection is estimated to average 4 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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