



Pre-Award Waiver, Release, and Limitation of Liability Agreement

(Timber Sales or Stewardship Contract)

Ref FSM 2432.31b

FS-2400-0076 (REV.xx/xxxx)
OMB 0596-0225 (EXP. x/xx/xxxx)



Purchaser



Contractor

This PRE-AWARD WAIVER, RELEASE, AND LIMITATION OF LIABILITY AGREEMENT ("Agreement") is entered into as of this _____ day of _____, _____ between the U.S. Forest Service ("Forest Service") and _____ ("Contractor") (together sometimes referred to herein as the "Parties").

Recitals

WHEREAS, on or about _____, the Forest Service selected Contractor to be the successful Offeror to operate the _____ Integrated Resource Timber Contract, located on _____ National Forest;

WHEREAS, the Parties recognize that the _____ Integrated Resource Timber Contract may be affected by existing and/or threatened _____

litigation ("Litigation") and that, due to such Litigation, the Contracting Officer may instruct Contractor to delay or suspend operations, and/or modify or terminate the contract for the _____ Integrated Resource Timber Contract; and

WHEREAS, Contractor desires the Forest Service to proceed with the award of the contract, despite the possibility that the Forest Service might delay or suspend operations, and/or modify or terminate the contract;

Terms and Conditions

1. **Contract Award.** After the Parties' execution of this Agreement, the Contracting Officer shall promptly award the contract for the _____ Integrated Resource Timber Contract to Contractor if Contractor has met all the eligibility requirements for contract award.

2. **Release of Claims.** Except as provided in Paragraph Three, Contractor agrees to waive and release any and all claims against the Forest Service, Department of Agriculture, and/or United States (collectively the "Government") based in whole or in part upon any instruction issued by the Contracting Officer to delay or suspend operations, and/or modify or terminate the contract for the _____ Integrated Resource Timber Contract because of Litigation. Contractor agrees that the foregoing waiver and _____

release includes, but is not limited to, any claim based in whole or in part upon (a) any finding that the Forest Service failed to comply with environmental laws, regulations, rules, and/or policy; (b) any express or implied contractual warranty regarding the availability of timber for harvest; or (c) any express or implied contractual duty to cooperate and not to hinder Contractor's performance.

3. **Contractor's Remedies.** In the event that the Contracting Officer instructs Contractor to delay or suspend operations, and/or modify or terminate the contract because of Litigation, Contractor shall be entitled to the remedies set forth in the _____ Integrated Resource Timber Contract, except as provided in Paragraph Four.

4. **Limitation of Liability.** In the event that the Contracting Officer instructs Contractor to delay or suspend operations, and/or modify or terminate the contract because of Litigation, Contractor shall not be entitled to any kind of breach damages, reliance damages, restitution damages, consequential damages, or special damages, except as specifically allowed in the contract. Moreover, Contractor shall not be entitled to the following contract remedies set forth in provisions B/BT8.34:

1) replacement volume, and 2) liquidated damages. Nor shall Contractor have the right to unilaterally terminate the contract under provision B/BT8.34, unless the duration of the delay or suspension exceeds one calendar year.

5. **Merger.** Upon the Parties' execution of the contract for the _____ Integrated Resource Timber Contract, this Agreement shall become part of such contract as an addendum thereto. Should there be a conflict between the terms of this Agreement and the terms of the original contract, the terms of this Agreement shall govern. The Parties' subsequent execution of the contract for the _____ Integrated Resource Timber Contract shall not in any way affect the waiver, release, and limitation of liability,

contained herein. Should Contractor assign or otherwise transfer contract-performance duties to a third-party, this Agreement shall be binding on the subsequent contract holder and/or operator.

6. **Contractor's Affirmation.** By executing this Agreement, Contractor affirms that it has freely and knowingly agreed to the foregoing waiver, release, and limitation of liability. Moreover, Contractor affirms that the Integrated Resource Timber Contract awarded by the Forest Service, which might have been delayed or withheld, constitutes adequate consideration for the foregoing waiver, release, and limitation of liability.

7. **Choice of law.** This agreement shall be governed by the laws of the United States and federal common law without regard to conflicts of laws.

8. **Severability.** In the event that a tribunal of competent jurisdiction invalidates any part of this Agreement, the Parties agree that such part shall be severed and that the remaining parts shall continue in full force and effect.

Terms and Conditions Continued

9. **Jurisdiction.** The Parties expressly agree that the United States Court of Federal Claims and the U.S. Civilian Board of Contract Appeals shall have jurisdiction over this Agreement and hereby consent to the jurisdiction of such bodies. The foregoing agreement and consent shall not be construed to interfere with or defeat the proper jurisdiction of other courts.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement.

USDA, Forest Service

By: _____ Contracting Officer
Name of Approving Official Signature of Approving Official Title of Approving Official

I, _____, certify that I have full authority to represent the interests of _____ Contractor
, and that my signature below binds _____ to this agreement.
Contractor

By: _____ Signature of Contractor Representative
Contractor Representative Title of Contractor Representative

Duly authorized Title Date CORPORATE SEAL
If the corporation has no corporate seal that fact shall be stated.

FS-2400-0076: Public burden for this collection is estimated to be 0.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Under the Paperwork Reduction Act of 1995, an agency shall not conduct or sponsor, and no persons are required to respond to, a collection of information unless it displays a valid OMB control number.