

1. INTERNATIONAL AIR TRANSPORTATION FAIR COMPETITIVE PRACTICES ACT. The recipient/cooperator organization shall comply with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 1517 (Fly American Act), which requires:

a. Any air transportation to, from, between, or within a country, other than the U.S., of persons or property, the expense of which will be assisted by USDA funding, will be performed on a United States flag carrier if service provided by such carrier is “available.”

b. For the purposes of the requirement:

(1) Passenger or freight service by a certified air carrier is considered “available” even though:

(a) Comparable or a different kind of service by a noncertificated air carrier costs less; or

(b) Service by a noncertificated air carrier can be paid for in excess foreign currency; or

(c) Service by a noncertificated air carrier is preferred by the recipient organization contractor or traveler needing air transportation.

(2) Passenger service by a certificated air carrier is considered to be “unavailable”:

(a) When the traveler, while enroute, has to wait 6 hours or more for an available U.S. carrier: or

(b) When any flight by a U.S. carrier interrupted by a stop anticipated to be 6 hours or more for refueling, reloading, repairs, and so forth, and no other flight by a U.S. carrier is available during the 6 hour period: or

(c) When the flight by a U.S. carrier takes 12 or more hours longer than a foreign carrier.

2. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS AND AUDIOVISUALS. Forest Service support shall be acknowledged in any publications and audiovisuals developed as a result of this instrument.

3. FINANCIAL STATUS AND CASH REPORTING. A Financial Status Report Form SF-269A, or SF-269 shall be submitted. The final Form SF-269A or SF-269 shall be submitted either with the final payment request, or no later than 90 days from the expiration date of the instrument, or

A Report of Federal Cash Transactions, Form SF-272 shall be submitted by the recipient if the Forest Service determines that more detailed reporting is necessary to properly monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipient. Unless indicated otherwise, the Form SF-272 will be submitted within 15 calendar days following the end of each quarter. A final Form SF-269A, or SF-269 is required however, within 90 days from expiration of the agreement.

4. FEDERAL COST PRINCIPLES. This agreement will be governed by

OMB Circular No. A-122, Cost Principles for Nonprofit Organizations with Exclusions listed in Attachment C of OMB Circular No. A-122

OMB Circular No. A-21, Cost Principles for Educational Institutions

OMB Circular No. A-87, Cost Principles for State, Local and Indian Tribal Governments

The Federal Acquisition Regulations (FAR), Part 31, Contract Cost Principles and Procedures.

and audit requirements under OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations

5. COLLECTION OF AMOUNTS DUE THE FEDERAL GOVERNMENT. Pursuant to 31 U.S.C. 3716 and 7 CFR, Part 3, Subpart B, any funds paid to a cooperator in excess of the amount to which the cooperator is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the cooperator

(3) Taking other action permitted by statute.

Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR, Chapter II "Federal Claims Collection Standards" and 31 U.S.C., Chapter 37.

6. TAXPAYER IDENTIFICATION NUMBER. The cooperator shall furnish their tax identification number upon execution of this instrument.

7. RIGHT TO TRANSFER EQUIPMENT AND SUPPLIES. Equipment and supplies approved for purchase under this instrument are available only for use as authorized. The Forest Service reserves the right to transfer title to the Federal government of equipment and supplies, valued over \$5,000 per unit, purchased by the recipient/cooperator using any Federal funding. Upon expiration of this instrument the recipient/cooperator shall forward equipment and supply inventory to the Forest Service, listing all equipment purchased throughout the life of the project and unused supplies. Disposition instructions will be issued by the Forest Service within 120 calendar days.

8. FUNDING EQUIPMENT AND SUPPLIES. Federal funding under this instrument is not available for reimbursement of recipient/cooperator purchase of equipment (and supplies).

9. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).

10. CONFIDENTIAL INFORMATION. Business and technical information, including all inventions, trade secrets, knowledge, data or information of the cooperator relating to the cooperator's manufacturing processes, customer lists, methods, machines, equipment, products, compositions, inventions, discoveries, financial matters, or any other matter disclosed by the cooperator as confidential shall be considered confidential under the Freedom of Information Act.

All information developed under this agreement for the application of shall be considered by both the cooperator and Forest Service as confidential, subject to the Freedom of Information Act, for a period of year(s) following completion of the agreement. After the year(s) period all rights under this agreement shall revert back to the Forest Service.

Information indicated to be subject to confidentiality under this agreement shall not be so subject to the extent that the information (1) was in the public domain at the time of disclosure or later become public domain through no fault of the Forest Service; (2) was known to the Forest Service at the time of disclosure from a source other than cooperator; (3) is later obtained for use and disclosure from a third party not under an obligation to cooperator; after a period ending years(s) from the termination date of this agreement.

11. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. The Forest Service, Inspector General, or Comptroller General, through any authorized representative, shall have access to and the right to examine all records related to this instrument. As used in the provision, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. All records pertinent to the award shall be retained for a period of 3 years.

12. MODIFICATION. 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 all parties, prior to any changes being performed. The Forest Service is not obligated to fund any changes not properly approved in advance.

13. COMMENCEMENT/TERMINATION. This instrument shall commence upon execution by both parties hereto and shall be effective as of the last date written below. This instrument expires on _____ unless otherwise extended by a bilaterally executed modification. Either party to this instrument may terminate it by providing written notice to the other party. After any such termination neither party shall have any obligation to the other with regard to any efforts by either party in the area of the collaborative research except as required by this instrument in relation to obligations accrued prior to termination. The recipient shall not incur any new obligations for the terminated portion of the instrument after the effective date and shall cancel as many obligations as possible.

14. REFUNDS. Contributions authorized for use by the Forest Service, which are not spent or obligated for the project(s) approved under this instrument, will be refunded to the cooperator or authorized for use for new projects by the cooperator and approved by the Forest Service.

15. NONDISCRIMINATION. The recipient/cooperator shall comply with all Federal statutes relating to nondiscrimination and all applicable requirements of all other Federal laws, Executive orders, regulations, and policies. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, 2000e-16), which prohibits discrimination on the basis of race, color, disability, or national origin; (b) Title IX of the Education amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; and Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794) which prohibits discrimination on the basis of disabilities. The nondiscrimination statement which follows shall be posted in primary and secondary recipient/cooperator offices, at the public service delivery contact point and included, in full, on all materials regarding such recipients'/cooperators' programs that are produced by the recipients/cooperators for public information, public education, or public distribution:

“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 will at minimum include the statement, in print size no smaller than the text, that “This institution is an equal opportunity provider.”

16. PROPERTY IMPROVEMENTS. Improvements placed on National Forest System land at the direction of either of the parties, shall thereupon become property of the United States, and shall be subject to the same regulations and administration of the Forest Service as other National Forest improvements of a similar nature. No part of this instrument shall entitle the cooperator to any share or interest in the project other than the right to use and enjoy the same under the existing regulations of the Forest Service.

17. ENVIRONMENTAL STANDARDS. The cooperator will comply with environmental standards pursuant to the notification of violating facilities in E.O. 11738.

18. LEGAL AUTHORITY. The cooperator has the legal authority to enter into this instrument, and the institutional, managerial and financial capability (including funds sufficient to pay nonfederal share of project costs) to ensure proper planning, management, and completion of the project.

19. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the Forest Service or the Cooperator(s) from participating in similar activities with other public or private agencies, organizations, and individuals.

20. COMMENCEMENT/EXPIRATION DATE. The instrument is executed as of the date of the last signature and is effective through _____ at which time it will expire unless extended.

21. EXTENSION OF PERFORMANCE PERIOD. The Forest Service, by written modification may extend the performance period of this instrument for a total duration not to exceed 5 years from its original date of execution.

22. TERMINATION. Any of the parties, in writing, may terminate the instrument is whole, or in part, at any time before the date of expiration. Neither party shall incur any new obligations for the terminated portion of the instrument after the effective date and shall cancel as many obligations as possible. Full credit shall be allowed for each Party’s expenses and all non-cancelable obligations properly incurred up to the effective date of termination.

23. PRINCIPAL CONTACT. The principal contacts for this instrument are:

Forest Service Project Contact	Cooperator Project Contact
Phone:	Phone:
FAX:	FAX:
E-Mail:	E-Mail:

Forest Service Administrative Contact	Cooperator Administrative Contact
Phone:	Phone:
FAX:	FAX:
E-Mail:	E-Mail:

24. AVAILABILITY OF FUNDS. Funds in the amount of \$ are currently available for performance of this instrument through . The 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 Forest Service for any payment may arise for performance under this instrument beyond , until funds are made available to the Forest Service for performance and until the recipient/cooperator receives notice of availability by written modification by the Forest Service.

25. NON-FUND OBLIGATING DOCUMENT. This instrument is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

26. DAVIS-BACON OR SERVICE CONTRACT ACT. 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 Federal 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. The Forest Service will award contracts in all situations where their contribution exceeds 50 percent of the costs of the contract. If a cooperator is approved to issue a contract it shall be awarded on a competitive basis.

27. COPYRIGHTING (1). The cooperator is granted sole and exclusive right to copyright , including 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 the copyright and all renewals thereof in accordance with this instrument. However, the cooperator shall not sell, or grant copyrights to a third-party designee who intends to sell, the document as a profit-making venture. No original text or graphics produced and submitted by the Forest Service shall be copyrighted. The 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 shall be transferred to any sub-agreements or subcontracts. This provision includes:

- a. The copyright in any work developed by under this instrument.
- b. Any rights of copyright to which purchases ownership with any Federal contributions.

28. COPYRIGHTING (2). The recipient is granted sole and exclusive right to copyright , including 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 grant or cooperative agreement. However, no original text or graphics produced and submitted by the Forest Service shall be copyrighted. The 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 shall be transferred to any subgrants or subcontracts. This provision includes:

- a. The copyright in any work developed by under this grant or cooperative agreement.
- b. Any rights of copyright to which purchases ownership with any Federal contributions.

29. PUBLICATION SALE. The cooperator may sell any publication resulting from the project. The publication may initially be sold at fair market value, which is defined in this instrument to cover costs of development, production, marketing, and distribution. After the costs of development and production have been recovered, fair market value is defined in this instrument to cover the costs of marketing, printing, and distribution only. Fair market value must exclude any in-kind or Federal government contribution to the total costs of the project.

30. PUBLISHING. It is agreed that the Forest Service shall have the right to publish research and technology derived as a result of this instrument, but any publication shall exclude data regarded as confidential under this instrument. Any publication shall first be reviewed by the cooperator to prevent release of technical information deemed confidential by the cooperator for successful implementation of this technology, and the cooperator shall timely submit its comments to the Forest Service. The comments shall be evaluated by the Forest Service, but shall not be binding on the Forest Service.

31. ELECTRONIC FUNDS TRANSFER. The recipient/cooperator shall designate a financial institution or an authorized payment agent through which a Federal payment may be made in accordance with U.S. Treasury Regulations, Money and Finance at 31 CFR 208, which requires that Federal payments are to be made by electronic funds transfer (EFT) to the maximum extent possible. A waiver may be requested and payment received by check by certifying in writing that one of the following situations apply:

1. The payment recipient/cooperator does not have an account at a financial institution.
2. EFT creates a financial hardship because direct deposit will cost the payment recipient more than receiving check.
3. The payment recipient/cooperator has a physical or mental disability, or a geographic, language, or literacy barrier.

To initiate receiving your payment(s) by electronic transfer, contact the National Finance Center (NFC) on the worldwide web at www.nfc.usda.gov, or call the NFC at 1-800-421-0323, or (504) 255-4647. Upon enrollment in the program you may begin to receive payment by electronic funds transfer directly into your account.

32. BILLING (1). The maximum total cost liability to the for this instrument is \$. Transfer of Funds to the Forest Service will be through an On-Line Payment and Collection System (OPAC) billing. The OPAC billing document which the Forest Service will prepare shall contain the following information as the first line of the description or the reference section:

Agency Agreement or Instrument No. – (Insert No.)
Agency Cost Account Date - (Insert No.(s))
Agency Location Code – (Insert ALC)
Budget Object Code – (Insert BOC)

A detailed list of charges incurred will be made available upon request. Any excess funds not used for the agreed costs shall be refunded to the upon expiration of this instrument.

33. BILLING (2). The maximum total cost liability to the Forest Service for this instrument is \$. Transfer of funds to the _____ will be through the Treasury On-Line Payment and Collection System (OPAC) billing. The OPAC billing document which the prepares shall contain the following information as the first line of the description or the reference section:

- FS Reference Document No. (MO) - (provided by FS Financial Mgmt)
- FS Accounting Station - (Insert Reg. Code, Unit Code; e.g. 1301)
- Job Code - (Insert Job Code composed of 6 alpha/numeric fields plus the two-digit fiscal year in position 7 and 8)
- FS Agreement No. - (Insert Inst. No.)
- FS Agency Location Code - 12-40-1100
- Budget Object Code - (e.g. 2554 for Research, all others 2559)
- Performing Agency Location Code - (Insert ALC)

Send copy of bill to USDA Forest Service
Attn: _____

A detailed list of charges incurred by the recipient/cooperator will be made available upon request. Any excess funds not used for the agreed costs shall be refunded to the Forest Service upon expiration of this instrument.

34. ADVANCE BILLING (1). Bill the cooperator prior to commencement of work for deposits sufficient to cover the estimated costs (including overhead) for the specific payment period. Overhead will be assessed at the rate of ____ %.

Billings shall be sent to:

35. REIMBURSABLE BILLING (2). Bill the cooperator _____, for funds sufficient to cover the costs for the specific payment period. All reimbursement billing shall be competed within the same fiscal year as Forest Service expenditures. Insert one of the following statements on overhead charges: Overhead at the rate of ____ % will be assessed, or Overhead will not be assessed.

Billings shall be sent to:

If payment is not received by the date specified on the Form FS-6500-89, Bill of Collection, the Forest Service shall exercise its rights regarding the collection of debts owed the United States.

If a payment bond is required, add the following sentence:

This includes conditions specified in associated payment bonds guaranteeing such payments.

36. PAYMENT BOND REQUIREMENT. Cooperator shall furnish and maintain a payment bond acceptable to the Forest Service in the amount of \$ before any work commences under this agreement.

37. PAYMENT /REIMBURSEMENT. Reimburse the cooperator for the Forest Service's proportionate share percent of actual expenses incurred, not to exceed \$, reduced by program income, and other Federal and nonfederal cash contributions, as shown in the incorporated Financial Plan. If program income generated from the project exceeds the cooperator's actual expenses, the Forest Service share is zero. The cooperator is approved to submit billings(s). The Forest will make payment for its proportionate share of project costs upon receipt of an invoice. Each invoice shall display the cooperator's actual expenditures to date of the invoice (not just the Forest Service share of actual expenditures), display by separate cost elements as documented in the Financial Plan, less program income and other Federal and nonfederal cash contributions and previous Forest Service payments. The invoice should be forwarded as follows:

c. Send an original to:

d. Send a copy to:

38. REIMBURSABLE PAYMENTS. Reimbursable payments are approved under this instrument. Only costs for those project activities approved in (1) the initial instrument, or (2) modifications thereto, are allowable. Requests for payment shall be submitted on Standard Form 270 (SF-270), Request for Advance or Reimbursement, and shall be submitted no more than monthly.

39. PAYMENT (1). Pay the cooperator on a reimbursable basis, upon submission of proper invoices, for costs stipulated for supplies delivered and accepted or services rendered and accepted, less any deductions, as provided in this instrument. Each invoice shall display the cooperator's actual expenditures to date of the invoice, displayed by separate cost elements, as documented in the Financial Plan. For the purpose of this instrument, reimbursement for indirect costs is limited to 10% of total, allowable direct costs and tuition remission shall not be reimbursed. The invoice should be submitted as follows:

a. Send an original to:

b. Send a copy to:

40. PAYMENT(2). The cooperator's total funding to the Forest Service shall be \$ which shall be paid in advance, prior to commencement of work. Any funds remaining at the conclusion of the instrument and, after all Forest Service obligations are met, shall be refunded to the cooperator.

41. ADVANCE PAYMENT (1). The recipient is approved to submit requests on an advance payment basis for estimated costs, that shall not exceed the minimum amount needed or no more than is needed for a 30-day period, whichever is less. Any funds advanced, but not spent, upon expiration of this instrument shall be returned to the Forest Service. Request for advance payments shall be submitted on Standard Form 270 (SF-70), Request for Advance or Reimbursement, and shall be submitted no more than monthly.

42. ADVANCE PAYMENT (2). The cooperator is approved to submit requests for advance payments on a basis, for the Forest Service's proportionate shall percent of anticipated actual expenses, not to exceed \$, reduced by program income, and other Federal and nonfederal cash contributions, as shown in the incorporated Financial Plan. If program income generated from the project exceeds the cooperator's actual expenses, the Forest Service share is zero. The Forest Service will make advance payment upon receipt of an invoice. The first invoice may request an advance based upon estimated cost not to exceed 30 days expenditures. Each subsequent invoice shall display the cooperator's (1) additional advance funding, if needed, and (2) the actual expenses incurred to date of the invoice (not just the Forest Service share of actual expenditures), displayed by separate cost elements as documented in the Financial Plan, less program income and other Federal and nonfederal cash contributions and previous Forest Service payments. Any funds advanced, but not spent, upon expiration of this instrument shall be returned to the Forest Service. The invoice should be forwarded as follows:

- a. Send an original to:
- b. Send a copy to:

43. INDIRECT COSTS AND TUITION REMISSION. In accordance with Title 7, U.S.C. 3319, indirect costs and tuition remission are not reimbursable to State Cooperative Institutions under joint venture and cooperative agreements. However, it should be noted that indirect costs may be used by State Cooperative Institutions to satisfy matching or cost-sharing requirements.

44. PROGRAM PERFORMANCE REPORTS. Submit a performance report . The final performance report shall be submitted either with your final payment request, or not later than 90 days from the expiration date of the instrument.

45. PROGRAM INCOME. If any program income is generated as a result of this instrument, the income shall be applied using the alternative as described in 7 CFR 3016.25 and 3019.24.

46. ENDORSEMENT. Any cooperator contributions made under this instrument do not by direct reference or implication convey Forest Service endorsement of the cooperator's products or activities.

47. FOREST SERVICE LIABILITY. The Forest Service shall not be liable to the depositor or landowner for any damage incident to the performance of this agreement.

48. 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, shall contain the (beginning of clause) Patents Rights Clause.

a. Definitions:

(1) 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.).

(2) Subject Invention. Any invention of the recipient/cooperator 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.

(3) 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.

(4) Made. When used in relation to any invention, the conception or first actual reduction to practice of such invention.

(5) 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 clause, 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.

(6) 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.

b. Allocation of Principal Rights. The recipient/cooperator may retain the entire right, title, and interest throughout the world to each subject invention, subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the recipient/cooperator retains 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 through out the world.

c. Invention Disclosure, Election, of Title and Filing of Patent Applications by the Recipient/Cooperator.

(1) The recipient/cooperator will disclose each subject invention to the Forest Service within two months after the inventor discloses it in writing to personnel responsible for patent matters. The disclosure to the Forest Service shall be in the form of a written report and shall identify the instrument under which the invention was made and the inventor(s). It shall 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 physical, chemical, biological or electric characteristics of the invention. The disclosure shall 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 Forest Service, the recipient/cooperator shall promptly notify the Forest Service of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the recipient/cooperator.

(2) The recipient/cooperator will elect in writing whether or not to retain title to any such invention by notifying the Forest Service within 2 years of disclosure to the recipient/cooperator; 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 Forest Service to a date that is no more than 60 days prior to the end of the statutory period.

(3) The recipient/cooperator will 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. The 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.

(4) Requests for extension of the time for disclosure to the Forest Service, election, and filing may, at the discretion of the Forest Service, be granted.

d. Conditions when Government May Obtain Title. The recipient/cooperator shall convey to the Forest Service, upon written request, title to any subject invention:

(1) If the recipient/cooperator fails to disclose or elect the subject invention within times specified in item c herein or elects not to retain title; provided that the Forest Service may only request title within 60 days after learning of the failure of the grantee or cooperator to disclose or elect within the specified times.

(2) In those countries in which the recipient/cooperator fails to file patent applications within the times specified in item c(3) herein; provided, however, that if the recipient/cooperator has 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 Forest Service, the recipient/cooperator shall continue to retain title in that country.

(3) In any country in which the recipient/cooperator decides 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.

e. Minimum Rights to Recipient/Cooperator and Protection of the Contractor Right to File.

(1) The recipient/cooperator shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the recipient/cooperator fails to disclose the subject invention within the times specified in item c herein. The recipient's/cooperator's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the recipient/cooperator is a party and includes the right to grant sublicenses of the same scope to the extent the recipient/cooperator was legally obligated to do so at the time the instrument was awarded. The license is transferable only with approval of the Forest Service, except when transferred to the successor of that party of the recipient's/cooperator's business to which the invention pertains.

(2) The recipient's/cooperator's domestic license may be revoked or modified by the 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 the recipient/cooperator 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 Forest Service to the extent the recipient/cooperator, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license the Forest Service shall furnish the recipient/cooperator a written notice of its intention to revoke or modify the license, and the recipient/cooperator shall be allowed 30 days (or such other time as may be authorized by the Forest Service for good cause shown by the recipient/cooperator) after the notice to show cause why the license should not be revoke or modified. The recipient/cooperator has 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.

f. Recipient/Cooperator Action to Protect the Government's Interest

(1) The recipient/cooperator agrees to execute, or to have executed, and promptly deliver to the Forest Service all instruments necessary to (a) establish or confirm the rights the Government has throughout the world in those subject inventions to which the recipient/cooperator elects to retain title, and (b) convey title to the Forest Service when requested under paragraph (c) herein and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The recipient/cooperator agrees to require, by written instrument, its employees, other than clerical and non-technical employees, to disclose promptly in the writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the recipient/cooperator 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). The recipient/cooperator 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.

(3) The recipient/cooperator will notify the 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.

(4) The recipient/cooperator agrees 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 Forest Service. The Government has certain rights in this invention.

g. Subcontracts

(1) The recipient/cooperator will include this clause, 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 the recipient/cooperator in this clause, and the recipient/cooperator 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.

(2) The recipient/cooperator will include in all other subcontracts the patent rights clause, regardless of tier, for experimental, developmental, or research work (cite agency implementing regulations or FAR).

(3) 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 clause constitute a contract between and subcontractor and the Federal agency with respect to those matters covered by this clause; 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 clause.

h. Reporting on Utilization of Subject Invention. The recipient/cooperator agrees 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 the recipient/cooperator or its licensees or assignees. Such reports shall include information regarding

the status of development, date of first commercial sale or use, gross royalties received by the recipient/cooperator, and such other data and information as the Forest Service may reasonably specify. The recipient/cooperator also agrees to provide additional reports as may be requested by the Forest Service in connection with any march-in proceeding undertaken by the Forest Service in connection with any march-in proceeding undertaken by the Forest Service in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the Forest Service agrees it will not disclose such information to persons outside the government without permission of the recipient/cooperator.

i. Preference for United States Industry. Notwithstanding any other provision of this clause, the recipient/cooperator agrees that neither it nor any assignee will 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 Forest Service upon a showing by the recipient/cooperator 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.

j. March-in-Rights. The recipient/cooperator agrees that with respect to any subject invention in which it has acquired title, the Forest Service has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the Forest Service to require the recipient/cooperator, 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 the recipient/cooperator assignee, or exclusive licensee refuses such a request, the Forest Service has the right to grant such a license itself if the Forest Service determines that:

(1) Such action is necessary because the recipient/cooperator 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;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably, satisfied by the recipient/cooperator, assignee, or their licenses;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the recipient/cooperator, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph 9 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.

k. Special Provisions for Contracts with Non-profit Organizations. If the recipient/contractor is a non-profit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the 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 will be subject to the same provisions as the recipient/cooperator.

(2) The recipient/cooperator will 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.

(3) The balance of any royalties or income earned by the recipient/cooperator with respect to subject invention 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

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give preference to a small business firm when licensing a subject invention if the recipient/cooperator determines 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 the recipient/cooperator is 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 the recipient/cooperator. However, the recipient/cooperator agrees that the Secretary may review the recipient's/cooperator's licensing program and decisions regarding small business applicants, and the recipient/cooperator will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the recipient/cooperator could take reasonable steps to implement more effectively the requirements of this paragraph (11)(d).

I. Communication

(1) The central point of contract within the U.S. Department of Agriculture for communications relating to the administration of this provision is:

Deputy Assistant General Counsel for Patents
Research and Operation Division
Office of the General Counsel
U.S. Department of Agriculture
Room 2332, South Building
Washington, D.C. 20250

(2) Disclosure statements are made through the Authorized Departmental Officer to:

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

(3) Practice statements are made to the Patent Advisor.

NOTE: Exceptions for Not Using the Patent Rights Provision:

(a) When the instrument is for the operation of a federally funded research and development center of a government-owned production facility;

(b) In exceptional circumstances when it is determined by the 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 State Code; or

(c) 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 the title to any subject invention is necessary to protect the security of such activities.

Any determination under this section shall be in writing and accompanied by a written statement of facts and shall contain such information as the Forest Service field office deems relevant and, at a minimum, shall:

- (1) Identify the small business firm or nonprofit organization involved.
- (2) Describe the extent to which Forest Service action restricted or eliminated the right to retain title to a subject invention.
- (3) State the facts and rationale supporting the Forest Service action.
- (4) Provide supporting documentation for those facts and rationale.
- (5) Indicate the nature of any objections to the Forest Service action and provide any documentation in which those objections appear. A copy of each such determination and written statement of facts shall 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 grant or cooperative agreement. In some cases of determinations applicable to instruments with small business firms, copies shall also be sent to the Chief Counsel for advocacy of the Small Business Administration.

49. PATENTS.

a. Subject invention shall mean any invention or discovery conceived or first reduced to practice in the course of work performed under this agreement and any modification to or extensions of this agreement by an employee of Forest Service or jointly by an employee of Forest Service and by an individual employed by cooperator in whatever capacity and which such invention may be patentable or otherwise protectable under Title 35 of the U.S. Code, under 7.U.S.C. 2321 et seq. or under the patent laws of a foreign country. Any subject matter generated in this collaborative research which is not a subject invention may be freely used by either party hereto, subject to the section titled "Confidential Information."

b. Research data which are collected, compiled, and evaluated under this agreement shall be shared and mutually interchanged between cooperator and Forest Service.

c. Cooperator and Forest Service shall confer periodically to report subject inventions to each other, to agree which subject inventions shall be the subject of patent applications, to define inventor ship, and to determine whether cooperator or Forest Service shall apply for the patent(s). The conferences shall be within thirty (30) days of written reports. Decisions will be made within thirty days of the conference. Longer or shorter periods can be agreed to by mutual consent by cooperator and Forest Service. If after the final report, a patent application has not been filed to any joint subject invention which cooperator judges patentable, cooperator shall have the right to file an application to such invention (or Forest Service may file if it chooses upon notice of cooperator's intent), and the parties shall cooperate in the execution of all documents necessary to effect such filing.

d. Any invention made under this agreement solely by an individual of cooperator shall be owned by Cooperator, provided the U.S. Government is granted a royalty free, nonexclusive, irrevocable license to practice the invention for U.S. Government purpose.

e. 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 each of Forest Service and cooperator shall jointly own an undivided interest in the patent rights on all subject inventions which jointly involve an employee of Forest Service and an employee of cooperator. The undivided interest of the Forest Service in such patent rights shall be subject to the option and right of first refusal in subsection 7.

f. This Agreement that is owned by Forest Service, cooperator is hereby granted the right to negotiate with the Forest Service (or its licensing agent) to obtain a royalty-bearing, license for the use of the patented invention (subject to the Government's right to use the same for Government purposes) in, to, and under any and all PATENTS owned by the Forest Service as a result of inventions made or contributed to by its employees in the cooperative research under this agreement. The license shall be subject to the following conditions:

(1) The license shall be consistent with the requirements of 35 U.S.C. 209(a), 209(b), 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 (or Forest Service's licensing agent).

(2) Cooperator's right to negotiate the license shall terminate whenever cooperator fails to:

(a) Submit a complete application for an exclusive license within sixty (60) days of being notified by Forest Service of an invention's availability for licensing; or

(b) Submit a good faith response to a written proposal of licensing terms within ninety (90) days of such proposal.

g. Reexaminations and reissues of patents covered under this agreement shall have no effect on royalties; they shall continue to accrue as if there had been no reexamination or reissue.

h. At the request of Forest Service, and where agreeable to cooperator, then cooperator shall arrange at its expense for the filing of patent applications on subject inventions, and the prosecution and maintenance of the same, including foreign filing agreeable to cooperator. Cooperator shall be entitled to a license under any such foreign patents or applications, either non-exclusive or exclusive and limited to the field of MVP drying technology, under the same conditions as specified in subsections (4) through (8).

i. Cooperator shall grant each of the following United States Department of Agriculture employees an Associate Power of Attorney for prosecution of any patents resulting from this Agreement before the United State Patent and Trademark Office or any foreign equivalent thereof:

(1) Janet I. Stockhausen, Registration No.: 34,256

(2) M. Howard Silverstein, Registration No.: 22,699

(3) John D. Fado, Registration; No.: 27,876

Provided, however, that cooperator shall promptly provide Forest Service with a copy of all documents which it files during the prosecution of a patent application under this agreement.

j. During the exclusive license term of this agreement, Licensee is empowered pursuant to the provisions of Chapter 29 of Title 35, United States Code or other statutes:

(1) to bring suit in its own name, at its own expense, and on its own behalf for infringement of presumably valid claims in a licensed patent;

(2) in any such suite, to enjoin infringement and to collect for its own use, damages, profits and awards of whatever nature recoverable for such infringement; and

(3) to settle any claim or suit for infringement of the licensed patent.

Provided, however, that Licensee shall promptly provide Forest Service with a copy of all documents which it files in such suit or receives from the adverse party or parties and Forest Service and appropriate Government authorities shall have a continuing right to intervene in such suite. Licensee shall take no action to compel the Government either to initiate or join in any such suit for patent infringement. Should the Government be made a party to any such suit by motion or other action of Licensee, Licensee shall reimburse the Government for any costs, expenses, or fees, which the Government incurs as a result of such motion or other action.

k. Any licenses granted under this agreement to cooperator from Forest Service shall permit Forest Service to cancel the license if Cooperator has not carried out the INVENTION under such conditions to establish that the INVENTION is being utilized by the U.S. public on reasonable terms within two (2) years after the first patent application is filed on the INVENTION.

l. The Assignee of record for all patents owned or co-owned by the Forest Service shall be:

“The United States of America as represented by the Secretary of Agriculture, Washington, D. C.”

50. Alternative Dispute Resolution.

The Administrative Disputes Resolution Act (5 U.S.C. 581-591), specifically authorizes and encourages Federal agencies to use alternative means of dispute resolution, including mediation, conciliation, and arbitration in lieu of adjudication.

Use of Alternative Dispute Resolution (ADR) does not preclude the use of negotiation, fact-finding conferences, and mediation. Any method that results in settlement, or partial settlement of a dispute is a good method. Any resolution reached under the ADR process is not binding on any of the participating parties.

The ADR methods described in paragraphs a-d are consensual and voluntary. In each case, procedures should be flexible and designed to meet the needs of the issue(s) in dispute.

a. Settlement Judge. A settlement judge is an administrative judge who will not hear or have any formal or informal decision-making authority; the judge is appointed solely for purposes of facilitating settlement. In many circumstances, settlement can be fostered by a frank, in-depth discussion of the strengths and weaknesses of each party's factual and legal position with a settlement judge. The recommendations of the settlement judge are not binding.

b. Minitrial. The minitrial is an expedited but structured procedure in which each party presents an abbreviated version of its position to principals who have full authority to conclude a settlement and to a USDA Board of Contract Appeals appointed neutral advisor. The parties and advisor agree in advance as to the method of presentation, without regard to customary procedure or rules of evidence. Presentations are followed by settlement negotiations in which the neutral advisor may assist. The recommendations of neutral advisors are not binding.

c. Summary Trial with Binding Decision. In a summary trial, the parties present their cases informally to an administrative judge or panel of judges. Pre-trial, trial, and post-trial procedures and rules generally will be modified or eliminated to expedite resolution. Either a summary "bench" decision or a summary written decision may be issued, the latter within 10 days after conclusion of the trial or receipt of a transcript, whichever is later. The parties must agree that all decisions, rulings, and orders of the Board shall be final. In addition, decisions under this ADR method have no precedent, are not appealable, and may not be set aside except for fraud.

d. Other Agreed Methods. The parties may agree on any other informal ADR method or combination thereof.

Parties who in good faith attempt to resolve their differences by agreement will gain both time and money, as well as maintain or restore amicable relations.