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Bulletin

Title: Memoranda of Understanding and Non-Funded Cooperative Agreements

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Originating Office: Extramural Agreements Division, AFM/ARS

Distribution: ARS Headquarters, Areas, and Locations

This bulletin is revised to reflect the change to the Non-funded Cooperative Agreement template with regards to ownership of intellectual property rights. These policies remain in effect until they are issued as a P&P.

Purpose

The purpose of this bulletin is to define policy on establishing Memoranda of Understanding (MOUs) and Non-funded Cooperative Agreements (NFCAs) for projects of mutual interest between the Agricultural Research Service (ARS) and other parties.

Background

The USDA Office of General Counsel (OGC) has determined that Memoranda of Understanding (MOU) cannot be used to document cooperative relationships between ARS and other parties when the terms of the agreement outline specific duties and responsibilities which commit or exchange ARS resources.

Authorities

Memoranda of Understanding (MOU) - ARS must have statutory (programmatic) authority to participate in the project.

Non-funded Cooperative Agreement (NFCA) and Standard Cooperative Agreements - Section 1472(b) of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended. (7 U.S.C 3318(b)). ARS must have statutory (programmatic) authority to participate in the project.

Eligibility

ARS may enter into NFCAs and MOUs with State agricultural experiment stations, State cooperative extension services, all colleges and universities, other research or education institutions and organizations, Federal and private agencies and organizations, individuals, either foreign or domestic, to further research, extension, or teaching programs in the food and agricultural sciences.

Definitions

Authorized Departmental Officer (ADO) - The Agency's official authorized to negotiate, award, administer, suspend, and terminate grants, cooperative agreements and memoranda of understanding.

Authorized Departmental Officer's Designated Representative (ADODR) - The Agency's technical representative, acting within the scope of delegated authority, who is responsible for participating with the Cooperator in the accomplishment of a cooperative agreement's objectives and monitoring and evaluating the Cooperator's performance.

Master Memorandum of Understanding (MMOU) - An agreement between ARS and another party covering a broad area of cooperative work. The MMOU outlines the general principles of cooperation, describes mutual interest and benefit in broad language, identifies responsibilities of both parties.

Memorandum of Understanding - An agreement between ARS and another party(ies) that sets out, in very broad, general terms, a plan for the parties to coordinate their efforts on projects of mutual interest. No specific duties and responsibilities are defined. Only general terms which identify how the parties intend to cooperate are described. There is no substantial commitment of resources by ARS and there is no direct transfer of funding from one party to the other.

Non-funded Cooperative Agreement - An agreement between ARS and another party(s) that describes in detail a jointly planned and executed project of mutual interest. All parties contribute resources and benefit independently in the outcome of the project. It is expected that ARS will commit resources, e.g., salaries, travel expenses, materials and supplies, etc., sufficient to support ARS' performance of the project. There is however, no direct transfer of funding from ARS to the other party(ies).

Standard Cooperative Agreement - A special purpose agreement between ARS and another party that defines a mutually beneficial relationship relative to the use of land, labor, equipment, facilities, livestock, or other resources. There is no direct transfer of funding from one party to the other. The agreement provides that the cooperator shall be compensated for losses suffered due to damage to the property of the owner which is used by ARS employees.

Policy

- MMOUs, including any amendments to the MMOU, shall be signed by the Administrator, ARS.
- NFCAs, including any amendments to the NFCA, shall be signed by the appropriate Authorized Departmental Officer (ADO).
- Standard Cooperative Agreements may be signed by the Location Administrative Officer/Technician (LAO/T), provided a written delegation of signature authority has been issued by the Area ADO.
- MOUs may only be used to establish the *intent* to cooperate, with independent performance, on projects of mutual interests where there is no transfer of resources.
- MOUs **shall not** provide for the exchange of resources, neither monetary nor non-monetary, e.g., involvement of Agency personnel, transfers of property, equipment and/or supplies.
- MOUs **shall not** be used for the purpose of performing tasks for another party.

- MOUs **shall not** be used to authorize acquisition, use or disposal of real or personal property, construction modifications, alterations, or capital improvements of any type to Federal or non-Federally owned property or facilities.
- NFCAs **shall** be used to document in detail a jointly planned and executed project of mutual interest which outlines specific goals and objectives, approach, and detailed duties and responsibilities of each party to the agreement. There is no direct transfer of funding from one party to the other.
- NFCAs **shall not** be used to avoid established Federal procurement, property, or personnel regulations.
- NFCAs **shall not** be used to authorize acquisition, use or disposal of real or personal property, construction modifications, alterations, or capital improvements of any type to Federal or non-Federally owned facilities or property.
- The following types of extramural agreements are replaced by the Non-funded Cooperative Agreement:
 - Supplement to Master MOU
 - Individual MOU
 - Standard MOU
- NFCAs shall be limited to five (5) years in duration.
- All MOUs, including MMOUs, and NFCAs shall be programmatically approved through the Agricultural Research Information System (ARIS).

Responsibilities

Area Director - The ARS Area Director is responsible for insuring mission relevancy and adherence to Agency policies and procedures with regard to MOUs and/or NFCAs.

Authorized Departmental Officer - The ADO is responsible for; 1) insuring adherence to the guidance provided in this Bulletin with regard to execution of MOUs and NFCAs; 2) providing written delegations of authority to the Authorized Departmental Officer's Designated Representative (ADODR) and/or the LAO/T; 3) insuring ARIS approvals are received prior to finalization of MOUs and NFCAs.

Authorized Departmental Officer's Designated Representative - The ADODR is responsible for; 1) developing a statement of work which defines joint program objectives and responsibilities of the cooperating parties; 2) entering agreement information into ARIS; 3) submitting the appropriate agreement documentation to the ADO for final negotiation and

execution of MOUs and NFCAs; 4) obtaining detailed interim and final progress reports from the cooperator for timely submission to the ADO.

Director, EAD - The Director, Extramural Agreements Division is responsible for; 1) review, approval and execution of MOUs and/or NFCAs entered into between ARS and foreign organizations; 2) review and approval of all agreements executed by the ARS Administrator and/or higher level USDA official; 3) coordinating review of agreements by the USDA, Office of General Counsel, as necessary for legal interpretation; 4) coordinating review of all MOUs between ARS and foreign governments with the Office of International Research Programs, ARS, to obtain Department of State clearances, as necessary.

Agreement Numbering Scheme

The Area ADO establishes the agreement number for MOUs and NFCAs. **The only exception is agreements with foreign organizations. Foreign agreements are assigned numbers by EAD.**

The numbering scheme is as follows:

58-XXXX-X-XXX (F) (N/M)

58	XXXX	X	XXXX	F	N or M
Agreement Code for Cooperative Agreements	4 th Level mode code identifies the ARS Office/Location responsible for the project	X = Fiscal Year indicator	Sequential Agreement Number assigned at the issuing office	F= Foreign Agreement (as applicable)	N = NFCA M = MOU (as applicable)

Curtis Wilburn, Jr., Director
Extramural Agreements Division

3Attachments:
Master MOU Template
MOU Template
NFCA Template

MASTER MEMORANDUM OF UNDERSTANDING
BETWEEN
(Name of Cooperator)
AND
UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESEARCH SERVICE

The (Name of Cooperator) hereinafter called the Cooperator, and the United States Department of Agriculture, Agricultural Research Service, hereinafter referred to as ARS, hereinafter jointly referred to as "the Parties," hereby affirm their mutual interest in, and desire to broaden, cooperative research programs and exchanges.

The Parties recognize that cooperation is a matter of working together toward common goals of mutual interest, not merely cooperative financing or sharing of research activities. The Parties also recognize that successful cooperation occurs only through mutual understanding and efficient administration of cooperative programs. Nothing in this broad understanding is to be construed as interfering in any way with the basic responsibilities and authority of either party for independent action.

This Master Memorandum of Understanding (MMOU) defines in general terms the basis for which the Parties will cooperate. Individual projects may be developed between the Parties which outline specific research projects.

ARTICLE I - PURPOSE

The purpose of this Memorandum of Understanding (MMOU) is to strengthen the cooperation between the Parties in a collaborative effort to...**(Describe purpose of cooperation)**. To this end, the Parties agree jointly to explore and coordinate research activities of mutual interest which will be implemented by mutual understanding and in conformity with the regulations and policies of both Parties.

ARTICLE II - MUTUAL INTERESTS

The Parties are currently engaged in and have independent interests **...(Describe area(s) of mutual interest)**. The Parties recognize the mutual benefit to be achieved through cooperative planning and execution of research activities.

ARTICLE III - COOPERATOR CONTRIBUTIONS

To facilitate the cooperative research effort(s) described herein, the Cooperator agrees to assign staff as may be agreed upon to assist in identifying projects of mutual interest, as well as aid in planning and implementing research activities.

ARTICLE IV - ARS CONTRIBUTIONS

To facilitate the cooperative research effort(s) described herein, ARS agrees to assign such members of its staff as may be agreed upon to assist in identifying projects of mutual interest, as well as aid in planning and implementing research activities.

ARTICLE V - GENERAL PROVISIONS

- a. The details of future cooperative undertakings shall be planned and executed under the auspices of separate cooperative agreements. Outlines covering goals and objectives, working plans, research methodologies, and procedures shall be prepared jointly. Intellectual Property Rights shall be protected in accordance with mutually acceptable terms as defined by the future individual agreements.
- b. Either party to this agreement shall be free to use any of the results in its official correspondence or publications provided due credit is given to the other party for its contribution(s) to the effort. It is understood that neither party will publish any results from joint research without consulting the other. This is not to be construed as applying for popular publication of previously published technical data. Publication may be joint or independent as may be agreed upon, always giving due credit to the contributions of all parties involved in the joint effort. In case of failure to agree as to the manner of publication or interpretation of results, either party may publish data after 90 days notice and submission of the proposed manuscripts to the other. In such instances the party publishing the data will give due credit to the cooperation but will assume full responsibility for publication and interpretation of results therein.
- c. This MMOU does not constitute a financial obligation to serve as a basis for expenditures. Each party will handle and expend its own funds. All expenditures of ARS funds pursuant to this MMOU must be in accordance with ARS and Departmental rules and regulations, and in each instance they must be based on appropriate fiscal documents such as a lease, contract, extramural agreement, purchase order, letter of authorization, etc. Expenditures made by the Cooperator will be according to its own governing rules and regulations.
- d. Either party shall be free to purchase and use any equipment needed to achieve the goals of this agreement. Equipment purchased with ARS funds shall remain the property of ARS and shall be subject to removal or other disposition by ARS at any time. Equipment purchased with the Cooperators' funds shall remain the

property of the Cooperator and shall be subject to removal or other disposition by the Cooperator at any time.

- e. The responsibilities assumed by each of the cooperating parties are contingent upon funds being made available from which expenditures may be legally made.
- f. This MMOU will come into effect from the date of the last signature and will be valid indefinitely. The parties agree to review this MMOU every 5 years to determine the need to continue, amend or terminate this MMOU. The MMOU may be modified only by mutual agreement between the Parties in writing, and may be discontinued at the request of either party. Requests for any major change shall be submitted to the other party not less than 90 calendar days prior to the proposed effective date. Termination requests shall be sent to the other party not less than 90 calendar days prior to the desired effective date.
- g. Copies of all correspondence concerning this MMOU shall be sent to the following:

Authorized Departmental Officer
(Name and Address)

Cooperator's Contact Person

Signed and dated this ____ day of (month/year).

Administrator, ARS

Cooperator's Designated Rep.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE AGRICULTURAL RESEARCH SERVICE
OF THE UNITED STATES DEPARTMENT OF AGRICULTURE
AND
(Name of Participant)

Agreement No.

The United States Department of Agriculture (USDA), Agricultural Research Service (ARS), and the (Name of Participant), hereafter referred to as "the Participants," hereby affirm their mutual interest in, and desire to broaden, cooperative research programs and exchanges.

The Participants recognize that cooperation is a matter of working together toward common goals of mutual interest, not merely cooperative financing or sharing of research activities. The Participants also recognize that successful cooperation occurs only through mutual understanding and efficient administration of cooperative programs. Nothing in this broad understanding is to be construed as interfering in any way with the basic responsibilities and authority of either party for independent action.

This Memorandum of Understanding (MOU) defines in general terms the basis for which the Participants may cooperate. Individual projects may be developed between the Participants which outline specific research projects.

ARTICLE I - PURPOSE

The purpose of this MOU is to strengthen the cooperation between the Participants in a collaborative effort to...**Describe purpose of cooperation.** To this end, the Participants may jointly explore and coordinate research, exchanges, training, and development activities of mutual interest, which would be implemented by mutual understanding and in conformity with the regulations and policies of both Participants.

ARTICLE II - MUTUAL INTERESTS

The Participants are currently engaged in and have independent interests in research designed to...**Describe area(s) of Mutual Interest.** The Participants recognize the mutual benefit to be achieved through cooperative planning and execution of research activities.

ARTICLE III - COOPERATOR AGREES TO:

To facilitate the cooperative research effort(s) described herein, the Cooperator agrees to:

Assign such members of its staff as may be required to meet its responsibilities, as well as aid in planning and jointly developing projects of mutual interest.

ARTICLE IV - ARS AGREES TO:

To facilitate the cooperative research effort(s) described herein, ARS agrees to:

Assign such members of its staff as may be required to meet its responsibilities, as well as aid in planning and jointly developing projects of mutual interest.

ARTICLE V - GENERAL PROVISIONS

The details of future cooperative undertakings should be planned and executed under the auspices of separate agreements between ARS and the Participant. Outlines covering goals and objectives, working plans, research methodologies, and procedures shall be prepared jointly. Intellectual Property Rights should be protected in accordance with mutually acceptable terms as defined by the future individual agreements.

Either Participant to this MOU shall be free to use any of the results in its official correspondence or publications provided due credit is given to the other Participant for its contribution(s) to the effort. It is understood that neither Participant will publish any results from joint research without consulting the other. This is not to be construed as applying for popular publication of previously published technical data. Publication may be joint or independent as may be agreed upon, always giving due credit to the contributions of all Participants involved in the joint effort. In case of failure to agree as to the manner of publication or interpretation of results, either Participant may publish data after 90 days notice and submission of the proposed manuscripts to the other. In such instances the Participant publishing the data will give due credit to the cooperation but will assume full responsibility for publication and interpretation of results therein.

This MOU does not constitute a financial obligation to serve as a basis for expenditures. Each Participant will handle and expend its own funds. All expenditures of ARS funds pursuant to this Agreement must be in accordance with ARS and Departmental rules and regulations, and in each instance they must be based on appropriate fiscal documents such as a lease, contract, extramural agreement, purchase order, etc. Expenditures made by the Cooperator will be according to its' own governing rules and regulations.

Either Participant shall be free to purchase and use any equipment needed to achieve the goals of this agreement. Equipment purchased with ARS funds shall remain the property of ARS and shall be subject to removal or other disposition by ARS at any time. Equipment purchased with the Cooperator's funds shall remain the property of the Cooperator and shall be subject to removal or other disposition by the Cooperator at any time.

The responsibilities assumed by each of the cooperating Participants are contingent upon funds being made available from which the expenditures may be legally made.

Cooperation under this MOU may commence from the date of signature and is expected to continue for five years. This MOU may be modified only by mutual agreement between the Participants in writing, and may be discontinued at the request of either Participant. Requests for any major change shall be submitted to the other Participant not less than 90 calendar days prior to the proposed effective date. Termination requests shall be sent to the other Participant not less than 90 calendar days prior to the desired effective date.

This MOU is entered into under the authority of 7 U.S.C. 3291.

Correspondence and documentation regarding this MOU should cite Agreement No. _____.

Copies of all correspondence and documentation shall be sent by the originating Participant to the other at the following address:

ATTN: Authorized Departmental Officer
(Name and Address)

Cooperator's Contact Person
(Name and Address)

Signed in _____ (city and state) _____, this _____ day of _____, 20xx.

For the U.S. Department of Agriculture
The United States of America:

For the (Name of Cooperator)

(Name and Title)

(Name and Title)

Name of Cooperator - City, State

OBJECTIVE:

The objective of this cooperative research project is to.....

APPROACH:

(Describe plans for achieving goals/objectives of the research project)

STATEMENT OF MUTUAL INTEREST:

(Identify independent and mutual interest in the project)

Both parties are actively engaged in independent research projects which..... *(Relate to project title)*. The parties agree that meeting the objectives of this project will strengthen and enhance ongoing research within the scope of this agreement.

THE COOPERATOR AGREES TO:

1. Work closely with ARS in planning and conducting the research outlined below.
2. Conduct at Cooperator facilities and elsewhere as appropriate, research directed toward... activities include:

(Outline specific duties and responsibilities necessary for successful completion of the project objective(s)).

ARS AGREES TO:

1. Work closely with the cooperator in planning and conducting the research outlined above.
2. Conduct research on the following aspects of the project:

(Outline specific duties and responsibilities necessary for successful completion of the project objectives).

MUTUAL AGREEMENTS:

1. The details of the cooperative work shall be planned and executed jointly by the Cooperator and the ARS. Outlines covering working plans and methods of procedure shall be prepared jointly subject to revision by joint action as work progress requires. Copies of these plans, as required, will be filed with the Cooperator and ARS.
2. A complete report of the results of the research and experimental work shall be submitted each year by the individual or individuals in direct charge of the cooperative work; one copy to be furnished to the Cooperator and one copy to ARS. A final report must be submitted within 90 days of project completion.

Name of Cooperator - City, State

3. Patents and Inventions:
 - a. "Subject Inventions" shall mean any invention conceived or first reduced to practice under this Agreement, and which is patentable or otherwise protectable under Title 35 of the United States Code, under Section 2321 of Title 7 of the United States Code, et seq., or under the patent laws of a foreign country.
 - b. Each party shall promptly make written disclosure to each other of each Subject Invention, said information shall be treated in confidence by the receiving party until such time as a patent is applied for by the other party.
 - c. Each party shall provide, when requested by the other, all information in its possession pertaining to a Subject Invention which may be necessary or useful in the preparation, filing, and prosecution of patent applications covering the Subject Invention.
 - d. Publication and/or oral disclosure of Subject Inventions shall be delayed in order to preserve the United States and/or foreign patent rights, PROVIDED said patent protection shall be promptly and diligently sought.
 - e. All rights, title, and interest in any Subject Invention made solely by employee(s) of ARS shall be owned by ARS.
 - f. All rights, title, and interest in any Subject Invention made solely by at least one (1) employee of ARS and at least one (1) employee of the Cooperator shall be jointly owned by ARS and the Cooperator.
 - g. All rights, title, and interest in any Subject Invention made solely by employees of the Cooperator shall be owned by the Cooperator.
4. Either party shall be free to furnish such equipment as may be needed. Equipment provided by the Federal Government shall remain the property of the Federal Government, subject to its removal or other disposition at any time. Equipment provided by the Cooperator shall remain the property of the Cooperator, subject to its removal or other disposition at any time.
5. This Agreement is to define in general terms the basis on which the parties concerned will cooperate and does not constitute a basis for financial obligations or expenditures. Each party will handle and expend its own funds. Any and all expenditures from Federal funds made in conformity with the plans outlined in this Agreement must be according to Department and ARS rules and regulations and, in each instance based upon appropriate fiscal documents, such as lease, contract, purchase order, letter of authorization, etc.
6. The responsibilities assumed by the cooperating parties are contingent upon funds being available from which the expenditures may be legally made.

7. This Agreement may be modified or discontinued at the request of either party. Requests for termination or any change shall be submitted to the other party for consideration not less than 60 days prior to the desired effective date of the termination.
8. Copies of all correspondence and documentation concerning this Agreement shall be sent by the originating party to the Authorized Departmental Officer.