

1
2 LAND USE AGREEMENT
3 BETWEEN
4 University of Puerto Rico Mayaguez
5 AND
6 NATIONAL ECOLOGICAL OBSERVATORY NETWORK, INC.
7 NEON Domain 4, Site Lajas Experimental Station
8

9 Land Use Agreement ("Agreement"), entered into as of the 1st day of March 2011,
10 between National Ecological Observatory Network, Inc., a District of Columbia not-for-profit
11 corporation headquartered in Boulder, Colorado ("NEON"), and University of Puerto Rico
12 Mayaguez ("Site Owner"). NEON and Site Owner are each sometimes referred to as a "Party"
13 and collectively as the "Parties".
14

15 RECITALS
16

17 A. NEON was organized by the ecological research community as a research
18 platform to allow scientists to analyze, understand, and forecast the nature and extent of
19 biological change ranging from local to continental. The NEON project ("Project") will be
20 comprised of site-based experimental infrastructure, cutting-edge lab and field instrumentation,
21 natural history archive facilities and computational, analytical and modeling capabilities, linked
22 via a computational network. Scientists and engineers will use NEON to conduct real-time
23 ecological studies spanning all levels of biological organization and temporal and geographic
24 scales. A uniform and standardized design of the infrastructure and instrumentation is essential
25 to informing the science, testing the hypotheses, and conducting the research. By systematically
26 controlling for sources of uncertainty in quantities measured over large time and spatial scales,
27 the standardized design will provide statistical power to distinguish between scientific
28 phenomena and systematic error.
29

30 B. NEON has apportioned the United States into 20 eco-climatic domains using a
31 statistical analysis of eco-climatic state variables. Each domain will host one instrumented
32 NEON core site and generally two (2) relocatable sites. Collectively, the domains represent
33 ecological and climate variability across the continental United States, Alaska, Hawaii, and
34 Puerto Rico. NEON believes that Lajas Experimental Station meets the criteria it has established
35 for the eco-climatic domains and desires to establish Lajas Experimental Station as a relocatable
36 site for the Atlantic Neotropical Domain.
37

38 C. Site Owner has agreed to allow NEON to use Lajas Experimental Station, which
39 is located near Lajas, Puerto Rico and more fully described on Exhibit A hereto (the "Site"), for
40 the above described ecological research and NEON wishes to use the Site for the Project, all on
41 the terms and conditions set forth herein.
42
43
44

1 NOW, THEREFORE, in consideration of the premises and the mutual covenants and
2 agreements set forth herein and other good and valuable consideration, the receipt, adequacy and
3 sufficiency of which are hereby acknowledged, the Parties agree as follows:
4

5 1. Grant of Right to Use Site. Site Owner hereby grants NEON the right to possess,
6 occupy and use (collectively "Right to Use") the Site at all times (twenty-four hours a day, seven
7 days a week) during the Term (as defined in Section 2 below) in accordance with the terms and
8 conditions of this Agreement including Exhibit B, and NEON hereby accepts such Right to Use
9 the Site.

10
11 2. Term. The term of this Agreement shall be for a period of five (5) years (the
12 "Term"), unless sooner terminated as provided in this Agreement. The Term shall commence on
13 March 1, 2011 (the "Commencement Date") and shall expire on the fifth anniversary of the
14 Commencement Date. NEON shall have the option to extend the Term of this Agreement for up
15 to ten (10) years from the Commencement Date by providing Site Owner with written notice of
16 its exercise of this option and the date to which the Agreement is extended not later than sixty
17 (60) days prior to the expiration of the Term of this Agreement. The extension shall be on all of
18 the terms and conditions of this Agreement, except that "Term" shall mean the period of
19 effectiveness of the Right to Use as so extended.
20

21
22 3. Permitted Use.
23

24 a. NEON will use the Site to install the infrastructure and instruments specified in
25 Section 3.b below, to operate and maintain such infrastructure and instruments, to conduct
26 ecological research in furtherance of the Project and to otherwise implement the Project.
27 Installation of the infrastructure and instruments and effectuation of the Project is subject to
28 availability of construction and operating funds for the Project. For purposes of this Agreement,
29 the term "infrastructure" means building, towers, fences and other facilities necessary or useful
30 for the Project and the word "install" includes, as appropriate, construction.
31

32 b. NEON shall have the right to install on the Site infrastructure and instruments
33 to collect, and support the gathering of, biological, biophysical, biogeochemical, and land-use
34 and land-management data. The instruments may include:
35

36 (1) A Fundamental Instrument Unit consisting of a soil array and a fixed
37 tower supporting sensor arrays, which will provide comprehensive data on (i) climate and
38 canopy microclimate, (ii) air pollution and air quality, (iii) carbon cycle, (iv) soil characteristics
39 and (v) water quality.

40 (2) A Fundamental Sentinel Unit which will collect information on
41 organisms and sample various plant and soil materials at the Site. Approximately 40 plots on the
42 Site will be chosen for periodic sampling (but no deployment of instrumentation) as part of the
43 Fundamental Sentinel Unit. NEON agrees not to locate any of the plots for Fundamental
44 Sentinel Unit sampling on any part of the Site that is designated as unavailable for such sampling
45 on Exhibit B.

1 (3) An aquatic array, associated infrastructure, and collection of water,
2 sediment, and organisms in still waters, subsurface waters, and streams.
3

4 Additionally, recognizing that the knowledge learned from the Project may suggest other
5 scientific experiments, NEON may conduct additional tests on the Site using other instruments
6 that are consistent with the Project.
7

8 c. NEON shall have the right to make such changes, alterations and/or additions
9 to the Fundamental Instrument Unit, Fundamental Sentinel Unit, Aquatic Array and other
10 instruments during the Term as NEON may desire from time to time subject to the limitations on
11 use of the Site as set forth in this Agreement. The candidate locations of the infrastructure to be
12 installed at the Site are set forth in Exhibit A. Installation of any additional infrastructure on the
13 Site shall require the written consent of Site Owner, which shall not be unreasonably withheld.
14

15 d. NEON shall have the right from time to time to build roads and paths and run
16 conduit for electricity on the Site in furtherance of the Project; provided any such roads and paths
17 shall not unreasonably interfere with Site Owner's use of the Site as set forth in Exhibit B and
18 any such installation of electrical conduit shall be coordinated with Site Owner. NEON shall not
19 permit any mechanics' or materialmen's liens to be filed against the Site in connection with any
20 labor or materials furnished to NEON. If any such lien shall be filed, NEON shall cause it to be
21 discharged at its sole cost and expense; provided, however, that if NEON desires to contest any
22 such lien, it may do so as long as it bonds or insures over such lien.
23

24 e. Any infrastructure and instruments on the Site shall be owned by NEON.
25 NEON may demolish or remove such infrastructure and remove such instruments from the Site
26 at any time. NEON shall not be obligated to deliver the Site upon expiration or termination of
27 this Agreement in an improved condition or containing any such infrastructure or instruments.
28

29 4. Access Right. Site Owner grants NEON the right (the "Access Right") to ingress
30 to and egress from the Site across Site Owner's property during the Term for design and
31 characterization of the Site, to install, operate and maintain the infrastructure, the Fundamental
32 Instrument Unit, the Fundamental Sentinel Unit and, if applicable, the Aquatic Array, and other
33 instruments, to conduct its ecological research and to implement the Project, on the terms and
34 conditions set forth. The Access Right granted by this section burdens Site Owner's property, is
35 for the benefit of the Site, and shall run with the land. Such Access Right shall expire
36 concurrently with NEON's Right to Use the Site pursuant to Section 1 above.
37

38 5. Condition of Site. Subject to Section 12 below, NEON accepts the Site and the
39 Access Right in an "AS IS, WHERE IS" condition, with all faults.
40

41 6. Repair and Maintenance. NEON, at its sole expense, shall keep and maintain the
42 NEON Site in good repair and in a neat and safe condition; provided, however, that NEON shall
43 not have any repair or maintenance obligations for matters arising from Site Owner's actions or
44 use of the Site.
45

1 7. Fiscal Responsibilities. NEON will be responsible and pay for the following Site
2 costs: (i) costs associated with Site characterization and construction, operation and maintenance
3 for the Project; (ii) costs for extendable sensors/consumables and processing/analysis of data for
4 the Project; (iii) costs for permitting/environmental assessments for the Project; (iv) costs for
5 security background checks for NEON personnel; and (v) costs to return the Site after expiration
6 of the Term, if requested by Site Owner, to a condition as close as reasonably possible to its
7 condition prior to the changes made by NEON (NEON shall have no obligation with respect to
8 any changes made by Site Owner). In addition, any NEON usage of Site Owner's phone lines,
9 data lines, power lines or electrical service will be separately metered and paid for by NEON.

10
11 8. Scientific Interference. Each Party will be respectful of the other Party's research
12 and the demarcation of their respective work sites, (e.g., keeping dust, interference, and traffic to
13 a minimum). Site Owner will coordinate with NEON all future modifications, new facilities, or
14 additional scientific activities within the agreed upon buffer zone of the Site, to ensure minimal
15 interference or disruption with the Project. Site Owner will take reasonable care to ensure that
16 Site Owner's personnel and activities do not interfere with NEON's activities at the Site (subject
17 to the terms of Exhibit B). NEON will have complete authority and control over the scientific
18 aspects and goals of the Project.

19
20 9. Safety and Security for Site. Any NEON employee working at the Site will
21 complete any safety training mandated by the Site Owner and complete an Employee Contact
22 form which will be delivered to Site Owner. NEON employees are not authorized to operate Site
23 Owner's vehicles. NEON employees are authorized to be passengers/riders in motor vehicles
24 operated by Site Owner personnel. NEON shall comply with any reasonable security regulations
25 established for access to the Site by Site Owner including, as necessary, appropriate security
26 clearances.

27
28 10. Agreements of Site Owner. Site Owner agrees to do the following:

- 29
30 a. Provide access to available phone lines, data lines, power lines and electrical
31 service for voice communication, data transfer and instrument control.
32 b. Provide a Point of Contact to act as a liaison between Site Owner and NEON, if
33 needed.

34
35 11. Agreements of NEON. NEON agrees to the following:

- 36
37 a. Establish policies for environmental protection, safety and security for the Site.
38
39 b. Ensure NEON's personnel do not interfere with any existing activities of Site
40 Owner at the Site (subject to the terms of Exhibit B). NEON will be responsible and accountable
41 for the conduct of its employees, agents and invitees while at the Site.
42
43 c. Use, operate and maintain the Site in a neat and safe manner in compliance
44 with all laws, ordinances and regulations as may now be in force or which may hereinafter be
45 enacted by federal, state or municipal authorities.
46

1 d. Ensure that the Site meets NEON requirements and perform any necessary
2 environmental permitting and assessments for the Project.

3
4 e. Provide a Domain Director responsible for maintenance and operations of the
5 NEON infrastructure who will serve in a liaison role between NEON and the Site Owner.

6
7 f. Return the Site after expiration of the Term, if requested by Site Owner, to a
8 condition as close as reasonably possible to its condition prior to the changes made to the Site by
9 NEON (NEON shall have no obligation with respect to any changes made by Site Owner).

10
11 12. Site Owner's Representations and Warranties. Site Owner represents and
12 warrants to NEON as follows:

13
14 a. Site Owner holds title to the Site, free and clear of all mortgages and security
15 interests. The Site and property made available pursuant to the Access Right are not subject to
16 any dedication, easement, right of way, covenant, condition, restriction, lien or encumbrance that
17 would prohibit or materially interfere with NEON's Right to Use Site or Access Right as
18 contemplated by this Agreement.

19
20 b. Site Owner has the full power and authority to enter into this Agreement and to
21 carry out its obligations hereunder, and by proper action has duly authorized the execution and
22 delivery of this Agreement.

23
24 c. Neither the execution and delivery of this Agreement, nor the fulfillment of or
25 compliance with the terms and conditions hereof, nor the consummation of the transactions
26 contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions
27 of any agreement or instrument to which Site Owner is now a party or by which Site Owner or
28 its property is bound.

29
30 d. Site Owner is not aware of any facts or circumstances that would prevent
31 NEON's use of the Site as contemplated by this Agreement.

32
33 e. To the best of Site Owner's knowledge, no Hazardous Materials exist or have
34 ever been released on or under the Site and the Site, in its present condition, is in full compliance
35 with all Hazardous Materials Laws. For purposes of this Section 12.e., "Hazardous Materials"
36 and "Hazardous Materials Laws" shall have the meaning set forth in Section 15 below.

37
38 f. Provided NEON is not in material default under this Agreement, Site Owner
39 warrants that NEON shall peaceably and quietly have, hold and enjoy the Site for the Term
40 without hindrance or interruption by Site Owner and that Site Owner will defend NEON in such
41 peaceful and quiet use and possession of the Site against the claims of any person.

42
43 13. NEON's Representations and Warranties. NEON represents and warrants to Site
44 Owner as follows:

1 a. NEON has the full power and authority to enter into this Agreement and to
2 carry out its obligations hereunder, and by proper action has duly authorized the execution and
3 delivery of this Agreement.

4
5 b. Neither the execution and delivery of this Agreement, nor the fulfillment of or
6 compliance with the terms and conditions hereof, nor the consummation of the transactions
7 contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions
8 of any agreement or instrument to which NEON is a party or by which NEON is bound.

9
10 14. Indemnification.

11
12 a. NEON will indemnify Site Owner and hold harmless from and against any
13 and all claims, actions, damages, liabilities and expenses incurred by Site Owner (including
14 attorney, expert and consultant fees) in connection with loss of life, personal injury and/or
15 damage to property arising from or out of any occurrence at the Site or from use of the Access
16 Right caused by any act or omission of NEON, its agents, employees, or invitees, except to the
17 extent caused by the act or neglect of Site Owner, its agents, employees or invitees.

18
19 b. Site Owner will indemnify NEON and hold harmless from and against any and
20 all claims, actions, damages, liabilities and expenses incurred by NEON (including attorney,
21 expert and consultant fees) in connection with loss of life, personal injury and/or damage to
22 property arising from or out of any occurrence caused by any act or omission of Site Owner, its
23 agents, employees or invitees, except to the extent caused by the act or neglect of NEON, its
24 agents, employees or invitees.

25
26 15. Environmental.

27
28 a. NEON will indemnify Site Owner and hold harmless from and against any
29 claims, actions, damages, penalties, fines, expenses (including attorney, expert and consultant
30 fees), liabilities or losses arising from the presence, release, disposal, migration, handling,
31 storage or treatment by NEON of Hazardous Materials on or from the Site during the Term of
32 this Agreement, or from a violation by NEON of the Hazardous Materials Laws during the Term
33 of this Agreement. Notwithstanding the above, in no event shall NEON be obligated to
34 indemnify Site Owner for any Hazardous Materials that migrate or otherwise impact the Site as a
35 result of the acts or omissions of Site Owner or a third-party.

36
37 b. NEON shall not cause or permit any Hazardous Materials to be brought upon,
38 kept or used in or about the Site by NEON, its agents, employees or invitees, except for materials
39 which are handled and stored in accordance with appropriate governmental regulations.

40
41 c. NEON shall immediately advise Site Owner in writing of (i) any and all
42 enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed
43 or threatened or of which it has been notified pursuant to any applicable Hazardous Materials
44 Laws relating to any Hazardous Materials affecting the Site; and (ii) all claims made or
45 threatened by any third party against NEON or the Site relating to damage, contribution, cost
46 recovery compensation, loss or injury resulting from any Hazardous Materials at the Site.

1
2 d. For purposes of this Agreement, "Hazardous Materials" means those
3 substances deemed a hazardous or toxic substance under any Hazardous Material Law, the group
4 of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive
5 materials, chemicals known to cause cancer or reproductive toxicity in humans, pollutants,
6 effluents, contaminants, hazardous wastes, hazardous materials, emissions or related materials
7 and any items included in the definition of hazardous or toxic waste, materials or substances
8 under any Hazardous Material Law. "Hazardous Materials Laws" collectively means and
9 includes any present and future local, state and federal law relating to the environment and
10 environmental conditions including, without limitation, the Resource Conservation and Recovery
11 Act, 42 U.S.C. § 6901, et seq. (as amended); the Comprehensive Environmental Response
12 Compensation and Liability Act, 42 U.S.C. § 9601; the Federal Water Pollution Control Act,
13 33 U.S.C. § 1251, et seq.; the Clean Air Act, 42 U.S.C. § 741, et seq.; the Toxic Substances
14 Control Act, 15 U.S.C. § 2601, et seq.; and the Safe Drinking Water Act, 42 U.S.C. § 300f, et
15 seq.; each as they may be amended, and all the regulations, orders, decrees now or hereafter
16 promulgated thereunder or under any local or state Hazardous Materials Laws.

17
18 16. Insurance.

19
20 a. During the Term of this Agreement, NEON, at its sole cost and expense, shall
21 purchase and maintain the insurance specified on Exhibit C hereto. Any contractor performing
22 work at the Site for NEON shall provide the insurance specified on Exhibit C.

23
24 b. NEON's comprehensive general liability insurance policy shall name Site
25 Owner as an additional insured, as its interest may appear, and shall provide that insurance
26 coverage shall not be canceled or altered except upon thirty days prior written notice to Site
27 Owner. NEON shall deliver certificates of insurance evidencing the insurance coverage required
28 herein to Site Owner prior to entering upon the Site and from time to time thereafter as may be
29 reasonably requested by Site Owner to establish NEON's insurance coverage.

30
31 c. NEON and Site Owner waive all rights against each other for damages to the
32 extent covered by insurance, except such rights as they may have to proceeds of such insurance.
33 The Parties agree to have their respective insurance carriers waive any right to subrogation that
34 such companies may have against NEON or Site Owner, as the case may be, so long as the
35 insurance is not invalidated thereby.

36
37 17. Termination.

38
39 a. Site Owner may terminate this Agreement in the event NEON fails to perform
40 any material covenant, condition or agreement herein contained on NEON's part to be kept or
41 performed and such failure continues for a period of thirty (30) days after written notice from
42 Site Owner specifying the nature of such failure, and, if not remedied by NEON within such
43 period, such failure continues for an additional period of fifteen (15) days after a second written
44 notice from Site Owner specifying the nature of such failure. If NEON shall in good faith
45 dispute the existence of such default and shall give written notice of such dispute stating NEON's
46 reasons as to why no such default exists, Site Owner shall not be entitled to terminate this

1 Agreement unless and until there has been a final resolution of such dispute pursuant to the
2 dispute resolution procedures set forth in Section 21 below and NEON shall then have had an
3 additional fifteen (15) days after such final resolution to cure such default.
4

5 b. NEON may terminate this Agreement at any time for any reason upon at least
6 ninety (90) days advance written notice to Site Owner.
7

8 c. On termination or expiration of this Agreement, NEON shall quit and
9 peaceably surrender the Site to Site Owner. If requested by Site Owner, NEON shall return the
10 Site to a condition as close as reasonably possible to its condition prior to the changes made to
11 the Site by NEON (NEON shall have no obligation with respect to any changes made by Site
12 Owner).
13

14 d. No expiration or termination of this Agreement shall affect any rights or
15 obligations of either Party under Sections 14 or 15 hereunder or any other provisions intended by
16 the Parties to survive such expiration or termination.
17

18 18. Notice. Any notice to be given or to be served upon either Site Owner or NEON
19 in connection with this Agreement shall be in writing and shall be sent by mailing the notice
20 registered or certified mail, postage prepaid, return receipt requested, by transmission of a
21 confirmed facsimile or by sending the same by Federal Express, Express Mail, or other
22 comparable and reliable delivery service, and addressed as follows:
23

24
25
26 Site Owner: Dr. Jorge Rivera Santos – Acting Chancellor
27 University of Puerto Rico Mayaguez
28 259 Blvd. Alfonso Valdez
29 AP 200 Piñero Building
30 Mayaguez, PR 00681
31

32 with copy to:

33 Dr. Hector Santiago Anadon – Acting Dean and Director
34 College of Agricultural Sciences
35 University of Puerto Rico Mayaguez
36 Call Box 900
37 Mayaguez, PR 00681
38

39
40 NEON:

41 National Ecological Observatory Network
42 3223 Arapahoe Avenue
43 Suite 210
44 Boulder, CO 80303
45 Attn: Liz Wright
46

1
2 with copy to:
3

4 Ireland, Stapleton, Pryor & Pascoe, P.C.
5 1675 Broadway, Suite 2600
6 Denver, Colorado 80202
7 Attention: William E. Tanis
8

9 or to such other addresses as the Parties may from time to time designate in writing to the other
10 Party, and any such notice or demand shall be deemed to have been given or served at the time
11 that the same shall be received. However, if the first attempt to serve notice is not received, then
12 a second notice may be sent and the notice shall be deemed to be effective three (3) days after it
13 is sent as set forth above.
14

15 19. Assignment of Right to Use and Access. NEON has the right to assign its rights
16 and obligations under this Agreement, in whole or in part, with the prior written consent of the
17 Site Owner.
18

19 20. Disputes. Any controversy or claim arising out of or relating to this Agreement
20 or its breach; shall only be settled in accordance with the following sequence of dispute
21 resolution procedures.
22

23 a. Good Faith Negotiation. In the event of any dispute between the Parties, in
24 connection with or arising out of the existence, validity, construction, performance, breach or
25 termination of this Agreement, the Parties shall promptly notify each other and meet, negotiate in
26 good faith, and attempt to amicably resolve such dispute.
27

28 b. Mediation. If the Parties, within twenty (20) days, are unable to resolve the
29 dispute themselves, unless the Parties shall agree otherwise, they will submit the dispute to non-
30 binding mediation conducted by the American Arbitration Association ("AAA") or any other
31 mutually acceptable alternate dispute resolution organization in Boulder, Colorado. Each Party
32 shall bear its own expenses but those related to the compensation of the mediator shall be borne
33 equally. The Parties, their representatives, other participants and the mediator shall hold the
34 existence, content and result of the mediation in confidence. If the dispute is not resolved
35 through mediation, claims may be resolved through binding arbitration.
36

37 c. Arbitration. If either Party elects to submit a dispute to arbitration, the
38 arbitration shall be binding and be conducted in accordance with the applicable Rules of the
39 AAA except as modified herein. The Party desiring arbitration shall deliver written notice of
40 demand for arbitration to the other Party within a reasonable time after the controversy or claim
41 arises, but in no event after the date when institution of legal or equitable proceedings based on
42 such controversy or claim would be barred by the applicable statute of limitations. The
43 arbitration shall be heard before a single neutral arbitrator appointed by mutual agreement of the
44 parties. If the Parties cannot agree upon a single arbitrator within ten (10) days of the referral of
45 the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member
46 arbitration panel. The two arbitrators so chosen shall within ten (10) days select a third

1 arbitrator. The arbitrator(s) shall be knowledgeable in land use matters, and shall not have any
2 substantial business or financial relationships with either Party. Such arbitration shall take place
3 in Boulder, Colorado. In the event of a conflict between the rules of the AAA and this provision,
4 this provision shall govern. Each Party shall bear its own expenses in connection with the
5 preparation and presentation of its case at the arbitration proceedings. Any U.S. court having
6 competent jurisdiction may enter judgment on the final arbitration award.

7
8 21. Miscellaneous.
9

10 a. The terms and conditions of this Agreement shall not be altered, waived,
11 modified or changed except by a written instrument, duly executed by the Parties. The Parties
12 agree to review this Agreement at least every three years to determine whether it should be
13 revised, but shall not have the authority, as a result of such review, to revise this Agreement
14 without the written agreement of both Parties.

15
16 b. Failure of either Party to complain of any act or omission on the part of the
17 other Party, no matter how long the same may continue, shall not be deemed to be a waiver by
18 said Party of any of its rights hereunder. No waiver by either Party of any breach of any
19 provision of this Agreement shall be deemed a waiver of a breach of any other provision of this
20 Agreement or a consent to any subsequent breach of the same or any other provision. If any
21 action by either Party shall require the consent or approval of the other Party, the other Party's
22 consent to or approval of such action on any one occasion shall not be deemed a consent to or
23 approval of said action on any subsequent occasion or a consent to or approval of any other
24 action on the same or any subsequent occasion.

25
26 c. The article headings herein are inserted only for convenience of reference and
27 shall in no way define, limit or prescribe the scope or intent of any provision of this Agreement.
28

29 d. All of the terms, covenants, conditions and provisions of this Agreement shall
30 be construed as covenants running with the land, and all rights given to and obligations imposed
31 upon the respective Parties shall be construed as inuring to and binding upon the successors in
32 interest and assigns of the Parties hereto.
33

34 e. NEON may record a Memorandum of this Agreement in the real property
35 records of the Clerk and Recorder or other official administrator of such records in the
36 County(ies) where the Site is located and in the appropriate governmental agency records (if
37 any).
38

39 f. NEON WILL MAKE DATA AVAILABLE TO THE GENERAL PUBLIC IN
40 ACCORDANCE WITH NEON'S DATA ACCESS POLICY.
41

42 g. Nothing in this Agreement is intended to confer upon any person, other than the
43 parties hereto and their respective successors and assigns, any rights, remedies, obligations or
44 liabilities under or by reason of this Agreement.
45

1 h. This Agreement shall be governed by and construed in accordance with the
2 laws of the State of Colorado, without regard to the choice of law provisions thereof.
3

4 i. If any term, covenant or condition of this Agreement or the application thereof
5 to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of
6 this Agreement or the application of such term, covenant or condition to persons and
7 circumstances other than those to which it has been held invalid or unenforceable, shall not be
8 affected thereby, and each term, covenant and condition of this Agreement shall be valid and
9 shall be enforced to the fullest extent permitted by law.
10

11 j. This Agreement (which includes the Exhibits) constitutes the entire agreement
12 of the Parties pertaining to its subject matter, and supersedes and replaces in its entirety all prior
13 and contemporaneous agreements. No covenant or condition not expressed in this Agreement
14 shall affect or be effective to interpret, change or restrict this Agreement.
15

16 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the
17 date first stated above.
18

19 National Ecological Observatory Network, Inc., a
20 District of Columbia not-for-profit corporation
21

22
23 By: 
24

25 Its: Director Permitting EHS
26

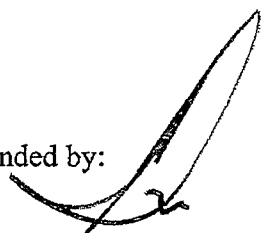
27 Site Owner
28

29
30 By:  
31

32 Its: Dr. Jorge Rivera Santos
33

34 Acting Chancellor
35

36 University of Puerto Rico – Mayaguez Campus
37

38
39 Recommended by: 
40

41 Dr. Hector Santiago Anadon
42 Acting Dean and Director
43 College of Agricultural Sciences
44
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Addendum - Contractual Clauses

National Ecological Observatory Network, Inc. (NEON) and University of Puerto Rico, Mayaguez (UPRM)

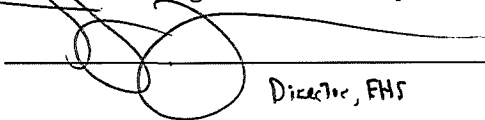
1. The two parties state that in their practices and proceedings there will be no discrimination on the basis of sex, race, color, place or date of birth, national origin, social status, physical or mental handicap, political or religious beliefs, or status as a military veteran.
2. The two parties are committed to maintaining records of all reports, timesheets for jobs or assistantships, and all other documents related to the services discussed in this Agreement, in order that they be available for examination or copying by the Office of Internal Auditors of the University of Puerto Rico, by a firm of outside auditors hired by the University of Puerto Rico, or by the Office of the Comptroller of Puerto Rico in its auditing of the University of Puerto Rico. Audits will be carried out at reasonable times during the course of the services or after their completion, in accordance with generally recognized auditing practices. Said documents will be kept for a period of no less than six (6) years or until the Office of the Comptroller of Puerto Rico has made its investigation, whichever occurs first.
3. Each of the parties consents to exempt and exonerate the other party from responsibility in the case of any judicial or extrajudicial claim, and to provide indemnization for damages and/or mental or moral anguish that may be suffered by any person or legal entity, when said damages are alleged to have been caused by the negligent, reckless, and/or culpable actions, conduct, or omissions of each party, its agents or employees, when such damages shall have occurred totally or partially during the realization of this Agreement.
4. NEON shall not use the name of the University of Puerto Rico, its initials UPR, its stamp, logos, seal, or any other identifying emblem or symbol distinctive of the Institution, for any matter related to the activities that are object of this agreement, without express and written authorization by the University of Puerto Rico.
5. NEON certifies and guarantees that during the performance of this agreement it will comply with the Executive Order 1 1246 of September 24, 1965, Subpart B, Section 202 (41 CFR 60-1.4); the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (41 CFR 60-250.5); the Rehabilitation Act of 1973, Section 503 (41 CFR 60-741.5), all as amended, and any other appliance rules and regulations of the Office of Federal Contract Compliance Programs (OFCCP). NEON is therefore deemed to have

Addendum- Contractual Clauses

National Ecological Observatory Network, Inc. (NEON) and University of Puerto Rico, Mayaguez (UPRM)

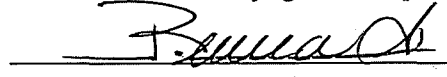

1. The two parties state that in their practices and proceedings there will be no discrimination on the basis of sex, race, color, place or date of birth, national origin, social status, physical or mental handicap, political or religious beliefs, or status as a military veteran.
2. The two parties are committed to maintaining records of all reports, timesheets for their jobs or assistantships, and all other documents related to the services discussed in this Agreement, in order that they be available for examination or copying by the office of Internal Auditors of the University of Puerto Rico, or by the Office of the Comptroller of Puerto Rico in its auditing of the University of Puerto Rico. Audits will be carried out at reasonable times during the course of the services or after their completion, in accordance with generally recognized auditing practices. Said documents will be kept for a period of no less than six (6) years or until the Office of the Comptroller of Puerto has made its investigation, whichever occurs first.
3. Each of the parties consents to exempt and exonerate the other party from responsibility in the case of any judicial or extrajudicial claim, and to provide indemnization for damages and or mental/moral anguish that may be suffered by any person or legal entity, when said damages are alleged to have been caused by the negligent, reckless, and/or culpable actions, conduct, or omissions of each party, its agents or employees, when such damages shall have occurred totally or partially during the realization of this Agreement.
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National Ecological Observatory Network, Inc.


Director, FHS

3/30/11

UPR-Mayaguez Campus

Proposed modification to the NEON UPRM Contractual Clauses:

1. No changes

2. In accordance with NEON Policies, the NEON document retention requirements are as follows:

Timesheets are retained for a period of five (5) years; applications and applicant data are kept for one (1) year; EEO-1 reports are kept for one (1) year and ADA and ADEA reports are kept for three (3) years. NEON's Human Resources document retention schedule is consistent with Federal and/or statutory requirements.

NEON's Human Resources has a disclosure of information policy that speaks to securing confidential employee information. NEON will release the information in special circumstances, i.e. subpoenas, requests from authorized agencies or personnel. NEON will keep all applicant data confidential.

3. NEON cannot waive an employee's right to seek relief or remedies in matters such as discrimination, harassment or workers compensation.

4. No changes

5. NEON is in compliance with all federal regulations. NEON is not a Federal Contractor, NEON Inc. is a Federal Awardee.

Additionally 41 CFR 60-250.5 states:

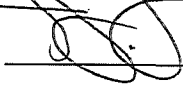
The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local employment service office of the state employment security agency wherein the opening occurs.

Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

As a matter of policy and practice all our announcements (internal and external) speak to encouraging Veterans to apply.

Our external announcements are targeted and specific to the position requirements.

National Ecological Observatory Network, Inc.

 DIRECTOR ENJ 3/30/11

University of Puerto Rico- Mayaguez Campus