

Department of Energy

Washington, DC 20585

Date: April 15, 2010

Re: A BILATERAL DOE LABORATORY UTILIZATION AGREEMENT

INTRODUCTION

DOE encourages the collaboration between DOE Laboratories in order to further programmatic goals. This includes exchanging personnel between DOE laboratories to utilize the unique facilities of a particular Laboratory. There has been confusion and inconsistencies on what types of agreements, if any, that may be executed between two DOE laboratories. For example, some labs may not require any agreement while other labs have required agreements with indemnity or over-reaching intellectual property rights.

THE AGREEMENT

To promote a consistent approach to such collaboration, and after consultation with the laboratories we have developed the attached Bilateral DOE Laboratory Utilization Agreement (BDLUA), which is acceptable to DOE when two DOE Laboratories want to exchange employees to use the Laboratory facilities. See Appendix A. Use of this agreement is entirely voluntary, but if this format becomes widely adopted it will facilitate laboratory collaborations.

This BDLUA has eliminated several key clauses usually included in similar agreements such as:

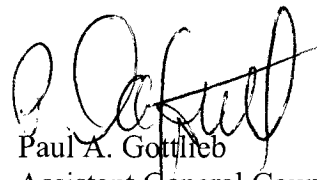
- a) Indemnity/liability/disputes provisions—Since DOE covers indemnity/liability at our labs for authorized work, the individual DOE labs aren't required to seek indemnity from each other.
- b) Intellectual property provisions—Since employees would follow the terms and conditions of their M&O Contractor, the standard agreement language is not necessary. We have included that third party intellectual property obligations (such as giving title to lab inventions to a WFO Sponsor) will apply to the work being performed.
- c) Export Control & Property provisions—Lab employees would follow standard M&O Contract terms.
- d) Costs—if one lab wants to charge another lab for its services, Article I allows for an additional funding agreement. These funding agreements can simply deal with money transfer for specific projects. We don't intend these to be supplemental to this agreement because approval may occur in a different laboratory office. That is, this BDLUA might be handled by the Laboratory WFO office and the money transfer could be handled by laboratory finance office; and therefore, executed by different contracting officers.



The Agreement was written to cover all projects and personnel exchanges at each Laboratory. However, individual project agreements could be executed.

CONCLUSION

This BDLUA is not to be executed with other Agency's Laboratories (for example, NASA's Jet Propulsion Lab) since some of the eliminated provisions might be deemed necessary by DOE management. If two DOE labs feel additional provisions are necessary, this BDLUA can be amended accordingly. Finally, this BDLUA is not mandatory and Laboratories are free to determine other means to achieve similar goals.

A handwritten signature in black ink, appearing to read "Paul A. Gottlieb", is positioned above the printed name.

Paul A. Gottlieb
Assistant General Counsel for
Technology Transfer and
Intellectual Property

APPENDIX A

Bilateral DOE Laboratory Utilization Agreement

No.

BETWEEN

Facility Operator of _____ Laboratory (under DOE Prime Contract No. DE-AC _____) (“CONTRACTOR A”)

AND

Facility Operator of _____ Laboratory (under DOE Prime Contract No. DE-AC _____) (“CONTRACTOR B”)
(Collectively, “the Parties”)

ARTICLE I. FACILITIES AND SCOPE OF WORK

A Contractor’s facilities (including equipment, services, information and other materials--(hereinafter “Host Facility”)) will be made available to employees and consultants (hereinafter “Participants”) of the other Party solely for carrying out the Prime Contracts of the Parties. An additional funding agreement (e.g., an Integrated Contractor Order) for funding transfer may be necessary if goods and services are provided by one Party at cost to the other Party.

ARTICLE II. TERM OF THE AGREEMENT

This Agreement shall have a term of ____ years from the effective date, which shall be effective as of the date on which it is signed by the last of the Parties. Either Party may terminate this Agreement for any reason at any time.

ARTICLE III. INTELLECTUAL PROPERTY RIGHTS

With regard to patent and technical data rights, Participants will follow their Party’s Prime Contract when working at a Host Facility. However, if the work performed by a Participant at the Host Facility is subject to an agreement with a third party (for example, WFOA or CRADA), the intellectual property provisions of that third party agreement shall supercede this section.

ARTICLE IV. LABORATORY SITE ACCESS, SAFETY AND HEALTH

As a precondition to using a Host Facility, Participants must complete all of the Host Facility’s Site Access documents and requirements. Participants shall take all reasonable precautions in activities carried out under this Agreement to protect the safety and health of others and to protect the environment. Participants must comply, or risk immediate expulsion, with all applicable safety, health, access to information, security and environmental regulations and the requirements of the DOE and Host Facility.

FOR THE CONTRACTOR A:

FOR THE CONTRACTOR B:

BY:
TITLE:
DATE:

BY:
TITLE:
DATE: