

Subject: Entering Into Memorandum Of Understanding (MOUs) With Foreign Partners	Effective Date: August 3, 2012	Initiated by: Deputy Director for Research
	Supersedes NEW	Approved: Director
Management System: 01 - Strategy and Management		
Process/Name: 01.08 / Business Development		Process Owner: Deputy Director for Research
Subject Matter Experts (SMEs): Deputy Director for Research, Deputy Director for Operations, Head of Business Operations, Head of Best Practices and Outreach		

Applicability

This procedure applies to *any* written undertaking for informal, non-R&D, non-legally binding collaboration between the PPPL and a foreign partner, whatever the title of the undertaking, such as Memorandum of Understanding, Memorandum of Agreement, Statement of Intent, Letter of Intent, or Declaration of Principles (collectively, “MOUs”).

This procedure, and MOUs, do not include contractual instruments such as Work for Others contracts or Cooperative Research and Development Agreements. MOUs describe the framework for cooperation and collaboration envisioned by the parties. They are not legally binding agreements, nor are they appropriate vehicles for obligating funds.

Introduction

Any MOU entered into between the PPPL and a Foreign Partner must meet the following three tests prior to execution:

- (i) align with the strategic interests and policies of the United States and PPPL
- (ii) be legally sound
- (iii) be reviewed carefully to ensure that any counterintelligence considerations are addressed.

Reviews of MOUs must include PPPL Management, Princeton University Counsel, and DOE.

Reference Documents

DOE Secretary of Energy Memorandum, “Laboratory Memoranda of Understanding (MOUs) with Foreign Partners, dated May 14, 2012

DOE Director of the Office of Science Memorandum to SC Site Office Managers (providing supplemental and clarifying guidance with regard to agreements with foreign entities), dated May 18, 2012

Definitions

Foreign Partner Foreign Partner includes a foreign government ministry, laboratory, research institute, international organization, or other entity (public or private).

PROCEDURE

RESPONSIBILITY

ACTION

- | | |
|---|---|
| PPPL Employee | <ol style="list-style-type: none"> 1. Initiates or is presented with a written foreign MOU, and immediately confers with the Department Head/Council Member, who will be responsible for the MOU, to ensure the proposed agreement aligns with the PPPL mission. 2. Prepares a draft MOU formatted to the PPPL Foreign MOU template (Attachment 1) and presents it to the Department Head/Council Member. |
| Department Head /
Council Member to be
responsible for the MOU | <ol style="list-style-type: none"> 3. Reviews the draft MOU and ensures that it aligns with the strategic interests and policies of the United States and PPPL. 4. Forwards the draft MOU to the Director of PPPL, with copies to the University Counsel, Deputy Director for Research, and Deputy Director for Operations for their timely review and advice. |
| Deputy Director for
Research, and
Deputy Director for
Operations | <ol style="list-style-type: none"> 5. Review the draft MOU and ensures that it aligns with the strategic interests and policies of the United States and PPPL. 6. Provides comments to the responsible Department Head / Council Member and to the University Counsel. |
| University Counsel | <ol style="list-style-type: none"> 7. Reviews the draft MOU and ensures that it is legally sound and aligns with the strategic interests and policies of the United States and PPPL. 8. Obtains review and approval of the draft MOU from the: <ul style="list-style-type: none"> • DOE Site Office Counsel • Senior Counterintelligence Officer of the PPPL. <p>Provides copies of these requests to the DOE-PSO Site Office Manager.</p> |

DOE Site Office
Manager

9. When the language of the draft MOU is acceptable to all parties and it has been approved by all necessary authorities, forwards the draft MOU for concurrence to the:
 - DOE-SC Senior Advisor for International Programs at Elizabeth.omalley@science.doe.gov
 - DOE-SC Advisor for International Programs at corey.cohn@science.doe.gov
 - Once concurrence has been received forwards to the Office Director for International Cooperative Activities in the DOE Office of Policy and International Affairs: labagreements@hq.doe.gov for approval

10. Forwards the MOU to the PPPL Director, when the language of the draft MOU is acceptable to all parties and all necessary authorities have approved it.

Director

11. Performs the final review, approval and signature of the MOU.
12. Delivers the final MOU to the Foreign Partner for approval signature.

Director's Office

13. Maintains the original signed MOU in the Office of the Director.

Director's Office

14. Forwards – within 20 days of execution of any MOU – a pdf copy of the final signed MOU to the:
 - Office of the Director for International Cooperative Activities in the DOE Office of Policy and International Affairs, at labagreements@hq.doe.gov
 - DOE-SC Senior Advisor for International Programs: Elizabeth.omalley@science.doe.gov;
 - DOE-SC Advisor for International Programs corey.cohn@science.doe.gov;
 - ~~At the request of the DOE-SC Senior Advisor for International Programs~~
 - DOE-PSO Site Manager
 - DOE Program Manager
 - Princeton University Counsel
 - PPPL Best Practices and Outreach

Best Practices and
Outreach

15. Maintains the website of electronic copies of MOUs and issues periodic reminders to responsible Department Heads / Council Member to review and update or extend their MOUs.

Training

- The Deputy Director for Research will provide a briefing to Council Members on the process and requirements of this procedure.
- This procedure will be distributed to all Supervisors for read-only-training.

Attachments

1. PPPL Foreign MOU Template
2. Frequently Asked Questions, DOE National Laboratory MOUs with Foreign Partners
3. PPPL Foreign MOU Checklist

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	PPPL Foreign MOU Template		Attachment 1

MEMORANDUM OF UNDERSTANDING

Between

THE TRUSTEES OF PRINCETON UNIVERSITY, Princeton Plasma Physics Laboratory

And

I. OBJECTIVE

- What is the objective of the parties in collaborating?

II. AREAS OF COOPERATION

- What are the research topics or areas of collaboration of the parties?

III. FORMS OF COOPERATION

- E.g., will the parties be exchanging information, data, samples, scientists and engineers?

IV. MECHANISMS OF COOPERATION

- E.g., will there be lead coordinators, and/or a joint steering committee which will discuss and identify new collaborative areas and elaborate on expectations and understandings?

V. GENERAL PROVISIONS

- The MOU does not create any legally binding obligations between or among the Participants.
- Participants understand that any actual collaborative research and development (R&D) can only be conducted under an appropriate formal agreement. Therefore, Participants expect to establish a separate formal agreement on each collaborative project, if necessary.
- Each Participant should conduct the cooperation under this MOU in accordance with applicable laws and regulations to which it is subject, and international agreements to which its Government is a party.

VI. COMMENCEMENT, MODIFICATION AND DISCONTINUATION

- Duration of the Cooperation
- MOU may be modified only by way of written agreement signed by the parties
- MOU may be discontinued at any time provided adequate written notice is provided.

VII. SIGNATORIES

FOR:
THE TRUSTEES OF PRINCETON
UNIVERSITY,
Princeton Plasma Physics Laboratory

FOR:

BY _____

BY _____

TITLE _____

TITLE _____

DATE _____

DATE _____

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Frequently Asked Questions, DOE National Laboratory MOUs with Foreign Partners			Attachment 2

**FREQUENTLY ASKED QUESTIONS
DOE NATIONAL LABORATORY MOUS WITH FOREIGN PARTNERS**

Frequently Asked Questions
DOE National Laboratory MOUs with Foreign Partners

In accordance with Secretary Chu’s May 14, 2012, memorandum to the Laboratory Directors, each DOE National Laboratory is required to have a process to ensure that Memoranda of Understanding (MOUs) with foreign partners meet three tests, i.e., align with U.S. strategic interests and policies, are legally sound, and address counterintelligence considerations. Each Laboratory Director is responsible for ensuring that each executed (signed) MOU is compliant with the three tests.

What type of undertaking does this policy apply to?

Any written undertaking for informal, non-R&D, non-legally binding collaboration between a Laboratory and a foreign partner, whatever the title of the undertaking, such as Memorandum of Understanding, Memorandum of Agreement, Statement of Intent, Letter of Intent, or Declaration of Principles. Legally binding contractual instruments such as Work for Others (WFO) contracts or Cooperative Research and Development Agreements (CRADAs) are already subject to prescribed statutory and regulatory requirements and DOE Orders, and therefore are outside the purview of the Secretary’s memorandum.

May collaborative R&D be conducted pursuant to an MOU?

No; MOUs may be utilized exclusively as a framework for informal, non-R&D collaboration, such as exchanging publicly available information on the identified subject matter(s), holding meetings and workshops, and expressing the intent to engage in visits and assignments of each other’s personnel to each other’s facilities. An MOU may be utilized to plan for the future conduct of collaborative R&D, but the actual conduct of such R&D can be conducted only under a legally binding contractual instrument such as WFO or CRADA, or under a legally binding international agreement to which DOE is the U.S. signatory party and which is coordinated through the relevant HQ Program Office.

What is the definition of “foreign partner”?

A foreign government ministry, laboratory, research institute, international organization, or other entity (public or private).

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Frequently Asked Questions, DOE National Laboratory MOUs with Foreign Partners			Attachment 2

What kind of language conveys that an MOU is informal and non-binding?

Below are examples of terms that indicate legally binding versus non-binding intent; lab MOUs should use *only* informal, non-binding language:

Language that May Indicate an Intention to be Legally Bound	Language that May Indicate an Intention Not to be Legally Bound
Shall, will, agree, commit	Plan to, intend, expect, should
Commitment, agreement	Understanding, statement, declaration
Parties, party	Participants
Agreement, treaty, convention, protocol	Statement, arrangement, mechanism
Entry into force	Date activities commence, today's date

Where can labs get help on creating a review and approval process for MOUs or get assistance in addressing any questions about currently pending draft MOUs?

The Office of International Cooperative Activities within the HQ Office of Policy and International Affairs is the headquarters contact for lab MOUs.

Director - Francesca Costantino

labagreements@hq.doe.gov or francesca.costantino@hq.doe.gov, 202-586-6569.

Country Responsibilities:

Africa and the Middle East: Denise Clarke, denise.clarke@hq.doe.gov, 202-586-6984
Americas: Denise Clarke
Asia: Keena Hillary, keena.hillary@hq.doe.gov, 202-586-8156
Europe: Keena Hillary
Russia and Eurasia: Denise Clarke

In addition to the Site Office and Headquarters Program Office, where can labs get help on questions about whether a proposed MOU meets the three tests?

For strategic and policy questions: The relevant country desk officer within the HQ Office of Policy and International Affairs/Office of International Cooperative Activities can advise on whether a proposed MOU aligns with U.S. strategic interests and policies, along with general information on the bilateral relationship. The desk officer will coordinate with others at DOE Headquarters as necessary, *e.g.*, the relevant Assistant or Under Secretary and the Program Office. Labs should contact the Office of International Cooperative Activities at labagreements@hq.doe.gov for referral to the relevant country desk officer.

For legal questions:

Diana Clark, Assistant General Counsel for International and National Security Programs
diana.clark@hq.doe.gov, 202-586-3417

Advice can be requested from the relevant Headquarters offices as the MOU is being developed.

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Where can labs get copies of existing DOE and U.S. Government formal agreements and informal MOUs with foreign partners?

The Office of International Cooperative Activities has developed the **COMmitment Management International Tracking (COMMIT)** database to archive the Department’s commitments. Labs can contact labagreements@hq.doe.gov to request copies of existing agreements with foreign partners. Fully executed laboratory MOUs will be added to the COMMIT database upon receipt.

What if a foreign partner wants to sign the MOU in a foreign language in addition to English?

The lab should obtain a draft of the foreign language text from the foreign partner after mutual agreement on the English language text has been reached, and send it to Office of International Cooperative Activities. That Office will coordinate review of the conformance of the English and foreign language texts by the Department of State’s Office of Language Services, along with the paperwork to transfer the required funds. Agreeing to sign in a foreign language may add considerably to the time required to prepare an MOU for signature.

What do I do with the signed MOU?

Labs should provide a pdf copy of the signed MOU within 20 days of signature to the Office of International Cooperative Activities for archiving in the Headquarters COMMIT database, so the Department has a complete record of ongoing cooperative activities. The signed MOU will also be circulated to the HQ Program Office, Office of International Cooperative Activities country desk, and Office of the General Counsel to review whether it satisfies the three tests.

Office of Policy and International Affairs
June 7, 2012

PPPL Foreign MOU Checklist	Attachment 3
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PPPL FOREIGN MOU CHECKLIST

1	Proposed activities include collaborative R&D	<input type="checkbox"/> No <input type="checkbox"/> Yes If yes, (a) utilize WFO, CRADA or other Lab-signatory contractual instrument; or (b) contact relevant HQ Program Office potential for conclusion of DOE-signatory R&D agreement.
2	MOU Title:	
3	Foreign Partner Name: Country:	
4	Proposed cooperation:	
5	Alignment with the PPPL Mission (PPPL's Mission is aligned with and part of the U.S. strategic interests and policies, thus providing benefits to the Government and Labs)	
6	Export Control Review, if necessary	Requested Date _____
7	Review by PPPL Management and University Counsel	
8	Counter Intelligence Review	Conducted by _____ Date _____
9	DOE Site Office Counsel Review	Conducted by _____ Date _____
10	Advice from Headquarters Program Office, General Counsel, and Policy and International Affairs	Requested Date _____
11	Foreign Language Text	<input type="checkbox"/> No <input type="checkbox"/> Yes If yes, send to DOE HQ/PI Office of International Cooperative Activities with funding citation, if applicable, for official language conformance by State Department.