

User Agreements From the DOE Perspective

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User Facility

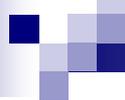
- No specific definition
- Used in DOE to describe a facility that is available for access by third parties
- Terms and conditions differ from lab to lab
- Purpose of the two new class waivers is to make available user agreements, that have been successfully used by SC, to all DOE to promote easy access to DOE labs and to promote uniformity across DOE

History

- Per the policy of the Atomic Energy Act and The Non-nuclear R&D Act, DOE is supposed to make its unique facilities available to users.
- First Non-Proprietary user class patent waiver was issued in 1983, which gave non-proprietary users (mainly comprising universities) rights in inventions that largely mirrored the provisions under the 1980 Bayh-Dole statute.
- Industrial users willing to pay full cost recovery also wanted access, starting with the Brookhaven light source, then later the Argonne light source. In 1991, DOE issued a class waiver for proprietary users under which users provided full cost recovery and were granted the right to elect title to their inventions with more limited reserved government rights, and the right to mark data as proprietary
- Both were for use of equipment only, and not for collaboration with lab personnel, and were only available at SC facilities
- 2005 - NSRC class waiver incorporated similar terms and conditions as the NPUA, but with the ability to collaborate
- 2008 – two new class waivers to make user agreements available to all DOE facilities, not just SC facilities

Prior use of similar waivers at selected facilities demonstrate they work

- Many SC facilities still have users of equipment pursuant to the 1983 and 1991 Class Waivers
- Only the SC Nanoscale Science Research Centers (ORNL, BNL, ANL, LBNL and SNL/LANL) had nonproprietary users who do collaborative research under a 2005 Class waiver
- The above have proven to be very successful so the above concepts are being made available to all DOE facilities in two new user class waivers



New Class Waivers

- Proprietary Users – like the old proprietary user class waiver
- Non-Proprietary Users – takes the place of the old non-proprietary class waiver and the NSRC class waiver and permits collaboration with lab scientists

Designation

- **Previously designated user facilities are automatically on the list of designated user facilities under the new waivers**
- **For new facilities designated as User Facilities, need an Implementation Plan**
 - system to determine which users have access to the site (e.g., peer review process or other selection process),**
 - access controls (security, remote (computer))**
 - how the user facility will interact with the user**
 - agreement to use standardized Non-Proprietary User Agreement**
 - reporting & accountability requirements**
- **Delegation to lab to enter into user agreements without DOE approval of each agreement encouraged**

Non-Proprietary User Agreements

- General scope of work directed toward precompetitive research that advances the state of the art in the user's area of interest, rather than toward producing a specific commercial end result (e.g., a marketable product);
- Intend to publish their research results in the open scientific literature;
- Do not require the data protection available in a CRADA, Work for Others Agreement, or Proprietary User Agreement.
- The converse of each of the above factors would be indicia that the work to be performed is beyond the preliminary research stage and would be more appropriately covered under a CRADA, WFOA or Proprietary User Agreement.
- User pays for its own costs; DOE funds DOE machine and scientists' time.
- This agreement is complementary to a WFO or CRADA, which are more complex, more difficult to negotiate and require DOE approval.

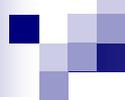
Non-Proprietary User Agreements

- Any changes to Standardized User Agreement require DOE approval
 - Streamlines negotiations
 - Promotes uniformity
 - Nature of these agreements makes this approach acceptable to virtually all users
- Allocation of Intellectual Property Rights:
 - Lab may elect title to its Subject Inventions per the M&O contract
 - USER may elect title to its Subject Inventions subject to:
 - Government Use License
 - March In Rights and US Preference apply
 - no US Competitiveness provision
 - No restriction on publication of Technical Data that is produced



Non-Proprietary User Agreements

- General Indemnity, addresses injury to personnel and damage to property. Non-proprietary user indemnifies contractor and Government only for its own negligent acts
- IP indemnity - addresses private IP rights that may be infringed during performance of work. User indemnifies lab contractor and Government
- Product Liability - addresses injury caused by downstream commercial products derived from work under Agreement. User indemnifies contractor and Government

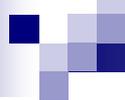


Class Waiver for Proprietary Users

- Scope of Class Waiver covers User who fully funds DOE's costs for machine time and its own costs.
- Research is that of the sponsor not DOE
- No research collaboration with Lab personnel
- Lab personnel may need to assist in operating the Lab equipment

Proprietary User Agreements

- Same approach to uniformity as with the NPUA
- Allocation of Intellectual Property Rights:
 - There should be no lab inventions. If there are, Lab may elect title to its Subject Inventions per the M&O contract
 - USER may elect title to its Subject Inventions subject to no government rights:
 - **No Government Use License**
 - **No March In Rights and No US Preference apply**
 - **no US Competitiveness provision**
 - Technical Data that is produced may be treated as the proprietary data of the sponsor.



Proprietary User Agreements

- General Indemnity - broader than for non-proprietary users, user indemnifies for all injury or damage except that which results from negligence on the part of the contractor or Government
- IP indemnity
- Product Liability



Questions