Memoranda of Understanding (MOUs)

BRIEF

Policy Summary

Memoranda of Understanding (MOUs), sometimes referred to as Letters of Intent, are aspirational statements of intention describing the framework for cooperation and collaboration envisioned by participants from Berkeley Lab and another entity or other entities. MOUs are not legally binding agreements, nor are they appropriate vehicles for obligating funds. All MOUs must be signed by the Laboratory Director, unless signature authority has been delegated by the Laboratory Director. Delegations of signature authority from the Laboratory Director may be informally communicated by the Chief of Staff, who will notify the Office of Laboratory Counsel (OLC) by e-mail of the Laboratory Director’s decision to delegate. MOUs must be reviewed by the OLC for legal form, content, and consistency with Laboratory policies. In addition, if it is with a foreign entity, the MOU must undergo a process of due diligence to ensure that any counterintelligence considerations are addressed. This policy describes the requirements and processes for usage, review, and approval of MOUs at the Laboratory.

Who Should Read This Policy

Any Berkeley Lab employee who drafts, negotiates, or submits MOUs for review, approval, and execution

To Read the Full Policy, Go To:

The POLICY tab on this wiki page

Contact Information

Chief Laboratory Counsel
Office of Laboratory Counsel

Policy

A. Purpose

This policy describes the requirements and processes for all Memoranda of Understanding (MOU) in which Lawrence Berkeley National Laboratory (Berkeley Lab) is a participant.

B. Persons Affected

This policy applies to any Berkeley Lab employee who drafts, negotiates, or submits MOUs for review, approval, and execution.

C. Exceptions

None
D. Policy Statement

1. Overview and Essential Criteria
   a. Memoranda of Understanding (MOUs), sometimes referred to as Letters of Intent, are aspirational statements of intention describing the framework for cooperation and collaboration envisioned by Berkeley Lab and the other participant(s). MOUs are not legally binding agreements, nor are they the appropriate vehicles for obligating funds. All MOUs are to be signed by the Laboratory Director, unless signature authority has been delegated by the Laboratory Director. Delegations of signature authority from the Laboratory Director may be informally communicated by the Chief of Staff, who will notify the Office of Laboratory Counsel by e-mail of the Laboratory Director’s decision to delegate.
   b. Laboratory MOUs must meet the following criteria:
      
      i. They must align with the strategic interests and policies of the United States and Berkeley Lab.
      
      ii. They must be reviewed by the Office of Laboratory Counsel (OLC) as to their legal form, content, and consistency with Laboratory policies.
      
      iii. In addition, if one or more of the participants is a foreign entity, they must undergo a process of due diligence to ensure that any counterintelligence considerations are addressed, including that:

         1. The proposing division must notify the Office of Science Program Manager, or pertinent U.S. Department of Energy (DOE) funder, for the contemplated activity. In some cases, OLC may require written concurrence from the DOE funding source.

         2. The OLC must notify and obtain approval of the MOU from the DOE Berkeley Site Office (BSO) through its Site Office Counsel.

         3. The OLC must notify and obtain approval of the MOU from the local DOE Counterintelligence Office; and

         4. The BSO (on behalf of the OLC) must notify and obtain approval of the MOU from the DOE Office of Science Advisor for International Programs.

         5. The OLC must e-mail an electronic version of the completely executed MOU to the DOE by e-mail to: labagree@hq.doe.gov and to the BSO in care of the Contracting Officer.

      iv. How is the Laboratory named in the MOU? The appropriate party to an MOU is named as, “The Regents of the University of California, manager and operator of the Lawrence Berkeley National Laboratory pursuant to Contract DE-AC02-05CH11231.”

      v. Is there a clause that describes discontinuation of the MOU? For example, “The Participants may discontinue this MOU at any time in writing. A Participant that wishes to discontinue its participation in this MOU should endeavor to provide at least thirty (30) days written notice to the other Participant.”

      vi. Is there a finite term for the MOU? For example, “Cooperative activities under this MOU may commence upon signature of the Participants and continue for a five (5) year period, unless discontinued in accordance with paragraph _ of this MOU.”

      vii. Is there a provision that describes how the MOU may be continued? For example, “This MOU may be modified in writing by mutual consent of the Participants and may be extended for additional periods.”

      viii. Is there a statement that the document is not legally binding for either participant? For example, “This MOU does not create legally binding obligations.”

      ix. Is there a statement that the cooperation is subject to the availability of funding? For example, “The conduct of cooperative activities contemplated by this MOU is subject to the availability of funding, personnel, and other resources.”

      x. Is there a statement indicating that all UC policies, Laboratory policies, and DOE regulations will be followed? For example, “Each participant should conduct the cooperation contemplated by this MOU in accordance with all applicable laws, regulations and other requirements to which it is subject, including, without limitation, export control laws and environment health and safety laws and regulations.”

      xi. Is there a statement regarding responsibilities for costs incurred in participating in the MOU? For example, “Each participant is to be responsible for the costs it incurs in participating in cooperative activities under this MOU.”

      xii. Are there any export control issues? If so, what are they? A sample paragraph to consider including for this issue is: “In view of its management by an institution of higher education, LBNL intends to conduct its activities under this MOU as

   Language That SHOULD NOT BE Used Because It Reflects an Intention to Be Legally Bound  

   | Shall, will, agree(d), commit, must | Plan to, intend, expect, should, may, decided, determined |
   | Commitment, agreement | Understanding, statement, declaration |
   | Parties, party | Participants |
   | Agreement, treaty, convention, protocol | Statement, arrangement, mechanism |
   | Entry into force, valid | Date activities commence, today’s date |
   | Amended | Modified, revised |
   | Terminated | Discontinued |

Language That SHOULD BE Used Since It Does Not Reflect an Intention to Be Legally Bound
fundamental research under U.S. Export Control regulations and has many foreign persons who are students and employees. Accordingly, [name of other participant] should not transfer to LBNL any information that is export controlled under the Export Administration Regulations or International Traffic in Arms Regulations.

In the MOU, consider the following:

- Publications are intended to be collaborative and Participants may publish information in whole or in part, independent of the other. Participants may secure pre-publication review from each other, which shall not be unreasonably withheld or delayed beyond thirty (30) days.

b. For MOUs that include a foreign-entity participant, the proposing division must notify the Office of Science Program Manager, or the pertinent DOE funder, of the proposed collaborative activity.

c. All MOUs must be referred to the OLC, which will review them as to their legal form, content, and consistency with Laboratory policies.

d. If the MOU includes intellectual property issues, the OLC may direct a copy to the Department Head of Technology Transfer and Intellectual Property Management, who will perform the review and advise as to any potential legal, intellectual property, or other issues presented by the draft MOU.

e. If there is a foreign language version of the MOU, the proposing division is responsible for supplying the OLC with a draft of the MOU in both English and the foreign language. The U.S. Department of State must review and accept the foreign-language version and the division will be responsible for the cost of that review.

f. When language of the draft MOU is acceptable to all participants and has been approved by all necessary authorities — including, for MOUs with foreign-entity participant, Site Counsel for BSO, the DOE Counterintelligence Office, and the DOE Office of Science Advisor for International Programs — the OLC will submit the MOU to the Laboratory Director for review, approval, and signature, if appropriate.

3. Post-execution Handling: The division supporting the MOU is responsible for providing the OLC with an original of the executed MOU. If the MOU includes a foreign participant, the OLC is responsible for e-mailing an electronic version of the completely executed MOU to DOE at labagreements@hq.doe.gov, and to the BSO in care of the Contracting Officer.

E. Roles and Responsibilities

<table>
<thead>
<tr>
<th>Role</th>
<th>Responsibility</th>
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<tbody>
<tr>
<td>Division Director</td>
<td><strong>All MOUs</strong>: Reviews and approves all draft MOUs emanating from the division to ensure that they align with the strategic interests and polices of the United States and Berkeley Lab</td>
</tr>
<tr>
<td>Chief Laboratory Counsel</td>
<td><strong>All MOUs</strong>: Is responsible for review of all Berkeley Lab MOUs as to their legal form, content, and consistency with Laboratory policies. The Office of Laboratory Counsel (OLC) is the office of record for original executed MOUs. If there is a foreign participant, the OLC is also responsible for submitting an electronic version of the completely executed MOU to DOE.</td>
</tr>
<tr>
<td>Laboratory Director</td>
<td><strong>All MOUs</strong>: Is responsible for reviewing, approving, and executing, if appropriate, all proposed MOUs.</td>
</tr>
<tr>
<td>Department Head of Technology Transfer and Intellectual Property Management</td>
<td><strong>All MOUs</strong>: May be asked by the OLC to review MOUs that include technology transfer or intellectual property content</td>
</tr>
<tr>
<td>DOE Berkeley Site Office (BSO)</td>
<td><strong>MOU with a Foreign Participant</strong>: Reviews and approves all MOUs that include a foreign participant, and serves as liaison for review requests to the DOE Office of Science Advisor for International Programs</td>
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<tr>
<td>DOE Office of Science Advisor for International Programs</td>
<td><strong>MOU with a Foreign Participant</strong>: Reviews and approves all MOUs that include a foreign participant</td>
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<tr>
<td>DOE Counter-Intelligence Office</td>
<td><strong>MOU with a Foreign Participant</strong>: Reviews and approves all MOUs that include a foreign participant</td>
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<td>U.S. State Department</td>
<td><strong>MOU with a Foreign Participant</strong>: Reviews and approves all foreign-language translations of MOUs</td>
</tr>
<tr>
<td>Berkeley Lab Employee Proposing MOU</td>
<td><strong>All MOUs</strong>: Is responsible for ensuring that all MOUs contain appropriate content, obtaining division director approval of the MOU and underlying activities, and interfacing with the Office of Laboratory Counsel during the MOU review-and-approval process. Serves as liaison with other MOU participant(s). <strong>MOU with a Foreign Participant</strong>: Is responsible for notifying the Office of Science Program Manager, or pertinent DOE funder, of the proposed MOU and contemplated activities.</td>
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F. Definitions/Acronyms

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<tr>
<th>Term</th>
<th>Definition</th>
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MOU

An MOU or Memorandum of Understanding, sometimes referred to as a Letter of Intent, is an aspirational statement of intention describing the framework for cooperation and collaboration envisioned by participants from Berkeley Lab and another entity or other entities.

OLC

Berkeley Lab's Office of Laboratory Counsel

BSO

Berkeley Site Office

G. Recordkeeping Requirements

The Office of Laboratory Counsel shall retain a completely executed original of all MOUs.

H. Implementing Documents

<table>
<thead>
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<th>Document number</th>
<th>Title</th>
<th>Type</th>
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<tr>
<td>N/A</td>
<td>Laboratory Counsel Practical Guide – MOUs</td>
<td>Process</td>
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<td>N/A</td>
<td>Laboratory Counsel Practical Guide – MOUs (MOU Template)</td>
<td>Form</td>
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I. Contact Information

Chief Laboratory Counsel
Office of Laboratory Counsel

J. Revision History

<table>
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<tr>
<th>Date</th>
<th>Revision</th>
<th>By whom</th>
<th>Revision Description</th>
<th>Section(s) affected</th>
<th>Change Type</th>
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<tbody>
<tr>
<td>11/19/2013</td>
<td>0</td>
<td>A. Del Simone</td>
<td>Now RPM policy</td>
<td>All</td>
<td>Major</td>
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Customer Information

DOCUMENT INFORMATION

Title: Memoranda of Understanding (MOUs)

Document number: 03.03.002.000

Revision number: 0

Publication date: 11/19/2013

Effective date: 11/19/2013

Next review date: 11/19/2016

Policy Area: Agreements

RPM Section (home): Conduct of Research and Development

RPM Section (cross-reference): none

Functional Division: Laboratory Counsel

Source Requirements Documents

- 5/14/12 Memorandum from Steven Chu re: Laboratory Memoranda of Understanding (MOUs) with Foreign Partners
- Frequently Asked Questions: DOE National Laboratory MOUs with Foreign Partners

Implementing Documents

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