

Technology Transfer Mechanisms at LBNL



Agreement	Use	Funding	Subject Inventions	Generated Data	U.S. Competitiveness	Indemnity	Highlights
Cooperative Research and Development Agreement (CRADA)	Collaborative research between DOE Labs and public and/or private entities for the mutual benefit of the parties	Private and/or Federal funds—shared or 100% funds-in Unfunded (participant in-kind only)	Lab and Participant may elect their own inventions and Participant has right to negotiate exclusive license to Lab inventions	No protection for Generated Data due to fundamental research exclusion With special permission may be kept confidential for for up to 5 years	Products embodying IP resulting from CRADA shall be manufactured substantially in the U.S.	No General or IP Indemnity . Only Product Liability	<ul style="list-style-type: none"> ✓ Collaborative research ✓ 5 year data protection in some cases ✓ Designed for multi-party collaborative research ✓ Stevenson Wydler Act (15 USC 3710a and ORDER 483.1B)
Strategic Partnership Program (SPP) Formally--Work for Others (WFO)	Work for businesses and other non-federal entities using highly specialized or unique DOE facilities, services or technical expertise	Private funds—full cost recovery	Sponsor may elect title to Subject Inventions	No protection for Generated Data due to fundamental research exclusion	U.S. Preference: Sponsor agrees not to grant any party exclusive right to use or sell products embodying Subject Inventions in the U.S. unless products are manufactured substantially in the U.S.	IP Indemnity and Product Liability General Indemnity waived if no equipment, personnel or materials provided by Sponsor	<ul style="list-style-type: none"> ✓ Sponsor typically retains right to elect title to subject inventions ✓ Option for limited Gov. R&D license ✓ DEAR 970.5217-1 and WFO Order 481.1D, which may be revised for SPP
		Federal funds—full cost recovery	Lab may elect title to Subject Inventions of the Lab	Unlimited Gov. rights	U.S. Preference (see above)	Same	<ul style="list-style-type: none"> ✓ Access to unique facilities and expertise using federal funds
Proprietary User Agreement	User may access designated facilities to conduct its own proprietary research	Private funds pays approved user rate	User may elect title to its Subject Inventions	User may protect as proprietary	n/a	IP Indemnity and Product Liability General Indemnity except Lab negligence	<ul style="list-style-type: none"> ✓ Generated data treated as proprietary ✓ Merit based access to unique facilities ✓ Class Waiver W(C)2008-005
Non-Proprietary User Agreement	Non-proprietary research at designated facilities	DOE pays costs of facility	Lab and User may elect their own Subject Inventions	Unlimited Gov. Rights	U.S. Preference (see above)	IP Indemnity and Product Liability General Indemnity except User negligence	<ul style="list-style-type: none"> ✓ Merit based access to unique facilities ✓ Class Waiver W(C)2008-003

DOE Technology Transfer Mechanisms (continued)



Non-Federal Strategic Partnership Program (SPP): Non-Federal SPP Agreements permit DOE laboratories and facilities to conduct work for businesses and other non-federal entities on a reimbursable basis. A privately funded SPP Agreement typically allows the non-Federal Sponsor to own any inventions made by the Laboratory under the SPP Agreement (i.e. Subject Inventions) and to mark as proprietary and obtain ownership of data that is generated under the SPP Agreement, subject to certain terms and conditions. Although the Government typically will retain a royalty-free license in Subject Inventions for use by or on behalf of the Government (i.e. Government Use License), a more limited Government research license may be applied to SPP Subject Inventions with DOE Patent Counsel approval. The Government Research License permits the Government to use and enable others to use the SPP Subject Inventions for research purposes only. If a limited research license is applied, then the Government retains expanded rights in data. SPP Agreements require the non-Federal Sponsor to: (1) maintain at least sixty (60) days of advance funding for activities the Laboratory conducts under the SPP Agreement; and (2) in certain circumstances, indemnify the Government and the Laboratory for certain specified risks, intellectual property infringement, and products liability. The Laboratory recovers its costs of performing activities under a SPP Agreement from a non-Federal Sponsor and is prohibited from charging any fee in excess of the Laboratory's costs. SPP Agreements are "best efforts" contracts and the Sponsor receives no warranties for work performed under a SPP Agreement.

Agreements for Commercializing Technology (ACT): ACT is a pilot program under which DOE laboratories may conduct research and development for businesses and other non-federal entities. **Not currently allowed at LBNL.**

Cooperative Research and Development Agreement (CRADA): A CRADA is a legal agreement between government laboratories and non-federal parties in which both participants agree to collaborate, by providing personnel, services, facilities, or equipment and pool the results from a particular research and development program. The non-federal parties must provide funds or in-kind contributions (no direct funding is provided by the laboratory to the CRADA participant). A CRADA allows the Participant to own the Subject Inventions it conceives or first reduces to practice under the CRADA. Data produced under the CRADA may also be protected from public disclosure for up to five (5) years. The Participant also receives an option for a limited period of time to negotiate a field of use limited exclusive license agreement to the Subject Inventions that the Laboratory conceives or first reduces to practice under the CRADA. As with SPP Agreements, certain terms and conditions such as the Government license apply to all CRADA Subject Inventions and data generated under the CRADA. Unless the CRADA is a "100% funds-in" CRADA, the Participant provides actual or in-kind funding for its contributions to the CRADA activities and the Laboratory obtains funding from a DOE programmatic source. The Laboratory does not charge a fee to the Participant for the Laboratory's CRADA activities. CRADA work begins after the Laboratory receives its funding, the CRADA is executed by the Laboratory and the Participant, and the DOE Contracting Officer approves the CRADA. The CRADA Participant indemnifies the Government and the Laboratory for product liability and the Government and the Laboratory disclaim all warranties to work performed under a CRADA.

User Agreements (UAs): Where Designated User Facilities are available at the Laboratory for the proposed scope of work, UAs allow access to unique facilities and equipment so that users may conduct their own proprietary or non-proprietary research. Proprietary users pay full cost recovery, own their generated data and inventions, subject to no reserved Government rights. Non-Proprietary users engage in pre-competitive research, share the costs of their research with the Government, own their inventions (subject to certain reserved Government rights), and are expected to publish data generated from the research.