

MEMORANDUM OF AGREEMENT
ON
COOPERATION AND UTILIZATION OF FEDERAL FACILITY CAPABILITIES

1. PARTICIPANTS:

This document, consisting of Paragraphs 1 through 17, is a Memorandum of Agreement (MOA) among:

U.S. Department of Energy
Oak Ridge Operations
Oak Ridge, TN
(hereafter "DOE ORO") and

U.S. Air Force
Arnold Engineering Development Center
Tullahoma, TN
(hereafter "AEDC") and

National Aeronautics and Space Administration (NASA)
acting by and through the
George C. Marshall Space Flight Center (MSFC)
Marshall Space Flight Center, AL
(hereafter "MSFC")

National Nuclear Security Administration (NNSA)
Y-12 Area Office
Oak Ridge, TN
(hereafter "NNSA Y-12")

Hereafter jointly referred to as the "Parties".

2. BACKGROUND & PURPOSE:

On June 1, 2000, MSFC, AEDC, and DOE ORO entered into a trilateral Memorandum of Understanding (MOU) on "Cooperation, Coordination and Utilization of Federal Facility Capabilities." The MOU provided:

The purpose of the agreement is to facilitate cooperation and coordination and utilization of complementary federal facility capabilities. This MOU will enhance the working relationship between the Parties and is intended to facilitate collaborative research and development, test and evaluation, technical support, facility technology demonstration and utilization, and related activities that are mutually beneficial to the missions of the Parties. This MOU provides for cooperation between MSFC facilities in Huntsville, Alabama, AEDC facilities at Arnold AFB, Tennessee, and the DOE ORO facilities in Oak Ridge, Tennessee.

The MOU recognized that "MSFC, AEDC and DOE ORO have certain common interests in conducting research, development, test and evaluation, and technology demonstration and utilization activities; in technology transfer and economic development; and in reuse of government assets on a continuing basis." The MOU charged the Parties to "... immediately initiate actions to assess the authorities for interagency work and establish streamlined interagency agreements and processes for doing work with each other." It is the purpose of this MOA to provide the basis and authority for implementing the commitments established in the MOU. It is the intent of the Parties that the activities under this MOA will support the missions of the Parties and enhance regional economic development. Statements of work, milestones, deliverables, methods of payment if appropriate and other specifics of projects shall be detailed under separately agreed to Subagreements established under this MOA. The extent of the reimbursement for the cooperative effort will be determined on a case by case basis under the individual Subagreements. Accordingly the purpose of this MOA is to establish a framework so that the Parties may expeditiously enter into Subagreements for mutually beneficial work at the facilities of any one or all of the Parties.

3. AUTHORITY:

Each of the Parties will conduct its activities under this MOA in accordance with its respective authorities.

The legal authority for MSFC to enter into this MOA is found in Sections 203(c) (5) and (6) of the Space Act of 1958, 42 U.S.C. Section 2473(c), as implemented by NASA Procedures and Guidelines (NPG) 1050.1.

The legal authority for AEDC to enter into this MOA is found in the Economy Act (31 U.S.C. 1535) and DoDI 4000.19, Interservice and Intergovernmental Support, August 9, 1995.

The legal authority for DOE ORO to enter into this MOA is found in the Economy Act (31 U.S.C. 1535) and the Atomic Energy Act (42 U.S.C. 2011, et seq.).

The legal authority for NNSA Y-12 to enter into this MOA is found in the Economy Act (31 U.S.C. 1535), the Atomic Energy Act (42 U.S.C. 2011, et seq.) and Title 32 of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106-65).

The signatories to this MOA covenant and warrant that they have authority to execute this MOA.

4. RESPONSIBILITIES OF THE PARTIES:

The Party seeking services under a Subagreement shall be called the Requesting Party. The Party that provides services under a Subagreement shall be the Providing Party. The Requesting Party will provide the specified Point of Contact (POC) of the other Party(ies) a reasonably specific statement of work, the basis for determining that the contemplated activity does not compete with the private sector, and the desired schedule and estimated costs, if appropriate. The Providing Party, through its specified POC, will use reasonable efforts to accommodate the Requesting Party. If the Providing Party indicates that it can perform the requested work then the Parties will enter into a Subagreement to this MOA. (See paragraph 14 for a full description of the Subagreements.) The detailed responsibilities of the Parties will be determined on a case by case basis in the individual Subagreements. The Parties recognize that contractors and other partners of the Parties may participate in the accomplishment of the work under Subagreements. In addition to establishing the process for the Parties doing work for each other (requesting and providing), this MOA enables the Parties to work in collaboration with respect to research, development and other activities that benefit the missions of the Parties.

5. FINANCIAL OBLIGATIONS, FUNDS MANAGEMENT, AND INVOICING PROCEDURES

- 5.1 Each Subagreement under this MOA must clearly state whether the Subagreement is reimbursable," "non-reimbursable," or "collaborative." In the event that a Subagreement between the Parties requires reimbursement for costs incurred, there will be a transfer of funds or other financial obligation from the Requesting Party to the Providing Party(ies) and the provisions of paragraph 5.2 of this MOA shall apply. In the event that a Subagreement is non-reimbursable or collaborative, then paragraph 5.3 shall apply. The Parties recognize that a Determination and Finding under the Economy Act (31 U.S.C. 1535), the Space Act, or the Atomic Energy Act may be required as a precedent to agreement on a Subagreement.
- 5.2 If a Subagreement states that the Requesting Party will reimburse the Providing Party for work provided under the Subagreement, the amount of the expected reimbursement shall be estimated in the Subagreement. The Providing Party will provide the Requesting Party the basis of the estimate to support the amount of the expected reimbursement. The transfer of funds will be in accordance with procedures established by the Military Interagency Purchase Request (MIPR) process for AEDC or by the Interagency Agreement (IA) process for DOE ORO and NNSA Y-12 or the appropriate funding authorization currently used by MSFC. The estimated billable services and the billing address will be indicated on each funding document.
- 5.2.1 The Providing Party shall perform the work on a best efforts basis. The Providing Party will not provide services or incur costs, unless otherwise agreed by the Parties to the Subagreement, beyond the available funding amount. If at any time during the performance of work on a reimbursable Subagreement, the Providing Party determines that costs are estimated to be greater than the approved estimate, it shall immediately notify the Requesting Party. Upon receipt of such notice, the Requesting Party shall:
- (1) Provide the additional funds to the Providing Party prior to their expenditure; or
 - (2) Limit the scope of the work to that which can be financed by the remaining funds; or
 - (3) Direct the Providing Party to terminate the project.
- Should the Requesting Party not exercise any of the above options, the Providing Party may immediately terminate the Subagreement notwithstanding any other provisions of this MOA. Under no circumstances shall either Party incur any costs in excess of any amount provided in the Subagreement.
- 5.3 If a Subagreement states that it is a non-reimbursable or collaborative Subagreement, there will be no transfer of funds or other financial obligation between the Parties in connection with the Subagreement. Each Party will fund its own participation under non-reimbursable Subagreements.
- 5.4 All activities under or pursuant to this MOA are subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act (31 U.S.C. 1341). This MOA is not by itself a funding document, and does not represent the obligation or transfer of funds. Transfers of funds among the Parties will be accomplished by individual Subagreements through statements of work and funding documents as identified in approved Subagreements.
- 5.5 All billings, collections, and payments related to work performed under this MOA will normally be recorded through the U.S. Department of Treasury's On-line Payment and Collection (OPAC) System or the Electronic Data Interchange Payment and Collection (EDIPAC) System.
- 5.6 The Treasury appropriation account symbol must be added to the funding authorization, along with the obligational expiration date and the date the appropriation closes for payment purposes.

Funds shall be considered obligated upon the Performing Party's acceptance of the funds. DOE ORO and NNSA Y-12 will account for and control funds by individual funding document unless specific written instruction to the contrary are received from a certifying official of AEDC or MSFC. Multiple funding documents for the same scope of work under a Subagreement will be fully costed on a first-in, first-out basis utilizing cost transfers if authorized.

6. SCHEDULES, MILESTONES, STATEMENTS OF WORK

Each Subagreement under this MOA will have associated with it a statement of work and estimated schedule for completing the prescribed work desired by the Requesting Party. Milestones will be identified. Acceptance of the Subagreement by the Providing Party also constitutes acceptance of the schedule and statement of work.

7. MANAGEMENT OF MOA ACTIVITIES

The individuals identified in the "Agreement Points-of-Contact" Section in Appendix A have been designated as the points-of-contact for this MOA and therefore share the authority and responsibility for accomplishing the activities of this MOA in accordance with the terms and conditions stated herein. The Parties have agreed to establish a Steering Committee comprising senior representatives of the Parties to review progress, resolve issues, and facilitate coordination of MOA activities. The Parties agree to conduct periodic meetings of the signatories to this MOA to review existing and potential activities pursuant to this MOA.

8. PRIORITY OF USE

The schedule and milestones are estimated based upon the Providing Party's current understanding of the projected use of manpower, facilities, and equipment. These resources are provided "as is," on a noninterference basis. In the event the Providing Party's projected usage changes, the Requesting Party shall be given expeditious notice of that change, so that the schedule and milestones may be adjusted accordingly. The Parties agree that the Providing Party' usage of manpower, facilities, and equipment shall have priority over the usage planned in this MOA, and should a conflict arise, the Providing Party, in its sole discretion, shall determine whether to exercise that priority.

9. LIABILITY AND RISK OF LOSS

Each Party agrees to assume full liability for its own risks associated with activities undertaken pursuant to this MOA. The work performed pursuant to this MOA will be performed on a best efforts basis. Neither the Parties, their contractors, nor persons acting on their behalf will be responsible, irrespective of causes, for failures to achieve the results described in Subagreements.

10. INTELLECTUAL PROPERTY DATA RIGHTS, AND SCIENTIFIC AND TECHNICAL REPORTING

All Parties to this MOA being of the Federal government it is hereby agreed:

10.1 Data Rights: Data exchanged between the Parties under this MOA, or generated by performance of activities under this MOA, will be exchanged without disclosure and use restrictions, with respect to the Parties, except as otherwise provided for in this MOA. No disclosure of such data to parties outside of this MOA will be made without the prior written approval of the Party originating such data.

- 10.2 Patent and Invention Rights: Unless otherwise agreed by the Parties, custody and administration of inventions made because of, or in direct relation to, the performance of activities under this MOA will remain with the respective inventing Party. The Parties understand that activities carried out under this MOA may be performed by personnel of their prime contractors under the provisions of their prime contracts. Inventions made by DOE ORO or NNSA Y-12 contractor employees may be subject to the DOE Issued Class Patent Waiver to the contractor or Public Law 96-517 and the contractor may elect to retain title to such inventions subject to retention by the Federal Government of march-in rights and a nonexclusive, nontransferable, paid-up license to practice or have practiced on behalf of the United States the invention throughout the world. The Parties will use best efforts to identify and report to each other any invention which is believed to have been jointly made by employees of the Providing Party or its contractors and employees of the Requesting Party or its contractors in the performance of the activities under this MOA. The Parties will consult and determine on a case by case basis whether it is in the best interest of the United States to pursue issuance of a patent on the subject invention, and if so, which Party shall pursue issuance of the patent. However, in any event, the Government shall retain a nonexclusive, irrevocable, royalty-free license in said invention, discovery, patent application, patent, technical data, or copyrighted material.
- 10.3 Scientific and Technical Reporting Requirements: Unless otherwise agreed by the Parties, DOE-funded scientific and technical final reports/products, if any, must be submitted in Portable Document Format, electronically via the DOE Energy Link system which can be accessed at <http://www.osti.gov/mlink/>. Unless otherwise agreed by the Parties, MSFC-funded scientific and technical final reports/products, if any, must be submitted via MSFC Scientific and Technical Resources which can be accessed at <http://starbase.msfc.nasa.gov/sti/sti.htm>.

11. PROPERTY/EQUIPMENT

Any property or equipment acquired by a Providing Party with the Requesting Party's funds during the performance of work under a reimbursable Subagreement shall be accounted for and maintained during the term of the Subagreement in accordance with the approved property system of the Providing Party. Upon completion or termination of the reimbursable Subagreement, any property acquired by the Providing Party with the Requesting Party's funds will be disposed of at the expense and direction of the Requesting Party.

12. SECURITY

It is envisioned that no classified work will be performed, or classified material received or transmitted under this MOA or its Subagreements. If classified work is performed, or classified material is received or transmitted under this MOA or its Subagreements then the Parties will consult to establish appropriate classified material handling procedures and security measures. The cost of providing and administering these procedures and measures will be paid by the Requesting Party.

13. COMPLIANCE WITH LAWS AND REGULATIONS

Each Party shall be responsible for complying with all applicable laws and regulations, including, but not limited to, safety, security, export control, and environmental laws and regulations.

14. SUBAGREEMENTS

- 14.1 Each Subagreement will detail the work to be done, schedules and milestones, whether reimbursement of expenses is required or not, the estimated costs to be reimbursed if reimbursement is required and any other specific information on a task.

- 14.2 Subagreements are intended to define the work to be accomplished and indicate what choices the Parties have made when this MOA allows choices. Each Subagreement is an adjunct to this MOA and incorporates into that Subagreement, without any requirement to so state, the terms of this MOA.
- 14.3 Subagreements may be terminated under the following terms:
- 14.3.1 Any Party may terminate a non-reimbursable Subagreement upon thirty (30) calendar day written notice to the other Party(ies) at any time and for any reason the terminating Party deems substantial. In the event of such termination, each Party shall return to the other Party(ies) any data it received to assist in the performance of the Subagreement, but any Party may retain any data generated by its partial performance of the Subagreement in accordance with Paragraph 10, " INTELLECTUAL PROPERTY AND DATA RIGHTS" of this MOA.
- 14.3.2 Any Party may terminate a reimbursable Subagreement upon a thirty (30) calendar day written notice to the other Party(ies) at any time and for any reason the terminating Party deems substantial. In the event of termination, the terminating Party will seek to provide reasonable advance notice and will seek to mitigate the effect of such termination and will enter into discussions with the non-terminating Party(ies) for that purpose.
- 14.3.3 In the event of termination by any Party under a reimbursable Subagreement, the Providing Party will be entitled to payment for those costs the Parties agree are appropriate for the work performed to the point of termination plus costs to terminate the activities, to include shipping of materials, software, hardware, etc. Termination costs are to be specified in the Subagreement by amendment to the Subagreement. Any unused funds held by the Providing Party will be returned to the Requesting Party. If agreement cannot be reached, the signatories of this MOA will settle the dispute.
- 14.3.4 If the terminating Party is the Requesting Party under a reimbursable Subagreement, the Performing Party shall be entitled to payment for any work performed up to the point of termination plus termination costs.
- 14.3.5 No Party shall be liable for any loss of revenue or other direct, indirect, or consequential harm incurred by another Party, its contractors, subcontractors, or customers as a result of any termination pursuant to Article 14 of this MOA .

15. TERM OF MOA, TERMINATION, AND DISPUTES

This MOA becomes effective on the date of the last signature of the Parties and shall remain in effect for a period of 5 years. Any Party, upon a 30-day written notice to the other Parties, may terminate its involvement in this MOA at any time and for any reason it deems substantial. In the event of a dispute between the Parties, no authorized final decision will be issued without the concurrence of the signatories of this MOA. If the dispute cannot be resolved, the signatories to this MOA will agree upon a third-party forum to settle the dispute.

16. SIGNATORY AUTHORITY FOR MODIFICATIONS AND SUBAGREEMENTS

Any modification to this MOA shall be executed in writing and signed by the signatories or their successors. Any Subagreement or change to a Subagreement may be negotiated and executed by the signatories to the Subagreement or their successors.

17. EXECUTION

ACCEPTANCE for the NASA, Marshall Space Flight Center

Signature: (Original Signature on File) Date: _____

A.G. Stephenson
Director
NASA Marshall Space Flight Center
MSFC, AL 35812

ACCEPTANCE for the U.S. Air Force, Arnold Engineering Development Center

Signature: (Original Signature on File) Date: _____

Michael L. Heil
Colonel, USAF
Commander
Arnold Engineering Development Center
100 Kindel Drive
Suite-303
Arnold AFB, TN 37389-1303

ACCEPTANCE for the U. S. Department of Energy, Oak Ridge Operations

Signature: (Original Signature on File) Date: _____

G. Leah Dever
Manager
U.S. Department of Energy
Oak Ridge Operations Office
Post Office Box 2001
Oak Ridge, TN 37831

ACCEPTANCE for the National Nuclear Security Administration, Y-12 Area Office

Signature: (Original Signature on File) Date: _____

William J. Brumley
Manager
Y-12 Area Office
Post Office Box 2001
Oak Ridge, TN 37831

Appendix A

The following individuals are designated as Agreement Points of Contact pursuant to this MOA.

National Aeronautics and Space Administration George C. Marshall Space Flight Center

Sally A. Little, Director
Technology Transfer Office, CD30
George C. Marshall Space Flight Center
National Aeronautics and Space Administration
Marshall Space Flight Center, Alabama 35812
(256) 544-4266

U.S. Air Force Arnold Engineering Development Center

For DOE ORO Technology Issues:

John T. Best
Chief, Applied Technology Division
Arnold Engineering Development Center
1099 Avenue C.
Arnold AFB, Tennessee 37389-9011

For NASA MSFC Space Systems Test and Evaluation Issues

Huland C. Smith, Lt Col, USAF
Chief, Space and Missile Systems Test Division
Arnold Engineering Development Center
676 Second Street
Arnold AFB, Tennessee 37389-4000

For Valley Corridor Development and Political Issues

Alexander F. Money
Chief, Business Development and Congressional Relations
Arnold Engineering Development Center
100 Kindel Drive, Suite A214
Arnold AFB, Tennessee 37389-1214

U.S. Department of Energy, Oak Ridge Operations Office and National Nuclear Security Administration, Y-12 Area Office

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