



University of California
Office of the President

Vice President —
Research & Graduate Studies

Research Administration Office

Memo

Operating Guidance

No.08-02

February 13, 2008

CONTRACT AND GRANT OFFICERS

Subject Stanford Linear Accelerator Center Use Agreement

Enclosed is a copy of the new Stanford Linear Accelerator (SLAC) Use Agreement between Stanford University and The Regents of the University of California. Under this Use Agreement, users from the University of California are granted permission to use the Stanford Synchrotron Radiation Laboratory (SSRL), a facility of SLAC.

The effective date of this Use Agreement is January 31, 2008 through January 31, 2013. This agreement replaces the expiring SLAC Use Agreement distributed through C&G Memo 03-01.

University researchers interested in the SLAC capabilities and how to submit a request to use the facility can find directions at <http://www-ssrl.slac.stanford.edu/guide.html>. There are several mechanisms in place for requesting use of this facility. Any questions or required assistance should be directed to: Cathy Knotts, User Research Administration Manager, (650) 926-3191 or knotts@ssrl.slac.stanford.edu.

Caution: This Use Agreement is meant to cover University officers, agents, employees, students, invitees, and guests only. Please **do not send contractors** working for UC under this agreement. Contractors are not among the individuals who are under University control and allowing them access to the SSRL under this agreement would incur unauthorized third party indemnification for the University. Under Regental Standing Order 100.4(dd) 9, only The Regents can approve third party indemnification. Contractors who wish to use the SSRL must sign a separate agreement with the facility.

Refer: Lourdes G. DeMattos
(510) 987-9850
lourdes.demattos@ucop.edu

Cancel: C&G Memo 03-01

Lourdes G. DeMattos
Contract and Grant Officer

Enclosure: SLAC Use Agreement 2008-2013

STANFORD UNIVERSITY
STANFORD SYNCHROTRON RADIATION LABORATORY
STANFORD LINEAR ACCELERATOR CENTER
USE AGREEMENT

This Use Agreement (AGREEMENT) is entered into between:

The Regents of the University of California

1111 Franklin Street, 5th Floor

Research Administration Office

Oakland, CA 94607-5200

hereinafter called USER INSTITUTION, and the Board of Trustees of the Leland Stanford, Jr., University (STANFORD), which operates the Stanford Synchrotron Radiation Laboratory (SSRL), a division of the Stanford Linear Accelerator Center (SLAC) under contract DE-AC02-76-SFO0515 with the United States Department of Energy (DOE).

In consideration of the mutual benefits arising from this AGREEMENT, including those accruing to USER INSTITUTION as a result of its access to SLAC synchrotron radiation facilities and association with STANFORD and those accruing to STANFORD and DOE as a result of association with USER INSTITUTION, the parties agree as follows:

A. DESCRIPTION OF WORK

Employee(s) of and/or consultant(s) of USER INSTITUTION, upon execution of this AGREEMENT, shall be permitted to use SLAC/SSRL facilities for the purpose of performing the experiment(s) described in the Proposal(s) accepted for performance at the SLAC synchrotron radiation laboratory. SSRL, as an integral academic unit of Stanford University, performs fundamental synchrotron light research and makes this resource available to eligible entities with the intent that the resulting research will be placed in the public domain through broad dissemination within the scientific community by the USER INSTITUTION. All such publications should contain one of the following attributions.

(a) X-ray absorption spectroscopy users, (biology, materials science, molecular environmental sciences, and chemistry users) and biological small-angle x-ray scattering users should use:

"Portions of this research were carried out at the Stanford Synchrotron Radiation Laboratory, a national user facility operated by Stanford University on behalf of the U.S. Department of Energy, Office of Basic Energy Sciences. The SSRL Structural Molecular Biology Program is supported by the Department of Energy, Office of Biological and Environmental Research, and by the National Institutes of Health, National Center for Research Resources, Biomedical Technology Program."

(b) Macromolecular crystallography users should use:

"Portions of this research were carried out at the Stanford Synchrotron Radiation Laboratory, a national user facility operated by Stanford University on behalf of the U.S. Department of Energy, Office of Basic Energy Sciences. The SSRL Structural Molecular Biology Program is supported by the Department of Energy, Office of Biological and Environmental Research, and by the National Institutes of Health, National Center for Research Resources, Biomedical Technology Program, and the National Institute of General Medical Sciences."

(c) All other users should use:

"Portions of this research were carried out at the Stanford Synchrotron Radiation Laboratory, a national user facility operated by Stanford University on behalf of the U.S. Department of Energy, Office of Basic Energy Sciences."

B. PERSONNEL RELATIONSHIPS

During all operations and activities pursued or performed under this AGREEMENT, EMPLOYEES and CONSULTANTS of the USER INSTITUTION shall be designated USERS and shall be considered the direct employees of USER INSTITUTION, an independent contractor.

USER INSTITUTION retains its employer/employee relationship with USER(s), including provision of general liability insurance and workers' compensation insurance, during the period of such use.

USERS shall be made aware of applicable laws, regulations, and rules described herein. In the event that USERS fail to observe and comply with such requirements, STANFORD may stop all or any part of their work and retract permission to participate as a USER or otherwise remain at SLAC.

C. PAYMENT OF EXPENSES

Before commencing the Experiment(s), USERS expecting to incur costs in running their experiment(s) shall provide an instrument that will allow SLAC to obtain reimbursement from USER (or USER INSTITUTION) for costs incurred in performance of the experiment.

USER INSTITUTION agrees to reimburse SLAC, on presentation of an invoice(s), for all expenses reasonably incurred by STANFORD on behalf of or at USER's request in connection with EXPERIMENTS. However, it is expressly understood that STANFORD shall have no obligation to incur expenses on behalf of USER.

D. INTELLECTUAL PROPERTY RIGHTS – USER FACILITIES (CLASS WAIVER)

The provisions of this subparagraph D do not apply to the intellectual property rights of the facility operator, nor will they apply when the USER is operating under an agreement with DOE which requires a different disposition of patent rights.

(a) Definitions

- (1) "Intellectual Property" means patents, trademarks, copyrights, mask works, and other forms of comparable property rights protected by federal law.
- (2) "Facility Operator" means the operating contractor which manages and operates the Government-owned, contractor-operated facility where the work under this Agreement is to be performed.
- (3) "Patent Counsel" means the DOE Patent Counsel assisting the Facility Operator.
- (4) "Subject Invention" means any invention or discovery of the User, conceived or first actually reduced to practice in the course of or under this Agreement, and includes any art, method, process, machine manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented under the Patent Laws of the United States of America or any foreign country.
- (5) "User" for purposes of this subparagraph D means the person or entity with which this Agreement is made.

(b) Rights of the User

(1) Election to Retain Rights

Subject to the provisions of Paragraph (c)(2) of this Clause, the User may retain the entire right, title and interest in any patent application filed in any country on a Subject Invention

reported and elected in accordance with Paragraph (e) of this Clause and in any resulting patent secured by the User. Where appropriate, the filing of patent applications by the User is subject to DOE security regulations and requirements.

(2) Minimum License

The User reserves an irrevocable, nonexclusive, paid-up license in each patent application filed in any country on a Subject Invention and any resulting patent in which the User does not elect to retain title or in which the Government acquires title. The license shall extend to the User's domestic subsidiaries and affiliates, if any, within the corporate structure of which the User is a part and shall include the right to grant sublicenses of the same scope to the extent the User was legally obligated to do so at the time this Agreement was entered into. The license shall be transferable only with approval of DOE except when transferred to the successor of that part of the User's business to which the invention pertains.

(c) Rights of Government

(1) Assignment to the Government

The User agrees to assign to the Government, upon request, the entire right, title, and interest in any country to each Subject Invention of the User except to the extent rights are retained by the User under Paragraph (b) (2) of this Clause, where the User:

- (i) Does not elect pursuant to this Clause to retain such rights; or
- (ii) Fails to have a patent application filed in that country on the Subject Invention or decides not to continue prosecution or not to pay any maintenance fees covering the invention; or
- (iii) At any time, the User no longer desires to retain title.

(2) Terms and Conditions of Waived Rights

- (i) To preserve the Government's residual rights to Subject Inventions, the User shall take all actions in reporting, electing, filing on, prosecuting and maintaining invention rights promptly, but in any event, in sufficient time to satisfy domestic and foreign statutory and regulatory time requirements, or, if the User decides not to take appropriate steps to protect the invention rights, it shall notify DOE in sufficient time to permit the Government to file, prosecute and maintain patent applications and any resulting patents prior to the end of such domestic or foreign statutory or regulatory time requirements.
- (ii) The User shall convey or assure the conveyance of any executed instruments necessary to vest in the Government the rights set forth in this Clause.
- (iii) The User hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each Subject Invention throughout the world for or on behalf of the United States.
- (iv) The User shall provide the Government a copy of any application filed on a Subject Invention promptly after such application is filed, including its serial number and filing date.
- (v) The User agrees that with respect to any Subject Invention in which it has acquired title, DOE has the right to require the User, or an assignee or exclusive licensee of Subject Invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicants or applicants, upon terms that are reasonable under the circumstances, and if the User, assignee, or exclusive licensee refuses such request, DOE has the right to grant such a license itself if DOE determines that:

(A) such action is necessary because the User or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention in such field of use;

(B) such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the User, assignee, or their licensees; or

(C) such action is necessary to meet requirements for public use specified by federal regulations and such requirements are not reasonably satisfied by the User, assignee, or licensees.

(vi) The User shall submit written reports at reasonable intervals upon request of the Government during the term of the patent on the Subject Invention regarding:

(A) the commercial use that is being made or is intended to be made of the invention; and

(B) the steps taken by the User or an assignee or exclusive licensee to bring the invention to the point of practical application or to make the invention available for licensing.

(d) Nondisclosure

To the extent data or information supplied under this section is considered by the User, its licensee or assignee to be privileged and confidential and is so marked, DOE agrees that, to the extent permitted by 35 U.S.C. Sec. 202(c) (5), it will not disclose such information to persons outside the Government.

(e) Invention Identification, Disclosures, and Reports

The User shall furnish the Patent Counsel a written report containing full and complete technical information concerning each Subject Invention of the User within six (6) months after conception or first actual reduction to practice, whichever occurs first, in the course of or under this contract, but in any event prior to any on sale, public use or public disclosure of such invention known to the User. The report shall identify the agreement and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any election of patent rights under this Clause. When an invention is reported under this Paragraph, it shall be presumed to have been made in the manner specified in Section (a)(1) and (2) of 42 U.S.C. Sec. 5908.

(f) Limitation of Rights

Nothing contained in this Patent Rights Clause shall be deemed to give the Government any rights with respect to any invention other than a Subject Invention except as set forth in the Facilities License of Paragraph (g).

(g) Facilities License

In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this Agreement, the User agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the User, which at any time through completion of this contract are owned or controlled by the User and are incorporated in the facility as a result of this Agreement to such an extent that the facility is not restored to the condition existing prior to the agreement (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the

afore-said rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(h) Rights in Technical Data

The Government shall have the right to use, duplicate or disclose any technical data first produced or furnished under this agreement, and to permit others to do so. Except as may be otherwise provided in this agreement, the Contracting Officer shall have the right to require the User to deliver a nonproprietary report of the research results.

(i) Rights Subject to Another Agreement

The intellectual property rights acquired by the User under this agreement shall also be subject to any additional terms and conditions of any other agreement, contract, grant or arrangement with the Government through which the User or its employees receive(s) funding, support or approval for the work performed under this agreement.

E. INDEMNITY AND LIABILITY

(a) Neither DOE nor STANFORD nor any of their employees makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information furnished, or process disclosed, or represents that its use would not infringe privately owned rights or that the services, materials or information furnished will accomplish the intended results or are safe for any purpose including the intended purpose. Reference therein to any specific commercial product, process, or service by trade name, mark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof, or STANFORD. The views and opinions of authors expressed therein are their own and do not necessarily state or reflect those of the United States Government or any agency thereof, or STANFORD, nor shall they be so construed.

(b) Neither STANFORD nor any of its employees, agents or other persons acting or purporting to act on its behalf nor the GOVERNMENT shall be responsible, irrespective of causes, for failure to perform the services or furnish the materials or information hereunder at any particular time.

(c) USER INSTITUTION ~~represents~~ agrees that, to the best of its knowledge, acts of USER, acts of STANFORD required or directed by USER, and use or disclosure of any information received from USER, shall not infringe any patent, copyright, trade secret or other rights.

(d) USER INSTITUTION and USER waives any and all claims against STANFORD or DOE arising from or connected with users' performance of an experiment(s) for (i) consequential damages, (ii) incidental damages, (iii) death or personal injury to USER(s), and/or (iv) damage to or loss of property.

(e) USER INSTITUTION agrees to indemnify, defend and hold harmless STANFORD, its trustees, officers, employees and agents and the DOE from any and all loss, claims, damage or liability, including without limitation personal injury, death, and property damage arising out of (i) the negligence or willful misconduct of USER, its employees or agents; or (ii) any breach of the warranties set forth in Clause (E)(c) above. (If USER legally is precluded from granting indemnity by state or federal law, it shall supply evidence that it is so precluded; alternate protection may be required.)

F. SAFETY AND HEALTH

The USER(s) shall take all reasonable precaution in the performance of the experiment(s) to protect the safety and health of employees of STANFORD and DOE and shall comply with all applicable safety and health regulations and requirements of DOE. In the event that USER(s) fail to comply with said

regulation or requirements of DOE, STANFORD may, without prejudice to any other legal or contractual rights, issue an order stopping all or any part of the experiment.

G. TERM OF THIS GENERAL USE AGREEMENT

AGREEMENT shall become effective on the date this AGREEMENT is executed by the last party and unless terminated earlier for good cause upon written notice by either party or extended by written agreement between the parties, shall terminate as of the Fifth year following commencement of this Agreement, or on termination date specified by USER INSTITUTION.

H. PRECEDENCE

The terms and conditions of this AGREEMENT shall take precedence over any inconsistent instrument issued to STANFORD for USER INSTITUTION's EMPLOYEE(s) or CONSULTANT(s), to the extent of any inconsistency therewith.

USER INSTITUTION

The Regents of the University of California

(Institution Name)

By Lourdes DeMattos
(Authorized Officer)

Title Contract and Grant Officer

Signature Lourdes DeMattos Date 1/31/08

Telephone Number 510-987-9850

THE BOARD OF TRUSTEES OF THE LELAND STANFORD, JR., UNIVERSITY

By Stan S. Cohelan, Jr. Title Director
(Authorized Officer) Business Services Division

Signature [Signature] Date 1-31-08