

Policy on Memoranda of Understanding

Fermilab Partnerships Policy 12.3

Issued 01 May 2012

Updated 30 June 2020

1. Purpose

This policy defines the principles for proposing a Memorandum of Understanding (MOU), between Fermi Research Alliance, LLC (FRA), as operator of Fermi National Accelerator Laboratory (Fermilab), and external entities, including U.S. or foreign based institutions, to ensure legal and contractual obligations are met in accordance with the guidance in DOE Policy 485.1A dated the 13 December 2019 on “Foreign Engagements with DOE National Laboratories.”

2. Scope

This scope of this policy includes all proposed MOUs between Fermi Research Alliance, LLC and other U.S. or foreign based institutions. In the case of a foreign entity, this includes Memorandum of Understanding, Memorandum of Agreement, Statement of Intent, Letter of Intent, Declaration of Principles or any similar document whatever its title.

3. Applicability

This policy applies to Fermi Research Alliance, LLC and all its employees.

4. Effective date

This policy went into effect on May 1, 2012 and its update was effective on June 30, 2020.

5. Policy

- a. A memorandum of understanding (MOU) is a general statement of intent which cannot contain specific financial commitments or deliverables.
- b. An MOU should only be used for informal, non-R&D, non-legally binding collaboration where a simple statement of intent for future collaboration is sufficient.
- c. Even when a standard MOU is permitted, a legally binding agreement is generally preferred.

- d. An MOU is most appropriate in situations that involve:
 - i. A new Partner who has not previously been involved with Fermilab;
 - ii. A new research direction that has not previously been authorized by the Directorate;
 - iii. A new relationship between an existing Partner and the laboratory;
 - iv. Establishing new Joint-Appointments with non-U.S. based institutions.
- e. Activities that may be conducted under an MOU include:
 - i. Engagement of publicly available information on jointly decided subject matters;
 - ii. Holding meetings and workshops to plan an R&D program or other relationship;
 - iii. Engaging in visits and assignments of personnel to each other's facilities;
 - iv. Transfer of equipment, samples and materials.
- f. All other activities require a Purchase Order (PO), a Cooperative Research and Development Agreement (CRADA), a Strategic Partnership Projects (SPP) agreement, a Non-Proprietary User Agreement (NPUA), Project Annex, or any other legally binding agreement that may be authorized by DOE for use at the laboratory.
- g. An MOU must comply with all Department of Energy policies and guidance related to engagement with a foreign entity, including Department of Energy Policy 485.1 Foreign Engagements with DOE National Laboratories” and supplemental guidance issued by Secretary of Energy Dan Brouillette (listed in **8. Authorities** below)
- h. Proposed MOUs for collaboration with foreign entities **must be approved by DOE and the Directorate BEFORE the start of negotiations** (See Fermilab Governance Management Policy #2017-05, “Policy on International Engagement” dated January 21, 2020.)
- i. MOUs may only be signed by the Laboratory Director, Deputy Director, or Chief Operating Officer.

6. Definitions

“Foreign Entity” means (1) any foreign government or foreign government agency or instrumentality thereof; (2) any international organization; (3) any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its territories; (4) any form of business enterprise organized or incorporated under the laws of the United States or a State or other jurisdiction within the United States which is owned, controlled or influenced by a foreign government, agency, firm, or corporation; and (5) any person who is not a citizen or national of the United States.

“Memorandum of Understanding (MOU)” refers to any contractually non-binding agreement between Fermi Research Alliance, LLC and one or more external entities, including Memorandum of Agreement, Letter of Intent, Statement of Intent, Declaration of Principles, or other similar document, whatever its title.

“Partner” is the term used to refer to all parties who participate in a formal, collaborative relationship with the Fermi Research Alliance, LLC, including Sponsors for a Strategic Partnership Projects (SPP) Agreement, Participants in a CRADA, or Users under a User Facility Agreement.

7. Responsibilities

The Laboratory Director is responsible for authorizing or delegating authority for establishing MOUs with domestic and international Partners.

The Head, Office of Partnerships and Technology Transfer is responsible for administering the Partnership Management System for the laboratory, including the administration of the Memorandum of Understanding policies and procedures.

8. Authorities

Department of Energy Policy 485.1A regarding “Foreign Engagements with DOE National Laboratories (Updated: 12-13-2019)

Deputy Secretary of Energy Memorandum regarding “Department of Energy International Science and Technology Engagement Policy” (Issued: 12/14/2018)

Secretary of Energy Memorandum regarding “Science and Technology Risk Matrix Guidance” (Issued: 12/13/2019)

Fermilab Governance Management System Policy #2017-05 “Policy on International Engagement” (Approved: 1/21/2020)

9. Owner

Responsibility for reviewing, updating and communicating changes to this policy rests with the Partnerships Management System Owner, presently the Head, Office of Partnerships and Technology Transfer.

10. Review cycle

This policy shall be reviewed every four years.

11. Communication Plan

The requirements of this policy shall be communicated to all employees, and periodic training shall be provided to Chiefs/Division Heads/Section Heads/Project Directors. This policy shall be available online in the Fermilab policy database. The Head, Office of Partnerships and Technology Transfer is responsible for the communication of this Policy.