

The Department of Energy (DOE) has opted to utilize the following agreement for Non-Proprietary User Facilities transactions. Because these transactions are widespread across Departmental facilities, uniformity in agreement terms is desirable. Except for the *** provisions, minor modifications to the terms of this agreement may be made by General Atomics, but any changes to the *** provisions or substantive changes to the non *** provisions will require approval by the DOE Contracting Officer, WHICH WILL LIKELY DELAY YOUR ACCESS TO THE FACILITY. Where this agreement is to be used as an umbrella agreement for multiple transactions, it may be modified to reflect such usage.

Non-Proprietary User Agreement

No.

BETWEEN

General Atomics

Operator of the DIII-D National Fusion Facility (hereinafter “Facility”) under United States (U.S.)
Department of Energy Cooperative Agreement No. DE-FC02-04ER54698

AND

YOUR ORGANIZATION

(“USER”)

(Collectively, “the Parties”)

ARTICLE I. FACILITIES AND SCOPE OF WORK

General Atomics will make available to employees, consultants and representatives of USER (hereinafter called “Participants”) the Facility, which may include equipment, services, information and other material, with or without General Atomics scientist collaboration, for purposes as described in the Appendix which is attached to and made a part of this Agreement. Additional future Appendices referencing this Agreement may be submitted by USER during the term of this Non-Proprietary User Agreement (“Agreement”) (see Article II). Such additional Appendices will be considered to be part of this Agreement upon acceptance by General Atomics. Each Appendix shall set forth the Technical Scope of Work of a specific project, including deliverables, to be performed pursuant to this Agreement. The scope of work shall not be considered proprietary information and shall be publicly releasable. The Parties agree that an initial abstract of the work to be performed shall be a deliverable under this Agreement. The Facility is a designated User Facility of the DOE, Office of Science. The Facility is managed by General Atomics under a Cooperative Agreement with the DOE, Office of Science. The Facility equipment is owned by DOE.

ARTICLE II. TERM OF THE AGREEMENT

This Agreement shall have a term of five years from the effective date, unless extended by mutual written agreement of the Parties. The term of this Agreement shall be effective as of the date on which it is signed by the last of the Parties.

ARTICLE III: COST

Each Party will bear its own costs and expenses associated with this Agreement. No money will be transferred to or from either Party as consideration, in whole or in part, for this Agreement.

ARTICLE IV: ADMISSION REQUIREMENTS

USER and Participants are subject to the administrative and technical supervision and control of General Atomics; and will comply with all applicable rules of General Atomics and DOE with regard to admission to and use of the Facility, including safety, operating and health- physics procedures, environment protection, access to information, hours of work, and conduct. Participants shall execute any and all documents required by General Atomics acknowledging and agreeing to comply with such applicable rules of General Atomics. Participants will not be considered employees of General Atomics for any purpose.

ARTICLE V: PROPERTY AND MATERIALS***

USER may be permitted by General Atomics to furnish equipment, tooling, test apparatus, or materials necessary to assist in the performance of its experiment(s) at the Facility. Such items shall remain the property of USER. Unless the Parties otherwise agree, all such property furnished by USER or equipment and test apparatus provided by USER will be removed by USER within sixty (60) days of termination or expiration of this Agreement or will be disposed of as required by law and in a manner consistent with all applicable General Atomics and DOE rules at USER's expense. Any equipment that becomes integrated into the Facility shall be the property of the U.S. Government or General Atomics as governed by the provisions of General Atomics' Cooperative Agreement for operation of the Facility, unless otherwise agreed to in writing. USER acknowledges that any material supplied by USER may be damaged, consumed or lost. Materials (including residues and/or other contaminated material) remaining after performance of the work or analysis will be removed in their then condition by USER at USER's expense. Risk of loss for USER's materials and other property will remain with USER at all times. USER will return the Facility and any equipment utilized in their original condition except for normal wear and tear at USER's expense. General Atomics shall have no responsibility for USER's property at the Facility. Personal property produced or acquired during the course of this Agreement shall be disposed of as directed by the USER at the USER's expense.

ARTICLE VI: SCHEDULING***

USER understands that General Atomics will have sole responsibility and discretion for allocating and scheduling usage of the Facility and equipment needed for or involved under this Agreement.

ARTICLE VII: INDEMNITY AND LIABILITY***

- A. Personnel Relationships** - USER shall be responsible for the acts or omissions of Participants.
- B. General Indemnity** - To the extent permitted by U.S. law and U.S. State law, USER hereby agrees to indemnify and hold harmless General Atomics and the U.S. Government, their officers, agents and employees from any and all liability, claims, damages, costs and expenses, including attorney fees, for injury to or death of persons, or damage to or destruction of property, to the extent such liability, claims, or damages is caused by or contributed to the negligence or intentional misconduct of USER or its employees or representatives during the performance of the work under this Agreement.

- C. Patent and Copyright Indemnity—Limited** - To the extent permitted by U.S. law and U.S. State law, USER shall fully indemnify the U.S. Government and General Atomics and their officers, agents, and employees for infringement of any United States patent or copyright arising out of any acts required or directed or performed by USER under this Agreement to the extent such acts are not normally performed at the Facility.
- D. Product Liability** - To the extent permitted by U.S. law and U.S. State law, if USER utilizes the work derived from this Agreement in the making, using, or selling of a product, process or service, then USER hereby agrees to hold harmless and indemnify General Atomics and the U.S. Government, their officers, agents and employees from any and all liability, claims, damages, costs and expenses, including attorney fees, for injury to or death of persons, or damage to or destruction of property, as a result of or arising out of such utilization of the work by or on behalf of USER, its assignees or licensees.
- E.** Each of General Atomics and the U.S. Government shall promptly notify USER of any claim covered by the indemnities under this Article VII. Such indemnity shall not apply to a claimed infringement that is settled without the consent of USER unless required by a court of competent jurisdiction.
- F. Notice and Assistance Regarding Patent and Copyright Infringement**
- a. USER shall report to the U.S. Government, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which USER has knowledge.
 - b. In the event of any claim or suit against the U.S. Government or General Atomics on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed hereunder, USER shall furnish to the U.S. Government and/or General Atomics, as applicable, when requested, all evidence and information in possession of USER pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the U.S. Government or General Atomics, as applicable, except where USER has agreed to indemnify the U.S. Government or General Atomics, as applicable.

NOTE: For U.S. State and Local Governments and Public Universities, the following provision may be used to replace the above indemnity and liability clauses of paragraphs B-D:

- B. General Indemnity—Reserved**
- C. Patent and Copyright Indemnity—Limited - Reserved**
- D. Product Liability** Any licenses granted or assignments made by USER to any third party in technology derived from the work performed under this Agreement, such license or assignment shall include the requirement that the licensee/assignee shall agree to hold harmless and indemnify General Atomics and the U.S. Government, their officers, agents and employees from any and all liability, claims, damages, costs and expenses, including attorney fees, for injury to or death of persons, or damage to or destruction of property, as a result of or arising out of such utilization of the work by or on behalf of USER's assignees or licensees.

NOTE: The Product Liability clause above for licensing to third parties by the USER may be used with Private Universities, but those agreements would still require General and Intellectual Property Indemnity clauses.

G. General Disclaimer

THE GOVERNMENT AND GENERAL ATOMICS MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE FACILITY FURNISHED HEREUNDER. IN ADDITION, THE GOVERNMENT, GENERAL ATOMICS, AND USER MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. THE GOVERNMENT, GENERAL ATOMICS AND USER SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO USE OF SUCH FACILITIES, RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT.

NOTE: Articles VIII (Patent Rights) and IX (Rights in Technical Data) are applicable to any privately funded work. If research subject to this Agreement is performed by the USER under a Federal agency grant, cooperative agreement, or contract, then, to the extent that the Intellectual Property Provisions in the USER’s grant, cooperative agreement, or contract with a Federal agency are inconsistent with the terms and conditions contained in these Articles, the terms and conditions of the grant, cooperative agreement, or contract shall apply to the work performed by the USER under this Agreement. If USER is a U.S. Government Agency, rights in and to patents and copyrights of USER shall be governed by the policies and regulations pertaining to USER and its employees.

ARTICLE VIII: PATENT RIGHTS***

A. Definitions

1. “Subject Invention” means any invention or discovery conceived or first actually reduced to practice in the course of or under this Agreement.
2. “USER Invention” means any Subject Invention of USER.
3. “General Atomics Invention” means any Subject Invention of General Atomics.
4. “Patent Counsel” means the DOE Counsel for Intellectual Property assisting the DOE Contracting activity.

B. Subject Inventions

General Atomics and USER agree to disclose their Subject Inventions, which includes any inventions of their Participants, to each other, concurrent with reporting such Subject Inventions to DOE. USER shall provide through the iEdison reporting system, unless otherwise directed by Patent Counsel, the disclosure within six months of conception or first actual reduction to practice, whichever occurs first.

C. General Atomics' Rights

Except as provided below in the case of joint inventions, General Atomics Inventions will be governed by the provisions of General Atomics' Cooperative Agreement for operation of the Facility.

D. USER's Rights

Subject to the provisions herein, USER may elect title to any USER Invention and in any resulting patent secured by USER within one year of reporting the subject invention to DOE. The USER shall file a US patent application within a reasonable period of time. Where appropriate, the filing of patent applications by USER is subject to DOE security regulations and requirements.

E. Joint Inventions

For Subject Inventions conceived or first actually reduced to practice under this Agreement that are joint Subject Inventions made by General Atomics and USER, each Party shall have the option to elect and retain title to its undivided rights in such joint Subject Inventions.

F. Rights of the U.S. Government

1. USER agrees to timely assign to the U.S. Government, if requested, the entire right, title, and interest in any country to each USER Invention where USER:
 - a. Does not elect to retain such rights; or
 - b. Fails to timely have a patent application filed in that country on the USER Invention or decides not to continue prosecution or not to pay the maintenance fees covering the Invention; or
 - c. At any time, no longer desires to retain title.
2. USER shall provide the U.S. Government through the iEdison reporting system, unless otherwise directed by Patent Counsel, a copy of any application filed by USER promptly after such application is filed, including its serial number and filing date.
3. USER hereby grants to the U.S. Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the USER Invention made under said project throughout the world.
4. USER acknowledges that the DOE has certain March-in Rights to any USER Inventions elected by the USER in accordance with 48 C.F.R. 27.304-1(g) and that the USER is subject to the requirements with respect to preference for U.S. industry pursuant to 35 U.S.C. § 204 to any USER Inventions elected by the USER.
5. USER agrees to include, within the specification of any U.S. patent applications and any patent issuing thereon covering a USER Invention, the following statement: "The U.S. Government has rights in this invention pursuant to a USER Agreement (specify number) between (USER name) and (General Atomics), which manages and operates the DIII-D National Fusion Facility for the U.S. Department of Energy."
6. USER agrees to submit through the iEdison reporting system, unless otherwise directed by Patent Counsel, on request periodic reports to DOE no more frequently than annually

on the utilization of USER Inventions or on efforts to obtain such utilization that are being made by USER or its licensees or assignees.

7. Facilities License: USER agrees to and does hereby grant to the U.S. Government and General Atomics a nonexclusive, nontransferable, irrevocable, paid-up license in and to any inventions or discoveries, regardless of when conceived or actually reduced to practice or acquired by USER, which at any time through completion of this Agreement are owned or controlled by 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 U.S. Government at the Facility, and (2) to transfer such licenses with the transfer of that Facility. The acceptance or exercise by the U.S. Government and General Atomics of the aforesaid rights and license shall not prevent the U.S. Government or General Atomics at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.
8. General Atomics' rights with respect to Inventions developed at the Facility will be governed by the provisions of its Cooperative Agreement for operation of the Facility.

G. Invention Report and Election

USER shall furnish the Patent Counsel a written report concerning each USER Invention within six months after conception or first actual reduction to practice, whichever occurs first. If USER wishes to elect title to the Invention, a notice of election should be submitted with the report or within one year of such date of reporting.

ARTICLE IX: RIGHTS IN TECHNICAL DATA***

A. Definitions:

1. "Technical Data" means recorded information regardless of form or characteristic, of a scientific or technical nature. Technical data as used herein does not include financial reports, cost analyses, and other information incidental to Agreement administration.
2. "Proprietary Data" means Technical Data which embody trade secrets developed at private expense, outside of this Agreement, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:
 - a. Are not generally known or available from other sources without obligation concerning their confidentiality;
 - b. Have not been made available by the owner to others without obligation concerning their confidentiality;
 - c. Are not already available to General Atomics or the U.S. Government without obligation concerning their confidentiality; and
 - d. Are marked as "Proprietary Data."
3. "Unlimited Rights" means rights to use, duplicate, or disclose Technical Data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

B. Allocation of Rights

1. The U.S. Government shall have Unlimited Rights in Technical Data first produced

or specifically used in the performance of this Agreement except as otherwise provided in this Agreement.

2. USER shall have the right to use for its private purposes, subject to patent, security or other provisions of this Agreement, Technical Data first produced by User in the performance of this Agreement provided that the data delivery requirements of this Agreement have been met as of the date of the private use of such data. USER agrees that to the extent it receives or is given access to Proprietary Data or other technical, business or financial data in the form of recorded information from DOE or General Atomics or its subcontractors, USER shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the DOE Contracting Officer.

C. Deliverables

1. USER agrees to furnish to DOE and/or General Atomics those data, if any, which are (a) specified to be delivered in Appendices, (b) essential to the performance of work by DOE or General Atomics personnel at the Facility, or (c) necessary for the health and safety of such personnel in the performance of work at the Facility. Any data furnished to DOE or General Atomics shall be deemed to have been delivered with Unlimited Rights unless marked as "Proprietary Data" of USER.
2. Upon completion or termination of the project, USER agrees to deliver to DOE and General Atomics a nonproprietary report describing the work performed under this Agreement.

D. Legal Notice

The following legal notice shall be affixed to each report or publication resulting from this Agreement which may be distributed by USER:

DISCLAIMER NOTICE

This document was prepared by as a result of the use of facilities of the U.S. Department of Energy (DOE), which are managed and owned by General Atomics acting under Cooperative Agreement No. DE-FC02-04ER54698. Neither General Atomics, DOE, the U.S. Government, nor any person acting on their behalf: (a) make any warranty or representation, express or implied, with respect to the information contained in this document; or (b) assume any liabilities with respect to the use of, or damages resulting from the use of any information contained in the document.

E. Copyrighted Material

1. USER agrees to, and does hereby grant to the U.S. Government and General Atomics, and to their officers, agents, servants, and employees acting within the scope of their duties:
 - a. A royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use, and dispose of and to authorize others so to do, all copyrightable material first produced or composed in the performance of this Agreement by USER, its employees or any individual or concern specifically employed or assigned to originate and prepare such material; and
 - b. A license as aforesaid under any and all copyrighted or copyrightable works not

first produced or composed by USER in the performance of this Agreement but which are incorporated in the material furnished or delivered under the Agreement, provided that such license shall be only to the extent USER now has, or prior to completion or final settlement of the Agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

2. USER agrees that it will not knowingly include any copyrightable material furnished or delivered under this Agreement without a license as provided for in subparagraph 1(b) hereof, or without the consent of the copyright owner, unless it obtains specific written approval of the DOE Contracting Officer for the inclusion of such copyrighted materials.

F. Disclosure of Proprietary Data

The USER shall not bring Proprietary Data into the Facility except at USER's own risk. Any such data, regardless how it is marked, shall be deemed Technical Data and shall be treated according to this article of this Agreement.

ARTICLE X. FACILITY ACCESS, SAFETY AND HEALTH***

As a precondition to using the Facility, Participants must complete all General Atomics site access documents and requirements. USER and its Participants shall take all reasonable precautions in activities carried out under this Agreement to protect the safety and health of others and to protect the environment. Participants must comply with all applicable safety, health, access to information, security and environmental regulations and the requirements of the Department and General Atomics, including the specific requirements of the Facility covered by this Agreement. In the event that USER or Participant(s) fails to comply with said regulations and requirements, General Atomics may, without prejudice to any other legal or contractual rights, issue an order stopping all or any part of USER's activities at the Facility.

ARTICLE XI. PERSONNEL RELATIONSHIPS***

Participants will remain employees, consultants or representatives of the USER at all times during their participation in the work under this Agreement, and shall not be considered employees of General Atomics or DOE for any purpose. Participants shall be subject to the administrative and technical supervision and control of General Atomics during and in connection with the Participant's activities under this Agreement.

ARTICLE XII: EXPORT CONTROLS***

USER acknowledges that the export of goods or Technical Data may require some form of export control license from the U.S. Government and that failure to obtain such export control license may result in criminal liability under the laws of the United States.

ARTICLE XIII: PUBLICATIONS***

- A. Any publication generated pursuant to this Agreement must adhere to the review requirements of the Facility, as stated in appropriate policy documents of the Facility.
- B. USER will not use the name of General Atomics or the U.S. Government or their employees in any promotional activity, such as advertisements, with reference to any product or service resulting from this Agreement, without prior written approval of the U.S. Government and General Atomics.

ARTICLE XIV. INSURANCE ***

During the term of this Agreement, USER shall maintain, at its own expense, (i) workers' compensation and employer's liability insurance in accordance with any applicable state law, and (ii) other insurance sufficient to cover its obligations under this Agreement. USER shall provide GA, upon request, with certificates of insurance evidencing the coverages required hereunder. In addition, each such policy, other than User's workers' compensation policy, shall name General Atomics as an additional insured.

ARTICLE XV. THIRD-PARTY CONTRACTS

Contracts between USER and third parties for work on General Atomics premises including, but not limited to, construction, installation, maintenance, and repair, will be subject to prior approval by the Department of Energy and General Atomics. The Department of Energy and General Atomics may require the insertion of specific terms and conditions into such contracts.

ARTICLE XVI. DISPUTES***

The Parties will attempt to jointly resolve all disputes arising under this Agreement. If the Parties are unable to jointly resolve a dispute within a reasonable period of time, a Party may seek relief in a court of competent jurisdiction in the State of California.

ARTICLE XVII. CONFLICT OF TERMS***

This Agreement constitutes the primary document which governs the work described in the attached Appendices. In the event of any conflict between the terms of this document and any other document issued by either Party, the terms of this document shall prevail.

ARTICLE XVIII: TERMINATION***

Either Party may terminate this Agreement for any reason at any time by giving not less than thirty (30) days prior written notice to the other Party. Notice will be deemed made as of the day of receipt. The obligations of any clause of this Agreement, which by their nature extend beyond its termination, shall remain in full force and effect until fulfilled.

ARTICLE XIX: NOTICES

Notices relating to this Agreement shall be directed solely to the respective persons designated by a Party for receipt thereof, as set forth below. Any notice required or permitted by this Agreement must be in writing, sent by personal delivery or courier.

If to General Atomics: General Atomics
3550 General Atomics Court
San Diego, California 92121
Attention: Contracts Department

with a copy to: General Atomics
3550 General Atomics Court
San Diego, California 92121
Attention: Law Department

If to User: User mailing address
Full Mailing Address

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized officer.

GENERAL ATOMICS

[FULL LEGAL NAME OF USER]

By: _____	By: _____
Name: <u>Richard Buttery</u>	Name: _____
Title: <u>Director, DIII-D National Fusion Facility</u>	Title: _____
Date: _____	Date: _____

Appendix

[This is a starting point for a Scope of Work. In this case, we assume that the User is joining DIII-D in order to develop research efforts and that they do not already have run time allocated. If someone from the User organization already has run time allocated (i.e., they have been awarded an experiment through the open call), then we would update this accordingly.]

[In all cases, the Scope of Work must accurately represent the purposes that bring the User to DIII-D, while also describing the appropriate scope associated with participation in an open research program.]

Scope of Work for [YOUR ORGANIZATION] (as “USER”)

The engagement of the USER within the DIII-D National Fusion Facility relates to the performance of the following project which has not received, and does not require, an allocation of facility run time:

Project Title: [title to be determined]
 USER Lead: [assigned lead from User]
 Run Time: 0.0 Days

The performance of this project, which is centered on [User described areas of interest; this should be a general description]

While this project does not have an allotment of run time, it remains possible for this scope to include participation in experiments. As such, this project scope includes the general tasks associated with conducting experiments as an active participant in the program: experimental planning and other experiment development, execution, analysis of research data, and potential analysis of results from past projects.

Initial Participant List from the USER

Anyone who will access unpublished DIII-D research data is considered to be such a contributor, and will be required to have an active cyber account. USER may add participants at any time. Since this scope of work requires access to unpublished DIII-D data, a DIII-D research user account is required for each participant listed here and any future participants serving on behalf of USER. The USER is able to include personnel from any organization whom they wish to bring into the program to help execute their research and development.

1. Personnel Full Name, email address
2. Personnel Full Name, email address
3. Personnel Full Name, email address

