

Agreement
Between
The American Institute in Taiwan
And
The Taipei Economic and Cultural Representative Office in the United States
For
Technical Cooperation on Neutron Scattering Research

Article I - Scope

This Agreement between the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO) provides a framework through which the National Institute of Standards and Technology Center for Neutron Research (NCNR), the designated representative of AIT, may, on a reimbursable basis, in areas of mutual interest in neutron scattering research and the development of neutron scattering instrumentation, provide technical expertise and training to and conduct scientific exchange activities with the National Central University (NCU) and the Institute of Nuclear Energy Research (INER), the designated representatives of TECRO.

Article II – Authorization

This Agreement is entered into pursuant to the Taiwan Relations Act of April 10, 1979, Public Law 96-8, (22 USC 3301 et. Seq.).

Article III - Program Goals

NCNR currently operates a broad range of world class cold neutron instrumentation, and presently is also in the process of upgrading the thermal neutron instrumentation to construct state-of-the-art thermal neutron spectrometers. The purpose of this Agreement is to provide research scientists associated with INER's Taiwan Research Reactor-II (TRR-II) project, the training and experience in neutron scattering techniques and the development of neutron scattering instrumentation.

Article IV – Cooperative Activities

Specific cooperative activities will be determined after consultations between AIT and its designated representative, NCNR, and TECRO and its designated representatives, NCU and INER. The types of cooperative activities may include the exchanges of scientific information, scientific visits, seminars and workshops, and joint cooperative research projects. All cooperative activities undertaken pursuant to this Agreement shall be subject to the respective and applicable laws, regulations, policies, funding and administrative procedures under which AIT and its designated representative, NCNR, and TECRO and its designated representatives, NCU and INER, operate.

This Agreement will:

- i. Allow INER's TRR-II related scientists to perform cutting edge neutron scattering research at the NCNR. Beam Time will be allocated on a scientifically competitive basis, through either the formal proposal system or as NIST allocated time.
- ii. Allow INER's TRR-II scientists to participate in NCNR's thermal neutron spectrometer safety modernization program. This will provide essential spectrometer design experience for INER's TRR-II Project Staff.

Article V – Responsibilities of AIT

AIT shall carry out its responsibilities pursuant to this Agreement with due diligence and efficiency.

- A. Selection of NCU and INER scientific staff working on the TRR-II project to participate in activities associated with this Agreement will be made jointly by AIT's designated representative, NCNR, and TECRO's designated representatives, NCU and INER. Personnel will be selected by merit factors such as education, experience and expertise.
- B. To the extent that reimbursements are made available to AIT by TECRO, AIT through its designated representative, NCNR, will make available such personnel, equipment and facilities necessary to carry out activities pursuant to this Agreement.
- C. AIT's designated representative, NCNR, shall assume all costs associated with the production of neutrons and maintenance of the neutron spectrometers associated with this Agreement.
- D. AIT's designated representative, NCNR, shall identify suitably qualified personnel who are acceptable to TECRO's designated representatives, NCU and INER to visit NCU and INER for consultations.
- E. Pursuant to this Agreement, AIT, through its designated representative, NCNR, shall assist TECRO in obtaining visas and other documents necessary for personnel of TECRO's designated representatives, NCU and INER, to visit the United States under the auspices of TECRO to carry out this Agreement.

Article VI – Responsibilities of TECRO

- A. Pursuant to this Agreement, TECRO, through its designated representatives, NCU and INER, shall assist AIT's designated representative, NCNR, in obtaining visas and other documents necessary for its personnel to visit Taiwan under the auspices of AIT to carry out this Agreement.
- B. Pursuant to this Agreement, TECRO shall assist AIT's designated representative, NCNR, in obtaining the necessary permits and authorizations for carrying out the activities specified in this Agreement, including access to facilities and areas under the jurisdiction of TECRO's designated representatives, NCU and INER by personnel of AIT's designated representative, NCNR, who are in Taiwan under the auspices of AIT.
- C. TECRO shall, pursuant to this Agreement, assure that AIT and its designated representative, NCNR, are held free and clear of all customs duties and imposition charged by the authorities in the territory represented by TECRO. Neither AIT nor its designated representative NCNR, shall be required to pay any duties or taxes in executing the terms and conditions of this Agreement.

Article VII – Financial Arrangements

- A. Activities under this agreement will be conducted on a fully reimbursable basis unless other arrangements are specific and mutually agreed in writing.
- B. TECRO shall pay all costs associated with services provided to TECRO, or its designated representatives, NCU and INER under this Agreement, including ancillary costs associated with the neutron experiments and instrumental development.
- C. Reimbursement shall be provided by TECRO for NCNR to arrange for scientists to interface with the program and to provide on-site supervision and training for the TRR-II project staff.
- D. AIT shall provide TECRO with documentation supporting requests for reimbursement in accordance with standard financial regulations and practices of AIT and its designated representative, NCNR. Separate documents will be prepared for TECRO's designated representatives, NCU and INER respectively.
- E. TECRO shall make all necessary arrangements to reimburse AIT for all actual costs incurred by AIT, or its designated representative, NCNR, in association with this Agreement.
- F. AIT and TECRO, through their designated representative(s) NCNR, INER and NCU, will mutually develop and agree upon an annual estimated budget for all activities associated with this Agreement which will become appendices to this Agreement.

Article VIII – Intellectual Property Considerations

- A. AIT and its designated representative, NCNR, and TECRO and its designated representatives, NCU and INER, support the widest possible dissemination of information provided, exchanged or arising under this Agreement, subject to the need to protect pre-existing proprietary information patent and copyright restrictions.
- B. The protection of Intellectual Property created or furnished in the course of cooperative activities under this Agreement shall be in accordance with the provisions of Annex I, which is an integral part of this Agreement.
- C. Information transmitted by either Party or its designated representative(s) to this Agreement to the other Party or its designated representative(s) shall be accurate to the best knowledge and belief of the transmitting Party and its designated representative(s).

Article IX - Liability

TECRO agrees to hold harmless, defend and indemnify AIT, NCNR, their Directors, officers, employees, agents, representatives, and any division of the United States Government (the “Indemnified Parties”), from and against any and all claims, costs, expenses, or losses of any kind or description, including reasonable attorney’s fees incurred to enforce this Agreement, if any arise out of, or are in anyway related to activities under this Agreement, specifically including, where permitted by law, claims, costs, expenses, or losses of any kind or description, that are attributable to the sole negligence of the Indemnified Parties. Further this obligation shall survive termination of this Agreement

Article X – Effective Date

This Agreement shall become effective on the date of last signature hereafter and shall remain in force for five years.

Article XI - Amendment and Termination

The provisions of this Agreement may be amended by written agreement of AIT and TECRO in consultation with NCNR, INER and NCU.

Either Party may terminate this Agreement at any time by notification to the other Party in writing sixty days in advance of the desired termination date. It is understood that an attempt will be made to reach mutual agreement on the termination dates to allow orderly termination of activities and repatriation of personnel, settlement with sub-tier suppliers and the determination of settlement costs and the distribution of project inventories and supplies.

Article XII – Surviving Provisions

The provisions of Articles VIII, including Annex I, shall survive the expiration of this Agreement.

Article XIV – Force Majeure

Any event of Force Majeure shall constitute an excusable delay. Examples include, but are not limited to embargo, quarantine, war, public disorders, explosions, fire, earthquake or other acts of God, the suspension, cancellation or failure to receive necessary permissions, or any other condition beyond the control of the Parties and their designated representative(s) affected. Such delays shall excuse the affected Party and its designated representative(s) from performance during the period when prevented, not terminate this Agreement, and require resumption of the performance as promptly as possible, using all best efforts to remove the cause of non-performance.

FOR THE AMERICAN INSTITUTE
IN TAIWAN

FOR THE TAIPEI ECONOMIC AND
CULTURAL REPRESENTATIVE
OFFICE IN THE UNITED STATES

Barbara J. Schrage
Deputy Managing Director

Rong-jye Chen
Deputy Representative

Date

Date

APPENDIX A

Estimated NCNR Budget For Year I

- 1) Reimbursement for training (\$95,000): Approximately 3 man-years (Article VII(C)), including ancillary costs for using the instruments (Article VII (B))
- 2) Reimbursement for travel expenses of up to two trips to Taiwan (Article VII-D) \$5,000

Total Year 1 Estimated budget for reimbursement to NCNR is \$100,000

ANNEX I

INTELLECTUAL PROPERTY

Pursuant to Article VIII of the Agreement between The American Institute in Taiwan (AIT) and The Taipei Economic and Cultural Representative Office in the United States (TECRO) for Technical Cooperation on Neutron Scattering Research (the Agreement):

The Parties and their designated representatives shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant implementing arrangements. The Parties shall require their designated representatives to notify one another in a timely fashion of any patentable inventions or copyrighted works or business confidential information arising under this Agreement and to seek protection for such intellectual property or business information in a timely fashion. Rights to such intellectual property shall be allocated as provided in this Annex.

I. SCOPE

A. This Annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed by the Parties or their designated representative(s).

B. For purpose of this Agreement, "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, Sweden, July 14, 1967.

C. This Annex addresses the allocation of rights, interests, and royalties between the Parties' designated representative(s). Each Party shall require its designated representative(s) to ensure that the other Party's designated representative(s) can obtain the rights to intellectual property allocated in accordance with the Annex, by obtaining those rights from its own participants through contracts or other legal means, if necessary. This Annex does not otherwise alter or prejudice the allocation between a Party's designated representative(s) and its participants, which shall be determined by the law and practices of the territory represented by the Party.

D. Disputes concerning intellectual property arising under this Agreement should be resolved through discussions between the concerned participating institutions or, if necessary, the Parties or their designated representative(s). Upon mutual written agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules or international law. Unless the Parties agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.

E. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

II. ALLOCATION OF RIGHTS

A. Each designated representative shall be entitled to a nonexclusive, irrevocable, royalty-free license in the territory represented by its Party to translate, reproduce, and publicly distribute scientific and technical journals, articles, reports, and books directly arising from cooperation under this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.

B. Rights to all forms of intellectual property, other than those rights described in Section II (A) above, shall be allocated as follows:

1. Visiting researchers, for example, scientists visiting primarily in furtherance of their education, shall receive intellectual property rights under the policies of the host institution. In addition, each visiting researcher named as an inventor shall be entitled to share in a portion of any royalties earned by the host institution from the licensing of such intellectual property.

2. (a). For intellectual property arising from research designated as joint research, for example, when the Parties' designated representatives, participating institutions, or participating personnel have agreed in advance on the scope of work, each designated representative shall be entitled to obtain all rights and interests in the territory represented by its Party. Rights and interests in third countries will be determined in implementing arrangements. If research is not designated as "joint research" in the relevant implementing arrangement, rights to intellectual property arising from the research will be allocated in accordance with paragraph IIB1. In addition, each person named as an inventor shall be entitled to share in a portion of any royalties earned by either institution from the licensing of the property.

(b). Notwithstanding paragraph IIB.2. (a) where the laws of the territory represented by one Party provide for a type of intellectual property protection that is not available under the laws of the territory represented by the other Party, the designated representative of the first Party shall be entitled to all rights and interests worldwide. Persons named as inventors of the property shall nonetheless be entitled to royalties as provided in paragraph IIB.2.(a).

III. BUSINESS-CONFIDENTIAL INFORMATION

In the event that information identified in a timely fashion as business-confidential is furnished or created under the Agreement, each Party's designated representative and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practice of the territory represented by its Party. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.