

MATERIAL TRANSFER AGREEMENTS:

What Faculty Need to Know

What is a Material Transfer Agreement (MTAs)?

MTAs are contracts with terms that govern the transfer of tangible research materials between two or more organizations (universities, non-profit entities, or for-profit entities). The MTA defines the rights of the provider and the recipient with respect to the materials and any derivatives.

Why is an MTA necessary? (Source: *Materials Transfer in Academic: 20 Questions and Answers*, Council on Governmental Relations, 2003.)

The provider of material or data may feel an MTA is needed in the following circumstances:

- The material and/or information is proprietary;
- The material or information is being maintained as a trade secret;
- The material is infectious, hazardous or subject to special regulations;
- The provider is concerned about potential liability; and/or
- The provider wishes to obtain rights to the results of the research in which the material or information is to be used.

I need to request research material from another institution --what do I need to do?

- Whenever you request material from another institution, you may receive an MTA (“incoming MTA”) from the provider institution. You must submit that MTA, along with an incoming MTA Questionnaire (http://www.uthsc.edu/research/research_administration/docs/questionnaire_incoming_mta_rev_ds_2_09_07.doc) to the Office of Grants and Research Agreements (“GRA”) for review, approval, and signature via Evisions/Cayuse 424/SP.
- Check with GRA ahead of time to see if the providing institution is a signatory to the UBMTA (Uniform Biological Material Transfer Agreement). If it is, and the other institution is agreeable, GRA may use a UBMTA Implementing Letter to expedite the review process.

The Uniform Biological Material Transfer Agreement (UBMTA) is a document approved by the Public Health Service and signed by a number of universities and non-profit institutions outlining approved terms of sharing biological materials. If both the provider and recipient institutions are signatories to the UBMTA, materials can be transferred under the terms of the UBMTA upon execution of an Implementing Letter for the particular transfer. Additional information about the UBMTA and a list of signatories is available at http://www.autm.net/aboutTT/aboutTT_umbta.cfm

- When the GRA receives the MTA, it will submit a copy to UTRF and the Biosafety Office and Export Control.
 - Biosafety must approve each material request, incoming or outgoing. Each time you request material to be sent to you or if you are sending material out, the material must be approved by the biosafety office, regardless of how harmless you may think the material is.
 - Export Control must approve each material request, incoming or outgoing. If an export license is required, significant time may be required to obtain the license.
 - Make sure you include on the route sheet all animal protocol and rDNA numbers pertinent to the research involving the material.
 - UTRF assists GRA in negotiating the terms of the MTA with the provider institution.

NOTE: If a colleague sends material to you without an MTA, you should check with the Biosafety Office to be sure there are no safety concerns and with the Export Control officer to be sure there are no export issues. To be certain there are no conflicts, you may want to contact GRA, who will contact the institution providing the material to see if an MTA is required.

Someone has requested research material from me - what do I need to do?

- Whenever you receive a request to send material to another institution (“outgoing MTA”), you must submit the request to the GRA. Material should not be sent out without prior approval.
- You must route the MTA in Evisions/Cayuse 424/st, along with the Outgoing MTA Questionnaire. This form provides necessary information used by GRA and UTRF to determine the type of MTA needed (the UBMTA, a simple MTA, or a special MTA if proprietary material is being requested).
- When the GRA receives the MTA, they will submit a copy to UTRF and the Biosafety Office and Export Control officer.
 - Biosafety must approve each material request, incoming or outgoing. Each time you request material to be sent to you or if you are sending material out, the material must be approved by the biosafety office, regardless of how harmless you may think the material is.
 - Make sure you include on the route sheet all animal protocol and rDNA numbers pertinent to the research involving the material.

- Export Control must approve each request for outgoing material.
- UTRF assists GRA in determining which type of MTA is required for outgoing material.

Who are the parties to an MTA?

- The parties to an MTA always include The University of Tennessee (UT) and the other institution. UTRF may be a party if an invention disclosure is involved.
- The University scientist is never a party to an MTA and should never sign the MTA for the University. The recipient scientist at UT, however, may sign an acknowledgement of his/her obligations to abide by the terms and conditions of the MTA.

Who signs MTAs for UT?

- Most MTAs, like other contracts, are authorized for signature by a designated official at the UTHSC. In most instances, the authorized signatory is the Vice Chancellor for Research. However, all contracts, including MTAs, that involve foreign entities require approval and signature by a system-level UT official.
- Faculty, Chairs, Deans, and other UT employees are not authorized to sign contracts (including MTAs) for UT. Only designated officials may sign contracts.

What are the main issues that may cause a delay in approval of the MTA?

- Sometimes negotiations are delayed because the MTA is not top priority for one party (usually the provider) or because approving officials are not available.
- Sometimes the material may not be approved by the biosafety office. The investigator will have to work with the biosafety office to obtain approval.
- Sometimes the material may require an export license. The investigator should work with the Export Control officer to obtain appropriate approvals.
- The primary reason for delays in MTAs is that the parties do not agree on the terms of the MTA. It sometimes takes weeks or months for the parties to negotiate terms that are mutually acceptable. This is especially true when the provider is a for-profit company. In rare instances, the parties may not be able to come to terms that are mutually agreeable and the material may not be available to the University.

- Terms that are likely to extend the negotiation period include:
 - Indemnification/Liability - UT is an agency of the State of Tennessee and, as such, can not agree to indemnify or hold harmless. UT can only agree to be liable for its own actions to the extent allowed by law. In rare instances, the provider will not transfer material if they cannot be indemnified for UT's use of the material.
 - Choice of Law/Jurisdiction - As a state institution, UT can not agree to have the MTA governed by another state's law and can not agree to the jurisdiction of another state. UT can agree to remain silent as to the choice of law, which usually resolves the issue. In rare instances (usually MTAs with foreign entities), however, the choice of law may be a deal breaker.
 - Arbitration- As a state institution UT can not agree to arbitration.
 - Definition of material - Ideally, the MTA defines the material as including the material itself and any unmodified derivatives of the material. However, sometimes the MTA defines "material" as the original material AND modifications and derivatives of the original material. The provider normally retains ownership of the "material," as defined in the document; therefore, in such cases, the provider institution would own such modifications and derivatives, which may be an invention. By agreeing to such a definition, UT could put itself in the position of violating any applicable funding agreements, including both federal and non-federal grants or contracts. Also, if the provider claims ownership of derivatives and/or modifications, the provider could also own the results of the research. The investigator could be prevented from using his or her own research results in further research, transferring them to other organizations, meeting obligations to research sponsors or funding agencies, or ensuring that the results are made public. Federal regulations and other grantor policies require publication of the results of research and sharing of research material with other scientists
 - Intellectual property provisions - Some incoming MTAs state that the provider owns results and inventions arising out of the research (the usually happens with for-profit companies). UT cannot agree to such terms, as an academic institution and recipient of external (including federal) funding. Also, if providers assert ownership over results and inventions, the investigator may be prevented from using results in future research. Preemption of ownership rights could restrict the investigator's use of inventions in that it could limit the investigators ability to interact with a future sponsor or may prevent the university from conveying rights to future licensees.

- Publication restrictions- Some MTAs require that the investigator obtain written consent from the provider to publish or the provider may request co-authorship. Such terms violate academic freedom and may conflict with funding agreements and journal requirements. Publication restrictions may also affect the investigator's ability to report results to sponsors or funding agencies. Sometimes delays in publication may be negotiated, provided that such delays are not excessive, are acceptable to the PI, and are not inconsistent with funding agreements.
- Illegal aliens- Pursuant to a new state law, the University must require providers of material to attest that they shall not knowingly use illegal aliens in the performance of the contract (the MTA). This applies to all international providers, and private domestic providers. Some providers do not wish to provide such an attestation.

The parties have agreed upon the terms, now what?

- Once the parties agree upon the terms, the MTA is signed by all parties. The signature process may take up to a week. In rare cases, it may take longer, especially if a foreign entity is involved or if original documents are required by the other party.
- Once the MTA has been signed by all parties, the provider should send the material. Sometimes it is necessary to send a reminder to the provider to send the materials.
- The provider should send the material to the investigator and the executed MTA to GRA. However, if the provider sends the executed MTA to the investigator with the material, please be sure to send the MTA to GRA; otherwise, we do not have a record that the contract is fully executed. Also, please let GRA know that you received the material.

Please feel free to contact GRA at any time after you have submitted a request if you have questions about the status of your MTA.

IMPORTANT!

- Try to obtain the material before submitting a grant in which you describe experiments that will require use of the requested materials. If MTA negotiations are extended or in those instances in which the parties cannot come to terms, the material may not be available. If the grant specifically names the material, a significant change in scope may be required.

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