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Material Transfer Agreements

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I. REASON FOR THIS POLICY

A Material Transfer Agreement (MTA) is a contract that accomplishes the transfer of research materials between two entities. Generally, the recipient intends to use the material for research purposes. The agreement defines terms of liability, intellectual property, ownership, and compensation (if any). The MTA defines the rights of the provider and the recipient with respect to the materials and any derivatives. Biological materials, such as reagents, cell lines, plasmids, and vectors, are the most frequently transferred materials, but MTAs may also be used for other types of materials, such as chemical compounds and even some types of software.

II. STATEMENT OF POLICY

The Vice President for Research (or designee) will review and approve incoming MTAs. Where biological agents are involved, the Vice President for Research relies upon the Institutional Biosafety Committee's (IBC) recommendations. University researchers should contact TTO@usd.edu to receive a Research Material Request for which must be filled out and signed by the researcher.

All MTAs from the University of South Dakota (USD) to other organizations are issued by the Office of Research and Sponsored Programs. Material Transfer between USD and another academic institution, or not-for-profit institution is relatively straightforward.

III. DEFINITIONS

Material Transfer Agreement (MTA): a contract that accomplishes the transfer of research materials between two entities.

IV. PROCEDURES

To encourage the process of sharing research tools between scientists, the National Institutes of Health and the Association of University Technology Managers develop standard language to simplify material transfers, issued as the Uniform Biological Material Transfer Agreement (UBMTA). The UBMTA is used for many transfers between academic institutions. UBMTA forms may be used for many types of transfers, including the transfer of materials that are the subject of a patent or patent application or have been or are likely to be commercially licensed.

Material Transfer from Industry to USD

Researchers often use materials provided by industry. For transfer of materials from industry, the University will usually be required to use the agreement written by the company providing the materials. An industrial MTA usually carries more restrictions than the UBMTA. Industrial MTAs may contain language that conflicts with basic academic rights or that places unnecessary restrictions on investigators. Companies may ask to own all rights to inventions arising from the use of the material or ask for exclusive rights to future inventions. For these reasons, the Office of Research and Sponsored Programs reviews, negotiates, and approves all MTAs from industry. Each industrial MTA is different and must be negotiated separately on a case-by-case basis, depending on the terms used in the agreement, the investigator's obligations to the sponsor(s) of the research, and the use of the investigator plans for the material.

Material Transfer from USD to Industry

The Office of Research and Sponsored Programs handles MTAs to transfer research materials from the University to outside institutions. The Office of Research and Sponsored Programs ensures that the agreements conform to institutional research policies. The Office of Research and Sponsored Programs may use several formats for material transfer, depending on the intended use of the materials. Please contact the Office of Research and Sponsored Programs for information or assistance.

Compliance Requirements

MTAs for live animals must have protocol(s) reviewed and approved by the Animal Care and Use Committee.

MTAs for custom antibodies or biological materials must have protocol(s) reviewed and approved by the Institutional Biosafety Committee.

MTAs for human tissue must have protocol(s) reviewed by the Institutional Review Board (IRB) for the Protection of Human Subjects. MTAs for hazardous materials and/or selected agents must follow Environmental Health & Safety (EH&S) compliance procedures.

POTENTIAL ISSUES IN MTAS

Confidentiality- When confidential information is exchanged along with the material, the company may request that such information not be further disclosed. If the information is necessary for interpretation of the research results obtained using the material, that same information may also be required for publication of those results.

Having agreed to hold the information confidential could prohibit an investigator from ever publishing the results of work using the company's material.

Delay in Publication- To protect potentially patentable inventions, companies often demand a review period for the investigator's manuscripts, abstracts or hard-copies of presentation materials. This demand may jeopardize the timeliness of publication.

Use of Materials in Sponsored Research Projects- Many industry MTAs contain language that prohibits the use of the material in research that is subject to licensing or consulting obligations to any third party, including the sponsor of the research project.

Definition of Material- The industry provider may propose a definition of material that includes not only the original material, but also modifications or derivatives made from the material that incorporate the investigator's original ideas or concepts. If the provider also claimed ownership of the modified material, the provider could own the results of the investigator's research. The investigator could be prevented from using research results in further research, transferring them to other organizations, meeting obligations to research sponsors, or ensuring that the results are made public.

Loss of Control of Intellectual Property - If MTAs preempt ownership rights, investigators may be restricted in their ability to interact with a future sponsor or may have conflicts with obligations to current sponsors. Intellectual property restrictions may prevent the institution from obtaining or conveying rights to future licensees.

Conflict with Existing Agreements- Industrial MTAs may contain obligations that conflict with obligations in a preexisting agreement. Also, the material may be used in conjunction with a separate material received under another MTA. These situations could result in granting two or more parties conflicting rights to the same invention. When MTAs are used in conjunction with federally funded research, the federal government has certain rights to resulting inventions (Bayh-Dole Act).

V. RELATED DOCUMENTS, FORMS AND TOOLS

Not Applicable