

Office of Contracts & Grants

Non-Disclosure (Confidentiality) Material Transfer and Field Trial Agreements

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Agenda/Objectives

1. Background on Non-Disclosure (NDA), Material Transfer (MTA), and Field Trial Agreements (FTA)
2. Processing NDA's, MTA's and FTA's
3. Should it be an MTA or FTA
4. Key Issues
5. Resources and Contacts



What is a Non-Disclosure Agreement?

- A **non-disclosure agreement (NDA)**, also known as a **confidential disclosure agreement (CDA)**, is a legal contract between at least two parties that outlines confidential material, knowledge, or information that the parties wish to share with one another for certain purposes, but wish to restrict access to.

What is a Material Transfer Agreement?

- A **Material Transfer (MTA)** is an agreement in which one party agrees to provide physical materials or samples to another party for testing, evaluation, or experimentation. The physical materials may include biological materials (from DNA, cultures, cell lines, plasmids, nucleotides, proteins, transgenic animals, cDNA libraries, seeds, to live plants), chemical compounds (drugs or pharmaceuticals), or even databases and software code.

Definition of Material

Most MTAs use a carefully defined term (e.g., “Material”) to describe the material being transferred. Elsewhere in the MTA, the provider will typically assert ownership of the Material, restrict use and further transfer of the Material, and ask that the Material be returned or destroyed upon completion of the agreed upon research. These provisions are generally acceptable when the definition of Material is limited to a precise description of what is actually being transferred. Such a definition is the simplest and usually the most appropriate one to use.

Key MTA Issues

- ▶ Ownership of the transferred Material and any of the modifications and derivatives made by Recipient
- ▶ Limits on the use of the Material by the Recipient, and to recover, where necessary, any costs in providing the Material
- ▶ Confidentiality of information relating to the Material, and publication restrictions
- ▶ Rights to inventions and use of research results
- ▶ Protect intellectual property or valuable know-how
- ▶ Protect institutions from legal liability as a result of the use of the Material or any results obtained;
- ▶ Other pertinent issues

What is a Field Trial Agreement?

- A **Field Trial (FTA)** is defined as an evaluation of a sponsor's agricultural products or materials (seeds, pesticides, fertilizers, etc.) following a protocol provided by the sponsor.

Processing NDAs, MTAs, and FTAs

Why does Office of Contracts and Grants process these types of agreements?

- Often transferring or receiving tangible research material or datasets with another researcher or company, requires an agreement.
- The goal is to prevent misunderstandings about who has which rights to the material, to address liability for flaws or problems that may occur, and to make sure you can publish under academic freedom.



Processing NDAs, MTAs, and FTAs

PI enters it into the Grant Tracking System (GTS) and uploads the agreement (if provided) and submits it to OCG for their review/execution.

Contracts and Grants Conducts Review

- Reviews GTS file entry
- Reviews documents for applicability
 - Works with PI to confirm intent/resources
 - If it has a component of funding, then analyst/officer determines whether it should be a standalone MTA or combined with a research agreement/service agreement/field trial agreement.
 - If the Sponsor's Agreement provided is full of problematic terms and conditions, then C&G contacts Sponsor and sends a copy of our own agreement to see if they are o.k. just signing ours and not having to spend additional time negotiating changes to theirs.

MTA OR FIELD TRIAL AGREEMENT?

- If you are requested to do a field trial for a sponsor and they provide the materials (seed, etc.) to do so, then a Field Trial Agreement should be used.
- In addition, they should also cover your total costs to do the field trial.
- Contracts and Grants has a standard field trial agreement to provide your sponsor. It is basically a service agreement and MTA combined.
- If you are requested to do a research project for a sponsor and they provide materials (seed, etc.) to do so, then a Research Agreement with appropriate MTA terms should be used.
- Contracts and Grants has a standard research agreement incorporating MTA terms to use.

Contracts and Grants Negotiates the Terms of the Agreement

Challenging Agreements:

- Consult with Director, and/or Office of General Counsel (OGC) at UCOP
- Have Principal Investigator and/or County Director sign Informed Participation Letter

Contracts and Grants Ensures the Execution of all Agreements

All agreements are signed by:

- OCG Director or Associate Director as they are Authorized Officials of the University and have the delegated authority to execute NDAs, MTAs, and FTAs
- Note: Principal Investigator(s) cannot sign as a legal party to the agreement, but can sign an NDA as having acknowledged and understood the agreement

Resources

- ▶ **Principles Regarding Rights to Future Research Results in University Agreements with External Parties**
<https://policy.ucop.edu/doc/2500487/PrinciplesRegardingResearchResults>
- ▶ **Incoming Material Transfer Agreements: Guidelines for University of California Negotiators** <https://www.ucop.edu/research-policy-analysis-coordination/resources-tools/contract-and-grant-manual/chapter19/chapter-19-400.html>
- ▶ **UC Guidelines and Policies** <https://www.ucop.edu/research-policy-analysis-coordination/resources-tools/find-uc-policies/index.html>
- ▶ **Bayh-Dole Act (Public Laws 96-517 and 98-620)**
<https://www.ucop.edu/research-policy-analysis-coordination/resources-tools/contract-and-grant-manual/chapter11/chapter-11-300.html>
- ▶ **NDAs, MTAs, and FTAs Negotiating Agreement terms and conditions:**
[https://ucanr.edu/sites/anrstaff/Administration/Business_Operations/Contracts - Grants/New Awards/Negotiating the Award Terms and Conditions/](https://ucanr.edu/sites/anrstaff/Administration/Business_Operations/Contracts_-_Grants/New_Awards/Negotiating_the_Award_Terms_and_Conditions/)

 **University of California**

Agriculture and Natural Resources



Who should I contact if I need clarification on confidentiality, material transfer or field trial agreements?

Your Assigned Officer/Analyst

or

**Kimberly Lamar,
Associate Director, Contracts & Grants**

kdlamar@ucanr.edu

530-750-1305



QUESTIONS???



**“I had a miraculous dream in which
our list of questions all had answers.”**

NEXT WEBINAR
***Academic Cost
Recovery/Salary Savings***

WEDNESDAY, October 28, 2020

9:30 A.M. – 10:30 a.m.

Presenters: Kathleen Nolan and BOC