

## Using Material Transfer Agreements

### **What is a Material Transfer Agreement?**

A Material Transfer Agreement (MTA) is used when one party is transferring or supplying research materials (eg. chemicals, drugs, biological materials, software, or datasets) to another party, be it a university, research institute or company. It is a written agreement defining the terms and conditions governing this transfer from the owner or authorised licensee to the party for evaluation or further research. An MTA is a binding contract that impacts on the ownership and use of the research materials and data supplied.

There are two types of MTAs: (1) outgoing MTAs are used when University members are providing resources to an external party; and (2) in-coming MTAs are generally issued to University members when they request resources from external parties.

### **Why is it important to use an MTA?**

An MTA protects UNSW's interests and rights in the material. For outgoing MTAs, this is particularly important should the recipient make modifications or improvements or make a novel discovery that leads to a commercial application.

Taking in-coming MTAs is equally important, as these will impact on what you and UNSW can do with the material supplied, and UNSW's rights should you make a novel discovery while using that material.

### **UNSW's Standardised Model**

For outgoing MTAs, the Grants Management Office (GMO) and Legal Office have developed a UNSW model MTA which aims to provide a standardised legal framework to guide their use.

The MTA should be negotiated and executed prior to the provision of the materials. The terms are generally consistent with international standards governing the transfer of research materials generated by government-funded research institutes for the advancement of scientific research. Generally, the UNSW agreement provides that the University retains all rights in the material and in any derivatives of the material. The recipient of the material retains a licence to use the derivatives for internal non-commercial purposes.

In-coming MTAs may come in different forms, as such these must be reviewed by a University solicitor prior to any agreements being made or action taken. In-coming MTAs from most research institutions are likely to comply with international standards. In-coming MTAs from for-profit commercial entities typically will be more restrictive.

### **Who can sign MTAs?**

The University's standardised MTA forms can be signed by those with delegated authority to sign research related agreements on behalf of UNSW:

- Heads of Schools
- Deans
- University Solicitor
- Director of the UNSW Grants Management Office
- Deputy Vice-Chancellor (Research)
- Vice-Chancellor.

If you are uncertain about who to contact, the GMO liaises with University staff on matters relating to projects that involve grants and fellowships, the negotiation of research contracts and the administration of externally awarded funds.

## **Using MTAs**

For outgoing MTAs, the model UNSW Materials Transfer Agreement must be executed prior to the provision of the materials. Staff must take particular care in what they do and say prior to the execution of the Agreement to ensure that UNSW is not bound by any representations you might make.

Outgoing MTAs will be issued by the GMO or Legal Office. GMO solicitors prefer to liaise directly with the researcher requesting a template MTA before they issue a suitable Agreement, as they need to fully understand the needs of the researcher and any IP or risk issues associated with the material being transferred before recommending a particular template. If necessary the GMO solicitors may consult with NSi in relation to IP matters.

Researchers should provide in-coming MTAs to the Head of School to ratify. Heads of School will send this to either the Legal Office or to the GMO for advice and review. This will be signed and then sent back to the HOS.

## **What if I want to change the standard Agreement?**

Any changes to the substantive terms of the Agreement must be negotiated through, or approved by, a UNSW GMO solicitor or the Legal Office.

If the GMO reviews the Agreement, the Director has the authority to sign. If the University's Legal Office review the MTA, it will be redirected to the relevant Head of School or Dean for signature.

Researchers should ensure there are no conflicts between new Agreements and any prior documents signed by UNSW. The GMO or Legal Office should be informed if there are any related agreements prior to entering into the new Agreement.

## **What about accepting incoming MTAs?**

The following are important points for researchers to consider when accepting an incoming MTA:

- Do not distribute materials provided to you under an MTA to parties external to your lab.

- Where the material is owned by a commercial entity, the MTA will have specifications regarding who owns the data arising from the use of the material. Often, the provider will want to own the data and restrict disclosure.

- Think carefully about the impact of the MTA on your research program and any third party obligations (funding bodies, collaborators, sponsors of research, etc). It may be necessary to find another research solution or tool.

- The MTA may have restrictions on publications in abstracts and journals, this can hold-up submitting an abstract or manuscript for up to 90 days.

- Some MTA may have obligations to keep information regarding the material confidential, and this can be for up to 10 years.

## **NSi's Involvement**

NewSouth Innovations (NSi), are the commercial agent of UNSW responsible for the protection and management of UNSW's IP assets and commercialisation of IP with commercial potential.

It is important to ensure that any Agreement signed does not impede NSi's ability to protect and commercialise IP. It is the responsibility of researchers to advise NSi, the Legal Office or the GMO prior to entering into a new Agreement if you believe the activity involves the use, development or creation of IP with commercial potential.

Where there is significant IP development or existing IP that might be compromised, NSi will get involved in the review of terms and conditions, however, the procedural and administrative function will still reside with the Legal Office or GMO

If the IP has already been assigned to NSi, or is the subject of an IP Notification lodged with NSi, i.e. NSi owns the IP or is assessing or commercialising it, then NSi will review and execute any in-coming or outgoing MTAs.

#### **Who to contact**

**Grants Management Office (GMO)** - Deirdre McKay ext. 57236 or [deirdre.mckay@unsw.edu.au](mailto:deirdre.mckay@unsw.edu.au)

**The UNSW Legal Office** - Celia De Winter, Solicitor, ext.52579 or [celia.dewinter@unsw.edu.au](mailto:celia.dewinter@unsw.edu.au)

**Laura Issa is the NSi Business Development Manager** for the Faculty of Medicine and can assist with any enquiries relating to MTAs for projects that are, or may be commercialised (ie where NSi has received or will receive an IP Notification). Laura can also help with any questions you have about research with commercial potential.

**Laura** can be contacted on ext. 55592 or mobile: 0410 607 458, or [l.issa@nsinnovations.com.au](mailto:l.issa@nsinnovations.com.au)