



Issues for Exchange of Plant Genetic Resources: Material Transfer Agreement (MTA)

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ABSTRACT

Material Transfer Agreement (MTA) is a contractual document that governs the transfer of tangible research materials between two parties where the recipient intends to use in the recipient's research program. It is an agreement outlining conditions under which material is provided from the owner to the recipient for a specific use. The MTA defines the rights of the provider and the recipient with respect to the material and its derivatives. Material could be a wide range of biological resources viz., seeds, plants, cultures, cell lines, plasmids, nucleotides, proteins, transgenics etc., any form of chemical compound and even some types of software. The MTA is legally binding for the use of material and the research results obtained thereof. It limits on the use of the material, confidentiality of information, specifies publication restrictions and the rights to inventions and utilisation of the results. There may be different types of MTA i.e. transfer between academic or research institutions, transfer from academic institution to industry and transfer from industry to institution and all of these would have different terms and conditions agreed upon by both the parties.

Keywords: Material Transfer Agreement, Treaty, Plant Genetic Resources, Exchange

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Material Transfer Agreement (MTA) defines the rights of the provider and the recipient with respect to transfer of the material and its derivatives. It is an agreement between parties that governs the transfer of tangible research material in which the recipient intends to use the material for research purposes (Rodriguez, 2005 and Tyagi *et al.*, 2010). Material could be a wide range of bio-resources viz., seeds, plants, cultures, cell lines, plasmids, nucleotides, proteins, transgenics etc. or any form of chemical compound and also some types of software (Rodriguez, 2007). It is a document in which the conditions under which the transfer of material is made is provided from the owner to the recipient for a specific use (Tyagi *et al.*, 2010). MTA addresses the issues of liability, publication, and intellectual property rights that may result from the research. In addition,

concerns such as limits on the use of the materials are included in MTA prior to the transfer of material. MTA is made to address various issues such as ownership of the transferred material and any of its modifications or derivatives. It limits on the use of the material, confidentiality of information, specifies publication restrictions and the rights to inventions and utilisation of the results. The MTA is generally legally binding for the use of material and the research results (Tyagi *et al.*, 2005). This is done to establish ownership of the material, give some legal protection to the institution and the providing scientist from potential liability resulting from the use of the material, and assure that the source of the material is identified and given appropriate credit in any resulting publications (Rodriguez *et al.*, 2007). The MTA could be of various types, viz., between two academic or research institutions; academic institution and industry and vice versa and all of these will have different terms and conditions as agreed upon by the parties (Tyagi *et al.*, 2005). There are multilateral agreements also, which

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specifies conditions for transfer of material between more than two parties.

MTA is a contractual document used for the acquisition of various biological research materials and occasionally data, developed by non profit, government and private industry. The owner of the material would want to ensure that MTA terms permit full dissemination of research results, and do not conflict with their policies. Because of these differing views of MTA, the necessary negotiations to accommodate the needs of both parties can be time consuming. The usual areas of negotiation relate to publications, use of the research results, and the ownership of the technology generated by the research. In case of government organisations where a high proportion of its research funding is received from the Government, it becomes important to ensure that MTA meet policies as well as the requirements of funding agencies including the policy on the sharing of research tools. The MTA addresses the issues of liability, publication and intellectual property rights that may result from the research. In addition, concerns such as limits on the use of the materials are frequently included in MTA prior to the transfer of material. The understanding established by the MTA can help avoid later issues and ensure the collaborative nature of the research.

On behalf of an organisation, a researcher would sign the MTA and he will be responsible for the associated legal and financial risks. MTA usually does not convey the details of funding sources; however, it is still a binding document with possible penalties for violations of the terms of the funding agencies. It is important for the researcher to read the terms of MTA before transmitting it for the provider's signature and it is assumed that a researcher who had signed MTA has read and agrees to conform to those terms.

The transfer of materials with a non profit institution should be as simple as possible. Typically, most of the Government institutions/Universities are non profit entities and use a simple agreement with a few restrictions and agreement is done expeditiously. The transfer of materials to or from the profit sector is usually more complex, as the corporate entity has an often aggressive interest in protecting its proprietary rights. There are also a number of differing contractual formats for transfer of materials from industry (Rodriguez, 2008).

Contact details: The names, complete contact details and e-mail address of a contact person for the other party

must be provided in the document before submission to expedite the process of transfer of the material.

Intellectual Property Rights: The provider will not sign any agreement with "reach through" intellectual property rights or publication restrictions. "Reach through" rights are when a provider obtains rights to improvements, modifications or inventions made by the researcher in the course of the research, and this can even include royalty or fees paid to the provider.

Incomplete agreements: The MTA should always be signed in duplicate in a bipartite agreement and signed original copies are required. The recipient must sign on two copies before sending it to the provider of the material. If the MTA requires the details of materials to be filled in, it may be done accordingly and if there is a requirement of research scope to be included, it may be attached with the document. The signature of the recipient along with date is a must and the provider would sign only on the complete agreements.

Conflicting contractual obligations: MTA that relate to other sponsored agreements or MTA must be carefully evaluated to ensure that we do not have terms between the multiple documents that conflict with one another. When the terms of an MTA conflict with another agreement, changes will have to be negotiated, and this may cause delay.

Warranty or indemnification: The organisation is a non profit entity and cannot give warranties for research, results, or materials. We cannot agree to assure a sponsor against harm or damages from use of results or materials.

Other party unwillingness to negotiate: Some MTA are presented as containing non-negotiable language. While the office of research is frequently successful in negotiating appropriate language, we cannot negotiate with a party who is unwilling to do so. The office of research will make more than one attempt to enter into a dialog, but if the other party is unwilling, our options are quite limited.

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: In order 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: In many industries MTA 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.

Loss of control of intellectual property: If MTA pre-empt 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.

Standard Material Transfer Agreements (SMTA)

No country is self-sufficient in plant genetic resources; all depends on genetic diversity in crops from other countries and regions. International cooperation and open exchange of genetic resources are therefore essential for food security. The fair sharing of benefits arising from the use of these resources has for the first time been practically implemented at the international level through the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), and its SMTA. In adopting the International Treaty, the FAO Conference requested the Commission on Genetic Resources for Food and Agriculture to act as Interim Committee for the Treaty, to decide upon the terms of the SMTA.

The Treaty aims at

- Recognizing the enormous contribution of farmers to the diversity of crops that feed the world.
- Establishing a global system to provide farmers, plant breeders and scientists with access to plant genetic materials.
- Ensuring that recipients share benefits they derive from the use of these genetic materials with the countries where they have been originated.

A legally binding treaty, which envisages a facilitated access to plant genetic resources for food and agriculture held by countries through multilateral system (MS) of exchange. This access under the Treaty would be only for utilization, conservation, research, breeding, training and

an access for chemical, pharmaceutical and other non-food and non-feed purposes is not covered by the treaty. The diversity of the legal systems of the contracting parties with respect to their national procedural rules governing access to courts and to arbitration, and the obligations arising from international and regional conventions applicable to these procedural rules, is recognized.

Role of National Bureau of Plant Genetic Resources (NBPGR) in India

Exchange of Plant Genetic Resources plays a vital role in crop improvement programmes world wide. Realizing the importance of genetic resources the erstwhile Plant Introduction Division of IARI was elevated as a separate institute NBPGR in 1976 and the unit dealing with germplasm exchange to researchers/scientists working in various research organizations in the country. The Division of germplasm Exchange has the following mandate and the activities are carried out in a systematic manner. Bureau receives a large number of requests from Indian scientists for materials already available in the country. If the desired materials are available in the Bureau, these are collected and forwarded to the indentor, or else the requests are forwarded to various sources in India and the material thus procured is forwarded to the indentor under MTA (Singh et al., 2009 and Singh et al., 2010).

Procedure for Indenting Germplasm from NBPGR/NAGS

- All the requests for supply of germplasm stored/maintained by NBPGR/NAGS should be sent to the Director, NBPGR, Pusa Campus, New Delhi-110012.
- Material Transfer Agreement (MTA) signed by recipient must be sent with the request. MTA can be downloaded from (www.nbgr.ernet.in)
- Feed back information on the performance or utilization of material along with sufficient quantity of multiplied seed must be sent to Director, NBPGR, New Delhi.

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