Material Transfer Agreements

Brief

<table>
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<tr>
<th>Title:</th>
<th>Material Transfer Agreements</th>
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<tr>
<td>Publication date:</td>
<td>9/14/2012</td>
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<td>Effective date:</td>
<td>9/20/1996</td>
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BRIEF

Policy Summary

A written Material Transfer Agreement (MTA) must be approved by Technology Transfer and Intellectual Property Management (TTIPM) before tangible research materials are provided to third parties (other than University of California staff or DOE). If a third-party provider of tangible research materials seeks to transfer the material to Berkeley Lab under an MTA, TTIPM must review and approve that MTA.

Examples of tangible research material include cell lines, transgenic plants and animals, DNA and RNA, viruses, plasmids, chemical compounds, and source code for software.

Who Should Read This Policy

Employees and affiliates who transfer tangible research materials to or from Berkeley Lab

To Read the Full Policy, Go To:

The POLICY tab on this wiki page

Contact Information

Licensing Manager
Technology Transfer and Intellectual Property Management
ttd@lbl.gov

Policy

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POLICY

A. Purpose

At times, Lawrence Berkeley National Laboratory (Berkeley Lab) needs to, or finds it useful to, transfer tangible research material to or obtain such material from third parties. A written Material Transfer Agreement (MTA) must be approved by Technology Transfer and Intellectual Property Management (TTIPM) before tangible research materials are provided to third parties (other than University of California staff or DOE). A MTA is required in order for Berkeley Lab to comply with its obligation under the UC-DOE Prime Contract to maintain the patentability of inventions, to foster appropriate technology transfer, to avoid liability for others’ use or misuse of Berkeley Lab material, and to maintain appropriate control over the material. If a third-party provider of tangible research materials seeks to transfer its material under an MTA, TTIPM must review and approve that MTA to ensure that the contractual obligations that Berkeley Lab will assume comply with DOE requirements and sound business practices.

B. Persons Affected

Employees and affiliates who transfer tangible research material to or from Berkeley Lab

C. Exceptions
D. Policy Statement

1. At times, Berkeley Laboratory needs to, or finds it useful to, transfer tangible research material or obtain such material from third parties. Examples of tangible research material include cell lines, transgenic plants and animals, DNA and RNA, viruses, plasmids, chemical compounds, and source code for software.

2. Outgoing Transfers
   a. Appropriate uses of Berkeley Lab’s outgoing transfers are to enable the recipient to evaluate the material’s potential commercial utility or the recipient’s interest in obtaining a commercial license from Berkeley Lab; to replicate, reproduce, evaluate, or confirm Berkeley Lab’s research effort; or do research furthering Berkeley Lab’s programmatic goals.
   b. Laboratory staff must observe the following procedures when Berkeley Lab transfers tangible research material to third parties (other than University of California staff or DOE). These procedures are established to enable Berkeley Lab to comply with its obligation under the UC-DOE Prime Contract to maintain the patentability of inventions, foster successful technology transfer, and avoid liability for others’ use or misuse of Laboratory material, and maintain appropriate control over the material (e.g., the use of the materials may be limited to specific projects and preclude the further transfer of the materials to non-approved recipients).
      i. Contact TTIPM when you wish to transfer Berkeley Lab tangible research material; TTIPM will prepare an MTA.
      ii. Transfer the tangible research material only after the MTA is signed by both TTIPM and the recipient.
      iii. For any tangible research material to be transferred, appropriately label and include instructions for handling as necessary for safe use.
      iv. Ship all tangible research materials through Berkeley Lab’s Shipping and Receiving Department to ensure compliance with Export Control and other applicable laws.

3. Incoming Transfers
   a. Generally, incoming transfers of tangible research material are generally not commercially available or have limited availability and are necessary or useful to further Berkeley Lab’s programmatic goals. (For purchases of tangible research materials, go through the Procurement and Property Management Department.)
   b. Laboratory staff must observe the following procedures if the third-party supplier of tangible research material requires the use of an MTA:
      i. Contact TTIPM to review the MTA and negotiate any required modifications to the contract.
      ii. Comply with the terms of the MTA. In particular:
         1. Confirm whether you can transfer the tangible research material to anyone else (virtually all MTAs prohibit transfer outside of Berkeley Lab, and many restrict transfer to a particular research group)
         2. Comply with any restrictions on use, e.g., typically for noncommercial use
         3. Comply with any pre-publication review or reporting requirements
      iii. Contact TTIPM to negotiate modifications or exceptions if you wish to use or transfer the tangible research material in a way that is not allowed by the MTA
      iv. Appropriately safeguard the tangible research material (e.g., segregate the tangible research material from Berkeley Lab materials and store it in a secure location), track the disposition of the tangible research material, and comply with return or destruction requirements either at the end of the MTA term or at the end of the research project. If the MTA requires the remaining tangible research material to be returned, send it through Berkeley Lab’s Shipping and Receiving Department, either by registered mail or a recognized courier service such as Federal Express or DHL.

E. Roles and Responsibilities

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<tr>
<th>Role</th>
<th>Responsibility</th>
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<tr>
<td>TTIPM Licensing Staff</td>
<td>• Negotiates and approves MTA and any amendments</td>
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<td></td>
<td>• Keeps MTA records</td>
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<tr>
<td>Berkeley Lab Researchers, Including Affiliates</td>
<td>• Submit or forward MTA request to TTIPM</td>
</tr>
<tr>
<td></td>
<td>• Appropriately label outgoing materials and secure third-party materials</td>
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<tr>
<td></td>
<td>• Ship through the Shipping and Receiving Department</td>
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<tr>
<td></td>
<td>• Comply with third-party MTA obligations, and request that TTIPM negotiate</td>
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<td></td>
<td>any needed changes</td>
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F. Definitions/Acronyms

<table>
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<th>Term</th>
<th>Definition</th>
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<tr>
<td>Tangible Research Material</td>
<td>Items produced in the course of research that are not generally commercially available. Tangible research material includes such items as biological materials, chemical compounds, computer software, integrated circuit chips, prototype devices, and equipment that is not yet available on the market. Tangible research material is separate and distinct from intangible (or intellectual) property such as inventions, patents, copyright, and trademarks.</td>
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Affiliates
Non-Laboratory employees engaged in on-site Laboratory activities. Affiliates are subject to training in safety and other subjects. They are also issued a Berkeley Lab identification badge. Affiliates may receive system accounts, research access to facilities, and a per diem allowance for housing and living expenses. Examples: Facility users, scientific collaborators, students

Intellectual Property (IP)
Intellectual property (IP) refers to creations of the mind: inventions, creative, literary and artistic works, and symbols, names, images, and designs used in commerce. The means to protect IP include patents, trademarks, copyright and trade secrets. Patents protect inventions. Trademarks protect words, names, symbols, sounds, or colors that distinguish goods and services. Copyrights protect works of authorship, such as writings, software, music, and works of art that have been tangibly expressed. Trade secrets are information that companies keep secret to give them an advantage over their competitors. While Berkeley Lab has discretion to secure and license patents, trademarks and copyrights, it is prohibited by DOE policy from licensing trade secrets.

Material Transfer Agreement (MTA)
A contract that governs the transfer of tangible research materials between two organizations, when the recipient intends to use it for his or her own research purposes. The MTA defines the rights and obligations of the provider and the recipient with respect to the materials and any derivatives.

Policy
Statements or directives from the federal, state, or local government; the University of California; or Berkeley Lab senior management that set a course of action, define acceptable conduct, or implement governing principles. Example: Berkeley Lab Site Access

TTIPM
Technology Transfer and Intellectual Property Management

G. Recordkeeping Requirements
- TTIPM keeps records of all material transfer agreements.
- Researchers must track the location and disposal of third-party tangible research materials obtained under an MTA.

H. Implementing Documents
None

I. Contact Information
Licensing Manager
Technology Transfer and Intellectual Property Management
ttd@lbl.gov

J. Revision History

<table>
<thead>
<tr>
<th>Date</th>
<th>Revision</th>
<th>By whom</th>
<th>Revision Description</th>
<th>Section(s) affected</th>
<th>Change Type</th>
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<tr>
<td>1/2/2012</td>
<td>0</td>
<td>H.Clark</td>
<td>Re-write for wiki (brief)</td>
<td>All</td>
<td>Major</td>
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<td>Re-write for wiki (policy)</td>
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Document Information

DOCUMENT INFORMATION

Title: Material Transfer Agreements
Document number: 03.03.001.000
Revision number: 1
Publication date: 9/14/2012
Effective date: 9/20/1996
Next review date: 9/14/2015
Policy Area: Agreements
RPM Section (home): Conduct of R&D
Source Requirements Documents


Implementing Documents

None