Northeastern University
Ocean Genome Legacy Center
430 Nahant Rd, Nahant, MA, USA 01908 | 617-373-3130 | oglinfo@northeastern.edu | ogl.northeastern.edu

Material Transfer Agreement

for provision of material with no change in ownership

Preamble

1. This AGREEMENT is for transfer of MATERIAL containing genetic resources for non-commercial analyses and research, with no change in ownership/permanent custodianship. At the end of the AGREEMENT, MATERIAL not consumed by analysis will have been returned or destroyed in accordance with the terms of this Agreement.
2. The Ocean Genome Legacy Center at Northeastern University's activities are guided by the Convention on Biological Diversity (CBD)[1] and the Nagoya Protocol on Access to GENETIC RESOURCES and the Fair and Equitable Sharing of Benefits Arising from their UTILIZATION (ABS)[2]. MATERIAL is transferred on the condition that RECIPIENT agrees to USE MATERIALS & PROVENANCE INFORMATION in compliance with international laws and conventions. This AGREEMENT is designed to promote scientific RESEARCH and EXCHANGE, whilst recognizing the terms on which the SUPPLIER originally acquired the MATERIAL. The SUPPLIER reserves the right not to supply any MATERIAL if such supply would be contrary to the terms of this Agreement and/or is not consistent with provisions of the CBD.
3. This agreement covers transfer of materials from the SUPPLIER(s) specified herein to the RECIPIENT(s) specified herein and authorizes non-commercial use only. By accepting this agreement, the RECIPIENT acknowledges that any commercial use of the original MATERIAL, its PROGENY, or UNMODIFIED DERIVATIVES requires separate agreements with all parties owning rights to this MATERIAL whether named or not named in this agreement. It is the sole obligation of the RECIPIENT to identify such parties and form such agreements.
4. Definitions of terms are provided in Annex 1 to this AGREEMENT.

Parties to AGREEMENT

SUPPLIER/PROVIDER Institution:
The Ocean Genome Legacy Center
Northeastern University, Marine Science Center
430 Nahant Rd, Nahant, 01908

RECIPIENT:

5. The SUPPLIER will supply the MATERIALS listed on Annex 2 attached to this AGREEMENT ("MATERIAL") under the following terms and conditions:

[1] http://www.cbd.int/convention/text/
[2] http://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf

Ownership of MATERIAL and relevant PROVENANCE INFORMATION and information

6. The SUPPLIER warrants that, to the best of its knowledge and belief, it is not aware of any third-party rights in the MATERIAL that would preclude it from supplying the MATERIAL to the RECIPIENT in accordance with this AGREEMENT.
7. The MATERIAL and PROVENANCE INFORMATION remain the property of the SUPPLIER. (subject to conditions set out in MUTUALLY AGREED TERMS with the Providing Country).
8. Nothing in this AGREEMENT shall or may be construed as granting the RECIPIENT any right or license to the MATERIAL and PROVENANCE INFORMATION for any USE other than the purpose described herein. Except as provided in this AGREEMENT, no rights are provided to RECIPIENT or RECIPIENT SCIENTIST under any patents, patent applications, trade secrets or other proprietary rights of SUPPLIER. RECIPIENT further acknowledges that no other right or license to the MATERIAL, their PROGENY, or DERIVATIVES or products produced thereby is granted or implied as a result of the transmission of the MATERIAL to RECIPIENT.
9. If the RECIPIENT desires to use or license the MATERIAL, PROGENY, or DERIVATIVES for COMMERCIAL PURPOSES, the RECIPIENT agrees, in advance of such use, to negotiate in good faith with the SUPPLIER and/or other parties owning rights to this MATERIAL, whether named or not named in this agreement, to establish the terms of a commercial license. It is understood by the RECIPIENT that the SUPPLIER, and/or other parties owning rights to this MATERIAL, shall have no obligation to grant such a license to the RECIPIENT, and may grant exclusive or non-exclusive commercial licenses to others, or sell or assign all or part of the rights in the MATERIAL to any third party(ies), subject to any pre-existing rights held by others and obligations.
10. The SUPPLIER shall be free, at its sole discretion, to distribute the MATERIAL to others for any USE and to USE the MATERIAL for its own purposes.
11. Unless otherwise indicated, copyright in all PROVENANCE INFORMATION supplied with the MATERIAL is owned by the SUPPLIER. The RECIPIENT may USE this PROVENANCE INFORMATION on condition that they are used solely for scholarly, education or RESEARCH purposes; that they are not used for commercial purposes; and that the RECIPIENT always acknowledges the source of the PROVENANCE INFORMATION with the words “With the permission of the Ocean Genome Legacy Center”;
12. PROVENANCE INFORMATION shall not be changed in publications without permission from the SUPPLIER (other than as required for editorial compliance etc.). Substantive modification shall be agreed with the SUPPLIER prior to publication.
13. The MATERIAL may not be transferred wholly or partially by the RECIPIENT to third parties, without prior written authorization from the SUPPLIER.
14. The RECIPIENT retains ownership of:
    i. MODIFICATIONS (except that, the PROVIDER retains ownership rights to the MATERIAL included therein), and
    ii. those substances created through the USE of the MATERIAL or MODIFICATIONS, but which are not PROGENY, UNMODIFIED DERIVATIVES or MODIFICATIONS (i.e., do not contain the ORIGINAL MATERIAL, PROGENY, or UNMODIFIED DERIVATIVES).

    Note: If either i) or ii) results from the collaborative efforts of the PROVIDER and RECIPIENT the joint ownership may be negotiated under a separate agreement.
15. Relevant documentation, as indicated below, is annexed to this document if relevant to the MATERIAL, and forms part of the AGREEMENT.

☐ Collecting Permit
☐ Mutually Agreed Terms (MAT)
☐ Prior Informed Consent (PIC)
☐ Export Permit
☐ Import Permit
☐ Letter Informing Providing Country of Third-Party Transfer
☐ CITES Registry Certificate of SUPPLIER: _____
☐ Other (please specify): _____
☐ The Internationally Recognized Certificate of Compliance (IRCC) Number(s) is/are: _____
☐ Documentation is not attached. If selected, please explain the reason for absence of documentation:

_____

16. The RECIPIENT shall maintain retrievable records linking the MATERIAL to these terms of acquisition and to any accompanying PROVENANCE INFORMATION provided by the SUPPLIER.

USE of MATERIAL and PROVENANCE INFORMATION

17. The RECIPIENT agrees that:

(a) the RECIPIENT may only USE the MATERIAL and resulting DERIVATIVES for non-commercial purposes in scientific RESEARCH, education and conservation; the RECIPIENT shall not sell, distribute or USE for profit or any other commercial application the MATERIAL, related DERIVATIVES or any direct or indirect results obtained from analysis or use of the MATERIAL.

(b) the MATERIAL:

i. is to be used for research purposes only;
ii. will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the prior written consent of the PROVIDER;
iii. is to be used only under the supervision of the RECIPIENT SCIENTIST or others working under his/her direct supervision and only for work at the RECIPIENT organization. Exceptions require the prior written consent of the PROVIDER; and
iv. will not be transferred to anyone else within the RECIPIENT organization without the prior written consent of the PROVIDER.

(c) The RECIPIENT agrees to refer to the PROVIDER any request for the MATERIAL from anyone other than those persons working under the RECIPIENT's direct supervision. To the extent supplies are available, the PROVIDER agrees to make the MATERIAL available, under a separate agreement having terms consistent with the terms of this Agreement, to other scientists (at least those at NONPROFIT ORGANIZATION(S)) who wish to replicate the RECIPIENT's research; provided that such other scientists reimburse the PROVIDER for any costs relating to the preparation and distribution of the MATERIAL.

(d) The RECIPIENT agrees to use the MATERIAL in compliance with applicable federal, state, or local laws, regulations, or ordinances, including the National Science Foundation's regulations and guidelines, such as, for example, those relating to research involving the use of animals or recombinant DNA.

Benefit-sharing

18. The RECIPIENT shall share fairly and equitably the benefits arising from their utilization of the MATERIAL, its PROGENY or DERIVATIVES in accordance with the CBD. A non-exhaustive list of non-monetary and monetary benefits is given the Annex to the Nagoya Protocol[3].

19. If, at any time, any product or process derived from MATERIALS provided under the terms of this AGREEMENT, whether or not such product or process is subject to intellectual property protection, is identified as having potential commercial USE not previously discussed with the SUPPLIER, the RECIPIENT shall immediately cease all further RESEARCH and activity undertaken in connection with the MATERIALS and shall promptly notify the SUPPLIER. The RECIPIENT shall be prohibited from continuing to engage in the activity for which the potential COMMERCIAL USE was identified until it has entered into a written agreement with the SUPPLIER or other parties that have rights to the Materials pertaining to the USE of genetic heritage and benefit-sharing.

20. The RECIPIENT will provide the SUPPLIER with copies of the publications resulting from the UTILIZATION. This Agreement shall not be interpreted to prevent or delay publication of RESEARCH findings resulting from the USE of the MATERIAL or the DERIVATIVES.

21. The RECIPIENT shall acknowledge the SUPPLIER as the source of the MATERIAL in all written and electronic publications and reports, including repository PROVENANCE INFORMATION, such as a unique identification number as provided in the PROVENANCE INFORMATION. See 45 for details regarding citation.

22. If submitting sequence data to GenBank/EMBL/DDBJ, the RECIPIENT should submit sequence data with the appropriate unique identifier provided by the SUPPLIER and provide the SUPPLIER with a list of such deposits including GenBank/EMBL/DDBJ Accession numbers. Any additional data sent to GenBank/EMBL/DDBJ should be linked to the original SPECIMEN and accession number provided by the SUPPLIER.

23. In any publication, or with submission to a public database, the RECIPIENT should include the following data USE statement: "[Data on genetic material contained in this paper/these data] are published for non-commercial USE only. UTILIZATION for purposes other than non-commercial scientific RESEARCH may infringe the conditions under which the GENETIC RESOURCES were originally accessed and should not be undertaken without contacting the [corresponding author of the paper/depositor of the sequence data] and/or seeking permission from the original provider of the genetic material."

24. The RECIPIENT agrees to acknowledge the Providing Country as the source of the MATERIAL in any and all publications arising from its utilization.

25. The RECIPIENT agrees to acknowledge the Providing Country as the source of the MATERIAL in any and all patent applications arising from its utilization.

Risks and Warranties

26. RECIPIENT assumes all liability for damages, which may arise from the use, storage, or disposal of MATERIAL AND PROVENANCE INFORMATION. PROVIDER shall not be liable to the RECIPIENT for any loss, claim, or demand made by the RECIPIENT, or made against the RECIPIENT by any other party, due to or arising from use of the MATERIAL AND PROVENANCE INFORMATION by the RECIPIENT, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the PROVIDER.

[3] http://www.cbd.int/abs/text/articles/default.shtml?sec=abs-37

27. The RECIPIENT indemnifies the SUPPLIER, its officers, employees and agents ('those indemnified') against all expenses, losses, damages and costs (including legal costs on a full indemnity basis) incurred by or awarded against those indemnified arising out of a claim by any person in relation to:

    i. the RECIPIENT's USE of the MATERIAL and PROVENANCE INFORMATION and its, and any other exercise of rights under this AGREEMENT; and

    ii. breach of this AGREEMENT by the RECIPIENT.

28. Any MATERIAL and PROVENANCE INFORMATION delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. THE SUPPLIER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF IDENTITY, SAFETY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF THE ORIGIN, IDENTITY, QUALITY, OR QUANTITY OF THE PROVIDED MATERIAL, PROGENY, AND DERIVATIVES, OR AS TO THE ACCURACY OR RELIABILITY OF ANY PROVENANCE INFORMATION PROVIDED, OR THAT THE USE OF THE MATERIAL, PROGENY AND DERIVATIVES WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.

29. The SUPPLIER is not liable for failures in any analysis (e.g., DNA extraction, PCR product, sequencing reaction, etc.).

Transport of MATERIAL

30. The RECIPIENT shall take all appropriate and necessary measures to import (and return, where appropriate) the MATERIAL in accordance with relevant laws and regulations.

31. The RECIPIENT is responsible for ensuring that it can provide all required permits to the SUPPLIER if requested.

Agreement

32. Neither party may assign or otherwise transfer this AGREEMENT and the rights acquired hereunder without the written consent of the other party. Any permitted assignee should agree in writing to be bound by the terms of this AGREEMENT.

33. Each party will ensure that its officers, employees and agents comply with the obligations imposed on it by this AGREEMENT as if personally bound by those obligations.

34. This AGREEMENT will terminate on the earliest of the following dates:

    i. on completion of RECIPIENT's current RESEARCH with the MATERIAL; or

    ii. on thirty (30) days written notice by either party to the other.

35. If termination occurs under 34(i), the RECIPIENT will discontinue its USE of the MATERIAL and, return or destroy any unconsumed MATERIAL.

    If applicable, notify the SUPPLIER in written form about the disposal of unconsumed MATERIAL and all related DERIVATIVES, such as PCR products, cycle-sequencing products or similar by-products, enabling the SUPPLIER to determine the starting point of the 20-year reporting obligation laid down in EU (No) 511/2014.

36. In the event that the SUPPLIER terminates this AGREEMENT under 34(ii), other than for breach of this AGREEMENT or conflict with prior Mutually Agreed Terms, or for cause such as an imminent health risk or patent infringement, the SUPPLIER may, at its discretion, defer the effective date of termination for a period of up to one year, upon request from the RECIPIENT, to permit completion of RESEARCH in progress.

37. Upon the effective date of termination, or if requested, the deferred effective date of termination, RECIPIENT will discontinue its USE of the MATERIAL and will, upon direction of the SUPPLIER, return or destroy any unconsumed MATERIAL and related DERIVATIVES. The RECIPIENT, at its discretion, also will either destroy the DERIVATIVES or remain bound by the terms of this AGREEMENT as they apply to DERIVATIVES.
38. The expiration or termination of this AGREEMENT shall not affect the obligations contained in this AGREEMENT.
39. The MATERIAL is provided at no cost. However, an optional transmittal fee may be requested solely to reimburse the SUPPLIER for its costs in acquisition, preparation, analysis, storage, and distribution of the MATERIAL or to defray the cost of additional services requested by the recipient. If a fee is requested by the SUPPLIER, the amount will be indicated in a transmittal document.
40. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and shall not be modified except by subsequent mutual written agreement of the parties.
41. All notices or other communications required or permitted to be made or given hereunder shall be deemed so made or given when hand-delivered or sent in writing by registered or certified mail, postage prepaid and return receipt requested, or by a nationally recognized courier service guaranteeing next-day delivery, may charges prepaid, and properly addressed to such other party as set forth above or at such other address as may be specified by either party hereto by written notice similarly sent or delivered.
42. The provisions of this Agreement are separable, and in the event any provisions of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.
43. This Agreement and any amendment thereto may be executed in counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.
44. This AGREEMENT is governed by and shall be construed in accordance with the law of the United States of America and the Commonwealth of Massachusetts.

Citations

45. The recommended format for reference citation in all publications concerning the MATERIAL is:

    "Accession ID [Specimen ID #(s)]. The Ocean Genome Legacy Center. Northeastern University. Published on the web at ogl.northeastern.edu/catalog."
46. The SUPPLIER requests that the RECIPIENT SCIENTIST inform the SUPPLIER of publications and citations concerning the MATERIAL.

IN WITNESS WHEREOF, each party has caused this instrument to be signed by its duly authorized officer on the date(s) set forth below:

	The Ocean Genome Legacy Center, Northeastern University
Recipient Institution	**Supplier/Provider Institution**
	Director, Grants & Contracts
Title	**Title**
Signature	**Signature**
Date	**Date**
	Dr. Daniel Distel
Recipient Scientist	**Supplier/Provider Scientist**
RECIPIENT CONTACT INFORMATION	**SUPPLIER/PROVIDER CONTACT INFORMATION**
	Dr. Daniel Distel
Contact Name	**Contact Name**
	Marine Science Center, Northeastern University
Building, Room Number, Department	**Building, Room Number, Department**
	430 Nahant Road
Street Address	**Street Address**
	Nahant, MA 01908; USA
City, State, Zip Code; Country	**City, State, Zip Code; Country**
	oglinfo@northeastern.edu
Email Address	**E-Mail Address**
	617-373-2576
Phone Number	**Phone Number**
Mailing address if different:	
RECIPIENT MAILING INFORMATION	
Name of Institution	
Contact Name	
Building, Room Number, Department	
Street Address	
City, State, Zip Code; Country	

Annex 1: Definition of terms

ACCESS: Permission to collect / sample GENETIC RESOURCES as granted by the country that has sovereign right over those resources (Providing Country). Note that this term has not been defined in the Convention on Biological Diversity or the Nagoya Protocol and may be used differently by some countries or organizations. An agreed definition should be included in all legal documents.

The EU Regulation defines ACCESS as 'the acquisition of GENETIC RESOURCES or of traditional knowledge associated with GENETIC RESOURCES in a Party to the Nagoya Protocol'.

AGREEMENT: this document.

COMMERCIAL PURPOSES:

For the purposes of this AGREEMENT, COMMERCIAL PURPOSES shall mean: applying for, obtaining or transferring intellectual property rights or other tangible or intangible rights by sale or license or in any other manner; commencement of product development; conducting market RESEARCH; seeking pre-market approval; and/or the sale of any resulting product or any data resulting from USE and/or analysis of this MATERIAL.

and

the sale, lease, or license of MATERIAL; or USEs of MATERIAL or PROVENANCE INFORMATION, by any organization, including RECIPIENT, to perform contract RESEARCH, to screen compound libraries, to produce or manufacture products for general sale; or to conduct RESEARCH activities that result in any sale, lease, license, or transfer of the MATERIAL or PROVENANCE INFORMATION to a for-profit organization.

The following are not considered Commercial USE:

Industrially sponsored academic RESEARCH, unless any of the above conditions of this definition are met.

Handling fees (e.g., for providing DNA samples), entrance charges etc., fall under the scope of management and/or administration of public RESEARCH facilities, do not involve the UTILIZATION of GENETIC RESOURCE, and are not considered as a commercialization of RESEARCH activity on GENETIC RESOURCE.

DERIVATIVE: means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or GENETIC RESOURCES, even if it does not contain functional units of heredity (definition from Nagoya Protocol Article 2).

EXCHANGE: also 'Transfer', and 'Permanent supply.' Permanent transfer of SPECIMENs to a Third Party.

GENETIC MATERIAL: any material of plant, animal, microbial or other origin containing functional units of heredity (definition from Nagoya Protocol, repeated from Article 2 of the Convention on Biological Diversity).

GENETIC RESOURCES: GENETIC MATERIAL of actual or potential value (definition from Nagoya Protocol, repeated from Article 2 of the Convention on Biological Diversity).

INTERNATIONALLY RECOGNIZED CERTIFICATE OF COMPLIANCE: Under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization,

Parties are to issue a permit or its equivalent at the time of access as evidence that access to genetic resources was based on prior informed consent and that mutually agreed terms were established.

Parties are required by the Nagoya Protocol to make information on the permit or its equivalent, available to the ABS Clearing-House for the constitution of the internationally recognized certificate of compliance.

MATERIAL: refers to the items listed in Annex 2 of this AGREEMENT, and means ORIGINAL MATERIAL, PROGENY, and UNMODIFIED DERIVATIVES thereof.

MATERIAL TRANSFER AGREEMENT (MTA): an agreement between two parties stipulating the terms and conditions for transferring SPECIMENs or samples, including GENETIC MATERIAL.

MODIFICATIONS: substances created by the RECIPIENT by using the MATERIAL which are not the ORIGINAL MATERIAL, PROGENY, or UNMODIFIED DERIVATIVES and which have new properties. MODIFICATIONS include, but are not limited to, recombinant DNA clones.

MUTUALLY AGREED TERMS (MAT): An agreement reached between the PROVIDING COUNTRY of GENETIC RESOURCES and users on the conditions of ACCESS and USE and the benefits to be shared between both parties.

ORIGINAL MATERIAL: that which was originally supplied to the SUPPLIER by the depositor.

PRIOR INFORMED CONSENT (PIC): The permission given by the competent national authority of a providing country to a user prior to accessing GENETIC RESOURCES, in line with an appropriate national legal and institutional framework, i.e., what a user can and cannot do with the material.

PROGENY: unmodified descendant (e.g., subculture or replicate) from the MATERIAL

PROVENANCE INFORMATION: unless otherwise stated, information, including locality and other collecting information, permits and other agreements, and any other information provided by the SUPPLIER with the MATERIAL.

PROVIDING COUNTRY / PROVIDER OF MATERIAL: (or "Country providing GENETIC RESOURCES") means the country supplying GENETIC RESOURCES collected from *in situ* sources, including populations of both wild and domesticated species, or taken from *ex situ* sources, which may or may not have originated in that country (definition from CBD Article 2).

RECIPIENT: the organization to whom the SUPPLIER sends the MATERIAL.

RESEARCH: The systematic investigation into and study of materials and sources in order to establish facts and reach new conclusions. This does not include any development of commercial applications.

SPECIMEN: This includes any type of biological material. The term “SPECIMEN” is usually synonymous with “material” or “samples” or “subsamples” in this context. The concept can include associated SPECIMENs or materials such as but not limited to parasites and gut content.

SUPPLIER: The party supplying the MATERIAL.

UNMODIFIED DERIVATIVES: replicates or substances which constitute an unmodified functional subunit or product expressed by the MATERIAL, such as, but not limited to, purified or fractionated subsets of the MATERIAL, including expressed proteins or extracted or amplified DNA/RNA.

USE: The purposes to which samples and SPECIMENs (biological and genetic material) are put, including but not limited to ‘UTILIZATION’ in the sense of the Nagoya Protocol.

UTILIZATION (OF GENETIC RESOURCES): to conduct RESEARCH and development on the genetic and/or biochemical composition of GENETIC RESOURCES, including through the application of biotechnology as defined in Article 2 of the Nagoya Protocol

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Annex 2: Description of Materials/ PROVENANCE INFORMATION to be Transferred

LISTING OF ORIGINAL MATERIAL

Item #	Type of Material	Accession Number	Scientific Name	Quantity	Distribution # and/or Invoice #

Notes: