



Northeastern University

*The Ocean Genome Legacy Center
of New England Biolabs*

430 Nahant Rd., Nahant, MA, USA 01908 781-581-7370 ext. 343 oginfo@neu.edu www.neu.edu/ogl

OCEAN GENOME LEGACY

MATERIAL TRANSFER AGREEMENT (NON-COMMERCIAL)

This agreement covers transfer of materials from the PROVIDER(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 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.

This Material Transfer Agreement is made and entered into as of the date of the last signature hereto ("Effective Date"). In consideration of the mutual agreements below, the parties agree as follows:

1. DEFINITIONS

1.1 "PROVIDER" is

The Ocean Genome Legacy Center of New England Biolabs
Marine Science Center, Northeastern University
430 Nahant Road, Nahant, MA 01908 USA

1.2 "PROVIDER SCIENTIST" is

NAME: Charlotte Seid, Ph.D.
EMAIL: c.seid@neu.edu
PHONE NUMBER: 781-581-7370 x343

1.3 "RECIPIENT" is

1.4 "RECIPIENT SCIENTIST" is

1.5 "ORIGINAL MATERIAL" is _____
(details listed in the attached table)

1.6 "MATERIAL" means ORIGINAL MATERIAL, PROGENY, and DERIVATIVES thereof.

1.7 "PROGENY" means a descendant from the MATERIAL, including altered forms of MATERIAL, such as virus from virus, cell from cell, or organism from organism. Some examples include, but are not limited to, subclones of unmodified and modified cell lines.

- 1.8 "DERIVATIVE" means all materials other than progeny that are derived in whole or in part from or made with the use of the MATERIAL. Some examples include, but are not limited to, purified or fractionated subsets of the ORIGINAL MATERIAL, proteins, monoclonal antibodies secreted by a hybridoma cell line, proteins isolated from cell lines supplied by the PROVIDER, or proteins expressed by DNA/RNA supplied by the PROVIDER, including proteins expressed from modified versions of said DNA/RNA.
- 1.9 "EVALUATION" means both the formulation of the MATERIAL and the testing of the MATERIAL.
- 1.10 "COMMERCIAL PURPOSES" means the sale, lease, or license of MATERIAL, PROGENY, or DERIVATIVES; or uses of MATERIAL, PROGENY, or DERIVATIVES 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 PROGENY or DERIVATIVES to a for-profit organization. However, industrially sponsored academic research shall not be considered a use of the MATERIAL or PROGENY or DERIVATIVES for COMMERCIAL PURPOSES per se, unless any of the above conditions of this definition are met.
- 1.11 "CONFIDENTIAL INFORMATION" is all information disclosed by either PROVIDER or PROVIDER SCIENTIST or RECIPIENT or RECIPIENT SCIENTIST relating to the MATERIAL and marked as confidential.
- 1.12 NONPROFIT ORGANIZATION(S): A university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute. As used herein, the term also includes government agencies.

2. USE OF MATERIAL

- 2.1 The RECIPIENT and the RECIPIENT SCIENTIST agree that the MATERIAL:
- (a) is to be used for research purposes only;
 - (b) 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;
 - (c) 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.
 - (d) will not be transferred to anyone else within the RECIPIENT organization without the prior written consent of the PROVIDER
- 2.2 The RECIPIENT and the RECIPIENT SCIENTIST agree to refer to the PROVIDER any request for the MATERIAL from anyone other than those persons working under the RECIPIENT SCIENTIST's direct supervision. To the extent supplies are available, the PROVIDER or the PROVIDER SCIENTIST agrees to make the MATERIAL available, under a separate implementing letter to this Agreement or other 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 SCIENTIST's research; provided that such other scientists reimburse the PROVIDER for any costs relating to the preparation and distribution of the MATERIAL.

- 2.2 The RECIPIENT SCIENTIST and RECIPIENT agree to use the MATERIAL in compliance with applicable federal, state, or local laws, regulations, or ordinances, including Public Health Service and National Institutes of Health regulations and guidelines, such as, for example, those relating to research involving the use of animals or recombinant DNA.
- 2.3 Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. THE PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF THE ORIGIN, IDENTITY, QUALITY, OR QUANTITY OF THE PROVIDED MATERIAL, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.
- 2.4 Except to the extent prohibited by law, the RECIPIENT assumes all liability for damages, which may arise from the use, storage, or disposal of MATERIAL. The PROVIDER will 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 by the RECIPIENT, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the PROVIDER.
- 2.5 This agreement shall not be interpreted to prevent or delay publication of research findings resulting from the use of the MATERIAL or the DERIVATIVES. The RECIPIENT SCIENTIST agrees to provide appropriate acknowledgement of the source of the MATERIAL in all publications.

3. CONFIDENTIAL INFORMATION

- 3.1 All CONFIDENTIAL INFORMATION of the other party identified as being confidential at the time it is provided shall be maintained in confidence by PROVIDER and RECIPIENT and shall not be used for any purpose except as permitted in this Agreement, and shall not be disclosed to any third party without the prior written consent of either party. Each party shall use the same level of care to prevent the use or disclosure of information and material of the other party as it exercises in protecting its own information of similar nature.
- 3.2 The confidentiality and non-use obligations of this Agreement shall not apply to information and material which:
 - (a) is in the public domain at the time of disclosure; or
 - (b) after disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement; or
 - (c) RECIPIENT can establish by relevant and material evidence was in its possession at the time of disclosure by PROVIDER; or
 - (d) comes to the RECIPIENT from a third party who is legally entitled to disclosure; or
 - (e) is required by law to be disclosed; or
 - (f) is approved for release by prior written authorization of PROVIDER.

4. PROPERTY RIGHTS

- 4.1 The MATERIAL is the property of the PROVIDER. 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 PROVIDER. No rights are provided to use the MATERIAL for COMMERCIAL PURPOSES.

- 4.2 RECIPIENT acknowledges that the MATERIAL is or may be the subject of a patent or patent application. The PROVIDER makes no representation or warranty that the use of the MATERIAL will not infringe any third party patent or other proprietary right.
- 4.3 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.
- 4.4 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 PROVIDER 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 PROVIDER, 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 to the Federal Government.

5. TERMS AND TERMINATION

- 5.1 This Agreement will terminate on the earliest of the following dates:
 - (a) on completion of RECIPIENT's current research with the MATERIAL; or
 - (b) on thirty (30) days written notice by either party to the other.
- 5.2 If termination occurs under 5.1(a), the RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECIPIENT will also either destroy the DERIVATIVES or remain bound by the terms of this Agreement as they apply to DERIVATIVES.
- 5.3 In the event that the PROVIDER terminates this Agreement under 5.1(b), other than for breach of this Agreement or for cause such as an imminent health risk or patent infringement, the PROVIDER will 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. 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 PROVIDER, return or destroy any remaining MATERIAL. 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.
- 5.4 Paragraph 2.4 and Sections 3 and 4 shall survive termination.
- 5.5 The MATERIAL is provided at no cost. However, an optional transmittal fee may be requested solely to reimburse the PROVIDER 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 PROVIDER, the amount will be indicated in a transmittal document.

6. MISCELLANEOUS

- 6.1 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.

- 6.2 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, 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.
- 6.3 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 must agree in writing to be bound by the terms of this Agreement.
- 6.4 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.
- 6.5 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.
- 6.6 This Agreement shall be interpreted and enforced in accordance with the laws of the State of Massachusetts.

7. CITATIONS

- 7.1 The recommended format for reference citation in all publications concerning the MATERIAL is:
“OGL Accession ID number [XXXXXX]. Ocean Genome Resource Database, The Ocean Genome Legacy Center of New England Biolabs, Northeastern University. Published on the web at: <http://www.northeastern.edu/marinescience/ogl/catalog/>; accessed [date].”
- 7.2 The PROVIDER requests that the RECIPIENT SCIENTIST inform the PROVIDER 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:

Ocean Genome Legacy

PROVIDER

Staff Scientist, Collections

Title

Charlotte Seid, Ph.D.

PROVIDER SCIENTIST

Charlotte A. Seid

Signature

Date

PROVIDER CONTACT INFORMATION

Ocean Genome Legacy

Name of Institution

Charlotte Seid, Ph.D.

Contact Name

Marine Science Center, Northeastern Univ.

Building, Room Number, Department

430 Nahant Road

Street Address

Nahant, MA, 01908 USA

City, State, Zip Code Country

781-581-7370 x343

Telephone Number

c.seid@neu.edu

E-Mail Address

RECIPIENT

Title

RECIPIENT SCIENTIST

Signature

Date

RECIPIENT CONTACT INFORMATION

Name of Institution

Contact Name

Building, Room Number, Department

Street Address

City, State, Zip Code Country

Telephone Number

E-Mail Address

MAILING ADDRESS IF DIFFERENT

PROVIDER MAILING INFORMATION

N/A

Name of Institution

Contact Name

Building, Room Number, Department

Street Address

City, State, Country, Zip Code

RECIPIENT MAILING INFORMATION

Name of Institution

Contact Name

Building, Room Number, Department

Street Address

City, State, Country, Zip Code

LISTING OF ORIGINAL MATERIAL

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

Notes: