

OCEAN GENOME LEGACY

MATERIAL TRANSFER AGREEMENT (NON-COMMERCIAL)

Note: This agreement covers transfer of materials from the Ocean Genome Legacy (PROVIDER) to recipients for non-commercial research. Commercial use of these materials requires a separate agreement and may involve additional interested parties.

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
Ocean Genome Legacy, 240 County Rd., Ipswich, Massachusetts, 01938 USA
- 1.2 "PROVIDER SCIENTIST" is
- 1.3 "RECIPIENT" is
- 1.4 "RECIPIENT SCIENTIST" is
- 1.5 "ORIGINAL MATERIAL" is
- 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.

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 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 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.

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.

5. 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.

7. MISCELLANEOUS

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 This Agreement shall be interpreted and enforced in accordance with the laws of the State of Massachusetts.

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

_____ PROVIDER	_____ RECIPIENT
_____ Signature	_____ Signature
_____ Name	_____ Name
_____ Title	_____ Title
_____ Date	_____ Date

_____ PROVIDER'S SCIENTIST	_____ RECIPIENT'S SCIENTIST
_____ Signature	_____ Signature
_____ Date	_____ Date

_____ PROVIDER CONTACT INFORMATION	_____ RECIPIENT CONTACT INFORMATION
_____ Name of Institution	_____ Name of Institution
_____ Contact Name	_____ Contact Name
_____ Building, Room Number, Department	_____ Building, Room Number, Department
_____ Street Address	_____ Street Address
_____ City, State, Country, Zip Code	_____ City, State, Country, Zip Code
_____ Telephone Number	_____ Telephone Number
_____ E-Mail Address	_____ E-Mail Address
_____	_____

MAILING ADDRESS IF DIFFERENT

PROVIDER MAILING INFORMATION

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