

NIC MTA – Subsample Transfer – General Terms and Conditions

In consideration of NIWA's provision of the Material to the Recipient, the Parties agree as follows:

1 Defined terms

In this Agreement:

Confidential Information means any information, data, material and related know-how disclosed to the Recipient by NIWA concerning the Material or NIWA's operations, which is either identified by NIWA as being confidential, or which by its nature may reasonably be regarded as being sensitive and/or of commercial value to NIWA and therefore confidential, but excludes information in the Recipient's possession prior to disclosure or information which becomes publicly known through no fault of the Recipient's. For the avoidance of doubt, the Material itself is not considered Confidential Information unless expressly identified as so by NIWA.

Cultural Intellectual Property refers to the cultural heritage, traditional knowledge and traditional cultural expressions held by indigenous and local communities, and includes mātauranga Māori.

Data means all data and information associated with the Specimens provided to the Recipient by NIWA under this Agreement, including that set out in the Agreement Details.

Inventions means any discoveries, improvements, processes, products or inventions made by the Recipient through the use of the Material.

Material means the Specimens and the Data.

Modifications means constructs derived from the use of the Material, including preparations containing DNA or RNA, genetic libraries, copies of specimen DNA or RNA or chemical syntheses of products with sequences determined by prior sequencing of the specimen DNA).

Recipient Contact means person named as the Recipient Contact in the Agreement Details.

Research Purpose means the project(s) and method(s) listed in the Agreement Details.

Specimens means the tissue samples, sub-samples or preparations supplied by NIWA to the Recipient and described in the Agreement Details.

2 The Parties and Acknowledgement

- 2.1 NIWA agrees to transfer the Specimens and provide the Data to the Recipient for the Research Purpose as set out in this Agreement, and the Recipient agrees to receive and use the Specimens and Data in accordance with this Agreement's terms.
- 2.2 The Parties recognise that the Collection provides a valuable resource aimed at promoting scientific understanding, exchange and research, and that the terms of this Agreement and the transfer of the Material and provision of the Data from the Collection are intended to promote those goals. As such, the Parties recognise the need to act towards one another in good faith at all times and to communicate honestly and respectfully regarding any issues arising under this Agreement.
- 2.3 The Recipient acknowledges this Agreement does not grant any licence to or ownership of any Cultural Intellectual Property that may be associated with the Material and agrees to respect such Cultural

Intellectual Property and its associated rights, and, if reasonably required, assist NIWA in preserving and maintaining them.

3 The Material and Data

- 3.1 The Material will be sent to the Recipient Contact at NIWA's cost unless otherwise arranged by the Parties. All risk in and responsibility for the Specimens passes to the Recipient on delivery, or, if earlier, the date NIWA notifies that the Recipient that they have been sent.
- 3.2 NIWA retains ownership of the Material at all times and except as expressly set out in this Agreement no rights in or to the Material are transferred to the Recipient. However, subject to the terms of this Agreement, the Recipient will own any intellectual property rights and Inventions (including any Modifications or derived products) it creates using the Materials.
- 3.3 NIWA grants the Recipient a non-exclusive, perpetual, royalty-free, worldwide licence (with the right to sublicense) to use, copy, modify and share the Data for the Research Purpose subject to the terms of this Agreement (including acknowledgment in accordance with clause 4.1(c)).
- 3.4 The Recipient may, if reasonably required for the purposes of the Research, undertake procedures which result in the destruction of the Specimens.

4 The Recipient's Obligations

- 4.1 In consideration of the provision of the Specimens and grant of licence for the Data under this Agreement, the Recipient agrees and warrants that it will (unless otherwise agreed by NIWA in writing):
 - a) only use the Specimens for the Research Purpose and, except as permitted by clause 5 below, will not sell, transfer, distribute or supply the Specimens to a third party without the prior written approval of NIWA;
 - b) obtain and comply with all necessary import permits and authorisations for the Specimens and provide evidence of this to NIWA on request (NIWA will on request provide reasonable assistance to the Recipient with obtaining such permits and authorisations);
 - c) cite NIWA specimen registration numbers where applicable and, as appropriate, acknowledge the Collection, research programs and identifying taxonomist(s) as specified in the Wording of Acknowledgment in the Agreement Details in any publication, presentation or display involving or relating to the Material;
 - d) provide NIWA with copies or reprints of any publications or reports relating to its use of the Material, and provide a summary of any Inventions or information or data created or collected through the Recipient's use of the Materials on NIWA's reasonable request;
 - e) subject to issues of commercial or cultural sensitivity or confidentiality, deposit any nucleic acid sequences obtained from the Specimens in a suitable public database, such as BOLD, GenBank, EMBL, DDBJ or Ira Moana, within four years of obtaining the sequences or the date of this Agreement, whichever is earlier, and provide NIWA with a

list of such deposits including accession numbers, and

- f) in event that a new species of invertebrate is described as a result of the Recipient's use of the Material, deposit the holotype and an equal share of the paratypes to the Collection in accordance with New Zealand law.

4.2 The Recipient will comply with all applicable legal or regulatory requirements, codes, ethical standards and guidelines in relation to its use, storage, handling, transfer, disposal or destruction of the Specimens, and any special conditions set out in the Agreement Details.

5 Transfer of Specimens by recipient

5.1 The Recipient may transfer the Specimens to another party provided that:

- a) the transfer is for non-commercial purposes, such as education, academic research or public collections;
- b) the third party transferee is informed about the provisions under this Agreement, and agrees to comply with the Recipient's obligations under it, including providing an undertaking in writing that any further transfer of the Material will be subject to the same obligations of the Recipient under this Agreement's, and
- c) NIWA's prior written approval to the transfer is obtained (such approval not to be unreasonably withheld).

6 Warranty and Liability

6.1 The Material delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties and is provided by NIWA on an 'as is' basis. The Recipient acknowledges that NIWA makes no representations or warranties of any kind, either express or implied, relating to the Material or use of the Material, including without limitation, the condition of the Specimens, the accuracy, currency or completeness of the Data, the non-infringement of third party rights, the use to which the Material may be put, or the results which may be obtained from using the Material. The Recipient agrees and acknowledges that it is solely responsible for its own assessment and evaluation of the Material and that the Recipient uses the Material at its own risk.

6.2 Without prejudice to clause 6.1, NIWA reserves the right to make updates, changes, corrections, additions and/or deletions to the Data. NIWA is under no obligation to supply the Recipient with such updates but will do so if possible.

6.3 NIWA accepts no liability for any loss or damage (whether direct or indirect) incurred by any person resulting from the use, storage, transport, handling, transfer or disposal of the Material and/or Modifications by the Recipient. In the event that NIWA is found liable under or in relation to this Agreement, NIWA's liability shall not exceed the monetary value of the Material provided under this Agreement.

6.4 The Recipient agrees to indemnify, hold harmless and defend (including legal fees on a solicitor client basis) NIWA from and against all damages, losses, claims, costs and expenses that may arise as a result of the Recipient's use, storage, transport, handling, transfer or disposal of the Material or Modifications, or that of a third party accessing or using the Material or Modifications through the Recipient, whether during or after the term of this Agreement.

7 General

7.1 Confidential Information is to remain strictly confidential and be maintained in confidence by the Recipient for five (5) years after its receipt or disclosure. The Recipient must not disclose any Confidential Information except to its own personnel who have a need to know unless otherwise agreed by NIWA in writing or to the extent such disclosure is required by law.

7.2 The failure of either Party to enforce or exercise any right under this Agreement will not constitute a waiver of that right and will not affect that Party's right to enforce or exercise it later.

7.3 Any notice required under this Agreement must be in writing and delivered to the relevant Party's contact person as set out in the Agreement Details. Notices will be considered properly served and effective 10 days from the date of posting if mailed by prepaid tracked airmail, on the date of delivery if given by hand, or eight hours after confirmation of receipt of transmission for email. Notices served after 17:00 on a business day or on a day that is not a business day will be considered served on the next business day.

7.4 The rights granted to the Recipient under this Agreement are personal to the Recipient and except as expressly permitted by this Agreement must not be assigned or sub-licensed without NIWA's prior written consent (not to be unreasonably withheld). Any permitted assignee must agree in writing to be bound by the terms of this Agreement.

7.5 The Parties agree to try and negotiate in good faith the resolution of any disputes that may arise under or pursuant to this Agreement.

7.6 NIWA may terminate this Agreement immediately if the Recipient breaches any term of this Agreement. On termination of this Agreement, the Recipient will destroy all Confidential Information and immediately stop using the Material and, unless agreed otherwise, will return at its cost the Material to NIWA on request.

7.7 This Agreement will be governed by and construed in accordance with the laws of New Zealand and the Parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

