

NIC Material Transfer Agreement – Loan – General Terms and Conditions

In consideration of NIWA's loan 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. 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 as set out in the Agreement Details.

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

Loan Period means the period for the loan of the Material under this Agreement as specified in the Agreement Details (such period may be extended as agreed by the Parties in writing).

Material means the Specimens and the Data.

Modifications means any constructs derived from the Recipient's 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 the person noted as the Recipient Contact in the Agreement Details.

Research Purpose means the project(s) and/or method(s) described in the Agreement Details or as otherwise agreed by NIWA in writing.

Results means all information, results and data arising from the Research Purpose that is created or generated by or on behalf of the Recipient relating to the use of the Material for the Research Purpose.

Specimens means the whole animals, tissue samples, sub-samples or preparations provided by NIWA to the Recipient under this Agreement as detailed in the Agreement Details.

2. The Parties

2.1 The Parties recognise that the Collection provides a valuable resource for scientific understanding, exchange and research and that the terms of this

Agreement and the loan of material from the Collection are intended to promote those goals while preserving the integrity of the Collection. 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.

3. The Material

3.1 The Recipient acknowledges that NIWA holds certain material on behalf of third parties and acts as the licensor and access provider for that material. NIWA and/or those third parties retain ownership of the Material, including any material contained or incorporated in Modifications. No title to or any intellectual property or proprietary rights in the Material, including any Material contained or incorporated in Modifications and resulting derivatives, are transferred to the Recipient except as expressly provided by this Agreement or as otherwise agreed in writing.

3.2 The Recipient further acknowledges that this Agreement does not grant any licence to 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.

3.3 Subject to the terms and conditions of this Agreement, NIWA grants the Recipient a non-exclusive, non-transferable and royalty-free worldwide licence to use the Material for the Research Purpose for the Loan Period.

4. Delivery of the Materials and Responsibility

4.1 The Material will be sent to the Recipient Contact's Delivery Address at NIWA's cost unless otherwise arranged by the Parties.

4.2 The Recipient is responsible for obtaining all necessary permits and authorisations for the import and export of the Specimens from or to New Zealand and will provide evidence of such permits and authorisations to NIWA on request. NIWA will on request provide reasonable assistance to the Recipient with obtaining such permits and authorisations.

4.3 On delivery, the Recipient assumes all risk and responsibility in connection with the Specimens until returned or otherwise disposed of in accordance with this Agreement. The Recipient must promptly report to NIWA any damage to or loss of the Specimens.

5. Use of the Material

5.1 Unless otherwise consented to by NIWA in writing, the Recipient will:

- a) only use the Material for the Research Purpose and not modify or change the Research Purpose in any way;
- b) not alter the Specimens in any way, including by dissection, genetic sampling, sectioning, taking casts or moulds of them, coating them for scanning electron microscopy (SEM) or for

micro CT scanning;

- c) not use the Material, or any Modifications, photographs, illustrations or 3D models of the Specimens for profit-making or commercial purposes without first entering into an appropriate licence or agreement with NIWA relating to that use (NIWA will negotiate with the Recipient in good faith but is under no obligation to enter into such a licence or agreement);
- d) not use the Specimens for administration to human subjects, or for therapeutic or for diagnostic use, and
- e) only use the Material at the Recipient's institutional facilities under the direction of the Recipient Contact and not otherwise sell, transfer, distribute or supply the Material or Modifications to any third party.

5.2 In addition, the Recipient must:

- a) Use, store, transport, handle and, if applicable destroy or dispose of, the Material in accordance with current best practice and procedure, all applicable domestic and international legal or regulatory requirements, any Special Conditions set out in the Agreement Details and all reasonable instructions provided by NIWA.
- b) Keep the Material secure and take all reasonable and necessary steps to preserve the Specimens and protect them from damage, including damage from insects and other pests, humidity, heat, light, and food and drink. Specimens sent out in preservative must be securely maintained and not allowed to dry out.
- c) Not separate labels or tags from the Specimens or alter them in any way, and ensure that any annotations related to the Specimens such as re-identification, type designations, or comments are made on a new label which includes the name of the responsible individual and year.
- d) Provide NIWA with reasonable access to the Specimens as required.

6. Return of Material

- 6.1 Unless otherwise agreed in writing and at the end of the Loan Period or termination of this Agreement, the Recipient must at its cost return to NIWA all the Material and any Modifications containing or incorporating the Material.
- 6.2 All international loans must be returned by tracked airmail or courier and comply with all domestic and international regulations. Specimens preserved in fluid must be securely packed in double heat-sealed plastic packaging with absorbent material and sent in accordance with Special Provision A180 of the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air/ IATA Dangerous Goods Regulations (DGR). Primary-type Specimens must be accompanied by a Protected Objects Act 1975 (NZ) temporary export permit and returned to NIWA within the specified time limit of that permit.
- 6.3 The Recipient must notify the NIWA Collection Manager before returning the Material to NIWA.

7. Inventions and Confidentiality

- 7.1 The Recipient will promptly notify NIWA on a confidential basis of any Inventions prior to their public disclosure. Subject to clauses 3.1, 3.2 and 7.2, the Recipient will own the Inventions, including any

Modifications or derivatives it creates under this Agreement.

- 7.2 To the extent that any Inventions include or incorporate the Material (or part of the Material), then the ownership and benefit sharing of such Inventions will be determined by agreement between the Parties acting in good faith and taking into account each Party's intellectual contribution and the role of the Material in their creation.
- 7.3 Confidential Information is to remain strictly confidential and be maintained in confidence by the Recipient for five (5) years after 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.

8. Publication and Results

- 8.1 Subject to clause 8.2 and the confidentiality obligations under this Agreement, the Recipient may publish or present the Results and will provide NIWA, free of charge, with a copy or reprint of any such publication or presentation either prior to or as soon as practicable after its publication or presentation.
- 8.2 The Recipient will cite NIWA specimen registration numbers and will acknowledge as appropriate 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 resulting from or relating to the Research Purpose and the Material.
- 8.3 If type specimens are designated from the Specimens on loan from NIWA, registration numbers must be attached to the Specimens and quoted with the published descriptions. The holotype and half of the paratype series are to be deposited at the Collection unless otherwise agreed.
- 8.4 The Recipient will provide NIWA with a summary of the Results on request.
- 8.5 The Recipient will provide any additional information collected on or created about the Specimens (for example, measurements, images, video, DNA sequences) at no charge to NIWA either as created or on expiry or termination of this Agreement. Due acknowledgement of the author(s) of this information will be recorded in the Collection database.
- 8.6 Unless otherwise agreed for cultural reasons or issues of commercial sensitivity or confidentiality, the Recipient must 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.

9. Warranty and Liability

- 9.1 The Material delivered under this Agreement is understood to be experimental in nature and may have hazardous properties and is provided by NIWA on an 'as is' basis. To the extent permitted by law and except as expressly provided in this Agreement, NIWA makes no representations or warranties of any kind, either express or implied, relating to the Material or its use, 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.
- 9.2 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 the Recipient's own risk.

- 9.3 Without prejudice to clause 9.1, 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.
- 9.4 To the extent permitted by law NIWA will not be liable under or in relation to this Agreement, whether in contract, tort (including negligence or breach of statutory duty) or otherwise for:
- a) any loss or damage incurred by any person through the use of or reliance on the Material or Modifications;
 - b) any indirect, special, incidental or consequential loss or damage, including economic loss, loss of profit, revenue, opportunity, or business;
 - c) any liability arising from personal injury or death, and
 - d) any liability arising from the infringement of any third party's intellectual property rights.

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.

- 9.5 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, handling, storage, transport, destruction 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.

10. Term and Termination

- 10.1 This Agreement is effective from the date it is signed by both Parties and will expire at the end of the Loan Period unless otherwise terminated in accordance with this Agreement.
- 10.2 NIWA has the right to recall the Material at any time and for any reason with 30 days written notice and this Agreement will terminate at the end of this notice period.
- 10.3 Either Party may terminate this Agreement upon sixty (60) days' written notice.
- 10.4 NIWA may terminate this Agreement immediately if the

Recipient breaches any term of this Agreement; or becomes, or appears likely to become, insolvent, bankrupt, wound up or otherwise unable to perform its obligations under this Agreement.

- 10.5 On termination or expiry of this Agreement, the Recipient must at its cost: return to NIWA all the Material and any Modifications containing or incorporating the Material unless agreed otherwise in writing, and destroy all of NIWA's Confidential Information.

11. General

- 11.1 The rights granted to the Recipient under this Agreement are personal to the Recipient and must not be assigned, transferred or sub-licensed without NIWA's prior written consent.
- 11.2 This Agreement is the entire agreement between the Parties and supersedes all prior agreements, representations, understandings and negotiations in relation to its subject matter. Amendments to this Agreement must be in writing and signed by the Parties.
- 11.3 The provisions of this Agreement which by their nature survive termination or expiry or which are stated to survive, including as to ownership, intellectual property, confidentiality, liability, warranty and publication, will survive expiry or termination of this Agreement.
- 11.4 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.
- 11.5 Any notice required under this Agreement must be in writing and delivered to the relevant Party's contact 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.
- 11.6 The Parties agree to try and resolve any disputes that may arise under or in connection with this Agreement through negotiation, consultation and discussion with each other in good faith in the first instance.
- 11.7 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.