

**NON-EXCLUSIVE SITE LICENSE FOR EXPRESSION OF POLYPEPTIDES IN YEAST
FOR RESEARCH USE ONLY**

THIS license agreement (the "AGREEMENT"), entered into as of the ___ day of _____, _____ (the "EFFECTIVE DATE"), is by and between Washington Research Foundation ("WRF"), a Washington State non-profit corporation having an office at 2815 Eastlake Avenue East, Suite #300, Seattle, Washington 98102, and _____ ("LICENSEE"), a corporation having administrative offices at _____.

WHEREAS, the technology entitled "Expression of Polypeptides in Yeast" is covered by certain PATENT RIGHTS, defined below, and those PATENT RIGHTS are owned jointly by WRF, by assignment from the University of Washington, and Genentech, Inc. (hereinafter, "GENENTECH"), a company having a place of business at 1 DNA Way, South San Francisco, CA 94080-4990;

WHEREAS, WRF is acting as the sole and exclusive licensor of the PATENT RIGHTS to be granted by this AGREEMENT;

WHEREAS, LICENSEE desires to obtain certain license rights to conduct research under the PATENT RIGHTS at LICENSEE'S affiliated research facilities (hereinafter "SITES") listed in Appendix A;

NOW THEREFORE, in consideration of the premises and mutual covenants herein, LICENSEE and WRF, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

1.1 "PATENT RIGHTS" shall mean WRF's rights to all claims in the United States and foreign patents and patent applications listed in Appendix B, attached hereto and a part of this AGREEMENT, patents issuing from those patent applications, and any and all divisions, continuations, continuations-in-part, extensions, substitutions, re-examinations, renewals and reissues arising therefrom or issued thereon.

1.2 "RIGHTS UNAVAILABLE" shall mean the rights that are not available to LICENSEE under this AGREEMENT. LICENSEE acknowledges that RIGHTS UNAVAILABLE are the subject of prior rights granted to third parties, and that no right, express or implied, is granted hereunder to any RIGHTS UNAVAILABLE. As of the EFFECTIVE DATE, RIGHTS UNAVAILABLE include the expression of any polypeptide from any human papillomavirus.

1.3 “LICENSED PROCESSES” shall mean any method(s) or process(es), the practice of which directly infringes, contributorily infringes or induces the infringement, literally or by the doctrine of equivalents, of a patent claim under the PATENT RIGHTS, but for this AGREEMENT.

1.4 “LICENSED PRODUCTS” shall mean products, including but not limited to compositions of matter, which, in the course of their manufacture, development, use or sale, directly infringes, contributorily infringes or induces the infringement, literally or by the doctrine of equivalents, of a patent claim under the PATENT RIGHTS, but for this AGREEMENT. For the avoidance of doubt, LICENSED PRODUCTS shall specifically exclude the products whose expression falls within RIGHTS UNAVAILABLE, as stated herein or as amended as allowed under Paragraph 1.2.

1.5 “INTERNAL RESEARCH” shall mean making and using LICENSED PRODUCTS and/or LICENSED PROCESSES solely at the SITES. INTERNAL RESEARCH includes the right of LICENSEE to conduct research falling within the PATENT RIGHTS under contract with third parties.

2. GRANT

2.1 Subject to the terms and conditions of this AGREEMENT, WRF hereby grants to LICENSEE a non-transferable, limited, non-exclusive, SITE license under PATENT RIGHTS solely for INTERNAL RESEARCH.

2.2 This AGREEMENT shall expire on April 8th of each year, and shall be renewable for the life of the PATENT RIGHTS upon payment of the RENEWAL FEE, as per Section 3.2.

2.3 LICENSEE shall have no right to assign, sublicense or otherwise transfer this AGREEMENT or any rights granted hereunder to any third party, except as provided in Section 6.6.

2.4 LICENSEE shall have the right to transfer to a third party research quantities, not intended for resale, of LICENSED PRODUCTS; provided that, within thirty (30) days of such transfer, LICENSEE provides notification to WRF in the form of copies of signed Material Transfer Agreements or other supporting documentation.

2.5 For the avoidance of doubt, a transfer of LICENSED PRODUCTS to a third party shall not constitute a transfer of rights or sublicense under this AGREEMENT

3. LICENSE AND RENEWAL FEES

3.1 LICENSEE shall pay WRF a non-refundable license fee for each SITE at which LICENSEE conducts INTERNAL RESEARCH as listed in Appendix A. Such fee shall be \$5,000 for one SITE, \$8,000 for two SITES, and an additional \$2,000 for each SITE thereafter. Said license fee shall be due and payable within fifteen (15) days from the EFFECTIVE DATE. Should the EFFECTIVE DATE be other than April 8th, the license fee shall be prorated based on a year of 365 days.

3.2 LICENSEE shall pay WRF an annual non-refundable fee (“RENEWAL FEE”) for each SITE at which LICENSEE conducts INTERNAL RESEARCH. Such fee shall be \$5,000 for one SITE, \$8,000 for two SITES, and an additional \$2,000 for each SITE thereafter. Said RENEWAL FEE shall be due and payable on every April 8th by invoice from WRF to maintain the AGREEMENT.

Within thirty (30) days of initiating INTERNAL RESEARCH at an additional SITE, LICENSEE shall provide WRF with an updated Appendix A, accompanied by an additional RENEWAL FEE as per the above schedule, prorated based on a year of 365 days.

The RENEWAL FEE shall be subject to increase on an annual basis as follows:

- i. such increase in any given year shall be not more than ten percent (10%) greater than the prior year’s RENEWAL FEE; notwithstanding increases to the RENEWAL FEE due to the addition of SITES to Appendix A.
- ii. WRF shall provide thirty (30) days advance written notice of such increases to the RENEWAL FEE.

3.3 All payments made pursuant to this AGREEMENT shall be payable in United States Dollars to Washington Research Foundation, 2815 Eastlake Avenue East, Suite #300, Seattle, Washington 98102, Attention: Controller. Invoices shall be sent to: _____

4. REPRESENTATIONS AND WARRANTIES

4.1 WRF represents that, to the best of WRF’s knowledge, information and belief:

- i. it has the full right, power and authority to grant a license to the PATENT RIGHTS granted herein;
- ii. it has the full right, power and authority, and has taken all corporate action necessary, to execute, deliver and perform this AGREEMENT;
- iii. it intends this AGREEMENT to create a legal, valid and binding obligation, enforceable in accordance with the terms and conditions hereof; and
- iv. no consent, permit or authorization of any governmental agency or third party is legally required for it to execute, deliver and perform the AGREEMENT except such as have already been obtained.

4.2 LICENSEE represents that, to the best of LICENSEE’s knowledge, information and belief:

- i. it has the full right, power and authority, and has taken all corporate actions necessary, to execute, deliver and perform this AGREEMENT;
- ii. it intends this AGREEMENT to create a legal, valid and binding obligation, enforceable in accordance with the terms and conditions hereof; and

- iii. no consent, permit or authorization of any governmental agency or third party is legally required for it to execute, deliver and perform the AGREEMENT except such as have already been obtained.

4.3 Nothing in this AGREEMENT shall be construed as:

- i. a warranty or representation by WRF as to the validity, enforceability or scope of the PATENT RIGHTS; or
- ii. an obligation to bring or prosecute actions or suits against third parties for infringement; or
- iii. a requirement that WRF shall file any patent application, secure any patent, or maintain any patent in force; or
- iv. an obligation by either party to furnish any manufacturing or technical information; or
- v. granting by implication, estoppel, or otherwise, any licenses or rights under patents of WRF other than PATENT RIGHTS, regardless of whether such other patents are dominant of or subordinate to any patents within PATENT RIGHTS; or
- vi. conferring a right to use in advertising, publicity, or otherwise any trademark or trade name of WRF, GENENTECH or University of Washington.

4.4 The PATENT RIGHTS are provided on an “as is” basis. WRF makes no representations or warranties:

- i. of commercial utility;
- ii. of merchantability or fitness for a particular purpose; or
- iii. that the manufacture or use of the PATENT RIGHTS, LICENSED PRODUCTS, or LICENSED PROCESSES will not infringe any patent, copyright or trademark or other proprietary rights of others.

WRF shall not be liable to LICENSEE, LICENSEE’s successors or assigns or any third party with respect to any claim arising from the use of the PATENT RIGHTS or use or sale of LICENSED PRODUCTS or products made using LICENSED PROCESSES; or any claim for loss of profits, loss or interruption of business, or for indirect, special or consequential damages of any kind.

5. TERM AND TERMINATION

5.1 Unless terminated earlier as provided in the following Sections of this Article 5, this AGREEMENT shall expire upon the expiration or invalidation by a court of competent jurisdiction from which no appeal has been or can be taken of the last to expire of the patent(s) included in the PATENT RIGHTS in the country(ies) in which LICENSEE is practicing the rights granted in this AGREEMENT, provided that the RENEWAL FEES are timely paid.

5.2 LICENSEE shall have the right to terminate this AGREEMENT at any time for any reason upon written notice to WRF.

5.3 This AGREEMENT shall terminate if LICENSEE breaches any material obligation under this AGREEMENT and if, after thirty (30) days' notice of said breach to LICENSEE, LICENSEE fails to cure such material breach.

5.4 Articles 2.4, 2.5 and 6 shall survive termination of this AGREEMENT.

5.5 Termination or expiration of this AGREEMENT in accordance with the provisions hereof shall not limit remedies of either party that may otherwise be available at law or in equity, subject to the terms of this AGREEMENT.

6. MISCELLANEOUS RIGHTS AND OBLIGATIONS

6.1 This AGREEMENT, including Appendix A, represents the full and complete understanding between the parties, and there are no agreements, understandings, representations or warranties of any kind between the parties except as expressly set forth in this AGREEMENT.

6.2 LICENSEE confirms and agrees that this AGREEMENT grants no express or implied right or license of any kind (without limitation) to:

- i. make or use LICENSED PRODUCTS or to practice the LICENSED PROCESSES for any purpose other than INTERNAL RESEARCH; or
- ii. have made, offer to sell, sell, or import LICENSED PRODUCTS; or
- iii. distribute LICENSED PRODUCT(S) to third parties except as allowed under Section 2.4; or
- iv. use LICENSED PRODUCT(S) for the treatment, prevention, diagnosis or monitoring of human or veterinary disease.

If LICENSEE desires to commercialize LICENSED PRODUCTS, LICENSEE must apply for a separate commercial license from WRF. WRF shall have the right to grant or deny any request for such a commercial license at its sole discretion.

6.3 This AGREEMENT shall not be amended or modified except by an instrument in writing duly executed by the parties and stating the parties' intent by such instrument to amend or modify this AGREEMENT; provided that, for the avoidance of doubt, Section 6.3 shall not limit the right of WRF to change the RENEWAL FEE as expressly provided in Section 3.2 and to amend the RIGHTS UNAVAILABLE definition as expressly provided in Section 1.2, and the duty of LICENSEE to update Appendix A as needed, as expressly required by Section 3.2.

6.4 A waiver of any breach of this AGREEMENT or a failure to enforce any of the terms or conditions of this AGREEMENT shall not in any way affect, limit or waive a party's rights hereunder at any time to enforce strict compliance thereafter with any and every term and condition of this AGREEMENT.

6.5 Any payment, notice or other communication required from either party, if delivered in writing, shall be sent by first-class mail, facsimile, or commercial carrier with return receipt requested to the respective address given below, or to such other address as either party shall designate by written notice. If delivered via electronic communication, the sending party shall also promptly confirm via

first-class mail or commercial carrier.

In the case of WRF to:

Washington Research Foundation
2815 Eastlake Avenue East, Suite 300
Seattle, Washington 98102
Fax: 206-336-5615
Attention: President
with a copy to: Director of Licensing

In the case of LICENSEE to:

Attention: _____

with a copy to:

or to such other address for such party as it shall have specified by like notice to the other party, provided that notices of a change of address shall be effective only upon receipt thereof. If sent by messenger or express courier service, the date of receipt (in the case of personal delivery) or the third business day after the date of dispatch (in the case of courier service) shall be deemed to be the date on which such notice or other communication has been given. If notice is given by fax, the date of receipt shall be deemed the business day such fax was transmitted.

6.6 This AGREEMENT shall inure to the benefit of, and shall be binding upon, the successors and permitted assigns of the respective parties hereto; provided that LICENSEE may only assign this AGREEMENT, with prior written notice to WRF, to the corporate successor to all or substantially all of LICENSEE's assets to which this AGREEMENT pertains.

6.7 LICENSEE shall indemnify, defend and hold harmless WRF, GENENTECH and the University of Washington, and their respective directors, regents, officers, employees and representatives (collectively, "INDEMNITEES") from and against any and all losses, claims (based on any theory, including, without limitation, claim of personal injury, product liability or property damage), damages, demands, suits, actions, investigations, penalties, fines, liabilities, costs and expenses (including, without limitation, reasonable attorney's fees and reasonable expenses imposed upon or incurred by INDEMNITEES) (collectively, "LOSSES") based on or arising (i) out of a claim, suit or proceeding against LICENSEE based on or arising out of LICENSEE's exercise of the rights granted under this AGREEMENT; or (ii) out of LICENSEE's research, development or use in any way of the technology covered by the PATENT RIGHTS; or (iii) breach by LICENSEE of any covenant or agreement contained in this AGREEMENT; or (iv) out of the negligence or willful misconduct of LICENSEE or any of its employees, agents or others acting under its direction or with its authority, except to the extent caused by the gross negligence or willful misconduct of INDEMNITEES.

6.8 INDEMNITEES shall promptly notify LICENSEE of any LOSSES of which they become aware subject to the provisions of Section 6.7. LICENSEE shall have the right to defend any such claim or action, at its cost and expense. LICENSEE shall not settle or compromise any such claim or action in a matter that imposes any restrictions or obligations on WRF or grants any rights to the PATENT RIGHTS, LICENSED PRODUCTS, or LICENSED PROCESSES without WRF's prior written consent. If LICENSEE fails or declines to assume the defense of any such claim or action within ninety (90) days after notice thereof, WRF may assume the defense of such claim or action for the account and at the risk of LICENSEE, and any LOSSES related thereto shall be conclusively deemed a liability of LICENSEE. LICENSEE shall promptly pay to the INDEMNITEES any LOSSES to which the indemnity of Section 6.7 relates, as incurred. The indemnification rights of INDEMNITEES contained in Sections 6.7 and 6.8 are in addition to all other rights which such INDEMNITEES may have at law or in equity or otherwise.

6.9 This AGREEMENT is and shall be deemed made and entered into in the State of Washington, and this AGREEMENT and the relationship between the parties shall be governed in all respects by the laws of the State of Washington, without respect to its choice-of-law rules; provided that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent has been granted. The parties agree that the exclusive venue of any lawsuit based on or arising out of this AGREEMENT shall be and remain in the federal or state courts located in King County, Washington, and they hereby consent to the personal jurisdiction of such courts for the purpose of enforcing the provisions of this AGREEMENT; provided that WRF may, if reasonably necessary to protect its rights hereunder, seek injunctive relief in any appropriate venue. The prevailing party in any action based on or arising out of this AGREEMENT shall, as part of whatever judgment may be awarded, be entitled to recover from the other party its litigation costs and expenses including, without limitation, reasonable fees and expenses for attorneys and consultants.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have caused this AGREEMENT to be executed as of the EFFECTIVE DATE.

[COMPANY NAME]_____	WASHINGTON RESEARCH FOUNDATION
Signature _____	Signature _____
Printed _____	Printed _____
Title _____	Title _____

APPENDIX A

LICENSEE'S LIST OF SITES PERFORMING INTERNAL RESEARCH

SITE	ADDRESS (Street Address, City, State, Zip)
1	
2	
3	
4	

APPENDIX B

Country	Patent App. No.	Filing Date	Status	Patent Number	Issue Date	Expiry Date
U.S.A.	08/474,333	06/07/95	Issued	5,618,676	04/08/97	04/08/14
U.S.A.	08/465,931	06/06/95	Issued	5,854,018	12/29/98	04/08/14
U.S.A.	08/465,986	06/06/95	Issued	5,856,123	01/05/99	04/08/14
U.S.A.	08/465,927	06/06/95	Issued	5,919,651	07/06/99	04/08/14