

**AGREEMENT FOR THE ACCESS TO AND USE OF DSM'S SEQUENCED
ASPERGILLUS NIGER GENOME**

This agreement is made and entered into on this ___ day of _____, 200-, by and between:

1. **[RESEARCHER]**, a **[university/research institute]** established at **[address]**, ("RESEARCHER"), of the one part; and

2. **DSM Research B.V.**, a company incorporated under the laws of The Netherlands and established at **[address]**, The Netherlands, acting also on behalf of its affiliated companies ("DSM"), of the other part;

hereinafter sometimes individually referred to as "**Party**" and collectively as "**Parties**".

WITNESSETH

WHEREAS, DSM avails of the sequence of the *Aspergillus niger* genome and is willing to share information with universities and non profit research organisations about the genome; and

WHEREAS, RESEARCHER - for purposes of research - is interested in the genome and is willing to share the results of its research into the genome with DSM;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions herein contained, the Parties hereto have agreed and do by these presents agree as follows:

ARTICLE 1 - DEFINITIONS

In addition to the terms defined elsewhere in this Agreement the following terms shall, as used herein, have the following respective meanings:

1.1 "**Agreement**", shall mean: this agreement;

1.2 "**Commencement Date**", shall mean: _____;

1.3 "**Genome**", shall mean: (parts of) the sequenced DSM *Aspergillus niger* genome;

- 1.4 "**Information**", shall mean: any and all data, know-how, instructions and other information relating to the Genome disclosed by DSM to RESEARCHER of any or in any form;
- 1.5 "**Investigator**", shall mean: RESEARCHER's supervisor of the Research;
- 1.6 "**Results**", shall mean: any and all data, know-how and inventions, stemming from the Research, whether or not patentable;
- 1.7 "**Research**", shall mean: the research by RESEARCHER into the Genome;
- 1.8 "**Research Participants**", shall mean: RESEARCHER's employees working under direct supervision and control of Investigator;
- 1.9 "**Website**", shall mean: DSM's website regarding the Genome at "http:\\[----]".

ARTICLE 2 - TERM AND TERMINATION

This Agreement shall be effective as from the Commencement Date and will remain in force until termination by one of the Parties subject to a notice period of three (3) months. Upon termination of the Agreement, RESEARCHER shall no longer request for Information or for access to the computer on DSM's premises as mentioned in the **Articles 4.1, 4.2 and 4.3**.

ARTICLE 3 - USE OF THE WEBSITE

3.1 RESEARCHER's requests for Information shall be done according to the instructions on the Website. Requests for Information can only be done after identification of RESEARCHER by a username and password.

3.2 Upon signing this Agreement DSM will provide a username and a password to RESEARCHER to be used by the Investigator and Research Participants mentioned in the Annex to this Agreement. The username and password shall be used solely by Investigator and Research Participants who agree to abide by the terms and conditions of this Agreement.

3.3 RESEARCHER is required to keep the username and password secret in order to prevent intrusion by unauthorized persons. RESEARCHER is further required to adopt a policy of regularly reviewing authorizations. In order to minimize the potential for unauthorized access DSM will provide Researcher with a new password at regular time intervals.

ARTICLE 4 - CONTRIBUTION BY DSM

4.1 DSM shall, upon RESEARCHER's request for Information, provide RESEARCHER with Information relating to the Genome to the extent as DSM may decide in its own discretion.

4.2 RESEARCHER can request the following kind of Information from DSM:

(i) Information regarding a gene, a set of genes or any other Information contained in the Genome. An example of such Information is the DNA-sequence of a particular set of proteins (e.g. the class of intracellular proteases) that RESEARCHER is interested in;

(ii) Information resulting from BLAST (Basic Local Alignment Search Tool) queries submitted by RESEARCHER to the Genome. BLAST queries will be restricted in size (number of base pairs or amino acids submitted), frequency (number of BLAST queries allowed per time) and Information provided (number of base pairs, protein sequences or hits). Actual restrictions will be published on the Website;

(iii) An ID-listing of genes present in the *Aspergillus niger* GeneChip® array in order to identify genes on the GeneChip® arrays. The possibility of Research by using GeneChip® arrays is described in **Article 4.4**.

4.3 RESEARCHER can request access to a computer on DSM's premises in Delft, the Netherlands, containing Information. RESEARCHER can make an appointment for the use of this computer via RESEARCHER's contact person within DSM.

4.4 RESEARCHER will be entitled to buy DSM's proprietary *Aspergillus niger* GeneChip® arrays from Affymetrix, Inc., the manufacturer of the *Aspergillus niger* GeneChip® arrays, whose address is:

3380 Central Expressway
Santa Clara, California 95051

Tel: + 408 731 5000
Fax: + 408 481 0422
www.affymetrix.com

or through a local Affymetrix representative. RESEARCHER will have to agree separately with Affymetrix, Inc., on the terms and conditions of the purchase and sale and subsequent analysis of the arrays. DSM will not charge a license fee to RESEARCHER regarding the purchase and use of any *Aspergillus niger* GeneChip® array.

ARTICLE 5 - CONTRIBUTION BY RESEARCHER

5.1 RESEARCHER shall have the Research performed through its **[faculty/department]** of **[name]** by Research Participants under the responsibility and supervision of the Investigator.

5.2 RESEARCHER shall make a list with the Investigator and all Research Participants concerned. This list will be attached as Annex 1 to this Agreement.

5.3 The obligations arising out of this Agreement for RESEARCHER apply *mutatis mutandis* for the Investigator and Research Participants.

ARTICLE 6 - REPORTING REQUIREMENT

As long as the Research lasts, every six (6) months a progress report regarding the Results shall be written under the supervision of the Investigator and shall be submitted to DSM. The first progress report shall be submitted within seven (7) months after the Commencement Date. Every progress report exist of at least a summary regarding the Results obtained in the foregoing period.

A final report regarding the Results will be submitted to DSM within a month after termination of the Research.

ARTICLE 7 - SECRECY

7.1 Unless agreed to otherwise in this Agreement, the RESEARCHER shall maintain the secrecy of all Information and Results and shall not in any way or at any time make use thereof for a period of five (5) years from the Commencement Date or until publication or filing of patent applications as set forth in the **Articles 9 and 8** whichever first occurs.

7.2 The obligations contained in **Article 7.1** shall not apply to Information and Results which:

- (i) are or become generally available to the public other than as a result of a disclosure by RESEARCHER;
- (ii) are or become available to RESEARCHER on a non-confidential basis from a source, other than DSM, which is not prohibited from disclosing such information to RESEARCHER by a legal, contractual or fiduciary obligation to DSM;
- (iii) was known to RESEARCHER prior to the disclosure by DSM to RESEARCHER as RESEARCHER shall have to demonstrate by competent proof thereof.

7.3 The obligations set forth under **Article 7.1** shall furthermore not apply to Information and Results which RESEARCHER is required to disclose in prosecuting or defending litigation or to comply with applicable governmental regulations, in which case RESEARCHER shall so inform DSM and the Parties shall first discuss on and take any necessary measures to keep the Information and/or Results confidential as much as possible.

7.4 RESEARCHER shall not disclose Information and Results to any persons other than the Investigator and Research Participants. RESEARCHER guarantees that the Investigator and Research Participants will maintain the secrecy thereof and not use the same in any way or at any time except as provided for in the **Articles 7.1, 7.2 and 7.3** and for the purpose of this Agreement.

ARTICLE 8 - INTELLECTUAL PROPERTY RIGHTS

8.1 RESEARCHER grants to DSM a royalty-free, worldwide non-exclusive license to patents on Results. Such license shall include the right to make, have made, use, sell, offer for sale, export and import products embodying such patents and to enter into contracts with third parties for doing the same.

8.2 RESEARCHER furthermore grants to DSM a time-limited option to negotiate a worldwide, exclusive license to, or assignment to DSM of, patents on Results. Such license shall be exclusive for fields of application that will be

indicated by DSM and will generally encompass food, feed, pharma and transformations of fine chemicals.

- 8.2 DSM's option to negotiate an exclusive license or assignment according to **Article 8.1** shall remain in effect for a period of six (6) months from the date that RESEARCHER discloses the patent on Results to DSM in writing. DSM may extend the option period for an additional six (6) months in exchange for payment of patent expenses. Upon DSM's exercise of this option in writing, the Parties agree to negotiate in good faith the terms and conditions of a license customary in the industry for agreements of that type. It is understood between the Parties that compensation for an exclusive license or assignment will preferably in the form of a single or milestone related payment to be made by DSM.
- 8.4 If DSM elects to exercise its option to an exclusive license or an assignment, DSM shall assume all costs - as agreed on between the Parties prior to being occurred - associated with securing and maintaining patent protection for such Results whether or not a patent issues. Such applications shall be prepared and prosecuted by RESEARCHER in consultation with DSM. DSM shall have a 90-day negotiation period from the date of election to conclude a license with RESEARCHER. If DSM does not elect to secure such an exclusive license or assignment, rights to the Results shall be disposed of in accordance with RESEARCHER's policies, with no further obligations to DSM. For the avoidance of doubt it is confirmed that DSM's rights as defined under **Article 8.1** will not be affected if no agreement on an exclusive license or assignment can be reached.
- 8.5 In the event DSM is of the opinion that the Results contains patentable subject matter and RESEARCHER is not interested in filing patent applications within one (1) month after DSM informed RESEARCHER thereof, DSM is entitled to file patent applications on the subject. The Parties agree to negotiate in good faith the terms and conditions of a license back to RESEARCHER for RESEARCHER's research purposes.
- 8.6 DSM reserves amongst others the right to file patent applications regarding the Genome and to publish the full

Genome. RESEARCHER will be notified prior to DSM's publication of the full Genome. In the event of such a publication DSM shall terminate the Agreement according to **Article 2**.

ARTICLE 9 - PUBLICATIONS BY RESEARCHER

9.1 As long as the Research lasts, RESEARCHER shall be entitled to publish and make presentations in respect of methods of the Research and the Results under the provision that RESEARCHER will give DSM the opportunity to review all such proposed publications and presentations at least six (6) weeks prior to the intended submission for publication or presentation. DSM shall maintain the confidentiality of the proposed publications and presentations until publication or presentation by RESEARCHER.

9.2 As of the date of receipt of copies of the intended publication or presentation, DSM shall have six (6) weeks to determine if it is interested in the Results to be published or presented and would like to proceed as mentioned in **Article 8** and/or its interests oppose such publication or presentation. Should DSM inform RESEARCHER during the aforementioned period of such opposition, RESEARCHER shall not proceed to such publication or presentation. The Parties shall thereupon enter into discussions on an acceptable version of the intended publication or presentation. During this period of discussion such publication or presentation will be withheld. In the event Parties do not reach agreement herein, said withholding period shall have duration of at the most six (6) months.

ARTICLE 10 - PUBLICITY

RESEARCHER shall not use the name of DSM, nor of any member of DSM's staff, in any publication, news release or other public announcement without the prior written approval of an authorised representative of DSM. However, each authorised publication, news release or other public announcement shall contain an appropriate acknowledgement of DSM's Information.

ARTICLE 11 - WARRANTY

The Information is experimental in nature and is provided "as is". DSM makes no representations or warranties of any kind, either express or implied, as to the merchantability or fitness of the Information for a particular purpose. DSM does not represent that the use of the Information will not infringe any patent, copyright or other rights of third parties.

ARTICLE 12 - INDEMNIFICATION AND LIABILITY

RESEARCHER will indemnify DSM and will hold DSM harmless from any and all liabilities, damage and cost arising out of or in connection with (i) RESEARCHER's use of or lack of Information and/or Results and (ii) the activities performed by Affymetrix, Inc. DSM shall not be liable for any damage or cost incurred by RESEARCHER (including but not limited to damages or cost for RESEARCHER's liability towards third parties) in the course of or any way connected with RESEARCHER's use of or lack of Information and/or Results and the activities performed by Affymetrix, Inc. except to the extent that the same will be shown to be due to gross negligence on the part of DSM.

ARTICLE 13 - NOTICES

All notices required under this Agreement shall be made in writing and sent by certified mail to the following addresses:

If to RESEARCHER:

Name:
Attn:
Address:

If to DSM:

DSM Research B.V.
Wim de Boer
A. Fleminglaan 1
2613 AX Delft
The Netherlands

Tel:
Fax:
E-mail:

The Netherlands
+ 31 15 279 2518
+ 31 15 279 2428
wim.boer-de@DSM.com

ARTICLE 14 - SIMILAR AGREEMENTS WITH THIRD PARTIES

DSM reserves the right to concludes agreements containing similar terms and conditions as in this Agreement with third parties.

ARTICLE 15 - ASSIGNMENT

The benefit or burden of this Agreement may not be assigned by either Party without the prior written consent of the other Party hereto, except that DSM may assign this Agreement to any direct or indirect affiliate of DSM.

ARTICLE 16 - NO AGENCY

It is agreed and understood by the Parties hereto that RESEARCHER and DSM, in their performance of obligations and responsibilities under this Agreement are independent contractors and that nothing herein shall be deemed to create an agency, partnership, joint venture or like relationship between the Parties.

ARTICLE 17 - FORCE AND EFFECT

The Parties undertake and agree to do all things and to sign all documents that may be necessary in order to give full force and effect to the reasonable intention of the present Agreement.

ARTICLE 18 - SEVERABILITY

The Parties agree that no provision of this Agreement which may be deemed unenforceable shall in any way invalidate any other provision of this Agreement, all of which shall remain in full force and effect.

ARTICLE 19 - ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the Parties and may not be altered, amended, modified, or otherwise changed except by the consent in writing of both Parties.

ARTICLE 20 - PARAGRAPH HEADINGS

The paragraph headings in this Agreement have been incorporated for the sole purpose of more convenient reference but not for any interpretation of the clauses to which they refer.

ARTICLE 21 - WAIVERS

The failure of either Party hereto at any time to take action against the other Party for breach of its obligations hereunder or the failure of either Party to terminate this Agreement for cause as herein provided for, shall not affect either Party's right to require full compliance with the terms of this Agreement at any time thereafter, and the waiver by either Party of a breach of any provision of this Agreement shall not constitute a waiver of any subsequent breach thereof nor nullify the effectiveness of such provision nor the right of such Party to demand redress for its respective losses, damages and claims.

ARTICLE 22 - SETTLEMENT OF DISPUTES AND APPLICABLE LAW

22.1 Any disputes arising in connection with or deriving from the present Agreement, which cannot be settled in an amicable way, shall be referred to the applicable court in The Netherlands, and the Parties consent to the jurisdiction of the courts there.

22.2 This Agreement is governed by and interpreted in accordance with the laws of The Netherlands.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate by their respective duly authorised representatives as of the date first written above.

[RESEARCHER]

DSM Research B.V. ___

By:
Its:

By:
Its: managing director

By:
Its:

By:
Its: managing director

Annex: List with names of Investigator and Research
Participants