

SAM LICENSE AGREEMENT (COMPANY WIDE)

This Agreement between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY (“Stanford”), an institution of higher education having powers under the laws of the State of California, and _____ (“Licensee”), a corporation having a principal place of business at _____ is effective on the ____ day of _____, 20____ (“Effective Date”).

1 BACKGROUND

Stanford has certain rights to Software for data reproducibility for microarrays. It is entitled “Significance Analysis of Microarrays (‘SAM’),” was developed by Gilbert Chu, Rob Tibshirani and Virginia Goss-Tusher, and is described in Stanford Docket S00-220. The Software was made in the course of research supported by the National Institutes of Health.

Stanford has certain rights to the mark “SAM” based on Stanford’s use of the mark to identify Software, as defined below.

2 DEFINITIONS

- 2.1 “Licensed Field of Use” means internal research purposes only. Software may not be transferred.
- 2.2 “Licensed Patent” means U.S. Patent 7,363,165.
- 2.3 “Software” means the object code to SAM provided to Licensee pursuant to this Agreement.
- 2.4 “Stanford Indemnitees” means Stanford and Stanford Hospitals and Clinics, and their respective trustees, officers, employees, students, and agents.

3 GRANT

- 3.1 **Grant.** Stanford grants Licensee a worldwide, non-exclusive license in the Licensed Field of Use to use and modify the Software and use the Licensed Patent as used in the Software. Stanford retains all intellectual property rights in Software provided to Licensee.
- 3.2 **Software.** Licensee agrees:
 - (A) To affix an appropriate notice of copyright to all copyrightable materials, and to do such things as are reasonable to protect and preserve Stanford’s rights in such copyright;
 - (B) To exercise due care in protecting Software from disclosure to third parties, at least to the degree it exercises care in protecting its own proprietary information;
 - (C) To take appropriate action with its employees, consultant, and sublicensees to satisfy

its obligation under this Agreement with respect to maintaining the above degree of protection for Software; and

(D) The any scientific journal articles written by its employees which contain data generated or analyzed using the Software will note that the Software was used in analysis and/or generation of such data.

3.3 **Term.** The licenses in Section 3.1 will terminate on the tenth anniversary of the Effective Date unless earlier terminated under Section 9 of this Agreement.

4 EXPORT

Licensee warrants that Licensee will not export or reexport the Software, directly or indirectly, to any country, individual or entity except when such export or reexport is authorized in full compliance with the laws and regulations of the United States of America.

Applicable laws and regulations may include, but are not limited to, the Export Administration Regulations, the International Traffic in Arms Regulations and the various economic sanctions regulations administered by the U.S Department of the Treasury.

5 GOVERNMENT RIGHTS

This Agreement is subject to all of the terms and conditions of Title 35 United States Code Sections 200 through 204, and Licensee agrees to take all reasonable action necessary on its part as licensee to enable Stanford to satisfy its obligations relating to the Software and Licensed Patent.

6 ROYALTIES

6.1 **Issue Royalty.** Licensee will pay to Stanford a noncreditable, nonrefundable license issue royalty of \$25,000 upon signing this Agreement.

6.2 **Annual Royalty.** Beginning on the first anniversary of the Effective Date and each anniversary thereafter, Licensee will pay Stanford a yearly license annual royalty of \$25,000.

7 INDEMNITY AND NEGATION OF WARRANTIES

7.1 **Negation of Warranties.** Stanford provides Licensee the rights granted in this Agreement AS IS and WITH ALL FAULTS. Nothing in this Agreement is or will be construed as a warranty that anything made, used, sold or otherwise disposed of under any license granted under this Agreement is or will be free from infringement of patents, copyrights, and other rights of third parties. Licensee acknowledges that Stanford will not provide Licensee with any maintenance or support for the Software. Stanford makes no representations and extends no warranties of any kind, either express or implied. Among other things, Stanford disclaims any express or implied warranty:

(A) of merchantability, of fitness for a particular purpose,

- (B) of non-infringement; or
- (C) arising out of any course of dealing.

7.2 **No Indirect Liability.** Stanford is not liable for any special, consequential, lost profits, expectation, punitive or other indirect damages in connection with any claim arising out of or related to this Agreement, whether grounded in tort (including negligence), strict liability, contract, or otherwise.

7.3 **Indemnification.** Licensee will indemnify, hold harmless, and defend all Stanford Indemnitees against any claim of any kind arising out of or related to the exercise of any rights granted Licensee under this Agreement or the breach of this Agreement by Licensee.

8 STANFORD NAMES AND MARKS

Licensee will not identify Stanford in any promotional statement, or otherwise use the name of any Stanford faculty member, employee, or student, or any trademark, service mark, trade name, or symbol of Stanford or Stanford Hospitals and Clinics, including the Stanford name, unless Licensee has received Stanford's prior written consent. Permission may be withheld at Stanford's sole discretion.

9 TERMINATION

9.1 **Termination by Licensee.** Licensee may terminate this Agreement by giving Stanford written notice at least 30 days in advance of the effective date of termination selected by Licensee.

9.2 **Termination by Stanford.**

- (A) Stanford may terminate this Agreement if Licensee:
 - (1) Is in default in payment of royalty; or
 - (2) Is in breach of any provision.
- (B) Termination under this Section 9.2 will take effect 30 days after written notice by Stanford unless Licensee remedies the problem in that 30-day period.

9.3 **Surviving Provisions.** Surviving any termination or expiration are:

- (A) Licensee's obligation to pay royalties accrued;
- (B) Any claim of Licensee or Stanford, accrued or to accrue, because of any breach or default by the other party; and
- (C) The provisions of Article 7 and any other provision that by its nature is intended to survive.

9.4 Concurrent with termination by either Licensee or Stanford, Licensee agrees to return or destroy all copies of Software in its possession.

10 MISCELLANEOUS

10.1 **Arbitration.** Any dispute between the parties regarding any payments made or due under this Agreement will be settled by arbitration in accordance with JAMS Arbitration Rules and Procedures. There parties are not obligated to settle any other dispute that may arise under this Agreement by arbitration.

10.2 **Assignment.** This Agreement may not be assigned.

10.3 **Infringement by Other.** Licensee will promptly notify Stanford of any suspected infringement of any License Patent by a third party.

10.4 **Notices.** All notices under this Agreement are deemed fully given when written, addressed, and sent as follows:

All general notices to Licensee are mailed to:

All financial invoices to Licensee (i.e., accounting contact) are e-mailed to:

All general notices to Stanford are e-mailed or mailed to:

Office of Technology Licensing
1705 El Camino Real
Palo Alto, CA 94306-1106
info@otlmail.Stanford.edu

All payments to Stanford are mailed to:

Stanford University
Office of Technology Licensing
Department #44439
P.O. Box 44000
San Francisco, CA 94144-4439

Either party may change its address with written notice to the other party.

10.5 **Waiver.** No term of this Agreement can be waived except by the written consent of the party waiving compliance.

10.6 **Choice of Law.** This Agreement and any dispute arising under it is governed by the laws of the State of California, United States of America, applicable to agreements negotiated, executed, and performed within California.

10.7 **Exclusive Forum.** The state and federal courts having jurisdiction over Stanford, California, United States of America, provide the exclusive forum for any court action between the parties relating to this Agreement. Licensee submits to the jurisdiction of such courts, and waives any claim that such a court lacks jurisdiction over Licensee or constitutes an inconvenient or improper forum.

10.8 **Electronic Copy.** The parties to this document agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The parties further waive any right to challenge the admissibility or authenticity of this document in a court of law based solely on the absence of an original signature.

The parties execute this Agreement in duplicate originals by their duly authorized officers or representatives.

THE BOARD OF TRUSTEES OF THE LELAND
STANFORD JUNIOR UNIVERSITY

Signature _____

Name _____

Title _____

Date _____

LICENSEE

Signature _____

Name _____

Title _____

Date _____