As filed with the Securities and Exchange Commission on December 1, 2003

Registration No. 333-109965

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 1
FORM S-1
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

DYNAVAX TECHNOLOGIES CORPORATION

(Exact Name of Registrant as Specified in its Charter)

Delaware	**2836**	**94-3378733**
(State or Other Jurisdiction of Incorporation or Organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

717 Potter Street, Suite 100
Berkeley, CA 94710-2722
(510) 848-5100
(Address, Including Zip Code, and Telephone Number,
Including Area Code, of Registrant's Principal Executive Offices)

Dino Dina, M.D.
President and Chief Executive Officer
Dynavax Technologies Corporation
717 Potter Street, Suite 100
Berkeley, CA 94710-2722
(510) 848-5100
(Name, Address, Including Zip Code, and Telephone Number,
Including Area Code, of Agent for Service)

Copies to:

John W. Campbell, Esq.	**Alan C. Mendelson, Esq.**
Morrison & Foerster LLP	**Patrick A. Pohlen, Esq.**
425 Market Street	**Latham & Watkins LLP**
San Francisco, California 94105	**135 Commonwealth Drive**
	Menlo Park, California 94025

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. [ ]

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. [ ]

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to Section 8(a), may determine.

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Explanatory Note

This Amendment No. 1 is being filed solely for the purpose of filing Exhibits 10.7, 10.8, 10.9 and 10.10 to the Registration Statement. No changes have been made to the preliminary prospectus constituting Part I of the Registration Statement or Items 13, 14, 15 or 17 of Part II of the Registration Statement.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 16. Exhibits and Financial Statement Schedules

(a) Exhibits

The exhibits are as set forth in the Exhibit Index.

(b) Financial Statement Schedules.

All schedules have been omitted because they are not required or are not applicable or the required information is shown in the financial statements or related notes.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Francisco, State of California on the 1st day of December, 2003.

DYNAVAX TECHNOLOGIES CORPORATION

By: /s/ DINO DINA, M.D.

Dino Dina, M.D.
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

Signature	Title	Date
/s/ DINO DINA, M.D. Dino Dina	President, Chief Executive Officer and Director *(Principal Executive Officer)*	December 1, 2003
* William J. Dawson	Vice President and Chief Financial Officer *(Principal Financial and Accounting Officer)*	December 1, 2003
* Daniel S. Janney	Chairman of the Board	December 1, 2003
* Louis C. Bock	Director	December 1, 2003
* Dennis Carson, M.D.	Director	December 1, 2003
* Jan Leschly	Director	December 1, 2003
* Arnold L. Oronsky, Ph.D.	Director	December 1, 2003

* Pursuant to Power of Attorney

/s/ DINO DINA, M.D. Attorney-in-fact		December 1, 2003

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EXHIBIT INDEX

Exhibit Number	Document
1.1*	Form of Underwriting Agreement
3.1*	Form of Amended and Restated Certificate of Incorporation of the Registrant to be in effect upon the closing of this offering
3.2*	Form of Bylaws of the Registrant to be in effect upon the closing of this offering
4.1	Reference is made to Exhibits 3.1 and 3.2
4.2*	Specimen Stock Certificate of the Registrant
4.3*	Fourth Amended Investors' Rights Agreement, dated as of October 20, 2003, between the Registrant and certain holders of the Registrant's preferred stock
5.1*	Opinion of Morrison & Foerster LLP as to the legality of the common stock
10.1**	Form of Indemnification Agreement between the Registrant and each of its executive officers and directors
10.2*	Registrant's 1997 Equity Incentive Plan, as amended
10.3*	2003 Stock Incentive Plan, including forms of agreements thereunder
10.4*	2003 Employee Stock Purchase Plan, including forms of agreements thereunder
10.5**	Triple Net Laboratory Lease, dated as of January 30, 1998, between the Registrant and Fifth & Potter Street Associates, LLC, including an amendment thereof
10.6*	Standard Industrial/Commercial Multi-Tenant Lease — Gross, dated January 31, 2001, between the Registrant and Neil Goldberg and Hagit Cohen
10.7+	Development Collaboration Agreement, dated June 10, 2003, between the Registrant and BioSeek, Inc.
10.8+	License and Supply Agreement, dated October 28, 2003, between the Registrant and Berna Biotech AG
10.9+	Exclusive License Agreement, dated March 26, 1997, between the Registrant and the Regents of the University of California, for Method, Composition and Devices for Administration of Naked Nucleotides which Express Biologically Active Peptides and Immunostimulatory Oligonucleotide Conjugates, including three amendments thereof.
10.10+	Exclusive License Agreement, dated October 2, 1998, between the Registrant and the Regents of the University of California, for Compounds for Inhibition of Ceramide-Mediated Signal Transduction and New Anti-Inflammatory Inhibitors: Inhibitors of Stress Activated Protein Kinase Pathways, including one amendment thereof.
10.11**	Management Continuity Agreement, dated as of October 15, 2003, between the Registrant and Dino Dina
10.12**	Management Continuity Agreement, dated as of September 2, 2003, between the Registrant and Daniel Levitt
10.13**	Management Continuity and Severance Agreement, dated as of August 1, 2003, between the Registrant and William J. Dawson
10.14**	Management Continuity and Severance Agreement, dated as of August 1, 2003, between the Registrant and Stephen Tuck
10.15**	Management Continuity and Severance Agreement, dated as of August 1, 2003, between the Registrant and Robert Lee Coffman
10.16**	Management Continuity and Severance Agreement, dated as of August 1, 2003, between the Registrant and Gary Van Nest
16.1**	Letter from PricewaterhouseCoopers LLP, regarding change in certifying accountants
23.1*	Consent of Morrison & Foerster LLP (see Exhibit 5.1)
23.2**	Consent of Ernst & Young LLP, Independent Auditors
23.3**	Consent of PricewaterhouseCoopers LLP, Independent Accountants
24.1**	Power of Attorney. Reference is made to the signature page included with the initial filing of the registration statement on Form S-1 with the SEC on October 24, 2003

* To be filed by amendment
** Previously filed
\+ Confidential treatment has been requested with regard to certain portions of this document.

[***]=CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED WITH BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 406 OF THE SECURITIES ACT OF 1933, AS AMENDED.

EXHIBIT 10.7

DEVELOPMENT COLLABORATION AGREEMENT

This Development Collaboration Agreement ("AGREEMENT") is made and effective as of June 10, 2003 (the "EFFECTIVE DATE"), by and between BioSeek, Inc., a California corporation, having a place of business at 863-C Mitten Road, Burlingame, California 94010 ("BIOSEEK") and Dynavax Technologies Corporation, a Delaware corporation, having a place of business at 717 Potter Street, Suite 100, Berkeley, California 94710 ("DYNAVAX").

BACKGROUND

A. BioSeek has developed certain technology known as BioMAP Technology (as defined below) that is used to perform, among other things, biofunctional characterization of genes and potential therapeutic compounds, as further described in this Agreement;

B. Dynavax is engaged in research and development of certain proprietary compounds for potential human therapeutic use, as further described in this Agreement;

C. Dynavax and BioSeek desire that BioSeek apply the BioMAP Technology to analyze and characterize the activity of certain compounds with the objective of advancing the development of such compounds, and the parties desire to enter into this Agreement to enable them to engage in such activities.

Now, therefore, in consideration of the mutual covenants and conditions contained herein, and intending to be legally bound, the parties agree as follows:

1. DEFINITIONS.

(a) "AFFILIATE" means, with respect to a particular party, another person that controls, is controlled by or is under common control with such party. For the purposes of the definition in this Section 1(a), the word "control" (including, with correlative meaning, the terms "controlled by" or "under the common control with") means the actual power, either directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such entity, whether by the ownership of at least fifty percent (50%) of the voting stock of such entity, or by contract or otherwise.

(b) "BioMAP TECHNOLOGY" means BioSeek's proprietary human cell-based model systems technology as more fully described in Exhibit 1(b).

(c) "CONFIDENTIAL INFORMATION" means, in the case of Dynavax, information disclosed by Dynavax to BioSeek concerning the identity of the Provided TZP Compounds, their development status, results of preclinical assays and requirements for their handling and safety ("DYNAVAX CONFIDENTIAL INFORMATION"), and in the case of BioSeek, information disclosed to Dynavax concerning the BioMAP Technology or otherwise related to BioSeek's performance of the Program ("BioSEEK CONFIDENTIAL INFORMATION"), that, in either case, if disclosed in tangible form is marked "Confidential" or with other similar designation to indicate its confidential or proprietary nature, or if disclosed orally is indicated orally to be confidential or proprietary by the disclosing party at the time of disclosure and is confirmed in writing as confidential or proprietary by the disclosing party within a reasonable time after such disclosure.

(d) "DERIVATIVE" means any compound that is derived from another compound. As used in this Section 1(d), a compound shall be considered a "Derivative" of a precursor compound if it either:

(1) is actually synthesized in a chemical synthesis program based on the precursor compound; or

(2) is actually synthesized based on structure-activity data relating to the precursor compound; or

(3) was made in the course of further advancing one or more precursor compounds toward commercialization; or

(4) is included within the scope of any claim of a patent application or patent which also claims one or more precursor compounds and/or compounds described in (1) through (3) above.

(e) "DYNAVAX PARTNER" means a third party with whom Dynavax has entered into a Partnering Agreement.

(f) "FDA" means the United States Food and Drug Administration.

(g) "IND" means an Investigational New Drug application, as defined in the U.S. Food, Drug and Cosmetic Act and the regulations promulgated thereunder, for initiating clinical trials in the United States.

(h) "NET SALES" means the total amount invoiced to non-Affiliate third parties on sales of TZP Products by Dynavax, Dynavax's Partners, and the Affiliates and sublicensees of each, less the following reasonable and customary deductions allowed to the buyer against the invoiced amount: (i) trade, cash and quantity discounts; (ii) amounts for claims, allowances or credits for returns; and (iii) prepaid freight, sales taxes, duties and other governmental charges (including value added tax) on particular sales, but excluding what is commonly known as income taxes, in each case if charged separately on the invoice and paid by the customer. For the removal of doubt, Net Sales shall not include sales to Dynavax, Dynavax's Partners, and the Affiliates and sublicensees of each for resale; however, sales to such entities shall be treated as Net Sales at list price. A "sale" shall also include a transfer or other disposition for consideration other than cash, in which case such consideration shall be valued at the fair market value thereof.

(i) "NOVEL MARKER" means a measurement or profile of a biological or biochemical analyte that indicates the activity of one or more of the TZP Compounds in a manner that is relevant to a mechanism of action of such TZP Compound in a particular disease state, which measurement or profile has not been, as of the date it is identified by BioSeek, or by Dynavax based on the Profiling Results, (i) disclosed as a marker for such purpose in the public domain as a result of prior publication or use, or (ii) identified as a marker for such purpose by Dynavax without use of any Profiling Results, which Dynavax shall have the burden of demonstrating with competent evidence.

(j) "PARTNERING AGREEMENT" means any agreement, arrangement or understanding between Dynavax and a third party under which Dynavax grants to the third party, directly or indirectly, any right or option to market, sell, distribute or otherwise commercialize a TZP Product in any geographic territory.

(k) "PHASE III TRIAL" means that portion of the clinical studies for the FDA submission and approval process which provides for trials of a product on sufficient numbers of patients to establish the safety and efficacy of such product to support regulatory approval in the proposed therapeutic indication as more fully defined in 21 C.F.R. Section 312.21(c).

(l) "PROFILING RESULTS" means the profiling information regarding the Provided TZP Compounds obtained as a result of BioSeek's performance of the Program.

(m) "PROGRAM" means the activities conducted or to be conducted by BioSeek under Section 2 of this Agreement in analyzing the Provided Compounds using the BioMAP Technology, with the objective of achieving the Target Milestone.

(n) "PROVIDED TZP COMPOUNDS" means those TZP Compounds specified in Exhibit 1(n) or otherwise provided by Dynavax to BioSeek in connection with the Program.

(o) "TARGET MILESTONE" means the accomplishment by BioSeek of [***].

(p) "THIRD-PARTY FINANCING" means Dynavax's closing of its first financing after the Effective Date in which Dynavax receives cash through the sale of its debt or equity securities, other than (i) the sale of its equity or debt securities to a corporate partner in connection with and as part of a product licensing transaction for other than a TZP Product, to the extent the amount invested is to be applied to support development of such product by Dynavax, or (ii) the sale of shares through exercise of options granted to employees or consultants under stock option plans or exercise of warrants outstanding on the Effective Date.

(q) "TZP COMPOUND" means any compound within the scope of one or more of the following clauses (i) or (ii): (i) any compound within the scope of any claim, as published 23 November 2000, of PCT publication No. WO 00/69861, and any Derivative thereof; or (ii) any compound provided by Dynavax pursuant to this Agreement, and any Derivative thereof.

(r) TZP PRODUCT" means a product that incorporates or utilizes one or more TZP Compounds.

(s) "UC AGREEMENT" means that certain Exclusive License Agreement between The Regents of the University of California and Dynavax, dated October 2, 1998, as amended September 22, 1999.

2. THE PROGRAM.

(a) Within ten (10) days after the Effective Date, Dynavax will provide to BioSeek, at no charge to BioSeek, such reasonable quantities of the TZP Compounds specified in Exhibit 1(n) as BioSeek may require under this Section 2. BioSeek shall in its discretion perform such research and development activities as it deems appropriate in its efforts to achieve the Target Milestone. Dynavax shall also provide BioSeek, within fifteen (15) days after the Effective Date, information specified in Exhibit 2(a), and Dynavax shall provide technical advice concerning the handling and preparation of the Provided Compounds. BioSeek and Dynavax shall each appoint a project leader to coordinate activities under this Agreement and to act as the primary contact and source of information on the Provided Compounds and the Program. Either party may change its designated project leader by written notice to the other party.

(b) Dynavax will provide BioSeek with a Material Safety Data Sheet for the Provided TZP Compounds and any additional available information concerning the safety, handling, use, disposal and environmental effects of the Provided TZP Compounds as may be necessary to conduct the Program. BioSeek shall use the Provided TZP Compounds solely for the limited and express purpose of conducting the Program. Without limiting the foregoing, the Provided TZP Compounds will not be used in humans. Upon

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completion or termination of the Program, at Dynavax's request, BioSeek shall return any unused portions of the Provided TZP Compound.

3. MILESTONE PAYMENT.

As compensation for performance of the Program, Dynavax shall [***] within 30 days after receiving notice from BioSeek of its achievement of the Target Milestone (the "MILESTONE PAYMENT"), subject to the following:

If the Target Milestone is first achieved at a time at which Dynavax has neither (i) entered into a Partnering Agreement with a third party for a TZP Product, nor (ii) filed an IND for a TZP Product, nor (iii) closed a Third Party Financing, then Dynavax's obligation to pay the Milestone Payment shall be considered deferred until 30 days following the first to occur of (i), (ii) or (iii).

4. PARTNER INCOME AND OTHER PAYMENTS.

If BioSeek achieves the Target Milestone, then as further compensation for the performance of the Program Dynavax shall pay to BioSeek the following:

(a) If the first Partnering Agreement is entered into before the filing of an IND(s) for a TZP Product, Dynavax shall pay BioSeek:

(i) [***], up to a maximum aggregate payment of [***]; and

(ii) A royalty of [***].

(b) If the first Partnering Agreement is entered into after the filing of an IND(s) and before the initiation of Phase III Trial(s) for a TZP Product, Dynavax shall pay BioSeek:

(i) [***], up to a maximum aggregate payment of [***]; and

(ii) A royalty of [***].

(c) If Dynavax does not enter into a Partnering Agreement prior to the initiation of Phase III clinical studies of a TZP Compound, then Dynavax shall pay BioSeek:

(i) [***] upon the initiation of a Phase III Trial for such TZP Product;

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(ii) [***] upon the first commercial sale of such TZP Product; and

(iii) A royalty of [***].

(d) For purposes of this Section 4, the "initiation of Phase III clinical studies" shall mean the enrollment of patients and commencement of treatment of patients in such studies. Notwithstanding the foregoing provisions of this Section 4, if Dynavax initially enters into a Partnering Agreement during the time period specified in Section 4(a) or 4(b), and such Partnering Agreement does not include the grant of rights in the United States, and Dynavax subsequently enters into a Partnering Agreement granting rights to the United States during the time specified in Section 4(b), or initiates Phase III clinical trials prior to entering into a Partnering Agreement granting rights to the United States, then at the time such subsequent Partnering Agreement is entered into, [***].

(e) If Dynavax enters into any Partnering Agreement that either party believes is not contemplated or reasonably addressed by the provisions of this Section 4, the parties shall confer in good faith to determine whether any adjustment to the provisions of this Agreement is appropriate to address such Partnering Agreement and achieve the intent of the parties. If after the date of this Agreement, Dynavax enters into a Partnering Agreement with a third party for a new research and development program, the objective of which is to develop products incorporating TZP Compounds for new therapeutic indications that function by different mechanisms of action than those identified by BioSeek in accomplishing the Target Milestone ("New Use Compounds"), Dynavax shall so notify BioSeek in writing. Any payments made to Dynavax under such a Partnering Agreement that are reasonably allocable to such new research and development or to commercialization rights to any resulting New Use Compounds [***].

5. PAYMENTS AND REPORTS.

(a) NET PARTNERING INCOME AND NET REPORTS; PAYMENTS. Dynavax shall forward to BioSeek a copy of any and all Partnering Agreements within 15 days after execution by the parties. Until such time as the aggregate amounts specified in Sections 4(a) and 4(b), as applicable, have been paid to BioSeek, Dynavax shall make quarterly written reports to BioSeek within sixty (60) days after the end of each calendar quarter, stating in each such report the amounts of and basis for any payments or other consideration received under each Partnering Agreement, and including the number, description, and aggregate Net Sales of each TZP Product sold during the calendar quarter; provided however, that Dynavax's reporting of Net Sales during such quarter may be extended to coincide with any longer reporting period included in the terms of the relevant Partnering Agreement, and provided further that Dynavax shall use best efforts to obtain such reports during such 60-day period. Simultaneously with the delivery of each such report, Dynavax shall pay to BioSeek the total Net Partnering Income and share of Net Sales, if any, due to BioSeek for the period of such report.

(b) PAYMENT METHOD. All amounts payable under this Agreement shall be made by bank-wire transfer in immediately available funds to an account designated by BioSeek. All payments hereunder shall be made in U.S. dollars. Any payments or portions thereof due hereunder which are not paid by the date such payments are due under this Agreement shall bear interest equal to the lesser one and one half percent (1 1/2%) per month, or the maximum rate permitted by law, calculated on the number of days such payment is delinquent. This Section 5(b) shall in no way limit any other remedies available to BioSeek.

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(c) CURRENCY CONVERSION. If any currency conversion is required in connection with the calculation of any amounts payable under this Agreement, such conversion shall be made using the standard procedure adopted and consistently applied by Dynavax in accordance with U.S. generally accepted accounting practices. In the absence of such a standard Dynavax procedure, such conversion shall be made using the selling exchange rate for conversion of the foreign currency into U.S. Dollars, quoted for current transactions reported in The Wall Street Journal for the last business day of the calendar quarter or calendar year, as the case may be, to which such payment pertains.

(d) RECORDS; INSPECTION. Dynavax, Dynavax's Partners, and the Affiliates and sublicensees of each shall keep complete, true and accurate books of account and records for the purpose of determining the amounts payable under this Agreement. Such books and records shall be kept reasonably accessible for five (5) years following the end of the calendar quarter to which they pertain. Dynavax shall make all such records available for inspection during such five (5)-year period by a representative or agent of BioSeek for the purpose of verifying amounts payable hereunder (including royalty statements). To the extent that Dynavax does not have the right to grant BioSeek the right to audit the books and records of Dynavax's Partners, the Affiliates of Dynavax's Partners, or the sublicensees of Dynavax or Dynavax's Partners, hereunder, Dynavax shall use best efforts to obtain for itself such rights and, at the request of BioSeek, shall exercise such audit rights and provide the results of such audit for inspection by BioSeek pursuant to this Section 5(d). BioSeek shall bear the costs and expenses of inspections conducted under this Section 5(d), unless a variation or error producing an underpayment in royalties payable exceeding five percent (5%) of the amount paid for any period covered by the inspection is established in the course of any such inspection, whereupon all reasonable out-of-pocket costs paid to third parties relating to the inspection and any unpaid amounts that are discovered will be paid by BioSeek, together with interest on such unpaid amounts at the rate specified in Section 5(b) above.

6. CONFIDENTIALITY.

(a) CONFIDENTIALITY. BioSeek agrees that it shall maintain in strict confidence all Dynavax Confidential Information, and Dynavax agrees that it shall maintain in strict confidence all BioSeek Confidential Information, using efforts no less diligent than such party uses to maintain the confidentiality of its own proprietary or confidential information. In addition to the foregoing, except to the extent expressly permitted by this Agreement, each party (i) agrees not to disclose, use, or grant the right to use Confidential Information of the other party to any third party without the prior written consent of such other party, and (ii) will only disclose, use or grant the use of such Confidential Information of the other party to those personnel, collaborators, consultants, or Affiliates of such party who are bound by similar obligations of confidentiality as those set forth herein and only to the extent they require access thereto to perform the activities contemplated herein. In addition to the foregoing, provided Dynavax gives BioSeek reasonable advance written notice and BioSeek provides its written consent, which shall not be unreasonably withheld, Dynavax may disclose to parties with whom Dynavax is considering granting commercial rights to TZP Compounds, the following BioSeek Confidential Information: cell types and disease-related pathways activated in the BioMAP Technology to produce Profiling Results, mechanisms of action disclosed within the Profiling Results (but not the methodology of how the experiments were run using such experimental conditions, the informatics and analytical tools used to generate results, and the generation of resulting data); provided that such collaborators or potential Partners are under similar obligations of confidentiality as those set forth herein for such Confidential Information.

(b) Notwithstanding anything to the contrary in this Agreement, Confidential Information shall not include information which the receiving party can demonstrate by competent written proof: (i) is now, or hereafter becomes, through no act or failure to act on the part of the receiving party, generally known or available in the public domain; (ii) is known by the receiving party at the time of receiving such information, or is hereafter furnished to the receiving party by a third party, in each case, as a matter of right and without restriction on disclosure, as evidenced by its records; (iii) is generated by the receiving party

independent of any information disclosed by the disclosing party by persons who have not had access to or knowledge of the Confidential Information of the disclosing party; or (iv) is the subject of a written permission to disclose provided by the disclosing party.

(c) Notwithstanding any other provision of this Agreement, disclosure of Confidential Information shall not be precluded to the extent such disclosure:

(i) is in response to a valid order of a court or other governmental body of a country or any political subdivision thereof; provided however, that the receiving party shall give reasonable advance notice to the disclosing party and shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued; or

(ii) is otherwise required by law or regulation; provided that receiving party shall give reasonable advance notice to the other party so that reasonable efforts can be made to obtain a protective order requiring that the Confidential Information so disclosed be used only for purposes required under the law or regulation.

(d) Except to the extent otherwise contemplated by this Agreement, within thirty (30) days after the expiration or termination of this Agreement for any reason, and in the absence of a further written agreement of the parties, each party shall destroy or return to the other party, as directed by such party, any and all materials containing Confidential Information received from such other party.

7. OWNERSHIP AND RIGHTS.

(a) TZP COMPOUNDS. As between the parties, all right, title and interest in and to the Provided TZP Compounds and other TZP Compounds within the scope of patent rights owned or exclusively licensed to Dynavax is, and will at all times, remain the sole and exclusive property of Dynavax.

(b) BIOMAP TECHNOLOGY AND DATA. As between the parties, all right, title, and interest in and to the BioMAP Technology and the results of the Program is, and will at all times remain, the sole and exclusive property of BioSeek, subject to the rights granted under Section 7(c) respecting the Profiling Results. The parties acknowledge and agree that data included in the Profiling Results will maintain and reside in BioSeek's database and that BioSeek may maintain and utilize such data as part of its database provided that (i) such data are coded in the database so that the identity of the Provided TZP Compounds and Dynavax are not disclosed, and (ii) BioSeek will not provide such data to other collaboration partners.

(c) PROFILING RESULTS. Upon completion of the Target Milestone, and subject to the terms and conditions of this Agreement (including the payment of all amounts due under this Agreement), BioSeek will grant to Dynavax the right and license to use the Profiling Results solely for the further research, development and commercialization of TZP Compounds and TZP Products.

(d) NOVEL MARKERS. Notwithstanding anything to the contrary herein, if Dynavax or a Dynavax Partner desires to use or commercialize a Novel Marker identified by BioSeek in clinical trials for TZP Compounds or as a diagnostic test, the right to use such Novel Marker shall not be considered granted under Section 7(c), but Dynavax and BioSeek shall negotiate in good faith an agreement providing for the use of such Novel Marker and providing for additional consideration to BioSeek for the use of such Novel Marker.

(e) COOPERATION; RESTRICTION OF RIGHTS. Each party shall cooperate with the other party, and shall obtain the cooperation of its employees and agents, to provide, as necessary, rights set forth in this

Section 7. Nothing in this Agreement is to be construed as granting a right or license to either party to use Confidential Information of the other party, except as expressly provided herein.

8. INDEPENDENT CONTRACTOR. Nothing herein shall be construed to create any relationship of employer and employee, agent and principal, partnership or joint venture between the parties. Each party is an independent contractor. Neither party shall assume, either directly or indirectly, any liability of or for the other party. Neither party shall have the authority to bind or obligate the other party and neither party shall represent that it has such authority.

9. USE OF TZP COMPOUNDS AND TECHNOLOGIES.

(a) Each party agrees to comply with all federal and state government regulations, guidelines, laws, policies, and internal policies that are applicable to such party's use of the TZP Compounds that are the subject of this Agreement or the other party's Confidential Information.

(b) Each party reserves the right to distribute or disclose compounds and Confidential Information owned by such party to others and to use such compounds and Confidential Information owned by such party for its own purposes.

10. DILIGENCE.

(a) Subject to continued technical feasibility and availability of internal resources, Dynavax shall diligently endeavor, either on its own or with a Dynavax Partner, to develop, manufacture, market, sell and meet commercial demand for TZP Products within a commercially reasonable time after the achievement of the Target Milestone, and to otherwise perform as required under Section 8 of the UC Agreement. As BioSeek may request from time to time after the achievement of the Target Milestone, Dynavax shall keep BioSeek informed as to Dynavax's progress in meeting its obligations under this Section 10(a). Without limiting the foregoing, Dynavax shall use commercially reasonable efforts to perform its obligations under the UC Agreement and to maintain the UC Agreement in full force and effect.

(b) If Dynavax determines for any reason that it will not or cannot pursue development of TZP Products, Dynavax shall promptly notify BioSeek of such intention in writing, and in such event, or in the event this Agreement is terminated pursuant to Section 14(c), without limiting any rights or remedies otherwise available to BioSeek, the parties shall, at BioSeek's request and at its option, negotiate in good faith on a non-exclusive basis for the grant to BioSeek of the right to develop, manufacture, market, sell, distribute and otherwise commercialize TZP Compounds, on reasonable terms and conditions which shall take into account the value to TZP Compound development contributed by both Dynavax and BioSeek.

(c) Subject to continued technical feasibility and availability of internal resources and without limiting any other provisions of this Agreement, BioSeek shall use commercially reasonable efforts to conduct the Program in a manner that is consistent with its goals and objectives. As Dynavax may request from time to time, BioSeek shall keep Dynavax informed as to Dynavax's progress in performing the work in the Program.

11. REPRESENTATION AND WARRANTY; DISCLAIMERS.

(a) REPRESENTATIONS AND WARRANTIES. Each party represents and warrants that it has the power to enter into this Agreement and to the best of its knowledge has the right to grant the rights granted herein to the other party. In addition, Dynavax represents and warrants that (i) Dynavax has not previously granted and will not grant any rights in any TZP Compounds (including, without limitation, any intellectual property rights) that are inconsistent with the rights and licenses granted to BioSeek herein; (ii) subject to the UC Agreement, Dynavax is the exclusive owner of the entire right, title, and interest in and to all TZP

Compounds (including, without limitation, all intellectual property rights therein); (iii) Dynavax has the right to provide the Provided TZP Compounds to BioSeek as set forth in this Agreement; (iv) Dynavax has performed as required under the UC Agreement; and (v) the UC Agreement has not terminated, expired, or in any way been limited, in any manner that would affect Dynavax's ability to diligently develop, obtain market approvals for, and market any TZP Products. BioSeek represents and warrants that it has the right to apply its BioMAP Technology for the purposes contemplated under this Agreement.

(b) DISCLAIMERS.

DYNAVAX AND BIOSEEK MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY OF NON-INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Dynavax acknowledges and agrees that (i) BioSeek shall not be responsible for any claims arising from use of the Provided TZP Compounds by Dynavax or third parties in human clinical trials, for commercial sale, or otherwise, (ii) Dynavax assumes sole responsibility for such use, and (iii) Dynavax indemnifies and holds harmless BioSeek for any claims or liabilities, including but not limited to attorneys' fees, arising from such use.

12. PUBLICATION.

(a) Each party acknowledges the other party's interest in publishing the results of the Program to obtain recognition within the scientific community and to advance the state of scientific knowledge. Each party also recognizes the mutual interest in obtaining valid patent protection and in protecting business interests and trade secrets. Consequently, if (i) BioSeek, its employees, agents or consultants wish to make a publication regarding the use of the Profiling Results (it is understood that BioSeek will not disclose Dynavax Confidential Information or the identity of the Provided TZP Compounds or of Dynavax without Dynavax's prior written consent), or (ii) Dynavax, its employees, agents or consultants wish to make a publication regarding the use of the BioMAP Technology in connection with the TZP Compounds (it is understood that Dynavax will not disclose any BioSeek Confidential Information without BioSeek's prior written consent), in each case, such party shall deliver to the other party a copy of the proposed written publication or an outline of an oral disclosure at least thirty (30) days prior to submission for publication or presentation. The reviewing party shall have the right (a) to propose in good faith modifications to the publication for patent reasons, trade secret reasons, or business reasons or (b) to request a reasonable delay in publication or presentation to protect know-how and patentable subject matter.

(b) If the reviewing party requests a delay, the publishing party shall delay submission or presentation for up to ninety (90) days to enable patent applications to be filed. Upon expiration of such time period, the publishing party shall be free to proceed with the publication or presentation. If the reviewing party requests modifications to the publication, the publishing party shall edit such publication to prevent disclosure of trade secrets or proprietary business information (including Confidential Information) prior to submission of the publication or presentation.

(c) Once a particular disclosure has been approved, either party may disclose the information contained therein in subsequent disclosures, including without limitation, promotions, press releases, public relations, advertisements, or sales and marketing materials, without the need for further approval by the other party, but may not use the other party's name or logo in connection with such information except as expressly provided in Section 13.

13. PRESS RELEASES; PUBLICITY.

(a) The parties agree that BioSeek and/or Dynavax may issue a press release announcing the collaboration under this Agreement, which release shall be subject to the reasonable approval of both parties. Dynavax also acknowledges BioSeek's interest in disclosing certain limited information concerning its research collaborations in order to promote and develop the BioMAP Technology. Accordingly, Dynavax agrees that BioSeek may reference Dynavax's name in conjunction with the promotion of its technologies, and refer to Dynavax as a research collaboration partner in BioSeek's promotions and other communications with prospective customers or investors, solely where such reference to Dynavax's name would not associate Dynavax with any particular compound or product.

(b) BioSeek may disclose in summary form data from the Program in a manner that does not reveal directly or indirectly the specific identity of any Provided TZP Compound or the identity of Dynavax. In addition to the foregoing, within thirty (30) days after disclosure of the Profiling Results to Dynavax, the parties shall in good faith discuss and mutually agree upon the particular data and information within such Profiling Results that BioSeek shall have the right to directly reference in conjunction with Dynavax's name or logo; it being understood that objections by a party shall be based upon their reasonable concerns regarding disclosure of (a) information that would provide a competitive advantage to any third party's competitors, (b) information that would adversely reflect on the goodwill of a party and or its business, (c) information that constitutes a trade secret or a patentable invention, (d) information that would constitute a violation of an agreement with a third party in existence as of the Effective Date, or (e) Confidential Information owned by the objecting party, and not otherwise permitted to be disclosed under this Agreement.

14. TERM; TERMINATION.

(a) The term of this Agreement begins on the Effective Date and will continue in effect until this Agreement is terminated as provided in this Section 14.

(b) BioSeek may terminate this Agreement, in its entirety or solely with respect to the Program or particular portions of the Program, at any time before BioSeek achieves the Target Milestone, upon not less than thirty (30) days' written notice to Dynavax, due solely to BioSeek's determination, which shall be made in good faith, that it is not technically feasible to complete the Program (or such portion of the Program) on a commercially reasonable basis. Dynavax may terminate this Agreement upon ninety (90) days' written notice to BioSeek if BioSeek has not achieved the Target Milestone within nine (9) months after the Effective Date, provided that such termination shall not be effective if BioSeek achieves the Target Milestone during such 90-day notice period. Except as provided in this Section 14(b) or Section 14(c), neither party shall have the right to terminate the Agreement unless the parties mutually agree to do so in writing.

(c) Without limiting any other rights or remedies under this Agreement, if within four years after the Effective Date, Dynavax has not (i) entered into a Partnering Agreement respecting any TZP Compound or (ii) initiated any clinical studies of any TZP Compound, then either BioSeek or Dynavax may terminate this Agreement upon written notice to the other party. Upon such termination, any rights of Dynavax to use any information or results provided hereunder shall terminate, and BioSeek's right of negotiation under Section 10(b) shall be triggered and shall continue in effect after such termination.

(d) Termination of this Agreement for any reason shall not release either party to this Agreement from any liability that, at the time of the termination, has already accrued to the other party. In addition, the provisions of Sections 1, 3, 4, 5, 6, 7(a), 7(b), 7(e), 10(b), 11(b), 12, 13, 14 and 15 shall survive any termination of this Agreement. Any rights and licenses granted under Section 7(c) shall terminate upon any termination of this Agreement.

15. MISCELLANEOUS.

(a) GOVERNING LAW. This Agreement shall be construed and enforced in accordance with the law of the State of California without regard to principles of conflicts of law.

(b) GENERAL. This Agreement constitutes the entire understanding and agreement of the parties respecting the subject matter hereof and supersedes any and all prior agreements or arrangements, written or oral, between the parties relating thereto. This Agreement may not be amended or supplemented in any way except by a written document signed by the party against whom such amendment or supplement is sought to be enforced. The failure on the part of either party to enforce, or any delay in enforcing, any right, power or remedy that such party may have under this Agreement shall not constitute a waiver of any such right, power or remedy, or release the other party from any obligations under this Agreement, except by a written document signed by the party against whom such waiver or release is sought to be enforced.

(c) ASSIGNMENT. Neither party shall assign its rights or obligations under this Agreement, in whole or in part, by operation of law or otherwise, without the prior express written consent of the other party; provided, however, that either party may, without such consent, assign this Agreement and its rights and obligations hereunder to an Affiliate or in connection with (i) the transfer or sale of all or substantially all of its business to which this Agreement pertains, or (ii) a merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all obligations of its assignor under this Agreement. Any purported assignment or transfer in violation of this Section 15(c) shall be void.

(d) NOTICES. All notices required or permitted to be given under this Agreement will be in writing, and may be given by (i) personal delivery, (ii) registered first-class United States mail, postage prepaid by the sender, return receipt requested, (iii) overnight delivery service, charges prepaid by the sender, or (iv) via facsimile, and, in each case, addressed to the other party at the address for such party as set forth below, and will be effective upon receipt in the case of (i), (iii) or (iv) above, and five days after mailing in the case of (ii) above.

If to BioSeek: BioSeek, Inc.
863-C Mitten Rd.
Burlingame, CA 94010
Fax #: 650.552.0725
Attention: Chief Executive Officer

If to Dynavax: Dynavax Technologies Corporation
717 Potter Street
Suite 100
Berkeley, CA 94710-2722
Fax #510.450.7740
Attention: Chief Executive Officer

(e) SEVERABILITY. In the event that any term of this Agreement is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other portion of this Agreement, and there shall be deemed substituted for such invalid, illegal or unenforceable term an alternative term as will most fully realize the intent of the parties as expressed in this Agreement to the fullest extent permitted by applicable law. The parties hereby declare their intent that this Agreement is to be construed in such fashion as to maintain its existence, validity and enforceability to the greatest extent possible.

(f) INJUNCTIVE RELIEF. Each of BioSeek and Dynavax acknowledges that the limitations and restrictions on its possession and use of the Confidential Information of the other party are necessary and reasonable to protect the other party, and each party acknowledges that monetary damages could be inadequate to compensate the other party for any violation by such party of any such limitations or

restrictions, and that any such violation could cause irreparable injury to the other party. BioSeek and Dynavax agree that, in addition to any other remedies that may be available in law, in equity or otherwise, each party shall be entitled to seek temporary and permanent injunctive relief against any threatened violation of such limitations or restrictions or the continuation of any such violation in any court of competent jurisdiction, without the necessity of proving actual damages.

In witness whereof, the parties have by duly authorized persons, executed this Agreement, as of the date first above written.

BIOSEEK	DYNAVAX
By: /s/ Peter D. Staple	By: /s/ Dino Dina
Title: Chief Executive Officer	Title:_____

EXHIBIT 1(b)

BioMAP TECHNOLOGY DESCRIPTION

BioMAP Technology includes; (i) the compositions (cell types, gene products, proteins, carbohydrates, lipids, compounds) of assays for the testing and analysis of compounds, genes, or biological samples ("BioMAP(TM) ASSAYS"); (ii) methods of measurement, instrumentation, techniques, materials, and concepts related to the above; (iii) drug/compound effects related to the above; (iv) drug/compound development to specific targets; (v) SDI(TM) animal model design, testing and compound efficacy in such models; (vi) composition, architecture and development of data, software and informatics tools regarding the analysis of BioMap(TM) and SDI(TM) data; (vii) methods and uses of combinatorial biology/BioMAP(TM) systems; and (viii) any improvements made of any of the foregoing.

EXHIBIT 1(n)

TZP COMPOUNDS TO BE PROVIDED TO BIOSEEK FOR THE PROGRAM

As of the Effective Date, Dynavax shall provide the following TZP Compounds to BioSeek for use in the Program:

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EXHIBIT 2(a)

INFORMATION TO BE PROVIDED BY DYNAVAX TO BIOSEEK

1. Structures of the Provided TZP Compounds

2. Data corresponding to metabolism and stability tests performed on the Provided TZP Compounds

3. Data on biochemical assays performed on the Provided TZP Compounds

4. Summary of data corresponding to previous tests on candidate targets of the Provided TZP Compounds including:

    a. RNA

    b. Cytokines

    c. In vitro cellular assays

    d. Responses in animal models

[***]=CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED WITH BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 406 OF THE SECURITIES ACT OF 1933, AS AMENDED.

EXHIBIT 10.8

LICENSE AND SUPPLY AGREEMENT

This License and Supply Agreement (this "Agreement") is entered into as of the last signature hereunder (the "Effective Date") by and between Berna Biotech AG, a Swiss corporation having its principal place of business at Rehhagstrasse 79, CH-3018 Berne, Switzerland ("Berna"), and Dynavax Technologies Corporation, a USA corporation having its offices at 717 Potter Street, Berkeley, California 94710, USA ("Dynavax"). Berna and Dynavax may be referred to in the Agreement individually as a "Party", and collectively as the "Parties".

RECITALS

A. Berna is the inventor of, and possesses certain information, technology, patents and other intellectual property rights regarding its proprietary yeast expression system based on the methyltrophic yeast Hansenula polymorpha (Hansenula Expression System) which are protected as intellectual property rights owned by Berna's affiliate Rhein Biotech N.V., Maastricht, The Netherlands. Based on its proprietary Hansenula Expression System, Berna's affiliates Rhein Biotech GmbH, Dusseldorf, Germany and Green Cross Vaccine Corporation, Yongin City, Korea ("GCVC") have developed processes for the production of adr-HBsAg, a component of vaccines for hepatitis B.

B. Dynavax is developing a prophylactic hepatitis B vaccine comprising an ISS-1018 oligonucleotide and HBsAg. Dynavax desires to license from Berna adr-HBsAg for use in such vaccine.

C. Dynavax is also developing a therapeutic hepatitis B vaccine comprising an ISS oligonucleotide and HBsAg. Dynavax desires to license from Berna adr-HBsAg for use in such vaccine.

D. Berna is willing to provide Dynavax access to adr-HBsAg, including the supply thereof by GCVC, and to grant Dynavax a license under such intellectual property rights of Rhein Biotech N.V., in accordance with the terms and conditions set forth in this Agreement.

AGREEMENT

For good and valuable consideration, including the covenants and obligations expressed herein, receipt of which is hereby acknowledged, intending to be legally bound, the parties hereto agree as follows:

1. DEFINITIONS.

1.1 "adr-HBsAg" shall mean the hepatitis B surface antigen of the subtype adr produced with the Hansenula polymorpha Expression System.

1.2 "adr-HBsAg Technology" shall mean (a) the technology with which adr-HBsAg in bulk can be produced and with which quality analysis is being performed, and (b) all patents, know-how and other intellectual property owned or controlled by Berna that claims or covers adr-HBsAg or its manufacture or use, including but not limited to the patents listed in Appendix C.

1.3 "Affiliate" shall mean any business entity that controls, is controlled by, or is under common control with another corporation or business entity. As used in this definition, the direct or indirect ownership of at least fifty percent (50%) or, if smaller, the maximum allowed by applicable law, of the voting securities or an interest in the assets, profits or earnings of a business entity shall be deemed to constitute "control" of the business entity. Rhein Biotech N.V., Rhein Biotech GmbH and GCVC are Affiliates of Berna in the sense of this definition.

1.4 "Berna" shall mean Berna and/or its affiliates mentioned above, as is appropriate in view of the rights and obligations under this Agreement.

1.5 "cGMP" shall mean current good manufacturing practices as defined by relevant Pharmaceutical Law and Pharmaceutical, Control Authority and Regulatory guidance in the country of Manufacturing.

1.6 "Confidential Information" shall have the meaning assigned thereto in Section 14.1.

1.7 "Disease Field" shall mean the field of inducing an active, long term prophylactic response or therapeutic immune response against Hepatitis B (including chronic status) in humans.

1.8 "Dynavax" shall mean Dynavax as defined above as well as its affiliates, as is appropriate in view of the rights and obligations under this Agreement.

1.9 "Fill and Finish Manufacturer" shall have the meaning assigned thereto in Section 2.3(c).

1.10 "Government Approval" shall mean any approvals, licenses, registrations or authorisations of any Regulatory Authorities, necessary for the use, development, testing, production, marketing, sale or distribution of the Vaccines in a regulatory jurisdiction.

1.11 "ISS" shall mean ISS 1018 (5'-TGACT GTGAA CGTTC GAGAT GA-3') or ISS 295 (5'-TCGTCGA-HEG-ACGTTCG-HEG-AGATGAT-3').

1.12 "Manufacturing and Supply" shall mean the commercial manufacture, processing, packing, holding, all required labelling, testing, storage, release and supply to Dynavax or its designee of adr-HBsAg in accordance with the terms and conditions set forth in this Agreement.

1.13 "Net Sales" shall mean the gross amount invoiced by Dynavax or Sublicensee (if applicable) for the sale or other disposition to an unaffiliated third party of Vaccines, less the following deductions for amounts actually incurred or allowed related to the sale or other disposition:

(a) trade, cash and quantity discounts (including volume discounts), credits and rebates, and credits, rebates and allowances and adjustments for rejections, recalls or returns (not in excess of the selling price of the Vaccine); and

(b) freight, insurance, sales, use, excise, value-added and similar taxes or duties imposed on the sale and included in the gross amount invoiced; and

(c) reasonable and customary rebates actually granted to managed health care organizations, federal, state, or local governments (or their agencies), and managed health organizations (including Medicaid rebates); and

(d) amounts debited on account of specific bad debts with respect to Net Sales previously invoiced, determined in accordance with the selling Party's normal accounting procedures consistently applied within and across its pharmaceutical or biopharmaceutical operating unit.

1.14 "Prophylactic Vaccine" shall mean a prophylactic Hepatitis B vaccine developed by Dynavax or its sublicensee and comprised of an ISS and adr-HBsAg, and that potentially utilises additional delivery or adjuvant technology, in pharmaceutical dosage forms suitable for human use.

1.15 "Proposed Publication" shall have the meaning assigned thereto in Section 8.1.

1.16 "Regulatory Authorities" shall mean those government agencies or authorities responsible for the regulation of Vaccines and/or adr-HBsAg (including without limitation the manufacture, supply and sale thereof) in the Territories.

1.17 "Specifications" shall mean those specifications set forth in Appendix A

1.18 "Sublicensee" shall mean any permitted sublicensee of the license granted to Dynavax under this Agreement as further described in Section 2.3.

1.19 "Territory A" shall mean Europe and North America.

1.20 "Territory B" shall mean all countries of the world except Japan and those named in the definition of Territory A.

1.21 "Territories" shall mean Territory A and Territory B.

1.22 "Therapeutic Vaccine" shall mean a therapeutic hepatitis B vaccine developed by Dynavax or its sublicensee and comprised of an ISS and adr-HBsAg, and that potentially utilises additional delivery or adjuvant technology, in pharmaceutical dosage forms suitable for human use.

1.23 "Vaccines" shall mean Prophylactic Vaccine and Therapeutic Vaccine.

2. LICENSE GRANT.

2.1 Subject to the terms and conditions of this Agreement, Berna hereby grants to Dynavax for the term of this Agreement, unless earlier terminated in accordance with Section 15, a non-exclusive license under the adr-HBsAg Technology, with the right to sublicense solely in accordance with Sections 2.3, to research, develop, manufacture, have manufactured, market, distribute, import, use, offer for sale and sell Vaccines in the Territories for use solely in the Disease Field. Such license grant does not permit the transfer by Dynavax to any third party of adr-HBsAg other than as part of assembled Vaccines (including, without limitation, transfer of Vaccines to third parties for preclinical testing, toxicology, or clinical trials) or in accordance with Section 2.3, without the prior written approval of Berna, such approval not to be unreasonably withheld.

2.2 The license granted in Section 2.1 is specific to the Disease Field. For the purpose of clarification, Dynavax shall have no right to include the adr-HBsAg in any other

product intended for therapeutic or prophylactic use in any field outside of the Disease Field, whether such other product is formulated as part of the Vaccines or sold in bundled package together with the Vaccines, unless a separate license for such other product and other disease field is expressly granted in writing by Berna to Dynavax.

2.3 Berna hereby grants to Dynavax for the term of this Agreement, unless earlier terminated in accordance with Section 15, the right to sublicense the right to research, develop, manufacture, have manufactured, market, distribute, import, use, offer for sale and sell Vaccines in the Territories under the adr-HBsAg Technology in the Disease Field as follows:

(a) Prior to the grant of a sublicense, Dynavax shall notify Berna in writing of the identity of the intended Sublicensee, and Berna shall have thirty (30) days to consent to the Sublicensee, such consent not to be unreasonably withheld. If Berna does not notify Dynavax in writing within such thirty (30) day period that Berna does not consent to such Sublicensee, Berna shall be deemed to have consented. All sublicense agreements shall be consistent with the terms of this Agreement and shall expressly bind the Sublicensee to the applicable terms of this Agreement and shall provide for the automatic assignment of the sublicense agreement to Berna if this Agreement is terminated by Berna. Dynavax shall promptly furnish Berna with a fully executed copy of any sublicense agreement.

(b) For the avoidance of doubt, either Dynavax or its Sublicensee may develop, manufacture, have manufactured, use, market, distribute, import, use, offer for sale and sell Vaccines in any part of the Territories.

(c) For purposes of clarity, `manufacture' and `have manufactured' includes the combining of the adr-HBsAg and the ISS to create the Vaccines, but does not include the manufacture of adr-HBsAg itself. For further clarity, the use of a third party (the "Fill and Finish Manufacturer") for the combining of the adr-HBsAg and the ISS and related formulation work to create the Vaccines, and related fill and finish work (including labelling and packaging), which will then be given to Dynavax or its Sublicensee for sale or other distribution, shall not be considered a sublicensing per se.

3. SUPPLY OF ADR-HBsAg.

3.1 SUPPLY COMMITMENT. Berna agrees to provide Dynavax on a non-exclusive basis, under the terms and condictions of this Article 3 (including supply prices) with the quantities of adr-HBsAg meeting the Specifications as required by Dynavax for use in making Vaccines for sale by Dynavax and/or its Sublicensees, whether as Prophylactic Vaccine and/or Therapeutic Vaccine.

3.2 SUPPLY PRICE

3.2.1 PROPHYLACTIC VACCINE. Berna will provide to Dynavax adr-HBsAg meeting Specifications on a bulk basis for incorporation into Prophylactic Vaccine, at the following prices:

(a) For pre-clinical and clinical development, [***]. For all subsequent orders for pre-clinical

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and clinical development purposes the price will be [***].

(b) For commercialisation in Territory A, [***].

(c) For commercialisation in Territory B, [***].

3.2.2 THERAPEUTIC VACCINE. Berna will provide to Dynavax adr-HBsAg meeting Specifications on a bulk basis for incorporation into Therapeutic Vaccine, at the following prices:

(a) For pre-clinical and clinical development, [***].

(b) For commercialisation in all Territories, [***].

3.2.3 If Berna's manufacturing costs increase due to Dynavax's requirements for new or modified Specifications or formulations of adr-HBsAg, the Parties shall negotiate in good faith a new pricing system. Berna shall not be obligated to manufacture in accordance with any such new or modified Specifications or formulations until the Parties have agreed to a price.

3.3 In all cases, sales to Dynavax will be EXW (ex works;Incoterms 2000). To control the shipment conditions, Berna will pack the quantities of adr-HBsAg suitable for delivery to the destination selected by Dynavax. Notwithstanding above mentioned EXW, Berna will arrange the shipping. All costs for freight and insurance will be charged to Dynavax separately with the invoice for each delivery. Thus the shipping terms on the invoice will show CIP `airport of destination'.

3.4 TITLE TO ADR-HBsAg. Berna shall retain all title and interest in and to any and all adr-HBsAg manufactured by Berna hereunder until such adr-HBsAg is supplied by Berna to Dynavax and paid for by Dynavax as provided in Section 3.2. Transfer of ownership shall not in any way relieve Dynavax of the covenants under Section 2.2, which shall continue to apply to all adr-HBsAg purchased by Dynavax from Berna.

3.5 FORECASTS. Within [***] after the Effective Date and [***], Dynavax shall provide Berna with a rolling forecast for the amount of adr-HBsAg required for the [***] period that commences [***] following the date of the forecast. The amounts for the [***] shall be by [***]. The amounts for the following [***] months shall be by [***]. The amounts forecasted for the [***] of the forecast (the "Ordered Amount") shall be automatically [***] firm and binding; [***] of the amounts forecasted for the following [***] of the forecast shall be automatically firm and binding; and the amounts forecasted for the [***] shall be non-binding.

(a) Berna shall fill each Ordered Amount within [***] from receipt of such order from Dynavax; provided, however, in the event a given order exceeds the requirements estimated in Dynavax's latest [***] rolling forecast for the [***] in question, Berna shall have up to [***] from receipt of such order to fill such excess requirements.

(b) Notwithstanding any other provision of this Agreement, unless otherwise agreed to in writing by Berna, Berna shall not be obligated to supply to Dynavax in a given [***] more adr-HBsAg than [***] above the amount estimated in Dynavax's latest [***] rolling forecast for the [***] in question, even if such quantity falls within production capacities, but Berna shall use commercially reasonable efforts to supply any such excess amounts.

3.6 CONFORMANCE TO SPECIFICATIONS. The adr-HBsAg supplied by Berna or its manufacturing designee hereunder shall conform at the time of delivery to Dynavax to the applicable Specifications. Dynavax may test any adr-HBsAg delivered hereunder to determine conformance of such adr-HBsAg with the applicable Specifications. If Dynavax determines that such adr-HBsAg does not meet such Specifications, Dynavax, shall within [***] of receipt of the nonconforming adr-HBsAg, notify Berna in writing of such nonconformance, including test results supporting Dynavax's determination. Berna shall, at no charge to Dynavax, replace nonconforming adr-HBsAg with adr-HBsAg that meet such Specifications. If Berna disagrees with the alleged nonconformity of the adr-HBsAg with the specifications, an independent laboratory, mutually agreed upon in writing by the Parties, shall analyse samples of the alleged nonconforming adr-HBsAg to determine compliance with the Specifications. Dynavax and Berna shall be bound by the laboratory analysis of such adr-HBsAg. The cost incurred in connection with retaining the independent laboratory shall be borne by Dynavax if the adr-HBsAg in question is found to conform to the Specifications and by Berna if it is found to not conform to the Specifications.

3.7 PERMITTED USES. Dynavax shall use the adr-HBsAg supplied by Berna hereunder only for purposes of research, development (including pre-clinical testing and toxicology), manufacturing, marketing, distribution and sale of Vaccines. Dynavax shall use the adr-HBsAg in compliance with this Agreement and with all applicable federal, state and local laws and regulations. Dynavax shall not transfer the adr-HBsAg or any related information to any person who is not under the immediate and direct supervision of Dynavax, except as may otherwise expressly be provided in this Agreement.

3.8 ACCESS TO FACILITIES. At Dynavax cost, Berna shall permit Dynavax and the Regulatory Authorities and their respective agents and representatives reasonable access to the facilities where the Manufacturing and Supply is being carried out at times mutually agreed to by Berna and Dynavax.

3.9 SHIPPING. Delivery shall be to Dynavax, C.I.P, named place of destination (Incoterms 2000), this place being outside the geographical region of Europe, with costs of insurance and freight invoiced to Dynavax, or its Sublicensee, as mentioned in Section 3.3. Risk for adr-HBsAg shall pass to Dynavax after delivery. Title shall pass to Dynavax after full payment of the invoiced price only.

3.10 MAINTENANCE OF RECORDS. Berna shall keep or cause to be kept complete, accurate and current records relating to all of its Manufacturing and Supply activities in accordance with all applicable laws, cGMP and the requirements of the Regulatory Authorities in the European Union.

3.11 ACCESS TO RECORDS. Berna shall provide Dynavax, at Dynavax's cost, with copies of all documentation under Berna's control relating to its Manufacturing and Supply of adr-HBsAg to the extent such documentation is required by any Regulatory Authority to be included in any Vaccines regulatory approval submission to such Regulatory Authority and to the extent this is economically reasonable. Berna hereby grants Dynavax and its Sublicensees

the right to reference Berna's regulatory approvals, if any, for adr-HBsAg and the drug master file for each adr-HBsAg on file with any regulatory agency. Upon Dynavax's request, Berna shall execute letters of authorisation evidencing Dynavax' and its Sublicensees' reference rights as set forth above. While Berna grants the above rights to the adr-HBsAg Technology and the use of the related documention, it is Dynavax's and its Sublicensees' obligation to comply with all relevant laws and regulations in the Territories.

3.12 COMPLIANCE WITH GMP STANDARDS. Berna is producing the adr-HBsAg under local cGMP requirements and is involved in the process of increasing the cGMP standards towards the level which will be compliant with European standards. Berna agrees to use reasonable commercial efforts to provide adr-HBsAg that complies with European and Canadian standards if so required by Dynavax.

4. PAYMENTS AND REPORTS

4.1 LICENSE FEE. As partial consideration for the rights and licenses granted hereunder, Dynavax shall pay Berna a non-refundable, non-creditable license fee of [***] within ten (10) days of the Effective Date of this Agreement.

4.2 PROPHYLACTIC VACCINE

4.2.1 MILESTONES. As partial consideration for the rights and licenses granted hereunder, Dynavax shall pay Berna the following non-refundable, non-creditable milestone payments:

(a) [***] within thirty (30) days of submission of the first application for licensure of Prophylactic Vaccine anywhere in the Territories.

Such payment shall only be due if payment for the corresponding milestone for the Therapeutic Vaccine has not been made (Section 4.3.1(a)(i)).

(b) [***] within thirty (30) days following the first licensure of Prophylactic Vaccine anywhere in the Territories.

Such payment shall only be due if payment for the corresponding milestone for the Therapeutic Vaccine has not been made (Section 4.3.1 (a)(ii)).

4.2.2 ROYALTY. As partial consideration for the rights and licenses granted hereunder, Dynavax shall pay Berna a [***] royalty on annual Net Sales made by Dynavax or its Sublicensee of Prophylactic Vaccine, commencing with the first commercial sale of Prophylactic Vaccine by Dynavax or its Sublicensee anywhere in the Territories.

4.3 THERAPEUTIC VACCINE

4.3.1 IN CASE OF COMPLETION OF DEVELOPMENT AND COMMERCIALISATION BY DYNAVAX, Dynavax shall pay Berna the following:

[***] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED WITH BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 406 OF THE SECURITIES ACT OF 1933, AS AMENDED.

(a) MILESTONES. As partial consideration for the rights and licenses granted hereunder, Dynavax shall pay Berna the following non-refundable, non-creditable milestone payments based on achievement of the milestone events by Dynavax:

(i) [***] within thirty (30) days of submission of the first application for licensure of Therapeutic Vaccine anywhere in the Territories.

Such payment shall only be due if payment for the corresponding milestone for Prophylactic Vaccine has not been made (Section 4.2.1(a)).

(ii) [***] within thirty (30) days following the first licensure of Therapeutic Vaccine anywhere in the Territories.

Such payment shall only be due if payment for the corresponding milestone for Prophylactic Vaccine has not been made (Section 4.2.1(b)).

(b) ROYALTY. As partial consideration for the rights and licenses granted hereunder, Dynavax shall pay Berna a [***] royalty on annual Net Sales made by Dynavax of Therapeutic Vaccine, commencing with the first commercial sale of Therapeutic Vaccine by Dynavax anywhere in the Territories.

(c) SALES BONUS PAYMENTS. As partial consideration for the rights and licenses granted hereunder, Dynavax shall pay Berna the following one-time milestone payments if the applicable milestone event is achieved:

(iii) [***] upon achievement of [***] in cumulative Net Sales of Therapeutic Vaccine anywhere in the Territories.

(iv) [***] upon achievement of [***] in cumulative Net Sales of Therapeutic Vaccine anywhere in the Territories.

4.3.2 IN CASE DYNAVAX ELECTS TO SUBLICENSE DEVELOPMENT AND/OR COMMERCIAL RIGHTS TO THE THERAPEUTIC VACCINE, Dynavax shall pay Berna the following in lieu of payment under 4.3.1:

(a) [***] of all revenues, in any form (including, but not restricted to, upfront, milestones, royalty and sales bonus payments), it receives in consideration of having granted such sublicense.

(b) For clarity, the following amounts received by Dynavax shall not be deemed to be revenues in consideration of the sublicense: equity investment in Dynavax, loans (if repaid), and R&D funding.

4.4 PAYMENT TERM. Royalties, if due, shall be paid for 15 years from the first commercial sale of Vaccines in each country.

4.5 PAYMENT SCHEDULE. Royalties shall be calculated on a semi-annual basis, specifically, the periods January 1 through June 30 and July 1 through December 31, ("Semi-Annual Period") and shall be due and payable within forty-five (45) days after the end of such Semi-Annual Period, commencing upon the completion of the first Semi-Annual Period during which the first commercial sale occurs.
Should Dynavax elect to sublicense development and/ or commercial rights to Therapeutic Vaccine, payment of Berna share of the proceeds as defined in Section 4.3.2 shall be due and payable within forty-five (45) days after the end of the Semi-Annual Period, commencing upon completion of the Semi-Annual Period during which signature of the sublicensing agreement occurs.

4.6 PAYMENT REPORTS. Forty-five (45) days following the end of each Semi-Annual Period, Dynavax shall furnish to Berna a written report that includes (a) the identity of the countries in which sales of Vaccines have been made and (b) the Net Sales of each Vaccine by Dynavax and the number thereof sold in each such country. Such reports shall be due together with the royalty and sales bonus payments under Sections 4.2.2, 4.3.1(b) and 4.3.1(c) subsequent to launch of the Vaccines. Such reports shall be made whether or not Dynavax has engaged in any sales of Vaccines during the Semi-Annual Period.
Should Dynavax elect to sublicense development and/ or commercial rights to Therapeutic Vaccine, forty-five (45) days following the completion of the Semi-Annual Period during which signature of the sublicensing agreement occurs, Dynavax shall furnish to Berna a written report that includes details of proceeds due to Dynavax under that agreement. At the end of each Semi-Annual Period thereafter, Dynavax shall furnish to Berna a written report that details any proceeds received by Dynavax from the Sublicensee. Such reports shall be due together with payments under Section 4.3.2. Such report shall be made whether or not Dynavax has received any proceeds from the Sublicensee during the Semi-Annual Period.
All information provided by Dynavax pursuant to this Section 4.6 shall be Confidential Information and subject to the terms of Section 14 hereto.

4.7 AUDITS. Dynavax shall keep, and shall cause its Sublicensee to keep, full, complete and accurate records and accounts of Net Sales of each Vaccine and of other proceeds from Sublicensee in sufficient detail to enable the royalty, sales bonus and other payments payable to Berna to be determined. Upon reasonable notice to Dynavax, Berna shall have the right to have an independent certified public accountant audit Dynavax's records pertaining to Vaccines during normal business hours to verify the royalty, sales bonus and other payments payable pursuant to this Agreement; provided, however that (a) such audit shall not take place more frequently than once a year, and (b) shall not cover such records for more than the preceding three (3) years. Such audits shall be at Berna's expense unless such audit determines that Dynavax has paid Berna less than ninety-five percent (95%) of the amount determined to be due for a given time period, in which case such audit shall be at Dynavax's expense and Dynavax shall pay to Berna the reasonable cost of such audit and any shortfall in payments due to Berna within thirty (30) days following Berna's invoice to Dynavax therefor. Dynavax shall preserve and maintain all such records and accounts required for audit for a period of three (3) years after the calendar year to which such records and accounts apply.

4.8 PAYMENT INSTRUCTIONS. All payments due hereunder shall be made in Swiss Francs (CHF) by wire transfer of immediately available funds to the following account:

Account No. [***]
Bank: [***]

[***] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED WITH BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 406 OF THE SECURITIES ACT OF 1933, AS AMENDED.

Swift Code: [***]
Clearing No. [***]

or to such other account as Berna may designate from time to time.

4.9 PAST DUE AMOUNTS. Any past due payments under this Agreement shall accrue interest until paid at [***] per annum, or the maximum rate permitted by law, whichever is less.

5. DEVELOPMENT AND COMMERCIALISATION

As partial consideration for the rights and licenses granted hereunder, Dynavax and Berna agree to the following terms for development and commercialisation, as follows:

5.1 PROPHYLACTIC VACCINE

5.1.1 BERNA TO COMMERCIALISE. As partial consideration for the rights and licenses granted hereunder, Dynavax grants Berna the exclusive right to commercialise Prophylactic Vaccine in the Territories on the following terms:

(a) Within two (2) months after availability to Berna, in at least a written overview form, of clinical results from the first pivotal phase III trial of Prophylactic Vaccine, Berna will negotiate and enter into a commercialisation agreement with Dynavax for Prophylactic Vaccine on commercially-reasonable terms as are negotiated by the Parties, by providing, on a country-by-country basis, an acceptable sales and marketing plan.

(b) The commercialisation agreement shall be structured in the form of a distribution agreement under which Berna shall have [***].

(c) Based on its review of the phase III trial results and evaluation of the commercial opportunity, Berna may exercise an option out of such commercialisation agreement with Dynavax for Prophylactic Vaccine (if entered into) on a country-by-country basis at its sole discretion. If so, Dynavax may choose to commercialise Prophylactic Vaccine alone, subject to the payment provisions of Section 4.2.

5.2 THERAPEUTIC VACCINE

5.2.1 OPTION TO COLLABORATE. As partial consideration for the rights and licenses granted hereunder, Dynavax grants Berna an exclusive option to negotiate and enter into a joint development agreement for the Therapeutic Vaccine on commercially reasonable terms as are negotiated by the Parties, on the following terms:

(a) This option shall be valid from the Effective Date and shall expire [***] after availability to Berna, in at least a written overview form, of phase II proof-of-concept data showing statistically significant impact on markers of viral replication or histological markers of liver damage.

(b) Should Berna exercise the option and the Parties enter into a joint development agreement with Dynavax. [***]. This sum shall be

payable in semi-annual instalments of one third. The first payment shall be made within 30 days of expiry of the option period, with the remaining payments to be made on the two subsequent six-month anniversaries of this date.

(c) Should Berna exercise the option to enter into a joint development agreement with Dynavax, [***].

(d) Should Berna exercise the option to enter into a joint development agreement with Dynavax, the terms of this Agreement, as applicable to Therapeutic Vaccine according to Sections 2, 3.2, 4 and 6, become void from the date of signature of the joint development agreement. The option to commercialise (Section 5.2.2) becomes void also.

5.2.2 OPTION TO COMMERCIALISE. If Berna does not exercise its option under Section 5.2.1, and Dynavax has not sublicensed commercial rights to the Therapeutic Vaccine as part of a combined development and commercialisation agreement, then Dynavax grants Berna an exclusive option to commercialise Therapeutic Vaccine on the following terms:

(a) This option shall be valid from the Effective Date and shall expire [***] after availability of clinical results to Berna, in at least a written overview form, from the first pivotal phase III trial, during which time Berna will be entitled to negotiate and enter into a commercialisation agreement with Dynavax for the Therapeutic Vaccine on commercially-reasonable terms as are negotiated by the Parties, by providing, on a country-by-country basis, an acceptable sales and marketing plan.

(b) The commercialisation agreement shall be structured in the form of a distribution agreement under which Berna shall have [***].

(c) Should Berna exercise the option and the Parties enter into a commercialisation agreement with Dynavax for Therapeutic Vaccine, the terms of this Agreement as applicable to Therapeutic Vaccine become void from the date of signature of the commercialisation agreement.

6. PERFORMANCE OBLIGATIONS.

6.1 COMMERCIAL DEVELOPMENT. Dynavax shall use its commercially reasonable diligent efforts to meet the development schedule attached hereto as Appendix B. Dynavax shall at all times keep Berna generally informed of Dynavax's updated development plans, which Dynavax shall provide to Berna in writing [***], for Vaccines, including Dynavax's planned timing for Vaccines commercial launch dates on a country-by-country basis. All dates and other information provided by Dynavax in such plan shall be used for planning purposes only, and shall be subject to reasonable modification by Dynavax based on its actual progress in the development process. Berna and Dynavax shall meet annually regarding Dynavax's efforts under this Agreement. Not more than two representatives from each Dynavax and Berna shall attend such meeting, which may take place either in person in a mutually agreed-upon location or via teleconference. At least thirty (30) days prior to each such meeting, Dynavax shall submit an annual written report to Berna that summarises Dynavax's efforts toward development and commercialisation of Vaccines.

6.2 MARKETING DOCUMENTATION. At all times during the term of this Agreement, Dynavax agrees to furnish reasonably promptly to Berna upon request all documentation and data that is or may hereafter be in Dynavax's possession relating to Dynavax's marketing of Vaccines, including, but not limited to, marketing support data. All such information and data shall be Confidential Information subject to Section 14 hereof.

7. GOVERNMENTAL APPROVALS.

7.1 A Party shall be responsible at its own expense for obtaining all Government Approvals for a Vaccine in any country where that Vaccine shall be sold or otherwise distributed by that Party. Each Party, at its own expense, agrees to provide the other Party with any assistance reasonably requested by it in obtaining such Governmental Approvals. While Berna grants the above rights to the adr-HBsAg Technology and the use of the related documention, it is Dynavax's and its Sublicensees' obligation to comply with all relevant laws and regulations in the Territories.

7.2 Within sixty (60) days following receipt by a Party, it shall promptly provide the other Party with notice of all Government Approvals received by it regarding Vaccines.

8. PUBLICATIONS.

8.1 IN GENERAL. Dynavax shall not publish or present, orally or in writing, including without limitation at symposia, national or regional professional meetings, or to publish in journals or other publications, any Confidential Information of Berna in any way relating to any aspect of the adr-HBsAg, whether separately or as part of Vaccines, including, but not limited to, the development or manufacture of the adr-HBsAg, whether separately or as part of Vaccines (the "Proposed Publication"), without providing Berna the opportunity for prior review. The Proposed Publication will be submitted to Berna at least [***] prior to the date on which it is to be submitted or disclosed to any person or entity not a party to this Agreement. During the [***] period, Berna will review the Proposed Publication for accuracy, disclosure of patentable material or disclosure of its Confidential Information. If, in Berna's sole opinion, a Proposed Publication contains patentable material, Berna will so notify Dynavax before the expiration of the [***] review period. After such notice, Berna may delay publishing for a period of up to [***], to permit filing of appropriate patent applications. Berna shall have the right to remove its Confidential Information from any Proposed Publication.

8.2 PUBLIC ANNOUNCEMENTS.

8.2.1 Within 7 days of the execution of this Agreement, the Parties agree to issue a joint press release on the same date. This press release must receive the prior written approval of each party prior to issuance, which approval shall not be unreasonably withheld

8.2.2 During the term of this Agreement, the Parties agree to consult with each other before issuing any press release or making any public statement based on new or previously undisclosed information with respect to this Agreement or any other transaction contemplated herein and, except as may be required by applicable law or any listing agreement with any national securities exchange, shall not issue any such press release or make any such public statement prior to obtaining the written consent of the other Party, such consent not to be unreasonably withheld.

[***]=CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED WITH BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 406 OF THE SECURITIES ACT OF 1933, AS AMENDED.

9. REPRESENTATIONS AND WARRANTIES.

9.1 NONTRANSFER. Dynavax represents and warrants that it will not transfer the adr-HBsAg, other than as part of the Vaccines, to any third party without the prior written consent of Berna, save for Dynavax's transfer of adr-HBsAg to its Sublicensee or Fill and Finish Manufacturer as stipulated in Section 2.3, or as a Permitted Use under Section 3.7.

9.2 COMPLIANCE WITH LAW. Dynavax warrants that Vaccines manufactured and/or sold or distributed by Dynavax will be manufactured, sold and distributed in accordance with all applicable laws, rules and regulations of the country of manufacture, sale or distribution of such Vaccines. Berna warrants that all adr-HBsAg manufactured and sold to Dynavax will be manufactured, sold and distributed in accordance with all applicable laws, rules and regulations of the country of manufacture.

9.3 NO CONFLICT. Each Party hereby represents and warrants that it is authorised to enter into this Agreement and that this Agreement does not create a conflict with any other right or obligation provided under any other agreement or obligation that such Party has with any third party.

10. INDEMNIFICATION.

10.1 Dynavax hereby agrees to indemnify, defend and hold harmless Berna, its Affiliates and their officers, agents and employees from and against any and all claims, actions, proceedings, liabilities or losses, including reasonable legal expenses and costs, including attorney fees (collectively, "Losses"), that arise from (a) any material breach of this Agreement, including a breach of any representation, warranty or covenant made by Dynavax hereunder, by Dynavax, (b) the negligence or wilful misconduct of Dynavax, its Affiliates or Sublicensee(s) and the employees, agents and contractors thereof, (c) any manufacturing of Vaccines, (d) the Vaccines infringing upon or violating any third party's patent or other proprietary rights , or (e) any handling, possession, use, marketing, distribution or sales of Vaccines by Dynavax or its Sublicensee(s); provided, however, that Dynavax shall have no obligation to indemnify Berna to the extent that such losses are the result of Berna's gross negligence or wilful misconduct or supply of defective adr-HBsAg.

10.2 Berna hereby agrees to indemnify, defend and hold harmless Dynavax, its Affiliates and their officers, agents and employees from and against any and all claims, actions, proceedings, liabilities or losses, including reasonable legal expenses and costs, including attorney fees (collectively, "Losses"), that arise from (a) any material breach of this Agreement, including a breach of any representation, warranty or covenant made by Berna hereunder, by Berna, (b) the negligence or wilful misconduct of Berna, its Affiliates or Sublicensee(s) and the employees, agents and contractors thereof, (c) any manufacturing of adr-HBsAg, (d) the adr-HBsAg infringing upon or violating any third party's patent or other proprietary rights in the country of manufacturing, or (e) any handling, possession, use, marketing, distribution or sales of Vaccines by Berna or its sublicensees; provided, however, that Berna shall have no obligation to indemnify Dynavax to the extent that such Losses are the result of Dynavax's gross negligence or wilful misconduct.

11. INSURANCE.

11.1 Dynavax shall obtain and maintain in effect during the term of this Agreement and for five (5) year thereafter, with financially strong insurance carriers, commercial general liability insurance covering bodily injury and property damage necessary to meet its liability obligations under this Agreement or amounts comparable to other companies of the same size

and having the same business as Dynavax. Dynavax shall provide a statement to Berna in which Dynavax identifies its insurer and warrants that its coverage is sufficient to meet its obligations set forth herein. The insurance limits will be increased as a function of increasing sales levels. There shall be a thirty (30) day notice of cancellation with respect to the insurance coverage, and Berna shall be notified in the event of any material change directly affecting Berna in the insurance contract or coverages afforded. Dynavax shall be solely responsible for the payment of any deductible. Berna shall maintain similar insurance levels as the above.

12. LIMITATION OF LIABILITY

In no event will either Party hereto be liable for any special, incidental, consequential or indirect damages suffered by the other Party arising in any way out of this Agreement, however caused and on any theory of liability. This limitation will apply even if the Party has been advised of the possibility of such damage.

13. DISCLAIMER OF WARRANTIES.

All adr-HBsAg are licensed and supplied hereunder "as is," and Berna hereby disclaims any and all representations and warranties with regard to the adr-HBsAg and Vaccines, express or implied, and specifically disclaims any other express or implied warranties, including any implied warranties of merchantability or fitness for a particular purpose or use and any other statutory warranties or any warranty of patentability or noninfringement.

14. CONFIDENTIALITY.

14.1 CONFIDENTIAL INFORMATION. "Confidential Information" shall mean any proprietary information of a Party that is specifically designated as "confidential" and that is disclosed by such Party to the other Party in any form in connection with this Agreement. For the term of this Agreement and five (5) years from the date of expiration or termination, each party (a) shall treat as confidential all Confidential Information provided by the other Party, (b) shall not use such Confidential Information except as expressly permitted under the terms of this Agreement or otherwise authorised in writing by the disclosing party, (c) shall implement reasonable procedures to prohibit the disclosure, unauthorised duplication, misuse or removal of such Confidential Information, and (d) shall not disclose such Confidential Information to any third party except as permitted under the Agreement. Without limiting the foregoing, each of the Parties shall use at least the same procedures and degree of care to prevent the disclosure of Confidential Information as it uses to prevent the disclosure of its own confidential information of like importance, and shall in any event use no less than reasonable procedures and a reasonable degree of care.

14.2 EXCEPTIONS. Notwithstanding the above, a Party shall have no obligation under Section 14.1 with regard to any Confidential Information of the other Party that such Party can demonstrate by competent evidence:

(a) was generally known and available to the public domain at the time it was disclosed, or becomes generally known and available to the public domain through no fault of the receiver;

(b) was known to the receiver at the time of disclosure as shown by the written records in existence at the time of disclosure;

(c) is disclosed with the prior written approval of the disclosing Party;

(d) becomes known to the receiving Party from a source other than the disclosing Party without breach of this Agreement by the receiving party and in a manner which is otherwise not in violation of the disclosing party's rights; or

(e) was independently developed by receiving Party without any use of Confidential Information of the disclosing Party.

14.2.2 REQUIRED DISCLOSURE. Notwithstanding the foregoing, a Party may disclose specific Confidential Information of the other Party solely to the extent such disclosure is required pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, that the disclosing Party shall provide reasonable advance notice to enable the other Party to seek a protective order or otherwise prevent such disclosure.

15. TERM AND TERMINATION.

15.1 TERM. The term of this Agreement shall be from the Effective Date until expiration of Dynavax obligations to pay royalties pursuant to Section 4.4.

15.2 TERMINATION BY AGREEMENT. This Agreement may be earlier terminated by either party upon mutual written agreement.

15.3 TERMINATION BY DYNAVAX.

15.3.1 TERMINATION. This Agreement may be earlier terminated by Dynavax upon twelve (12) months written notice to Berna. If Dynavax terminates under this provision, Berna may continue to manufacture the amounts of adr-HBsAg that are then considered "firm and binding" pursuant to Section 3.5 above, and, if Berna provides or has provided adr-HBsAg to Dynavax, then Dynavax shall make all payments later due to Berna pursuant to Sections 3.2 and 4.

15.3.2 PARTIAL TERMINATION. If Berna does not exercise its option to collaborate under Section 5.2.1 above, then Dynavax may terminate this Agreement solely as to the Therapeutic Vaccine if, in its sole discretion, it determines based on technical and commercial considerations that further development of the Therapeutic Vaccine is not feasible.

15.4 TERMINATION FOR BREACH. Upon any material breach of this Agreement by a Party, the non-breaching Party may terminate this Agreement upon sixty (60) days written notice to the breaching party, provided that such notice shall become effective at the end of the sixty (60) day period only if the breaching party shall not have cured such breach within such period. For purposes of this Agreement, breach shall be deemed to "material" if it includes, but not be limited to, (a) the promotion and sale of Vaccines for use outside of the Disease Field, (b) distribution of adr-HBsAg other than as allowed under this Agreement, (c) failure to pay the royalties and other payments due under Section 4, (d) failure to comply with the publication obligations specifically related to adr-HBsAg under Section 8.1, and (e) failure to comply with the insurance requirements under Section 11.

15.5 BANKRUPTCY. Either Party may terminate this Agreement by giving thirty (30) days written notice to the other Party if such other Party (a) files a petition of bankruptcy or has any such petition filed against such other Party; (b) goes into compulsory liquidation; (c) has its business placed in the possession of a receiver, a government or a government agency; (d) makes an assignment for the benefit of creditors; or (e) is subject to a dissolution or winding up.

15.6 EFFECTS OF TERMINATION. Neither expiration nor termination shall relieve either party of its obligations under Sections 4.4 through 4.9, 8, 9 through 14 and 16. Further, Dynavax shall make all reports and payments as are required for the final quarter. Upon expiration or termination hereof, at Berna's option, Dynavax shall return or destroy, and certify destruction of, any adr-HBsAg in Dynavax's possession or control.

16. MARCH-IN RIGHTS

In the event that Berna is unable to manufacture and/or to supply to Dynavax the forecasted and ordered amount of adr-HBsAg requested by Dynavax (subject to the exceptions of Section 3.5(a) and 3.5(b) above) for any reason whatsoever (including, but not limited to, bankruptcy, reorganization or merger), and does not cure such failure within one hundred and twenty (120) days of written notice by Dynavax, then Berna grants Dynavax a non-exclusive, non-sublicensable, right and license under the adr-HBsAg Technology in the Territories to make or have made by a third party adr-HBsAg for purposes solely of satisfying Dynavax's requirements for making Vaccines. The choice of such third party will require the explicit consent of Berna, the declaration of which should not be unreasonably withheld.

Dynavax shall thereafter be entitled to access to all material and proprietary rights owned or licensed by Berna necessary to make adr-HBsAg. Such access includes, but is not limited to:

(a) access to Berna's Manufacturing Working Cell Bank, and manufacturing process for adr-HbsAg and the relevant analytical procedures.

(b) reasonable technical assistance by Berna to enable such manufacturing technology transfer.

All information provided by Berna pursuant to this Section 16 shall be Confidential Information and subject to the terms of Section 14. Dynavax shall use its best efforts to enter into any such manufacturing agreement on customary commercial terms that will allow for termination upon Berna's ability to again supply adr-HBsAg. If Dynavax does enter into such a manufacturing agreement, then such right and license shall not be revoked until such time as Berna is once again in a position to meet its supply obligations under this Agreement, at which time Dynavax's agreement with any third-party manufacturer will be terminated in accordance with the terms therein.

To prevent above mentioned inability to manufacture and/or to supply, Berna has the right to supply to Dynavax, observing reasonable lead times for change, adr-HbsAg from a different manufacturing site that meets the specifications of Annex 2 and is accompanied by documentation satisfying Article 3.12 of this Agreement.

17. GENERAL PROVISIONS.

17.1 INDEPENDENT CONTRACTORS. Berna and Dynavax shall be independent contractors and shall not be deemed to be partners, joint venturers or each other's agents, and neither party shall have the right to act on behalf of the other except as is expressly set forth in this Agreement.

17.2 ENTIRE AGREEMENT; AMENDMENT. This Agreement sets forth the entire agreement and understanding between the parties and supersedes all previous agreements, promises, representations, understandings, and negotiations, whether written or oral between the parties with respect to the subject matter hereof. There shall be no amendments or modifications to

this Agreement, except by a written document signed by both parties.

17.3 ASSIGNMENT. This Agreement shall be binding upon and shall inure to the benefit of any successor or successors of Berna and Dynavax by reorganisation, merger, consolidation or otherwise, and any assignee that has acquired all of substantially all of the business and properties of either. Berna and Dynavax shall not otherwise assign their rights and obligations hereunder unless having obtained the prior written consent of the other party hereto, which consent will not be unreasonably withheld or delayed.

17.4 GOVERNING LAW; INJUNCTIVE RELIEF. This Agreement shall be construed and enforced in accordance with the laws of Switzerland. It is understood that the application of the United Nations Convention on Contracts for the International Sales of Goods (CISG, Vienna 1980) shall be excluded.Berna shall have the right to such injunctive relief or other legal or equitable relief as is reasonable to ensure that Dynavax does not transfer the adr-HBsAg to a third party, except as allowed under this Agreement, without Berna's prior written consent

17.5 DISPUTE RESOLUTION. Any dispute or claim arising out of or in connection with this Agreement shall be resolved as follows: (a) for a period of thirty (30) days after a dispute arises the respective chief executive officers of the parties or their designees shall negotiate in good faith in an effort to resolve the dispute, and (b) if the dispute has not been resolved at the close of such thirty (30) day period, the matter will be finally settled by binding arbitration. The arbitration proceedings shall be governed by the procedural rules of Chapter 12 of the Swiss Private International Law Act of December18, 1987 (SPIL;SR 291) and by any further rules subsequently agreed upon by the PARTIES or fixed by the arbitration tribunal.

17.6 SEVERABILITY. If any provision of this Agreement is finally held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

17.7 WAIVER. Any delay or failure in enforcing a party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of a party's right to the future enforcement of its rights under this Agreement.

17.8 NOTICE. Any notice required or permitted by this Agreement to be given to either party shall be in writing and shall be deemed given when delivered personally, by confirmed telecopy to a fax number designated in writing by the party to whom notice is given, or by registered, recorded or certified mail, return receipt requested, and addressed to the party to whom such notice is directed, at:

If to Berna: Berna Biotech AG.
Rehhagstrasse 79
CH-3018 Berne
Switzerland
Attention: CEO
Fax: +41 31 980 62 29

with a copy to: Berna Biotech Ltd.
Rehhagstrasse 79
CH-3018 Berne
Switzerland
Attention: VP Legal/Regulatory Affairs
Fax: + 41 31 980 6312

If to Dynavax: Dynavax Technologies Corporation
717 Potter Street, Suite #100
Berkeley, California 94710, USA
Attention: President
Fax: (510) 450-7740

with a copy to: Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
Attention: Barclay James Kamb, Esq.
Fax: (650) 849-7400

or at such other address or telecopy number as such party to whom notice is directed may designate to the other party in writing.

17.9 FORCE MAJEURE. If the performance of this Agreement or any obligations hereunder is prevented, restricted or interfered with by reason of fire or other casualty or accident, strikes or labour disputes, war or other violence, any law, order, proclamation, ordinance, demand or requirement of any government agency, or any other act or condition beyond the control of the parties hereto, the party so affected, upon giving prompt notice to the other party shall be excused from such performance (other than the obligation to pay money) during such prevention, restriction or interference.

17.10 HEADINGS. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.

17.11 COUNTERPARTS. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

18. LIST OF APPENDICES

Appendix A: Specification of adr-HBsAg, extra highly concentrated

Appendix B: Commercial Development schedules of Prophylactic Vaccine and of Therapeutic Vaccine.

Appendix C: Berna Biotech List of relevant Patents

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last written below.

DYNAVAX, 717 Potter Street, Suite #100

Berkeley, California 94710 U.S.A.

/s/ Dino Dina October 28, 03

Dr. Dino Dina Date:

President and Chief Executive Officer

BERNA BIOTECH AG, Rehhagstrasse 79

CH-3018 Berne, Switzerland

/s/ Daan Ellens

[Name] DAAN ELLENS Date: 28 October 2003

[Title] CHIEF OPERATION OFFICER
CEO, Rhein Biotech N.V.

/s/ Illegible

[Name] Illegible Date: 28 October 2003

[Title] Director Rhein Biotech NV

/s/ J. v. Manger - Koenig 28 October 2003

Jorg von Manger - Koenig
Executive Vice President
Legal/Regulatory Affairs
Intellectual Property Rights

APPENDIX A

SPECIFICATION OF adr-HBsAg, EXTRA HIGHLY CONCENTRATED BULK

- - Not formaldehyde treated

- - No preservative (thimerosal) has been added.

NR.	TEST-ITEM	METHOD	DIMENSIONS	SPECIFICATIONS
1.	Protein content	Lowry method	(Mu)g/mL	1.8x10(3) < or = X < or = 2.6x10(3)
2.	HBsAg protein content	ELISA	% on protein	> or = 95
3.	Polysaccharide content	Anthrone method	(Mu)g/100 (Mu)g protein	< or = 10
4.	Lipid content	Sulfphospho vanillin method	(Mu)g/100 (Mu)g protein	< or = 100
5.	Agents used for purification process: Tween 20 content	determination by spectrophotometer	(Mu)g/100 (Mu)g protein	< or = 50
6.	Agents used for purification process: CsCl content	detection of residual Cesium by ion chromatography	(Mu)g/20 (Mu)g protein	< or = 5
7.	Endotoxin	LAL	E.U./ 100 (Mu)g protein	< or = 10
8.	Sterility	Direct method or Membrane filter method		Sterile
9.	Conclusion release	Pass		

APPENDIX B

COMMERCIAL DEVELOPMENT SCHEDULES: PROPHYLACTIC VACCINE AND THERAPEUTIC VACCINE

HEPATITIS B PROPHYLACTIC DEVELOPMENT PLAN

[***]

[***]=CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED WITH BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 406 OF THE SECURITIES ACT OF 1933, AS AMENDED.

APPENDIX B

COMMERCIAL DEVELOPMENT SCHEDULES: PROPHYLACTIC VACCINE AND THERAPEUTIC VACCINE

HEPATITIS B THERAPEUTIC DEVELOPMENT PLAN

[***]

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APPENDIX C

Licensed Patents

Docket Number	Title	Country	Serial No/Filing Date	Status
Rhein Biotech	Process for preparing a	EP	Filed 25.07.1985	Granted 12.06.1991 as EP 173 378
	Polypeptide by culturing a transformed	US	Filed 24.09.1990	Granted 31.08.1993 as US 5,240,838
	Microorganism suitable	US	Filed 07.06.1995	Granted 21.04.1998 as US 5,741,672
	Therefore and DNA sequences suitable for preparing such microorganism	JP		Granted as JP 2 592 444
		JP		Granted as JP 2 675 202
		JP		Granted as JP 2 575 284
		DK		Pending
		CA		pending

Rhein Biotech	DNA molecules coding for FMDH control regions and structured gene for a protein having FMDH activity and their uses	EP	Filed 17.07.1987	Granted 18.05.1994 as EP 299 108 Granted
		US	Filed 03.03.1992	14.02.1995 as US 5,389,525 Granted
		CA	Filed 28.10.1988	25.03.1997 as CA 1,339,012 Granted
		JP	Filed 01.11.1988	02.06.2000 as JP 307 299 3 Granted
		BR	Filed 17.10.1996	01.08.2000 as BR PI 1100065-1
		CL	Filed 24.09.1996	Pending
		DK	Filed 26.10.1988	Pending

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EXHIBIT 10.9

EXCLUSIVE LICENSE AGREEMENT

between

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

and

DYNAVAX TECHNOLOGIES CORPORATION

for

UC Case Nos. 92-296 and 97-138

Method, Compositions and Devices For Administration of Naked Nucleotides Which Express Biologically Active Peptides,

and

Immunostimulatory Oligonucleotide Conjugates

TABLE OF CONTENTS

CASE NOS. 92-296 & 97-138

EXCLUSIVE LICENSE AGREEMENT

for

Method, Compositions and Devices For Administration of Naked Nucleotides Which

Express Biologically Active Peptides

and

Immunostimulatory Oligonucleotide Conjugates

This license agreement (the "Agreement") is made effective this 26th day of March, 1997 (the "Effective Date") between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation having its statewide administrative offices at 300 Lakeside Drive, 22nd Floor, Oakland, California 94612-3550, ("The Regents"), and Dynavax Technologies Corporation, a California corporation having a principal place of business at Alta Partners, One Embarcadero Center, San Francisco, CA 94111, (the "Licensee").

BACKGROUND

A. Certain inventions, generally characterized in the patent applications entitled "Method, Compositions and Devices For Administration of Naked Nucleotides Which Express Biologically Active Peptides" UC Case No. 92-296 and "Immunostimulatory Nucleotide Sequences" UC Case No. 97-138 (collectively the "Invention"), were made in the course of research at the University of California, San Diego by Drs. Dennis A. Carson, Eyal Raz and Meredith Howell and are covered by Regents' Patent Rights as defined below;

B. The development of the Invention was sponsored in part by the National Institutes of Health and as a consequence this license is subject to overriding obligations to the Federal Government under 35 U.S.C. Sections 200-212 and applicable regulations;

C. The development of the Invention was sponsored also in part by Ciba-Geigy Ltd., which has waived its rights to the Invention in a letter to The Regents dated May 14, 1996;

D. The Licensee has evaluated the Invention under a Secrecy Agreement with The Regents dated July 15, 1996 (U.C. Control No. 97-20-0023);

E. The Licensee wished to obtain rights from The Regents for the commercial development, use, and sale of products from the Invention, and The Regents is willing to grant those rights so that the Invention may be developed to its fullest and the benefits enjoyed by the general public;

F. The Licensee is a "`small business concern" as defined pursuant to 15 U.S.C. Section 632; and

G. Both parties recognize and agree that royalties due under this Agreement will be paid on both pending patent applications and issued patents.

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In view of the foregoing, the parties agree:

1. DEFINITIONS

1.1 "Regent's Patent Rights" means any subject matter claimed or disclosed in any of the following:

CASE NUMBER	U.S. PATENT APPLICATION SERIAL NUMBER	FILING DATE
92-296-1	08/112,440	August 26, 1993 - (now abandoned)
92-296-2	08/464,878	June 7, 1995

92-296-3	08/333,068	November 1, 1994
92-296-4	08/334,260	November 3, 1994
92-296-5	[***]	[***]
92-296-6	[***]	[***]
92-296-7	[***]	[***]
92-296-8	[***]	[***]
92-296-9	[***]	[***]
92-296-A	08/593,554	January 30, 1996
92-296-B	08/725,968	October 4, 1996
97-138-1	60/028,118	October 11, 1996

by Drs. Dennis A. Carson, Eyal Raz and Meredith Howell and assigned to The Regents; and continuation applications thereof, and divisions, substitutions, and continuation-in-part applications, but only to the extent claims in any such continuation-in-part application contain subject matter included in the foregoing listed applications as originally filed in the U.S. Patent and Trademark Office ("USPTO"); any patents issuing on said applications including reissues, reexaminations and extensions; and any corresponding foreign applications or patents (including inventor's certificates).

1.2 "Licensed Product" means any machine, manufacture or composition of matter that is either claimed or disclosed in Regents' Patent Rights, or that is produced by the Licensed Method or, the use of which would constitute, but for the license granted to the Licensee under this Agreement, an infringement of any pending or issued claim within Regents' Patent Rights.

1.3 "Licensed Method" means any method that is claimed or disclosed in Regents' Patent Rights, the use of which would constitute, but for the license granted to the Licensee under this Agreement, an infringement of any pending or issued claim within Regents' Patent Rights.

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1.4 "Net Sales" means the total of the gross invoice prices of Licensed Products sold or Licensed Methods performed by the Licensee, or an Affiliate or a sublicensee of Licensee, less the sum of the following actual and customary deductions where applicable: cash, trade, or quantity discounts; sales, use, tariff, import/export duties or other excise taxes imposed on particular sales; transportation charges and allowances; credits to customers because of rejections or returns or discounts actually allowed. For purposes of calculating Net Sales, transfers to an Affiliate or sublicensee for end use for purposes other than performing research and development of Licensed Products by the Affiliate or sublicensee will be treated as sales at list price.

1.5 "Affiliate" means any corporation or other business entity which the Licensee owns or controls, directly or indirectly, at least fifty percent (50%) of the outstanding stock or other voting rights entitled to elect directors, or by which the Licensee is owned or controlled directly or indirectly by at least fifty percent (50%) of the outstanding stock or other voting rights entitled to elect directors; but in any country where the local law does not permit foreign equity participation of at least fifty percent (50%), then an "Affiliate" includes any company in which the Licensee owns or controls or is owned or controlled by, directly or indirectly, the maximum percentage of outstanding stock or voting rights permitted by local law.

1.6 "Attributed Income" means the following types of income received by Licensee which is attributable to the Invention licensed hereunder: upfront licensing fees paid to Licensee by third parties (e.g. corporate partners and sublicensees of Licensee) and licensing and/or research and development (R&D) milestone payments made to Licensee for the development of Licensed Products which milestone payments are payable prior to (but not after) the commencement of clinical trials for a Licensed Product to which the income is attributable. Attributed Income does not include amounts received by Licensee from third parties for the purchase of an equity interest in Licensee (except amounts in excess of the fair market value of Licensee's stock at the time such purchase is made), amounts received to fund Licensee's research and development efforts (charged at cost), amounts received by Licensee

as a loan subject to repayment, or reimbursement of patent costs, or amounts received by Licensee for research and development and/or licensing of technology not covered by Regents' Patent Rights.

2. LIFE OF PATENT EXCLUSIVE GRANT

2.1 Subject to the limitations set forth in this Agreement, The Regents grants to the Licensee a world-wide license under Regents' Patent Rights to make, have made, use and sell Licensed Product and to practice Licensed Method.

2.2 Except as otherwise provided in this Agreement, the license granted in Paragraph 2.1 is exclusive for the life of this Agreement.

2.3 The license granted in Paragraphs 2.1 and 2.2 is subject to all the applicable provisions of any license to the United States Government executed by The Regents and is subject to the overriding obligations to the U.S. Government under 35 U.S.C. section 200-212 and applicable governmental implementing regulations.

2.4 The Regents reserves the right to use the Invention and associated technology for its own noncommercial educational and research purposes.

3. SUBLICENSES

3.1 The Regents also grants to the Licensee the right to issue sublicenses to third parties to make, have made, use and sell Licensed Product and to practice Licensed Method, as long as the Licensee has current exclusive rights thereto under this Agreement. To the extent applicable, sublicenses must include all of the rights of and obligations due to The Regents (and, if applicable, the United States Government) contained in this Agreement.

3.2 The Licensee shall promptly provide The Regents with a copy of each sublicense issued; collect and guarantee payment of all payments due The Regents from sublicensees; and summarize and deliver all reports due The Regents from sublicensees. All information provided pursuant to this Paragraph 3.2 shall be deemed Confidential Information of Licensee for the purposes of Article 30 (Secrecy).

3.3 Upon termination of this Agreement for any reason, The Regents shall allow sublicensees to become direct licensees of the rights granted herein, to the extent that it is not unreasonable for The Regents to do so as a public entity and provided that:

3.3.1 The Licensee was not in breach of this Agreement when entering into the sublicense;

3.3.2 The sublicensee is not in breach of its sublicense agreement at the time of termination of this Agreement; and

3.3.3 The sublicensee acquires no rights from or obligations on the part of The Regents other than those that are specifically granted in this Agreement, and the sublicensee assumes all obligations to The Regents required of Licensee by this Agreement, including past due obligations existing at the time of assumption of this sublicense, as well as any additional payments required by the sublicense.

4. PAYMENT TERMS

4.1 Paragraphs 1.1, 1.2, and 1.3 define Regents' Patent Rights, Licensed Products and Licensed Methods so that royalties are payable on products and methods covered by both pending patent applications and issued patents. However, if no patent has issued on a particular U.S. or national-phase filed foreign patent application within [***] after such application was so filed, then all obligation to pay royalties on sales of Licensed Products which are solely claimed by that patent application will be suspended until the patent has issued. When such patent does issue, Licensee shall resume paying royalties based on the issued patent as of the date of issuance. Licensee shall also pay to The Regents, within sixty (60) days of issuance all back royalties which accrued during the period of suspended royalties. Royalties will accrue in each country for the duration of Regents' Patent Rights in that country and are payable to The Regents when Licensed Products are invoiced, or if not invoiced, when delivered to a third party.

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4.2 Licensee shall pay earned royalties quarterly within sixty (60) days after each calendar quarter. Each payment will be for earned royalties accrued within the Licensee's most recently completed calendar quarter.

4.3 All monies due The Regents are payable in United States dollars. When Licensed Products are sold for monies other than United States dollars, the Licensee shall first determine the earned royalty in the currency of the country in which Licensed Products were sold and then convert the amount into equivalent United States funds, using the exchange rate quoted in the Wall Street Journal on the last business day of the reporting period.

4.4 Royalties earned on sales occurring in any country outside the United States may not be reduced by any taxes, fees, or other charges imposed by the government of such country on the payment of royalty income. The Licensee is also responsible for all bank transfer charges. Notwithstanding this, all payments made by the Licensee in fulfillment of The Regents' tax liability in any particular country will be credited against earned royalties or fees due The Regents for that country.

4.5 If legal restrictions prevent the prompt remittance of royalties by the Licensee from any country where a Licensed Product is sold, the Licensee shall deposit the amount owed to The Regents into an interest bearing account in the applicable country in the name of The Regents until the restrictions are removed. However, if these restrictions persist for longer than a year, the Licensee shall calculate the amount owed United States funds and shall pay The Regents that amount and all subsequent royalties owed to The Regents directly from its U.S. source of funds.

4.6 If any patent or patent claim within Regents' Patent Rights is held invalid in a final decision by a court of competent jurisdiction and last resort and from which no appeal has or can be taken, all obligation to pay royalties based on that patent or claim or any claim patentably indistinct therefrom will cease as of the date of final decision. The Licensee will not, however, be relieved from paying any royalties that accrued before the final decision or that are based on another patent or claim not involved in the final decision.

4.7 No royalties may be collected or paid on Licensed Products sold to the account of the U.S. Government, any agency thereof, state or domestic municipal government as provided for in the License to the Government.

In the event payments, rebillings or fees are not received by The Regents when due, the Licensee shall pay to The Regents interest charges at a rate of [***]. Interest is calculated from the date payment was due until the day payment is actually received by The Regents.

5. LICENSE-ISSUE FEE

The Licensee shall pay to The Regents a license issue fee of [***] in two installments as follows: the first payment of [***] shall be paid within seven (7) days of the Effective Date and the second payment of [***] shall be paid on the first anniversary of the Effective Date. The license issue fee is non-refundable, non-cancelable and is not an advance against royalties.

6. LICENSE MAINTENANCE FEE

The Licensee shall also pay to The Regents a license maintenance fee of [***] beginning on the second anniversary of the Effective Date and continuing annually on each anniversary of the Effective Date, provided, however, that the maintenance fee is not due on any anniversary of this Agreement if on that date the Licensee is commercially selling a Licensed Product and paying an earned royalty or a minimum annual royalty to The Regents on the sales of that Licensed Product exceeding such maintenance fee amount of [***] for the preceding year. License maintenance fees are non-refundable and are not an advance against earned royalties.

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7. EARNED ROYALTIES AND MINIMUM ANNUAL ROYALTIES

7.1 The Licensee shall also pay to The Regents an earned royalty of [***] of the Net Sales of any Licensed Product by the Licensee or any sublicensee. Licensee shall pay such earned royalty at the time it submits the relevant quarterly royalty report pursuant to Paragraph 11.5.

7.2 The Licensee shall pay to The Regents a minimum annual royalty of [***] per year for human therapeutic Licensed Products, and [***] per year for all other Licensed Products for the term of Regents' Patent Rights, beginning with the year of the first year of commercial sales for each Licensed Product. For the first year of commercial sales, the Licensee's obligation to pay the minimum annual royalty will be pro-rated for the number of months remaining in that calendar year when commercial sales commence, and the minimum annual royalty will be due the following February 28, to allow for crediting of the pro-rated year's earned royalties. For subsequent years, the minimum annual royalty will be paid to The Regents by February 28 of each year and will be credited against the earned royalty due for the calendar year in which the minimum payment was made.

8. ADDITIONAL PAYMENTS

8.1 Clinical Milestone Payment: Licensee shall pay to The Regents [***] within thirty (30) days of the commencement of a clinical [***]. Such payment shall be made for [***]. Additionally, Licensee shall pay to The Regents [***] within thirty (30) days after [***], and [***] within thirty (30) days after [***].

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8.2 Patent Milestone Payment: Within thirty (30) days of notification by the USPTO of the allowance of any claim included within Regents' Patent Rights claiming any one of the following technologies: [***], the Licensee shall pay The Regents a one-time cash payment of [***].

8.3 Indexed Milestone Payment: Within sixty (60) days of either (a) the closing of a public offering of the common stock pursuant to a registration statement filed with the Securities and Exchange Commission or (b) any consolidation or merger of Licensee with any other entity, or any other corporate reorganization following which the shareholders of Licensee immediately prior thereto own less than sixty percent (60%) of Licensee's voting power, or any transaction or series of transactions in which greater than forty percent (40%) of Licensee's voting power is transferred to a third party not previously a share holder of Licensee; Licensee shall make to The Regents a cash payment equal to [***].

8.4 Income: Within sixty (60) days of Licensee's receipt of Attributed Income, Licensee shall pay to The Regents [***]. These payments by Licensee shall continue until the earlier to occur of (i) an aggregate of [***] has been paid under this Paragraph 8.4, or (ii) [***].

9. DUE DILIGENCE

9.1 The Licensee shall sponsor research in the laboratory of Dr. Augusto Lois at the University of California San Diego, and such sponsored research will be for a two (2) year period of not less than [***], pursuant to the research agreement between The Regents of the University

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of California and Licensee dated November 22, 1996, which is attached as Exhibit "A" ("Research Agreement").

9.2 The Licensee must make commercially reasonable efforts to execute at least one agreement with a corporate partner within [***].

9.3 Furthermore, within one hundred eighty (180) days of the Effective Date, the Licensee must submit a formal business plan outlining the full operations including recruitment of key staff and implementation of the research and development plan. This plan must include a clear strategy for financing the Licensee until (1) the Licensee concludes a successful initial public offering, or (2) the Licensee is acquired by another corporate entity.

9.4 The Licensee, on execution of this Agreement, shall diligently proceed with the development, manufacture and sale of Licensed Products, either on its own or with a sublicensee, and shall diligently endeavor to market the same within a commercially reasonable time after execution of this Agreement.

9.5 The Licensee or its sublicensee shall:

9.5.1 submit an IND covering Licensed Products to the United States FDA [***];

9.5.2 demonstrate the efficacy of a Licensed Product in a scientifically valid animal model [***];

9.5.3 market Licensed Products [***];

9.5.4 market Licensed Products in the United States [***]; and reasonably fill the market demand for Licensed Products following commencement of marketing at any time during the exclusive period of this Agreement.

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If the Licensee is unable to perform any of the provisions in this Article 9, then The Regents has the right and option either to terminate this Agreement or convert the exclusive license granted to Licensee in Paragraphs 2.1 and 2.2 to a nonexclusive license.

10. OPTION ON FUTURE TECHNOLOGY

Subject to the terms of the Research Agreement, attached hereto as Exhibit "A," the Licensee shall have an option to obtain an exclusive license to The Regents' rights in inventions conceived and reduced to practice during the term of the Research Agreement and as a result of research fully funded by the Licensee in the laboratory of Dr. Augusto Lois at the University of California, San Diego. The terms of such license shall be agreed upon by the parties pursuant to good faith negotiations conducted within a reasonable time after any invention is disclosed to Licensee, as provided for in the terms of the Research Agreement.

11. PROGRESS AND ROYALTY REPORTS

11.1 Beginning August 28, 1997 and semi-annually thereafter, the Licensee shall submit to The Regents a written progress report covering the Licensee's (and any Affiliate or sublicensee's) activities related to the development and testing of all Licensed Products and the obtaining of the governmental approvals necessary for marketing. Progress reports are required for each Licensed Product until the first commercial sale of that Licensed Product occurs in the United States and shall be again required if commercial sales of such Licensed Product are suspended or discontinued.

11.2 Progress reports submitted under Paragraph 11.1 shall include, but are not limited to, the following topics:

- summary of work completed
- key scientific discoveries
- summary of work in progress
- current schedule of anticipated events or milestones

- market plans for introduction of Licensed Products, and

- a summary of resources (dollar value) spent in the reporting period.

11.3 The Licensee has a continuing responsibility to keep The Regents informed of the large/small business entity status (as defined by the USPTO) of itself and its sublicensees and Affiliates.

11.4 The Licensee shall promptly report to The Regents in its progress report the date of first commercial sale of a Licensed Product in each country.

11.5 After the first commercial sale of a Licensed Product anywhere in the world, the Licensee shall make quarterly royalty reports to The Regents within sixty (60) days after each calendar quarter of each year. Each royalty report will cover the Licensee's most recently completed calendar quarter and will show (a) the gross sales and Net Sales of Licensed Products sold during the most recently completed calendar quarter; (b) the number of each type of Licensed Product sold; (c) the royalties, in U.S. dollars, payable with respect to sales of Licensed Products; (d) the method used to calculate the royalty; and (e) the exchange rates used.

11.6 If no sales of Licensed Products have been made during any reporting period, the royalty report shall include a statement to this effect.

12. BOOKS AND RECORDS

12.1 The Licensee shall keep accurate books and records showing all Licensed Products manufactured, used, and/or sold under the terms of this Agreement. Books and records must be preserved for at least five (5) years from the date of the royalty payment to which they pertain.

12.2 Books and records must be open to inspection by representatives or agents of The Regents at reasonable times. The Regents shall bear the fees and expenses of examination but if an error in royalties of more than [***] is discovered in any examination then the Licensee shall bear the fees and expenses of that examination.

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13. LIFE OF THE AGREEMENT

13.1 Unless otherwise terminated by operation of law or by acts of the parties in accordance with the terms of this Agreement, this Agreement will be in force from the Effective Date until either the expiration date of the last-to-expire patent licensed under this Agreement, or if no patent included in Regents' Patent Rights has issued, until the date upon which the last patent application licensed under this Agreement is abandoned.

13.2 Any termination of this Agreement will not affect the rights and obligations set forth in the following Articles:

Paragraph 8.3	Indexed Milestone Payment
Article 12	Books and Records
Article 16	Disposition of Licensed Products on Hand on Termination
Article 17	Use of Names and Trademarks
Article 22	Indemnification
Article 30	Secrecy

14. TERMINATION BY THE REGENTS

If the Licensee fails to perform or violates any term of this Agreement, including failure to sponsor research for at least two (2) years pursuant to the Research Agreement attached hereto as Exhibit "A" (as provided for in Article 10), then The Regents may give written notice of default (Notice of Default) to the Licensee. If the Licensee fails to repair the default within sixty (60) days of the effective date of Notice of Default, The Regents may terminate this Agreement and its licenses by a second written notice (Notice of Termination). If a Notice of Termination is sent to the Licensee, this Agreement will automatically terminate on the effective date of that notice. Termination will not relieve the Licensee of its obligation to pay any fees owing at the time of termination and will not impair any accrued right of The Regents. These notices are subject to Article 23 (Notices).

15. TERMINATION BY LICENSEE

15.1 The Licensee has the right at any time to terminate this Agreement in whole or as to any portion of Regents' Patent Rights by giving notice in writing to The Regents. Notice of termination will be subject to Article 23 (Notices) and termination of this Agreement will be effective sixty (60) days from the date such notice is received by The Regents.

15.2 Any termination under the above Paragraph does not relieve the Licensee of any obligation or liability accrued under this Agreement prior to termination or rescind any payment made to The Regents or anything done by Licensee prior to the time termination becomes effective. Termination does not affect in any manner any rights of The Regents arising under this Agreement prior to termination.

16. DISPOSITION OF LICENSED PRODUCTS ON HAND UPON TERMINATION

Upon termination of this Agreement the Licensee is entitled to dispose of all previously made or partially made Licensed Products, but no more, within a period of one hundred and twenty (120) days provided that the sale of those Licensed Products is subject to the terms of this Agreement, including but not limited to the rendering of reports and payment of royalties required under this Agreement.

17. USE OF NAMES AND TRADEMARKS

Nothing contained in this Agreement confers any right to use in advertising, publicity, or other promotional activities any name, trade name, trademark, or other designation of either party hereto (including contraction, abbreviation or simulation of any of the foregoing). Unless required by law, the use by the Licensee of the name "The Regents of the University of California" or the name of any campus of the University of California is prohibited.

18. LIMITED WARRANTY

18.1 The Regents warrants to the Licensee that it has the lawful right to grant the rights The Regents purports to grant to Licensee under this license.

18.2 This license and the associated Invention are provided WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. THE REGENTS MAKES NO REPRESENTATION OR WARRANTY THAT THE MANUFACTURE, USE, SALE, OFFER FOR SALE OR IMPORT OF THE LICENSED PRODUCTS OR LICENSED METHODS WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT.

18.3 IN NO EVENT MAY THE REGENTS BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM EXERCISE OF THIS LICENSE OR THE USE OF THE INVENTION OR LICENSED PRODUCTS.

18.4 This Agreement does not:

18.4.1 express or imply a warranty or representation as to the validity or scope of any of Regents' Patent Rights;

18.4.2 express or imply a warranty or representation that anything made, used, sold, offered for sale or imported or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of patents of third parties;

18.4.3 obligate The Regents to bring or prosecute actions or suits against third parties for patent infringement except as provided in Article 21;

18.4.4 confer by implication, estoppel or otherwise any license or rights under any patents of The Regents other than Regents' Patent Rights as defined in this Agreement, regardless of whether those patents are dominant or subordinate to Regents' Patent Rights; or

18.4.5 obligate The Regents to furnish any know-how not provided in Regents' Patent Rights.

19. PATENT PROSECUTION AND MAINTENANCE

19.1 As long as the Licensee has paid patent costs as provided for in this Article, The Regents shall diligently endeavor to prosecute and maintain the United States and foreign

patents comprising Regents' Patent Rights using counsel of its choice. The Regents shall provide the Licensee with copies of all documentation relevant to any filings relating to The Regents' Patent Rights to be made with the USPTO reasonably in advance of the anticipated submission date thereof, so that the Licensee may be informed of and comment upon such filings. The Licensee agrees to keep this documentation confidential. The Regents will incorporate Licensee's comments into the proposed filing where reasonably practicable, provided however, that The Regents' counsel will take instructions only from The Regents, and all patents and patent applications under this Agreement will be assigned solely to The Regents.

19.2 The Regents shall use all reasonable efforts to amend any patent application to include claims reasonably requested by the Licensee to protect the products contemplated to be sold under this Agreement.

19.3 The Licensee shall apply for an extension of the term of any patent included within Regents' Patent Rights which may be available under the Drug Price Competition and Patent Term Restoration Act of 1984 and/or European, Japanese and other foreign counterparts of this Law. The Licensee shall prepare all documents, and The Regents agrees to execute the documents and to take additional action as the Licensee reasonably requests in connection therewith.

19.4 If either party receives notice pertaining to infringement or potential infringement of any issued patent included within Regents' Patent Rights under the Drug Price Competition and Patent Term Restoration Act of 1984 (and/or foreign counterparts of this Law), that party shall notify the other party within ten (10) days after receipt of notice of infringement.

19.5 The Regents shall file, prosecute and maintain all US and foreign patent applications and patents included within Regents' Patent rights.

19.6 The Licensee shall bear the costs of preparing, filing, prosecuting and maintaining all United States and foreign patents and patent applications contemplated by this Agreement. Costs billed by The Regents' patent counsel relating to such patents and patent applications will be rebilled to the Licensee and are due within thirty (30) days of rebilling by

The Regents. These costs include patent prosecution costs for the Invention incurred by The Regents prior to the execution of this Agreement and any patent prosecution costs that may be incurred for patentability opinions, re-examination, re-issue, interferences, or inventorship determinations.

19.7 The Licensee may request The Regents to obtain patent protection on the Invention in foreign countries if available and if it so desires. The Licensee shall notify The Regents of its decision to obtain or maintain foreign patents not less than sixty (60) days prior to the deadline for any payment, filing, or action to be taken in connection therewith, provided that The Regents will use reasonable efforts to inform Licensee of impending deadlines as soon as it becomes aware thereof this notice concerning foreign filing must be in writing, must identify the countries desired, and must reaffirm the Licensee's obligation to underwrite the costs thereof. The absence of such a notice from the Licensee to The Regents will be considered an election not to obtain or maintain foreign rights, provided that The Regents have notified Licensee of the relevant deadline as provided herein.

19.8 The Licensee's obligation to underwrite and to pay patent prosecution costs will continue for so long as this Agreement remains in effect, but the Licensee may terminate its obligations with respect to any given patent application or patent upon three (3) months' prior written notice to The Regents. The Regents will use its best efforts to curtail patent costs when a notice of termination is received from the Licensee. The Regents may prosecute and maintain such application(s) or patent(s) at its sole discretion and expense, but the Licensee will have no further right or licenses thereunder. Non-payment of patent costs may be deemed by The Regents as an election by the Licensee not to maintain application(s) or patent(s).

19.9 The Regents may file, prosecute or maintain patent applications at its own expense in any country in which the Licensee has not elected to file, prosecute, or maintain patent applications in accordance with this Article, and those applications and resultant patents will not be subject to this Agreement.

20. PATENT MARKING

The Licensee shall mark all Licensed Products made, used or sold under the terms of this Agreement, or their containers, in accordance with the applicable patent marking laws.

21. PATENT INFRINGEMENT

21.1 If the Licensee learns of the material infringement of any patent licensed under this Agreement, the Licensee shall call The Regents' attention thereto in writing and provide The Regents with reasonable evidence of infringement. Neither party will notify a third party of the infringement of any of Regents' Patent Rights without first obtaining consent of the other party, which consent will not be unreasonably denied. Both parties shall use reasonable efforts in cooperation with each other to terminate infringement without litigation.

21.2 The Licensee may request that The Regents take legal action against the infringement of Regents' Patent Rights. Request must be in writing and must include reasonable evidence of infringement and damage to the Licensee. If the infringing activity has not abated within ninety (90) days following the effective date of request, The Regents then has the right to:

21.2.1 commence suit on its own account; or 21.2.2 refuse to participate in the suit,

and The Regents shall give notice of its election in writing to the Licensee by the end of the one-hundredth (100th) day after receiving notice of written request from the Licensee. The Licensee may thereafter bring suit for patent infringement, at its own expense, if, and only if, The Regents elects not to commence suit and if the infringement occurred during the period and in a jurisdiction where the Licensee had exclusive rights under this Agreement. The Licensee elects to bring suit in accordance with this paragraph, The Regents may thereafter join that suit at its own expense.

21.3 Any suit brought pursuant to this Paragraph 21.3 will be at the expense of the party bringing suit and all damages recovered thereby will belong to the party bringing suit. Any legal action brought jointly by The Regents and the Licensee will be at the joint expense

of the parties and all recoveries will be shared jointly by them in proportion to the share of expenses paid by each party.

21.4 Each party shall cooperate with the other party in litigation proceedings instituted hereunder at the expense of the party bringing suit. Litigation will be controlled by the party bringing the suit, provided, however that The Regents may be represented by counsel of its choice in any suit brought by the Licensee.

22. INDEMNIFICATION

22.1 The Licensee shall indemnify, hold harmless and defend The Regents, its officers, employees, and agents; the sponsors of the research that led to the Invention; and the inventors of the patents and patent applications in Regents' Patent Rights and their employers against any and all claims, suits, losses, liabilities, damages, costs, fees, and expenses resulting from or arising out of exercise of this license or any sublicense, except to the extent any claims result from or arise out of the gross negligence, recklessness or willful misconduct of The Regents, its officers, employees, and agents; the sponsors of the research that led to the Invention; and the inventors of the patents and patent applications in Regents' Patent Rights and their employers. This indemnification includes, but is not limited to, any product liability claims.

22.2 The Licensee, at its sole cost and expense, shall insure its activities in connection with the work under this Agreement and obtain, keep in force and maintain insurance as follows, or an equivalent program of self insurance:

22.3 Comprehensive or commercial form general liability insurance (contractual liability included) with limits as follows:

- Each Occurrence $1,000,000

- Products/Completed Operations Aggregate $5,000,000 (upon the initiation of Phase I clinical trials)

- Personal and Advertising Injury $1,000,000

- General Aggregate (commercial form only) $3,000,000 until the commencement of Phase I clinical trials, at which point such coverage shall be for $5,000,000

The coverage and limits referred to under the above do not in any way limit the liability of the Licensee. The Licensee shall furnish The Regents with certificates of insurance showing compliance with all requirements under this Paragraph 22.3. Certificates must:

- Provide for thirty (30) days' advance written notice to The Regents of any modification.

- Indicate that The Regents has been endorsed as an additional insured under the policy.

- Include a provision specifying that the coverage will be primary and will not participate with nor will be excess over any valid and collectable insurance or program of self-insurance carried or maintained by The Regents.

22.4 The Regents shall notify the Licensee in writing of any claim or suit brought against The Regents with respect to which The Regents intends to invoke the provisions of this Article. The Licensee shall keep The Regents informed on a current basis of its defense of any claims under this Article.

23. NOTICES

Any notice or payment required to be given to either party is properly given and effective (a) on the date of delivery if delivered in person or (b) five (5) days after mailing if mailed by first-class certified mail, postage paid, to the respective addresses given below, or (c) on the date of transmission by facsimile, as evidenced by a written confirmation thereof, or to another address or facsimile number as is designated by written notice given to the other party.

In the case of the Licensee: DYNAVAX TECHNOLOGIES CORPORATION

717 Potter Street, Suite 100
Berkeley, CA 94710-2722
Attention: Ken Goldman
Fax: (510) 848-5694

In the case of The Regents: THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Office of Technology Transfer
1320 Harbor Bay Parkway, Suite 150
Alameda, California 94502
Attention: Executive Director
Research Administration and
Technology Transfer
Referring to: UC Case Nos. 92-296 & 97-138
FAX: (510) 748-6639

24. ASSIGNABILITY

This Agreement may be assigned by The Regents, but is personal to the Licensee and assignable by the Licensee only with the written consent of The Regents, which consent will not be unreasonably withheld.

25. NO WAIVER

No waiver by either party of any default of this Agreement may be deemed a waiver of any subsequent or similar default.

26. GOVERNING LAWS

THIS AGREEMENT WILL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, but the scope and validity of any patent or patent application will be governed by the applicable laws of the country which granted such patent or in which country such patent application was filed.

27. PREFERENCE FOR UNITED STATES INDUSTRY

Because this Agreement grants the exclusive right to use or sell the Invention in the United States, the Licensee agrees that any products sold in the U.S. embodying this Invention or produced through the use thereof will be manufactured substantially in the United States.

28. GOVERNMENT APPROVAL OR REGISTRATION

Licensee shall notify The Regents if it becomes aware that this Agreement is subject to any U.S. or foreign government reporting or approval requirement. Licensee shall make all necessary filings and pay all costs including fees, penalties, and all other out-of-pocket costs associated with such reporting or approval process.

29. EXPORT CONTROL LAWS

The Licensee shall observe all applicable United States and foreign laws with respect to the transfer of Licensed Products and related technical data to foreign countries, including, without limitation, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations.

30. SECRECY

30.1 With regard to confidential information ("Confidential Information"), whether in oral, written or electronic form, received from a party regarding this Invention or this Agreement, the receiving party agrees:

30.1.1 not to use the Confidential Information except for the sole purpose of performing under the terms of this Agreement;

30.1.2 to safeguard Confidential Information against disclosure to others with the same degree of care as it exercises with its own data of a similar nature;

30.1.3 not to disclose Confidential Information to others (except to its employees, agents or consultants who are bound to the receiving party

by a like obligation of confidentiality) without the express written permission of the disclosing party, except that the receiving party is not prevented from using or disclosing any of the Confidential Information that:

30.1.3.1 the receiving party can demonstrate by written records was previously known to it or independently developed by it;

30.1.3.2 is now, or becomes in the future, public knowledge other than through acts or omissions of the receiving party; or

30.1.3.3 is lawfully obtained by the receiving party from sources independent of the disclosing party; and

30.1.4 that the secrecy obligations of the receiving party with respect to Confidential Information will continue for a period ending five (5) years from the termination date of this Agreement.

30.2 With regard to biological material received by Licensee from The Regents, if any, including any cell lines, vectors, genetic material, derivatives, products progeny or material derived therefrom ("Biological Material"), the Licensee agrees:

30.2.1 not to use Biological Material except for the sole purpose of performing under the terms of this Agreement;

30.2.2 not to transfer Biological Material to others (except to its employees, agents or consultants who are bound to the Licensee by like obligations restricting access to and use of Biological Material) without the express written permission of The Regents, except that the Licensee is not prevented from transferring Biological Material that:

30.2.2.1 becomes publicly available other than through acts or omissions of the Licensee; or

30.2.2.2 is lawfully obtained by the Licensee from sources independent of The Regents;

30.2.3 to safeguard Biological Material against disclosure and transmission to others with the same degree of care as it exercises with its own biological materials of a similar nature;

30.2.4 to destroy all copies of Biological Material at the termination of this Agreement.

31. MISCELLANEOUS

31.1 The headings of the several sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

31.2 This Agreement is not binding on the parties until it has been signed below on behalf of each party. It is then effective as of the Effective Date.

31.3 No amendment or modification of this Agreement is valid or binding on the parties unless made in writing and signed on behalf of each party.

31.4 This Agreement including Exhibit A embodies the entire understanding of the parties and supersedes all previous communications, representations or understandings, either oral or written, between the parties relating to the subject matter hereof, including the Secrecy Agreement dated July 15, 1996.

This Agreement does not supersede, alter or amend the Research Agreement attached hereto as Exhibit A. However, in the event of any conflict between the terms of this Agreement and the Research Agreement, the terms of this Agreement will control for purpose of interpreting this Agreement.

31.5 In case any of the provisions contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if the invalid, illegal, or unenforceable provisions had never been contained in it.

IN WITNESS WHEREOF, both The Regents and the Licensee have executed this Agreement, in duplicate originals, by their respective and duly authorized officers on the day and year written.

DYNAVAX TECHNOLOGIES CORPORATION	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
By: /s/ Daniel S. Janney (Signature)	By: /s/ Terence A. Feuerborn (Signature)
Name: Daniel S. Janney (Please Print)	Name: Terence A. Feuerborn
Title: President	Title: Executive Director Research Administration and Technology Transfer
Date: 3/14/97	Date: 3/26/97

Approved as to legal form: /s/ Edwin H. Baker 3/19/97

Edwin H. Baker Date
University Counsel
Office of General Counsel

EXHIBIT "A"

RESEARCH AGREEMENT

This Agreement is made by and between Dynavax Technologies Corporation ("Sponsor") with offices at Alta Partners, One Embarcadero Center, Suite 4050, San Francisco, California, 94111, and The Regents of the University of California, a California Corporation having its principal office at 300 Lakeside Drive, Oakland, CA 94612-3550, on behalf of the University of California, San Diego campus ("University").

WHEREAS, it is in the mutual interest of Sponsor and University that research be conducted on a Biotechnology Star Project by Dr. Eyal Raz and Dr. Dennis Carson entitled "Inhibition of Allergic Responses by Gene Immunotherapy" (Project);

WHEREAS, Sponsor desires to financially support said research at University;

NOW, THEREFORE, the parties agree as follows:

1. SCHEDULE - The Project shall be conducted in accordance with the statement of work attached hereto as Exhibit "A" and incorporated into this Agreement by this reference solely for the purpose of describing the scope of work to be performed under this Agreement. The term of this Agreement shall be 1 January 1997 through 31 December 1998, unless sooner terminated as herein provided.

2. BUDGET - Sponsor shall support the Project by a grant of [***] and the University shall support the project with a match of [***]. The grant amount shall cover all direct and indirect costs of the Project, as set forth in the budget attached hereto as part of the grant proposal set forth in Exhibit "A" and incorporated into this Agreement and the Sponsor grant amount shall be paid as set forth in Section 3. If at any time University has reason to believe that the cost of the Project will be greater than the amount budgeted, University shall notify Sponsor in writing to that effect, giving a revised budget of the cost of completion of the Project. Sponsor shall not be obligated to reimburse University for the costs incurred in excess of the Budget unless and until Sponsor has notified University in writing that the revised budget is accepted. Upon expenditure of the accepted budget amount, University's obligation to continue performance of the Project shall cease. If the Project period is more than one year, the balance of any funds remaining at the end of any Project year may be carried over to subsequent years during the period of the Agreement to support the Project.

3. PAYMENT - Upon execution of this agreement, Sponsor will provide payment in the amount of [***].

Payment shall be made to "The Regents of the University of California" and sent to the following:

[***]=CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED WITH BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 406 OF THE SECURITIES ACT OF 1933, AS AMENDED.

The Regents of the University of California
c/o Emma Reyes
Manager, Extramural Funds Accounting
University of California, San Diego
9500 Gilman Drive
La Jolla, CA 92093-0954

At least thirty (30) days prior to the beginning of each quarter thereafter, Sponsor will make a payment to the University in an amount equal to one-quarter of the annual budget amount. Upon request by Sponsor, the University will provide to Sponsor a report of expenditures shown by major cost categories for the prior annual accounting period.

4. PRINCIPAL INVESTIGATOR - The research is to be conducted by University under the direction of Dr. Eyal Raz ("Principal Investigator") who will be responsible for the direction of the Project, including all budgeting and revisions to the Budget, in accordance with applicable University policies. The Principal Investigator is considered essential to the work being performed and no substitution may be made without the prior written concurrence of the Sponsor.

Principal Investigator shall keep Sponsor regularly informed of progress under this Agreement and shall deliver summary quarterly reports and a detailed final report upon conclusion of this project.

5. CONFIDENTIALITY - Subject to Paragraph 9 of this Agreement, it

is the intent of the parties that neither party shall furnish any information considered confidential and/or proprietary by it and/or one or more third parties to the other party in connection with this Agreement.

Should Sponsor deem it necessary to disclose information considered confidential and/or proprietary by it to University, it will be clearly marked by Sponsor, in writing, as "Confidential Information". Except as required by law, University will not disclose confidential information for a period of five years from the end of this Agreement, and shall use such Confidential Information solely to perform its obligations under this Agreement. This obligation does not apply to information that was known to University prior to its receipt from Sponsor (as evidenced by the University's written records), that is independently developed by the University, or becomes known at any time to third parties without any breach of confidential obligations by the University.

University will use its best efforts to protect the confidentiality of such information while in its possession, and may disclose such information only to University employees, agents or consultants who require access to such information for the purpose of performing under this Agreement, and who are bound to keep such information confidential.

6. RIGHTS IN DATA - Subject to Paragraph 5 and 8 of this

Agreement, University shall have the right to copyright, publish, disclose, disseminate and use, in whole and in part, any data and information received or developed under the Project. Subject to Paragraphs 8 and 9 of this Agreement, Sponsor shall have the right to disclose, publish and use the technical reports, data and information delivered under the Project to Sponsor by University.

7. USE OF NAME/PUBLICITY - It is agreed by each party that it will not under any circumstance use the name of the other party or its employees in any advertisement, press release or publicity with reference to this Agreement, without prior written approval of the other party, except as required by law.

8. PUBLICATION - University shall have the right to publish the results of the work conducted by University under this Agreement to the extent such results do not contain Confidential Information of Sponsor, provided Sponsor has the opportunity to review and comment on any proposed manuscripts describing said work thirty (30) days prior to their submission to a third party for publication and the University agrees to consider Sponsor's comments prior to publication. However, if submission of such manuscript for publication would cause the loss of significant foreign patent rights, University will, at its option, either delete the enabling portion of the proposed publication, or withhold publication for an additional sixty (60) days until U.S. patent filings are completed, but only to the extent that Sponsor agrees to reimburse University

for costs associated with filing, prosecuting and maintaining such patent applications.

9. PATENT RIGHTS

A. Sole Sponsor Inventions - All rights to inventions or discoveries conceived solely by Sponsor shall belong to Sponsor.

B. Sole University Inventions - All rights to inventions or discoveries conceived solely by University and arising from research conducted under this Research Agreement shall belong to the University.

C. Joint Inventions - All rights to inventions or discoveries conceived jointly by University and Sponsor arising from research conducted under this Research Agreement shall be jointly-owned in accordance with the U.S. laws of inventorship.

The University shall offer to the Sponsor, in accordance with the provisions of the following paragraph, a time-limited right to negotiate an exclusive, worldwide, sublicensable, royalty-bearing license under the University's interest in Sole University Inventions and Joint Inventions, to make, use, sell, offer for sale and import products incorporating or using any Sole University or Joint Invention conceived and first actually reduced to practice in the performance of research under this Research Agreement, for the term of any patent thereon.

In the event that an invention is conceived, but not sufficiently reduced to practice for patent application filing during the term of this Agreement, Sponsor is hereby granted (I)the right to fund any additional research that may be necessary or appropriate to develop the invention sufficiently for patent filing, exercisable as provided in paragraph 9 of this Agreement, and (ii)if Sponsor provides such funding, the exclusive option, exercisable as provided in paragraph 9 of this Agreement, to obtain an exclusive, worldwide, sublicensable, royalty-bearing license to make, use, sell, offer for sale and import products incorporating or using such invention.

The University shall promptly disclose to the Sponsor any Sole University or Joint inventions arising under this Research Agreement. The Sponsor shall hold such disclosure on a confidential basis and will not disclose the information to any third party without consent of the University. The Sponsor shall advise the University in writing within sixty (60) days of disclosure to the Sponsor whether or not it wishes to secure an exclusive, worldwide, sublicensable, royalty-bearing license under such invention. If the Sponsor elects to secure a license, the University shall not offer such opportunity to license such invention to any third party while the University and Sponsor are negotiating such license. The Sponsor shall have six (6) months from the date of election to conclude a license or option agreement with the University. Such period may be extended by mutual agreement. Said license shall contain commercially reasonable terms typically contained in license agreements pertaining to

inventions of similar nature and market potential, shall require diligent performance by the Sponsor for the timely commercial development and marketing of such inventions and shall require the Sponsor to reimburse the University all costs of filing, prosecuting and maintaining patent applications and patents claiming such inventions, whether or not patents issue from such applications.

If the University and Sponsor do not conclude a license agreement prior to the expiration of the foregoing six (6) month negotiation period, the University may then offer to third parties the opportunity to obtain a license to such inversion. If, within one year after the expiration of the negotiation period, the University and a third party negotiate terms of a license which are acceptable to the University, then the University shall, before executing such license agreement with such third party, first offer Sponsor a license on the same terms, provided such terms are more favorable to such third party than those last offered to Sponsor. Sponsor may review such terms for thirty (30) days after receiving such offer, during which time University shall not conclude such license with such third party. If Sponsor notifies the University that it desires to obtain a license on such terms, the University shall grant such license to Sponsor and not to such third party. If Sponsor elects not to secure such license(s) during such thirty (30) day period, all rights to the Invention(s) disclosed hereunder shall be disposed of in accordance with University policies, with no further obligation to Sponsor.

The University shall file, prosecute and maintain all patent applications and patents claiming Sole University Inventions or Joint Inventions, using counsel mutually agreed upon by the parties for so long as the Sponsor reimburses the University for costs thereof. The University shall provide copies of any documents filed with the U.S. Patent and Trademark Office (or the foreign equivalent thereof) to Sponsor in advance of the filing of such documents with the appropriate authority, and agrees to consult with and consider the comments of Sponsor regarding the contents of such filings. The University shall also reasonably cooperate with Sponsor in obtaining patent protection for Sole University Inventions or Joint Inventions in all foreign countries designated by Sponsor. Sponsor may notify the University if it intends to cease reimbursing the University for patent-related expenses by providing at least ninety (90) days prior written notice, in which case the University shall have the right, but not the obligation to continue to file, prosecute and maintain such patent protection at the University's expense.

10. INDEMNIFICATION - Sponsor agrees to defend, indemnify and hold University harmless from and against any and all liability, loss, expense, reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Sponsor, its officers, agents or employees. If human subjects are

involved, subject to University policy regarding care of such human subjects, Sponsor also agrees to be responsible for the costs of providing medical care to any subject injured as a result of his or her participation in the research conducted under this Agreement.

University agrees to defend, indemnify and hold Sponsor harmless from any claim, liability, loss, expense, reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of University, its officers, agents, or employees.

11. SUPPLIES AND EQUIPMENT - In the event that University purchases equipment hereunder, title to such equipment shall vest in University.

12. EXCUSABLE DELAYS - In the event of a delay caused by inclement weather, fire, flood, strike or other labor dispute, act of God, act of governmental officials or agencies, or any other cause beyond the control of University, University shall be excused from performance hereunder for the period of time attributable to such delay, which may extend beyond the time lost due to one or more of the causes mentioned above for a reasonable period of time, provided that the University uses reasonable efforts to overcome the cause of any such delay. In the event of any such delay, this

Agreement may be revised by changing the Budget, performance period and other provisions, as appropriate, by mutual agreement of the parties.

13. NOTICE - Whenever any notice is to be given hereunder, it shall be in writing and sent to the following address, or such other address as a party may designate from time to time by written notice to the other party:

University: Pamela J. Tiffany
Contract and Grant Officer
Office of Contract and Grant Admin., 9034
University of California, San Diego
9500 Gilman Drive
La Jolla, CA 92093-0934

(for express mail:

UCSD Contracts and Grants
10300 N. Torrey Pines Road, 2nd Floor
La Jolla, CA 92037)

Sponsor: Dynavax Technologies Corporation
717 Potter Street, Suite 100
Berkeley, CA 94710-2722
Attention: Ken Goldman
Fax: (510) 848-5694

14. TERMINATION - Either party may terminate this Agreement for material breach by the other party, if such breach remains uncured for sixty (60) days after the breaching party receives notice of such breach from the nonbreaching party. Written notice shall be directed to the appropriate individual named in Article 13 ("NOTICE") of this Agreement. Upon the giving of notice of termination by either party, the University shall exert its best efforts to limit or terminate any outstanding commitments. Sponsor

shall reimburse University for all costs incurred by it for all work performed through the effective termination date, and for all outstanding obligations which cannot be canceled. Such obligations may include salary and fringe benefits (including vacation accrual) of personnel engaged on the project during their severance period; purchase orders and other agreements with outside vendors which cannot be canceled; inventory storage and disposition costs for items produced under this Agreement; and indirect costs associated with these obligations. In addition, in the event of termination by Sponsor, University shall also be reimbursed for additional costs which may be incurred as a result of termination, including reasonable clerical and accounting costs. Support for any graduate students employed by the project are noncancellable. University shall furnish, within ninety (90) days of the effective date of termination, a final invoice for settlement of all costs to be reimbursed.

15. GOVERNING LAW. - This Agreement is made in accordance with, and shall be governed and construed under the laws of the State of California, excluding its choice of law rules.

16. SEVERABILITY, - In the event any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of this Agreement will remain in full force and effect.

17. ENTIRE AGREEMENT. - This Agreement and the exhibit attached

hereto constitute the entire, final, complete and exclusive agreement between the parties and supersede all previous agreements or representations, written or oral, with respect to the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA	DYNAVAX TECHNOLOGIES CORPORATION
By: /s/ Pamela J. Tiffany --- (Signature)	By: /s/ Daniel S. Janney --- (Signature)
Name: Pamela J. Tiffany	Name: Daniel S. Janney
Title: Contract & Grant Officer	Title: President
Date: November 15, 1996	Date: 11/22/96

AMENDMENT TO LICENSE AGREEMENT

THIS AMENDMENT TO LICENSE AGREEMENT is made this 23rd day of July, 1997, between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, having statewide administrative headquarters at 300 Lakeside Drive, 22nd Floor, Oakland, California, 94612-3550, hereinafter referred to as "The Regents," and Dynavax Technologies Corporation, a California corporation, having an address at 3099 Science Park Road, Suite 500, San Diego, California 92121, hereinafter referred to as the "Licensee."

WHEREAS, The Regents and the Licensee entered into a License Agreement, dated the 26th day of March 1997, (UC Control No. 97-04-0493) for Method, Compositions and Devices for Administration of Naked Nucleotides Which Express Biologically Active Peptides (UC Case No. 92-296) and Immunostimulatory Oligonucleotide Conjugates (UC Case No. 97-138-1), owned by The Regents;

NOW, THEREFORE, upon execution of this Agreement, it is agreed between the parties to amend the License Agreement.

I. Paragraph 9.1 is amended to read as follows:

9.1 The Licensee shall sponsor research in the laboratory of Elena Martin Orozco, Ph.D., at the University of California San Diego, and such sponsored research will be for a two (2) year period of not less than [***] (including direct and indirect costs), pursuant to the research agreement between The Regents of the University of California and Licensee dated November 22, 1996, which is attached as Exhibit "A" ("Research Agreement").

* * * * * * * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their respective officers hereunto duly authorized, the day and year hereinafter written.

DYNAVAX TECHNOLOGIES CORPORATION:	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:
By: /s/ Dino Dina (signature)	By: /s/ Julie E. Bishop
Name: Dino Dina, M.D.	Name: Julie E. Bishop
Title: President	Title: Licensing Associate Office of Technology Transfer
Date: July 17, 1997	Date: 7-23-97

Approved as to legal form: /s/ Sandra Schultz 7/10/97

Sandra S. Schultz
University Counsel
Office of General Counsel

Date

[***]=CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED WITH BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 406 OF THE SECURITIES ACT OF 1933, AS AMENDED.

FIRST AMENDMENT TO LICENSE AGREEMENT

This amendment ("Amendment") is effective this 2nd day of October, 1998, between The Regents Of The University Of California, a California corporation, having statewide administrative headquarters at 1111 Franklin Street, 12th Floor, Oakland, California, 94607-5200, hereinafter referred to as "The Regents," and Dynavax Technologies Corporation, a California corporation, having an address at 717 Potter Street, Suite 100, Berkeley, California 94710, hereinafter referred to as the "Licensee."

WHEREAS, The Regents and the Licensee entered into a license agreement, dated the 26th day of March, 1997 (UC Control No. 97-04-0493) for Method, Compositions and Devices For Administration of Naked Nucleotides Which Express Biologically Active Peptides, for certain patent applications covered by UC Case No. 92-296, and owned by The Regents and for Immunostimulatory Oligonucleotide Conjugates, UC Case No. 97-138 and owned by The Regents ("License Agreement"),

WHEREAS, The parties wish to include additional patent applications filed since the date of the License Agreement in the License Agreement,

NOW, THEREFORE, upon execution of this Amendment, it is agreed between the parties to amend the License Agreement.

I. Paragraph 1.1 is deleted in its entirety and replaced with the following:

1.1 "Regents' Patent Rights" means any subject matter claimed or disclosed in any of the following:

Case Number	U.S. Patent Application Serial Number	Filing Date
92-296-1	Serial No. 08/112,440	August 26, 1993 (now abandoned)
92-296-2	Serial No. 08/464,878	June 7, 1995; claims allowed September 16, 1997
92-296-3	Serial No. 08/333,068	November 1, 1994
92-296-4	Serial No. 08/334,260	November 3, 1994
92-296-5	[***]	[***]
92-296-6	[***]	[***]
92-296-7	[***]	[***]
92-296-8	[***]	[***]

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92-296-9	[***]	[***]
92-296-A	Serial No. 08/593,554	January 30, 1996
92-296-B	Serial No. 08/725,968	October 4, 1996
92-296-C	Serial No. 08/927,120	September 5, 1997
92-296-D	Serial No. 08/928,412	September 12, 1997
92-296-E	Application authorized	September 30, 1997
92-296-F	Application authorized	September 29, 1997
97-138-1	Serial No. 60/028,118	October 11, 1996
97-138-2	Serial No. 08/927,120	September 5, 1997

by Drs. Dennis A. Carson, Eyal Raz and Meredith Howell and assigned to The Regents; and continuing applications thereof, divisions, substitutions, and continuation-in-part applications, but only to the extent claims in any such continuation-in-part application contain subject matter included in the foregoing listed applications as originally filed in the U.S. Patent and Trademark Office ("USPTO"); any patents issuing on said applications including reissues, reexaminations and extensions; and any corresponding foreign applications or patents (including inventor's certificates)."

* * * * * * * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Amendment by their respective officers hereunto duly authorized, the day and year hereinafter written.

DYNAVAX TECHNOLOGIES CORPORATION	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
By: /s/ Dino Dina --- (Signature)	By: /s/ Terence A. Feuerborn --- (Signature)
Name: Dino Dina, M.D.	Name: Terence A. Feuerborn
Title: President & CEO	Title: Executive Director Office of Technology Transfer
Date: September 25, 1998	Date: 10-2-98

Approved as to legal form: /s/ Edwin H. Baker 9/8/99

Edwin H. Baker Date
University Counsel
Office of General Counsel

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UC Case Nos. 92-296 and 97-138

THIRD AMENDMENT TO EXCLUSIVE LICENSE AGREEMENT

This third amendment (the "Third Amendment") is effective this 22nd day of September, 1999 (the "Effective Date") between The Regents of the University of California, a California corporation with administrative headquarters at 1111 Franklin Street, 12th Floor, Oakland, California 94607-5200 ("The Regents"), and Dynavax Technologies Corporation, a California corporation, having an address at 717 Potter Street, Suite 100, Berkeley, California 94710, ("Dynavax").

BACKGROUND

A. The Regents and Dynavax entered into an exclusive license agreement (UC Control No. 97-04-0493) dated March 26, 1997 ("the Agreement") which covers "Methods, Compositions, and Devices for Administration of Naked Nucleotides Which Express Biologically Active Peptides" and "Immunostimulatory Oligonucleotide Conjugates".

B. The Regents and Dynavax entered into other exclusive license agreements. These are UC Agreement Control Nos. 99-04-0166 and 99-04-0321, dated October 2, 1998 (the "UC 94-029 Agreement" and "UC 97-287 Agreement", respectively) which cover "Compounds for Inhibition of Ceramide-mediated Signal Transduction" and "New Anti-inflammatory Inhibitors: Inhibitors of Stress Activated Protein Kinase Pathways"; and "Inhibitors of DNA Immunostimulatory Sequence Activity," respectively.

C. This Agreement was amended July 23, 1997, to change the Principle Investigator listed in the Research Agreement dated November 22, 1996.

D. This Agreement was amended October 2, 1998, to include additional patent applications in the definition of Regents' Patent Rights.

E. The Regents and Dynavax wish to further amend this Agreement to include additional patent applications filed since the Effective Date in the definition of Regents' Patent Rights.

F. The Regents and Dynavax wish to further amend this Agreement to amend the Index Milestone Payment, and

G. The Regents and Dynavax wish to further amend this Agreement to amend the Attributed Income Payment to take into consideration amounts which may be or have been paid under the UC 94-029 Agreement and the UC 97-287 Agreement.

NOW, THEREFORE, the parties agree to amend the Agreement as set forth herein.

Paragraph 1.1 is deleted in its entirety and replaced with the following:

1.1 "Regents' Patent Rights" means any subject matter claimed or disclosed in any of the following:

Case Number	U.S. Patent Application Serial Number or U.S. Patent Number	Filing Date or Issue Date
92-296-1	Serial No. 08/112,440]	August 26, 1993
92-296-2	Patent No. 5,830,877	November 3, 1998
92-296-3	Patent No. 5,804,566	September 8, 1998
92-296-4	Patent No. 5,679,647	October 21, 1997
92-296-5	[***]	[***]
92-296-6	[***]	[***]
92-296-7	[***]	[***]
92-296-8	[***]	[***]
92-296-9	[***]	[***]
92-296-A	Serial No. 08/593,554	January 30, 1996
92-296-B	Patent No. 5,849,719	December 15, 1998
92-296-C	Serial No. 08/927,120	September 5, 1997
92-296-D	Serial No. 08/928,412	September 12, 1997
92-296-G	Serial No. 09/212,064	September 15, 1998
92-296-H	Serial No. 09/235,742	January 21, 1999
97-138-1	Serial No. 60/028,118	October 11, 1996
97-138-2 - incorp. into 92-296-C	Serial No. 08/927,120	September 5, 1997
97-138-3	Serial No. PCT/US97/19004	October 9, 1997

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by Drs. Dennis A. Carson, Eyal Raz and Meredith Howell and assigned to The Regents; and continuing applications thereof, divisions, substitutions, and continuation-in-part applications, but only to the extent claims in any such continuation-in-part application contain subject matter included in the foregoing listed applications as originally filed in the U.S. Patent and Trademark Office ("USPTO"); any patents issuing on said applications including reissues, reexaminations and extensions; and any corresponding foreign applications or patents (including inventor's certificates).

Paragraph 8.3 is deleted in its entirety and replaced with the following:

8.3 Indexed Milestone Payment: Within sixty (60) days of either (a) the closing of a public offering of the common stock pursuant to a registration statement filed with the Securities and Exchange Commission or (b) any consolidation or merger of Dynavax with any other entity, or any other corporate reorganization following which the shareholders of Dynavax immediately prior thereto own less than sixty percent (60%) of Dynavax's voting power, or any transaction or series of transactions in which greater than forty percent (40%) of Dynavax's voting power is transferred to a third party not previously a shareholder of Dynavax; Dynavax shall make to The Regents a cash payment equal to [***]. This Indexed Milestone Payment shall be a one-time payment by Dynavax under any one of the three (3) license agreements between The Regents and Dynavax. One third (1/3) of this amount will be attributed to this Agreement, one third (1/3) to the UC 94-029 Agreement, and one third (1/3) to the UC 97-287 Agreement.

Paragraph 8.4 is deleted in its entirety and replaced with the following:

8.4 Attributed Income: Within sixty (60) days of Dynavax's receipt of Attributed Income, Dynavax shall pay to The Regents [***]. Such Attributed Income shall be allocated to the license agreement that generated the Attributed Income. These payments by Dynavax shall continue until an aggregate of [***] has been paid by Dynavax under the three (3) license agreements between The Regents and Dynavax.

[***] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED WITH BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 406 OF THE SECURITIES ACT OF 1933, AS AMENDED.

Paragraph 9.5.3 is deleted in its entirety and replaced with the following:

9.5.3 market Licensed Products [***];

The following Paragraph 9.6 is added:

9.6 If Dynavax is unable to meet any of the dates set forth in Paragraph 9.5, Dynavax shall be entitled to a one-time extension of each of the dates (which have not been met) by [***] upon payment of [***] to The Regents, provided that such payments is received by The Regents within sixty (60) days of receipt of written notice by The Regents that Dynavax has not met a due diligence date. The [***] payment has the effect of extending the subject date and all subsequent dates by [***]. The Regents shall not exercise its rights to terminate this Agreement unless a re-established date is not met.

The remaining provisions of the Agreement remain in full force and effect.

The parties have executed this Third Amendment in duplicate by their respective and duly authorized officers, as evidenced by the signatures below.

DYNAVAX TECHNOLOGIES CORPORATION:	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:
By: /s/ Dino Dina (signature)	By: /s/ Terence A. Feuerborn (signature)
Name: Dino Dina, M.D.	Name: Terence A. Feuerborn
Title: President & CEO	Title: Executive Director Research Administration and Technology Transfer
Date: Sept. 17 1999	Date: 9-22-99

Approved as to legal form: /s/ Edwin H. Baker 9/8/99

Edwin H. Baker Date
University Counsel
Office of General Counsel

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EXHIBIT 10.10

EXCLUSIVE LICENSE AGREEMENT

BETWEEN

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

AND

DYNAVAX TECHNOLOGIES CORPORATION

FOR

COMPOUNDS FOR INHIBITION OF CERAMIDE-MEDIATED SIGNAL TRANSDUCTION
AND
NEW ANTI-INFLAMMATORY INHIBITORS: INHIBITORS OF STRESS ACTIVATED PROTEIN KINASE PATHWAYS

UC CASE NO. 94-029-2, 94-029-3, 94-029-4

TABLE OF CONTENTS

UC Case No. 94-029

EXCLUSIVE LICENSE AGREEMENT

For

Compounds for Inhibition of Ceramide-Mediated Signal Transduction

And

New Anti-Inflammatory Inhibitors: Inhibitors of Stress Activated Protein Kinase Pathways

This License Agreement (the "Agreement") is made effective this 2nd day of October, 1998 (the "Effective Date"), between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, having its statewide administrative offices at 1111 Franklin Street, 12th Floor, Oakland, California 94607-5200 ("The Regents"), and Dynavax Technologies Corporation, a California corporation, having a principal place of business at 717 Potter Street, Suite 100, Berkeley, CA 94710 (the "Licensee").

BACKGROUND

A. Certain inventions, generally characterized as Compounds for Inhibition of Ceramide-Mediated Signal Transduction and New Anti-Inflammatory Inhibitors: Inhibitors of Stress Activated Protein Kinase Pathways for certain patent applications covered by UC Case No. 94-029 (collectively the "Invention"), were made in the course of research at the University of California, San Diego by Drs. Dennis A. Carson, Howard Cottam, and D. Bruce Wasson, and are covered by Regents' Patent Rights as defined below.

B. The development of the Invention was sponsored in part by National Institutes of Health and, as a consequence, this license is subject to overriding obligations to the United States ("U.S.") Federal Government under 35 U.S.C. Sections 200-212 and applicable regulations.

C. Licensee has evaluated the Invention under a Secrecy Agreement with The Regents (U.C. Control No. 98-20-0041) dated July 23, 1997.

D. Licensee and The Regents have executed a Letter of Intent (U.C. Control No. 98-30-0042) dated July 11, 1997.

E. Licensee wishes to obtain rights from The Regents for the exclusive commercial development, use and sale of products from the Invention, and The Regents is willing to grant those rights so that the Invention may be developed to its fullest and the benefits enjoyed by the general public.

F. Licensee is a "small business firm" as defined in 15 U.S.C. Section 632.

G. Both parties recognize and agree that royalties due under this Agreement on products and methods will be paid by Licensee on both pending patent applications and issued patents.

H. The Regents and The Licensee understand and agree that The Invention licensed hereunder embodies significant know-how and, accordingly, royalties due under this Agreement will be paid on products developed through the use of Technology Rights and The Licensee is willing to pay such royalties in exchange for the Technology Rights granted by, and used under, this license, regardless of whether or not some or all of the Technology Rights may have been published or may become published.

I. The Regents gratefully acknowledge the gift of [***].

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In view of the foregoing, the parties agree:

1. DEFINITIONS

1.1 "Affiliate" means any corporation or other business entity in which Licensee owns or controls, directly or indirectly, at least fifty percent (50%) of the outstanding stock or other voting rights entitled to elect directors or in which Licensee is owned or controlled directly or indirectly by at least fifty percent (50%) of the outstanding stock or other voting rights entitled to elect directors; but in any country where the local law does not permit foreign equity participation of at least fifty percent (50%), then an "Affiliate" includes any company in which Licensee owns or controls, or is owned or controlled by, directly or indirectly, the maximum percentage of outstanding stock or voting rights permitted by local law.

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1.2 "Licensed Method" means any method that is covered by Regents' Technology Rights or Regents' Patent Rights, or the use of which would constitute, but for the license granted to Licensee under this Agreement, an infringement of any pending or issued claim within Regents' Patent Rights.

1.3 "Licensed Product" means any material that is either covered by Regents' Technology Rights, or Regents' Patent Rights, that is produced by the Licensed Method or that the use of which would constitute, but for the license granted to Licensee under this Agreement, an infringement of any pending or issued claim within Regents' Patent Rights, or a misuse or misappropriation of Regents' Technology Rights.

1.4 "Technology Rights" means know-how and embodiments of know-how existing as of the Effective Date relating to Regents' Patents Rights, whether or not covered by Regents' Patent Rights, for example, data, protocols, cell lines, and other Materials which pertain to and/or are ancillary to the exercise of the rights granted herein, and which are listed on Appendix A.

1.5 "Net Sales" means the total of the gross invoice prices of Licensed Product sold or Licensed Method performed by Licensee, an Affiliate or a sublicensee, less the sum of the following actual and customary deductions where applicable: cash, trade or quantity discounts; sales, use, tariff, import/export duties or other excise taxes imposed on particular sales; transportation charges; and allowances or credits to customers because of rejections or returns. For purposes of calculating Net Sales, transfers to an Affiliate or sublicensee for end use by the Affiliate or sublicensee will be treated as sales at list price.

1.6 "Regents' Patent Rights" means The Regents' interest in the following subject matter:

UC Case Number	U.S. Application Number or U.S. Patent Number	Filing or Issue Date
94-029-2	08/482,551	June 7, 1995
94-029-3	08/858,778	February 7, 1994
94-029-4	09/107,026	June 29, 1998

and continuing applications thereof including divisions and substitutions but excluding continuation-in-part applications; any patents on said applications including reissues, reexaminations and extensions; and any corresponding foreign applications or patents.

2. LIFE OF PATENT EXCLUSIVE GRANT

2.1 Subject to the limitations set forth in this Agreement, The Regents grants to Licensee a world-wide license under Regents' Patent Rights and Regents' Technology Rights to make, have made, use, sell, offer to sell and import Licensed Product and to practice Licensed Method.

2.2 Except as otherwise provided in this Agreement, the license granted in Paragraph 2.1 is exclusive for the life of the Agreement.

2.3 Except as otherwise provided herein, the licenses granted in Paragraphs 2.1 and 2.2 are for all fields of use.

2.4 The license granted in Paragraphs 2.1 and 2.2 is subject to all the applicable provisions of any license to the U.S. Government executed by The Regents and is subject to the overriding obligations to the U.S. Government under 35 U.S.C. Sections 200-212 and applicable governmental implementing regulations.

2.5 The Regents reserves the right to use the Invention and associated technology for clinical, educational and research purposes.

3. SUBLICENSES

3.1 The Regents also grants to Licensee the right to issue sublicenses to third parties to make, have made, use, sell, offer to sell and import Licensed Product and to practice Licensed Method, as long as Licensee has current exclusive rights thereto under this Agreement. To the extent applicable, sublicenses must include all of the rights of and obligations due to The Regents and the U.S. Government contained in this Agreement.

3.2 Licensee shall promptly provide The Regents with a copy of each sublicense issued; collect and guarantee payment of all payments due The Regents from sublicensees; and summarize and deliver all reports due The Regents from sublicensees.

3.3 Upon termination of this Agreement for any reason, The Regents, at its sole discretion, shall determine whether Licensee shall cancel or assign to The Regents any and all sublicenses.

4. PAYMENT TERMS

4.1 Paragraphs 1.2, 1.3 and 1.6 define Licensed Method, Licensed Product and Regents' Patent Rights, so that royalties are payable on products and methods covered by both pending patent applications and issued patents. Royalties will accrue in each country for the duration of Regents' Patent Rights in that country and are payable to The Regents when Licensed Product is invoiced or if not invoiced, when delivered to a third party. In the case of Licensed Products covered by Regents' Technology Rights but not Regents' Patent Rights, royalties will accrue for fifteen (15) years from the Effective Date.

4.2 Licensee shall pay to The Regents earned royalties quarterly on or before February 28, May 31, August 31 and November 30 of each calendar year. Each payment will be for earned royalties accrued within Licensee's most recently completed calendar quarter.

4.3 All monies due The Regents are payable in U.S. dollars. When Licensed Product is sold for monies other than U.S. dollars, Licensee shall first determine the earned royalty in the currency of the country in which Licensed Product was sold and then convert the amount into equivalent U.S. funds, using the exchange rate quoted in The Wall Street Journal on the last business day of the reporting period.

4.4 Royalties earned on sales occurring in any country outside the U.S. may not be reduced by any taxes, fees or other charges imposed by the government of such country on the payment of royalty income. Licensee is also responsible for all bank transfer charges. Notwithstanding this, all payments made by Licensee in fulfillment of The Regents' tax liability in any particular country will be credited against earned royalties or fees due The Regents for that country.

4.5 If, at any time, legal restrictions prevent the prompt remittance of royalties by Licensee from any country where a Licensed Product is sold, Licensee shall convert the amount owed to The Regents into U.S. funds and shall pay The Regents directly from its U.S. source of funds for as long as the legal restrictions apply.

4.6 If any patent or patent claim within Regents' Patent Rights is held invalid in a final decision by a court of competent jurisdiction and last resort and from which no appeal has or can be taken, all obligation to pay royalties based on that patent or claim or any claim patentably indistinct therefrom will cease as of the date of final decision. Licensee will not, however, be relieved from paying any royalties that accrued before the final decision or that are based on

\
another patent or claim not involved in the final decision or that are based on The Regents' Technology Rights. If a product is covered by Regents' Technology Rights but not Regents' Patent Rights, royalties will be reduced by [***].

4.7 No royalties may be collected or paid on Licensed Product sold to the account of the U.S. Government, any agency thereof, state or domestic municipal government as provided for in the License to the Government.

4.8 In the event payments, rebillings or fees are not received by The Regents when due, Licensee shall pay to The Regents interest charges at a rate of ten percent (10%) per annum. Interest is calculated from the date payment was due until actually received by The Regents.

5. LICENSE-ISSUE FEE

Licensee shall pay to The Regents a license-issue fee of [***] within seven (7) days after the Effective Date. This fee is non-refundable, non-cancelable and is not an advance against royalties.

6. EARNED ROYALTIES AND MINIMUM ANNUAL ROYALTIES

6.1 Licensee shall also pay to The Regents an earned royalty of [***] of the Net Sales of Licensed Product or Licensed Method.

6.2 Licensee shall pay to The Regents a minimum annual royalty of [***] for the life of Regents' Patent Rights, beginning with the year of the first commercial sale of Licensed Product, but no later than [***]. For the first year of commercial sales, Licensee's obligation to pay the minimum annual royalty will be pro-rated for the number of months remaining in that calendar year when commercial sales commence and will be due the following February 28, to allow for crediting of the pro-rated year's earned royalties. For subsequent years, the minimum annual royalty will be paid to The Regents by February 28 of each year and will be credited against the earned royalty due for the calendar year in which the minimum payment was made.

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7. ADDITIONAL PAYMENTS

Clinical Milestone Payment: Licensee shall pay to The Regents [***] within thirty (30) days of the commencement of the first clinical [***]. Additionally, Licensee shall pay to The Regents [***] within thirty (30) days after [***].

8. DUE DILIGENCE

8.1 Within one hundred eighty (180) days of the Effective Date, the Licensee must submit a formal business plan outlining the full operations including recruitment of key staff and implementation of the research and development plan for Licensed Products. This plan must include a clear strategy for financing the Licensee until (1) the Licensee concludes a successful initial public offering, or (2) the Licensee is acquired by another corporate entity.

8.2 The Licensee, on execution of this Agreement, shall diligently proceed with the development, manufacture and sale of Licensed Products, either on its own or with a sublicensee, and shall diligently endeavor to market the same within a commercially reasonable time after execution of this Agreement.

8.3 The Licensee or its sublicensee shall:

8.3.1 demonstrate the efficacy of a Licensed Product in a valid animal model [***];

8.3.2 submit an IND covering Licensed Products to the United States FDA [***];

8.3.3 market Licensed Products [***];

8.3.4 market Licensed Products in the United States [***]; and

8.3.5 reasonably fill the market demand for Licensed Products following commencement of marketing at any time during the exclusive period of this Agreement.

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If the Licensee is unable to perform any of the provisions in this Article 8, then The Regents has the right and option either to terminate this Agreement or convert the Licensee's exclusive license granted to Licensee in Paragraphs 2.1 and 2.2 to a nonexclusive license.

8.4 In addition to the obligations set forth above, Licensee shall spend an average of [***] per [***] for the development of [***] on average during the first [***] after the Effective Date.

9. PROGRESS AND ROYALTY REPORTS

9.1 Beginning February 28, 1999, and semi-annually thereafter, Licensee shall submit to The Regents a written progress report covering Licensee's (and any Affiliate or sublicensee's) activities related to the development and testing of all Licensed Product and the obtaining of the governmental approvals necessary for marketing. Progress reports are required for each Licensed Product until the first commercial sale of that Licensed Product occurs in the U.S. and shall be again required if commercial sales of such Licensed Product is suspended or discontinued.

9.2 Progress reports submitted under Paragraph 9.1 shall include, but are not limited to, the following topics:

- summary of work completed
- key scientific discoveries
- summary of work in progress
- current schedule of anticipated events or milestones
- market plans for introduction of Licensed Product and
- a summary of resources (dollar value) spent in the reporting period.

9.3 Licensee has a continuing responsibility to keep The Regents informed of the business entity status (as defined by the U.S. Patent and Trademark Office) of itself and its sublicensees and Affiliates.

9.4 Licensee shall report to The Regents in its immediately subsequent progress and royalty report the date of first commercial sale of a Licensed Product in each country.

9.5 After the first commercial sale of a Licensed Product anywhere in the world, Licensee shall make quarterly royalty reports to The Regents on or before each February 28, May 31, August 31 and November 30 of each year. Each royalty report will cover Licensee's most

[***] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED WITH BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 406 OF THE SECURITIES ACT OF 1933, AS AMENDED.

recently completed calendar quarter and will show (a) the gross sales and Net Sales of Licensed Product sold during the most recently completed calendar quarter; (b) the number of each type of Licensed Product sold; (c) the royalties, in U.S. dollars, payable with respect to sales of Licensed Product; (d) the method used to calculate the royalty; and (e) the exchange rates used.

9.6 If no sales of Licensed Product have been made during any reporting period, a statement to this effect is required.

10. BOOKS AND RECORDS

10.1 Licensee shall keep accurate books and records showing all Licensed Product manufactured, used and/or sold under the terms of this Agreement. Books and records must be preserved for at least five (5) years from the date of the royalty payment to which they pertain.

10.2 Books and records must be open to inspection by representatives or agents of The Regents at reasonable times. The Regents shall bear the fees and expenses of examination but if an error in royalties of more than [***] is discovered in any examination, then Licensee shall bear the fees and expenses of that examination.

11. LIFE OF THE AGREEMENT

11.1 Unless otherwise terminated by operation of law or by acts of the parties in accordance with the terms of this Agreement, this Agreement will be in force from the Effective Date until the last-to-expire patent or patent application licensed under this Agreement is abandoned and no patent in the Regents Patent Rights ever issues; or until fifteen (15) years from the Effective Date as set forth in Paragraph 4.1, whichever is later.

11.2 Any termination of this Agreement will not affect the rights and obligations set forth in the following Articles:

Article 10 Books and Records

Article 14 Disposition of Licensed Product on Hand Upon Termination

Article 15 Use of Names and Trademarks

Article 20 Indemnification

Article 24 Failure to Perform

Article 29 Secrecy

[***] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED WITH BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 406 OF THE SECURITIES ACT OF 1933, AS AMENDED.

12. TERMINATION BY THE REGENTS

If Licensee fails to perform or violates any term of this Agreement, then The Regents may give written notice of default ("Notice of Default") to Licensee. If Licensee fails to repair the default within sixty (60) days of the effective date of Notice of Default, The Regents may terminate this Agreement and its licenses by a second written notice ("Notice of Termination"). If a Notice of Termination is sent to Licensee, this Agreement will automatically terminate on the effective date of that notice. Such termination will not relieve Licensee of its obligation to pay any fees owing at the time of termination and will not impair any accrued right of The Regents. These notices are subject to Article 21 (Notices).

13. TERMINATION BY LICENSEE

13.1 Licensee has the right at any time to terminate this Agreement in whole or as to any portion of Regents' Patent Rights by giving notice in writing to The Regents. Such notice of termination will be subject to Article 21 (Notices) and termination of this Agreement will be effective sixty (60) days from the effective date of such notice.

13.2 Any termination under the above Paragraph does not relieve Licensee of any obligation or liability accrued under this Agreement prior to termination or rescind any payment made to The Regents or anything done by Licensee prior to the time termination becomes effective. Termination does not affect in any manner any rights of The Regents arising under this Agreement prior to termination.

14. DISPOSITION OF LICENSED PRODUCT ON HAND UPON TERMINATION

Upon termination of this Agreement Licensee is entitled to dispose of all previously made or partially made Licensed Product, but no more, within a period of one hundred and twenty (120) days provided that the sale of Licensed Product is subject to the terms of this Agreement, including but not limited to the rendering of reports and payment of royalties required under this Agreement.

15. USE OF NAMES AND TRADEMARKS

Nothing contained in this Agreement confers any right to use in advertising, publicity or other promotional activities any name, trade name, trademark or other designation of either party hereto (including contraction, abbreviation or simulation of any of the foregoing). Unless required by law, the use by Licensee of the name "The Regents of the University of California" or the name of any campus of the University of California is prohibited.

16. LIMITED WARRANTY

16.1 The Regents warrants to Licensee that it has the lawful right to grant this license.

16.2 This license and the associated Invention are provided WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. THE REGENTS MAKES NO REPRESENTATION OR WARRANTY THAT THE LICENSED PRODUCT OR LICENSED METHOD WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT.

16.3 IN NO EVENT MAY THE REGENTS BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM EXERCISE OF THIS LICENSE OR THE USE OF THE INVENTION OR LICENSED PRODUCT.

16.4 This Agreement does not:

16.4.1 express or imply a warranty or representation as to the validity or scope of any of Regents' Patent Rights;

16.4.2 express or imply a warranty or representation that anything made, used, sold, offered for sale or imported or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of patents of third parties;

16.4.3 obligate The Regents to bring or prosecute actions or suits against third parties for patent infringement except as provided in Article 19 (Patent Infringement);

16.4.4 confer by implication, estoppel or otherwise any license or rights under any patents of The Regents other than Regents' Patent Rights as defined in this Agreement, regardless of whether those patents are dominant or subordinate to Regent's Patent Rights; or

16.4.5 obligate The Regents to furnish any know-how not provided in Regents' Patent Rights, or Regents' Technology Rights.

17. PATENT PROSECUTION AND MAINTENANCE

17.1 As long as Licensee has paid patent costs as provided for in this Article, The Regents shall diligently endeavor to prosecute and maintain the U.S. and foreign patents comprising Regents' Patent Rights using counsel of its choice and The Regents shall provide Licensee with copies of all relevant documentation so that Licensee may be informed of the continuing prosecution and Licensee agrees to keep this documentation confidential. The Regents' counsel will take instructions only from The Regents, and all patents and patent applications will be assigned solely to The Regents, regardless of possible Licensee inventorship.

17.2 The Regents shall use all reasonable efforts to amend any patent application to include claims reasonably requested by Licensee to protect the products contemplated to be sold under this Agreement.

17.3 Licensee shall apply for an extension of the term of any patent included within Regents' Patent Rights if appropriate under the Drug Price Competition and Patent Term Restoration Act of 1984 and/or European, Japanese and other foreign counterparts of this Law. Licensee shall prepare all documents and The Regents agrees to execute the documents and to take additional action as Licensee reasonably requests in connection therewith.

17.4 If either party receives notice pertaining to infringement or potential infringement of any issued patent included within Regents' Patent Rights under the Drug Price Competition and Patent Term Restoration Act of 1984 (and/or foreign counterparts of this Law), that party shall notify the other party within ten (10) days after receipt of notice of infringement.

17.5 Licensee shall bear the costs of preparing, filing, prosecuting and maintaining all U.S. and foreign patent applications contemplated by this Agreement. Costs billed by The Regents' counsel will be rebilled to Licensee and are due within thirty (30) days of rebilling by The Regents. These costs include patent prosecution costs for the Invention incurred by The Regents prior to the execution of this Agreement and any patent prosecution costs that may be incurred for patentability opinions, re-examination, re-issue, interferences or inventorship determinations.

Prior costs will be due upon execution of this Agreement and billing by The Regents and are at least approximately [***].

17.6 Licensee may request The Regents to obtain patent protection on the Invention in foreign countries if available and if it so desires. Licensee shall notify The Regents of its decision to obtain or maintain foreign patents not less than sixty (60) days prior to the deadline for any payment, filing or action to be taken in connection therewith. This notice concerning foreign filing must be in writing, must identify the countries desired and must reaffirm Licensee's obligation to underwrite the costs thereof. The absence of such a notice from Licensee to The Regents will be considered an election not to obtain or maintain foreign rights.

17.7 Licensee's obligation to underwrite and to pay patent prosecution costs will continue for so long as this Agreement remains in effect, but Licensee may terminate its obligations with respect to any given patent application or patent upon three (3) months written notice to The Regents. The Regents will use its best efforts to curtail patent costs when a notice of termination is received from Licensee. The Regents may prosecute and maintain such application(s) or patent(s) at its sole discretion and expense, but Licensee will have no further right or licenses thereunder. Non-payment of patent costs may be deemed by The Regents as an election by Licensee not to maintain application(s) or patent(s).

17.8 The Regents may file, prosecute or maintain patent applications at its own expense in any country in which Licensee has not elected to file, prosecute or maintain patent applications in accordance with this Article and those applications and resultant patents will not be subject to this Agreement.

18. PATENT MARKING

Licensee shall mark all Licensed Product made, used or sold under the terms of this Agreement, or their containers, in accordance with the applicable patent marking laws.

19. PATENT INFRINGEMENT

19.1 If Licensee learns of the substantial infringement of any patent licensed under this Agreement, Licensee shall call The Regents' attention thereto in writing and provide The Regents with reasonable evidence of infringement. Neither party will notify a third party of the

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infringement of any of Regents' Patent Rights without first obtaining consent of the other party, which consent will not be unreasonably denied. Both parties shall use their best efforts in cooperation with each other to terminate infringement without litigation.

19.2 Licensee may request that The Regents take legal action against the infringement of Regents' Patent Rights. Request must be in writing and must include reasonable evidence of infringement and damages to Licensee. If the infringing activity has not abated within ninety (90) days following the effective date of request, The Regents then has the right to:

19.2.1 commence suit on its own account; or

19.2.2 refuse to participate in the suit, and

19.2.3 The Regents shall give notice of its election in writing to Licensee by the end of the one-hundredth (100th) day after receiving notice of written request from Licensee. Licensee may thereafter bring suit for patent infringement, at its own expense, if and only if The Regents elects not to commence suit and if the infringement occurred during the period and in a jurisdiction where Licensee had exclusive rights under this Agreement. If, however, Licensee elects to bring suit in accordance with this Paragraph, The Regents may thereafter join that suit at its own expense.

19.3 Legal action, as is decided on, will be at the expense of the party bringing suit and all damages recovered thereby will belong to the party bringing suit, but legal action brought jointly by The Regents and Licensee and fully participated in by both will be at the joint expense of the parties and all recoveries will be shared jointly by them in proportion to the share of expense paid by each party.

19.4 Each party shall cooperate with the other in litigation proceedings instituted hereunder but at the expense of the party bringing suit. Litigation will be controlled by the party bringing the suit, except that The Regents may be represented by counsel of its choice in any suit brought by Licensee.

20. INDEMNIFICATION

20.1 Licensee shall indemnify, hold harmless and defend The Regents, its officers, employees and agents; the sponsors of the research that led to the Invention; and the inventors of the patents and patent applications in Regents' Patent Rights and their employers against any and all claims, suits, losses, liabilities, damages, costs, fees and expenses resulting from or arising out of exercise of this license or any sublicense. This indemnification includes, but is not limited to, any product liability.

20.2 Licensee, at its sole cost and expense, shall insure its activities in connection with the work under this Agreement and obtain, keep in force and maintain insurance as follows or an equivalent program of self insurance.

20.3 Comprehensive or commercial form general liability insurance (contractual liability included) with limits as follows:

- Each Occurrence $1,000,000
- Products/Completed Operations Aggregate $5,000,000
- Personal and Advertising Injury $1,000,000
- General Aggregate (commercial form only) $5,000,000

The coverage and limits referred to under the above do not in any way limit the liability of Licensee. Licensee shall furnish The Regents with certificates of insurance showing compliance with all requirements. Certificates must:

- Provide for thirty (30) days' advance written notice to The Regents of any modification.
- Indicate that The Regents has been endorsed as an additional Insured under the coverage referred to under the above.
- Include a provision that the coverage will be primary and will not participate with nor will be excess over any valid and collectable insurance or program of self-insurance carried or maintained by The Regents.

20.4 The Regents shall notify Licensee in writing of any claim or suit brought against The Regents in respect of which The Regents intends to invoke the provisions of this Article. Licensee shall keep The Regents informed on a current basis of its defense of any claims under this Article.

21. NOTICES

21.1 Any notice or payment required to be given to either party is properly given and effective (a) on the date of delivery if delivered in person or (b) five (5) days after mailing if mailed by first-class certified mail, postage paid, to the respective addresses given below or to

another address as is designated by written notice given to the other party.

In the case of Licensee:
DYNAVAX TECHNOLOGIES CORPORATION
717 Potter Street, Suite 100
Berkeley, CA 94710
Attention: Dr. Dino Dina

In the case of The Regents:
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
Office of Technology Transfer
1111 Franklin Street, 5th Floor
Oakland, CA 94607-5200
Attention: Executive Director
Research Administration and
Technology Transfer
RE: UC Case No. 94-029-2, -3 and -4

22. ASSIGNABILITY

This Agreement may be assigned by The Regents, but is personal to Licensee and assignable by Licensee only with the written consent of The Regents, which consent will not be unreasonably withheld.

23. NO WAIVER

No waiver by either party of any default of this Agreement may be deemed a waiver of any subsequent or similar default.

24. FAILURE TO PERFORM

If either party finds it necessary to undertake legal action against the other on account of failure of performance due under this Agreement, then the prevailing party is entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

25. GOVERNING LAWS

THIS AGREEMENT WILL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, but the scope and validity of any patent or patent application will be governed by the applicable laws of the country of the patent or patent application.

26. PREFERENCE FOR U.S. INDUSTRY

Because this Agreement grants the exclusive right to use or sell the Invention in the U.S., Licensee agrees that any products sold in the U.S. embodying this Invention or produced through the use thereof will be manufactured substantially in the U.S.

27. GOVERNMENT APPROVAL OR REGISTRATION

Licensee shall notify The Regents if it becomes aware that this Agreement is subject to any U.S. or foreign government reporting or approval requirement. Licensee shall make all necessary filings and pay all costs including fees, penalties and all other out-of-pocket costs associated with such reporting or approval process.

28. EXPORT CONTROL LAWS

Licensee shall observe all applicable U.S. and foreign laws with respect to the transfer of Licensed Product and related technical data to foreign countries, including, without limitation, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations.

29. SECRECY

29.1 With regard to confidential information ("Data"), which can be oral or written or both, received from The Regents regarding this Invention, Licensee agrees:

29.1.1 not to use the Data except for the sole purpose of performing under the terms of this Agreement;

29.1.2 to safeguard Data against disclosure to others with the same degree of care as it exercises with its own data of a similar nature;

29.1.3 not to disclose Data to others (except to its employees, agents or consultants who are bound to Licensee by a like obligation of confidentiality) without the express written permission of The Regents, except that Licensee is not prevented from using or disclosing any of the Data that:

29.1.3.1 Licensee can demonstrate by written records was previously known to it;

29.1.3.2 is now or becomes in the future, public knowledge other than through acts or omissions of Licensee; or

29.1.3.3 is lawfully obtained by Licensee from sources independent of The Regents; and

29.1.4 that the secrecy obligations of Licensee with respect to Data will continue for a period ending five (5) years from the termination date of this Agreement.

29.2 With regard to material received by Licensee from The Regents, if any, including any compounds, cell lines, vectors, genetic material, derivatives, products progeny or material derived therefrom ("Biochemical Material"), Licensee agrees:

29.2.1 not to use Biochemical Material except for the sole purpose of performing under the terms of this Agreement;

29.2.2 not to transfer Biochemical Material to others (except to its employees, agents or consultants who are bound to Licensee by like obligations conditioning and restricting access, use and continued use of Biochemical Material) without the express written permission of The Regents, except that Licensee is not prevented from transferring Biochemical Material that:

29.2.2.1 becomes publicly available other than through acts or omissions of Licensee; or

29.2.2.2 is lawfully obtained by Licensee from sources independent of The Regents;

29.2.2.3 to safeguard Biochemical Material against disclosure and transmission to others with the same degree of care as it exercises with its own biological materials of a similar nature;

30. MISCELLANEOUS

30.1 The headings of the several sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

30.2 This Agreement is not binding on the parties until it has been signed below on behalf of each party. It is then effective as of the Effective Date.

30.3 No amendment or modification of this Agreement is valid or binding on the parties unless made in writing and signed on behalf of each party.

This Agreement embodies the entire understanding of the parties and supersedes all previous communications, representations or understandings, either oral or written, between the parties relating to the subject matter hereof. The Secrecy Agreement dated July 23, 1997 is hereby terminated.

30.4 In case any of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable in any respect, that invalidity, illegality or unenforceability will not affect any other provisions of this Agreement and this Agreement will be construed as if the invalid, illegal or unenforceable provisions had never been contained in it.

IN WITNESS WHEREOF, both The Regents and Licensee have executed this Agreement, in duplicate originals, by their respective and duly authorized officers on the day and year written.

DYNAVAX TECHNOLOGIES CORPORATION:	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:
By: /s/ Dino Dina	By: /s/ Terence A. Feuerborn
(Signature)	(Signature)
Name: DINO DINA, M.D.	Name: Terence A. Feuerborn
Title: President & CEO	Title: Executive Director Research Administration and Technology Transfer
Date: September 25, 1998	Date: 10-2-98

Approved as to legal form: /s/ Sandra S. Schultz 9/30/98

Sandra S. Schultz Date
University Counsel
Office of General Counsel

UC Case Nos. 94-029-2, 94-029-3, 94-029-4

FIRST AMENDMENT TO EXCLUSIVE LICENSE AGREEMENT

This first amendment (the "First Amendment") is effective this 22nd day of September, 1999 (the "Effective Date") is between The Regents of the University of California, a California corporation with administrative headquarters at 1111 Franklin Street, 12th Floor, Oakland, California 94607-5200 ("The Regents"), and Dynavax Technologies Corporation, a California corporation, having an address at 717 Potter Street, Suite 100, Berkeley, California 94710, ("Dynavax").

BACKGROUND

A. The Regents and Dynavax entered into an exclusive license agreement (UC Control No. 99-04-0166) dated October 2, 1998 ("the Agreement") which covers "Compounds for Inhibition of Ceramide-mediated Signal Transduction" and "New Anti-inflammatory Inhibitors: Inhibitors of Stress Activated Protein Kinase Pathways".

B. The Regents and Dynavax entered into other exclusive license agreements. These are UC Control No. 97-04-0493, dated March 26, 1997 (the "UC 92-296, 97-138 Agreement") which covers "Methods, Compositions, and Devices for Administration of Naked Nucleotides Which Express Biologically Active Peptides" and "Immunostimulatory Oligonucleotide Conjugates"; and UC Control No. 99-04-0321, dated October 2, 1998 (the "UC 97-287 Agreement") which covers "Inhibitors of DNA Immunostimulatory Sequence Activity" respectively.

C. The Regents and Dynavax wish to amend this Agreement to include an additional patent application in the definition of Regents' Patent Rights.

D. The Regents and Dynavax wish to further amend this Agreement to include the Index Milestone Payment as restated in Paragraph 8.3 of the Third Amendment to the UC 92-296, 97-138 Agreement.

E. The Regents and Dynavax wish to further amend this Agreement to include Attributed Income Payment as restated in Paragraph 8.4 of the Second Amendment to the UC 92-296, 97-138 Agreement.

NOW, THEREFORE, the parties hereby agree to amend the Agreement as set forth herein.

Paragraph 1.6 is deleted in its entirety and replaced with the following:

1.6 "Regents' Patent Rights" means any subject matter claimed or disclosed in any of the following:

Case Number	U.S. Patent Application Serial Number or U.S. Patent Number	Filing Date or Issue Date
94-029-2	Patent No. 5,843,943	December 1, 1998
94-029-3	Serial No. 08/858,778	May 19, 1997
94-029-4	Serial No. 09/107,026	June 29, 1988
99-222-1	Serial No. 09/313,048	May 17, 1999

and continuing applications thereof including divisions and substitutions but excluding continuations-in-part applications; any patents on said applications including reissues, reexaminations and extensions; and any corresponding foreign applications or patents.

The following Paragraph 1.7 is added:

1.7 "Attributed Income" means the following types of income received by Dynavax which is attributable to the Invention licensed hereunder: upfront licensing fees paid to Dynavax by third parties (e.g. corporate partners and sublicensees of Dynavax) and licensing and/or research and development (R&D) milestone payments made to Dynavax for the development of Licensed Products which milestone payments are payable prior to (but not after) the commencement of clinical trials for a Licensed Product to which the income is attributable. Attributed Income does not include amounts received by Dynavax from third parties for the purchase of an equity interest in Dynavax (except amounts in excess of the fair market value of Dynavax's stock at the time such purchase is made), amounts received to fund Dynavax's research and development efforts (charged at cost), amounts received by Dynavax as a loan

subject to repayment, or reimbursement of patent costs, or amounts received by Dynavax for research and development and/or licensing of technology not covered by Regents' Patent Rights.

Article 7 is renamed Paragraph 7.1 and restated:

7.1 Clinical Milestone Payment: Licensee shall pay to The Regents [***] within thirty (30) days of the commencement of the first clinical [***]. Additionally, Licensee shall pay to The Regents [***] within thirty (30) days after [***].

The following Paragraph 7.2 and Paragraph 7.3 are added:

7.2 Indexed Milestone Payment: Within sixty (60) days of either (a) the closing of a public offering of the common stock pursuant to a registration statement filed with the Securities and Exchange Commission or (b) any consolidation or merger of Dynavax with any other entity, or any other corporate reorganization following which the shareholders of Dynavax immediately prior thereto own less than sixty percent (60%) of Dynavax's voting power, or any transaction or series of transactions in which greater than forty percent (40%) of Dynavax's voting power is transferred to a third party not previously a shareholder of Dynavax; Dynavax shall make to The Regents a cash payment equal to [***]. This Indexed Milestone Payment shall be a one-time payment by Dynavax under any one of the three (3) license agreements between The Regents and Dynavax. One third (1/3) of this amount will be attributed to this Agreement, one third (1/3) to the UC 92-296, 97-138 Agreement, and one third (1/3) to the UC 97-287 Agreement.

7.3 Attributed Income: Within sixty (60) days of Dynavax's receipt of Attributed Income, Dynavax shall pay to The Regents [***]. Such Attributed Income shall be allocated to the license agreement that generated the Attributed Income. These payments by Dynavax shall continue until an aggregate of [***] has been paid under any one of the three (3) license agreements between The Regents and Dynavax.

Paragraph 8.3.3 is deleted in its entirety and replaced with the following:

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8.3.3 market Licensed Products [***];

The following Paragraph 8.6 is added:

8.6 If Dynavax is unable to meet any of the dates set forth in Paragraph 8.3, Dynavax shall be entitled to a one-time extension of each of the dates (which have not been met) by [***] upon payment of [***] to The Regents, provided that such payment is received by The Regents within sixty (60) days of receipt of written notice by The Regents that Dynavax has not met a due diligence date. The [***] payment has the effect of extending the subject date and all subsequent dates by [***]. The Regents shall not exercise its rights to terminate this Agreement unless a re-established date is not met.

The remaining provisions of the Agreement remain in full force and effect.

The parties have executed this First Amendment in duplicate by their respective and duly authorized officers, as evidenced by the signatures below.

DYNAVAX TECHNOLOGIES CORPORATION:	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:
By: /s/ Dino Dina (Signature)	By: /s/ Terence A. Feuerborn (Signature)
Name: Dino Dina, M.D.	Name: Terence A. Feuerborn
Title: President & CEO	Title: Executive Director Research Administration and Technology Transfer
Date: Sept 17 1999	Date: 9-22-99

Approved as to legal form: /s/ Edwin H. Baker 9/8/99

Edwin H. Baker Date
University Counsel
Office of General Counsel

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