BIOLOGICAL MATERIAL TRANSFER AGREEMENT
BETWEEN THE UNIVERSITY OF ARIZONA
AND

(Name of Requesting Institution of Company)

THIS BIOLOGICAL MATERIAL TRANSFER AGREEMENT ("BMTA"), effective on the date of the last authorized signature affixed hereto ("Effective Date"), is by and between The Arizona Board of Regents on behalf of the Arizona Genomics Institute ("AGI") and the University of Arizona having an address at Tucson, Arizona 85721 ("SUPPLIER") and ____________________________ ("RECIPIENT").

RECIPIENT will hold the Material in trust solely for the purposes set forth in this BMTA.

Definitions

"Material" shall mean material that is specified in requesting letter, email or electronic order form, and which is clearly identified by genus, species and subspecies. Material shall include original Material, Progeny and Unmodified Derivatives but shall not include Modifications as defined below:

"Progeny" shall mean any unmodified descendant from Material, such as virus from virus, cell from cell, DNA sequence from DNA sequence.

"Unmodified Derivatives" shall mean substances created by RECIPIENT which constitute an unmodified functional subunit or product expressed by the Material, including, but not limited to, subclones of unmodified cell lines, purified or fractionated subsets of Material, proteins expressed by DNA/RNA supplied by the SUPPLIER, or monoclonal antibodies secreted by a hybridoma cell line.

"Modifications" shall mean substances created by the RECIPIENT which contain/incorporate the MATERIAL, such as genetic crosses, reproductive or vegetative plant propagative Material or anything containing functional units of heredity.

"Affiliate" shall mean any company controlling or controlled by RECIPIENT by direct or indirect ownership or control of at least fifty percent (50%) of the voting stock or similar interest.

"Commercial Use" shall mean uses of the Material by RECIPIENT to perform contract research, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license, or transfer of data or intellectual property, resulting from said research activities, to a third party, for-profit organization.

Terms

RECIPIENT and SUPPLIER agree to the following terms and conditions:

1. No Warranties. ANY MATERIAL DELIVERED PURSUANT TO THIS BMTA IS UNDERSTOOD TO BE EXPERIMENTAL IN NATURE, AND SUPPLIER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF
MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER RIGHTS.

2. Rights and Obligations of Parties to this BMTA.

2.1. Ownership. RECIPIENT acknowledges that SUPPLIER retains title, rights and interest in Material. SUPPLIER retains the right to distribute Material to third parties.

2.2. Shipment of Material. SUPPLIER Scientist shall make Material available for shipment to RECIPIENT in a timely manner after effective date of this BMTA. The RECIPIENT assumes the risk of loss due to shipping.

2.3. Custody of Material. Material being made available pursuant to this BMTA is to be held by RECIPIENT in trust solely for research purposes in the laboratory of the RECIPIENT scientist identified in this BMTA. RECIPIENT shall not transfer Material to any third party, except an Affiliate, without the prior written consent of SUPPLIER.

2.4. Authorized Access. RECIPIENT Scientist shall at SUPPLIER's written request provide SUPPLIER with a list of personnel under the supervision of RECIPIENT Scientist that have access to the Material.

2.5. Derivative Rights. RECIPIENT retains the right to create, own, and use any Modifications developed as a result of this Research Project.

2.6. Limitations on Rights. This BMTA shall not grant RECIPIENT rights:

2.6.1. under any patent;
2.6.2. in any know-how of the SUPPLIER; OR
2.6.3. to use the Material or any related product or process derived therefrom for profit-making or Commercial Uses.

2.7. Commercial Use. If RECIPIENT desires to make Commercial Use of Material or an Unmodified Derivative that contains or incorporates Material, and related patents, if any, it agrees to negotiate in good faith a license with SUPPLIER prior to any profit-making or Commercial Use. SUPPLIER shall have no obligation to grant such license to RECIPIENT and may grant an exclusive license to RECIPIENT or non-exclusive licenses to others who may be investigating uses of the Material.

2.8 Invitrogen Rights. RECIPIENT acknowledges that the Material is or may be the subject of one or more third party patents. Material containing pCMV.SPORT-6.1 vector, a component of “Gateway®” cloning technology from INVITROGEN CORPORATION, is subject to specific patents and other restrictions as described in the INVITROGEN CORPORATION Limited Use Label License attached hereto as Exhibit A. Except as provided in this BMTA, no express or implied licenses or other rights are provided to the Recipient under any patents, patent applications, trade secrets or other proprietary rights of the Supplier, including any altered forms of the Material made by the Supplier. In particular, no express or implied licenses or other rights are provided to use the Material, modifications, or any related patents of the Supplier for commercial purposes.
2.9 Fee. Fees for Materials are found at the AGI Orders Website http://www.genome.arizona.edu/orders/ and will be inserted by RECIPIENT in the requesting letter, email or electronic order form.

3. Termination.

3.1. This BMTA will terminate on the earliest of the following event:
   3.1.1. upon thirty (30) days written notice by either party to the other;
   3.1.2. when Material becomes generally available from third parties, for example, through reagent catalogs;
   3.1.3. one (1) year after Effective Date, if RECIPIENT is a for-profit company (renewable upon written mutual agreement); or
   3.1.4. upon automatic termination by SUPPLIER for violation of paragraphs on Custody of Material, Limitations on Rights, and Compliance.

3.2. Upon termination of this BMTA, RECIPIENT agrees to discontinue within thirty (30) days its use of the Material and anything incorporating the Material. RECIPIENT agrees, upon direction of SUPPLIER, to return or destroy the Material. RECIPIENT will send SUPPLIER a written confirmation that the Material has been returned or destroyed.

4. Government Rights. The provision of Material to RECIPIENT is understood to alter in no way any rights of the U.S. Government or other research sponsor of SUPPLIER, if applicable.

5. Publication. During the term of this BMTA and six (6) months thereafter, RECIPIENT Scientist agrees to provide SUPPLIER Scientist with an advance copy of any publication resulting from the use of Material not less than thirty (30) days prior to the submission to a journal or any other public disclosure. RECIPIENT Scientist also agrees to provide appropriate acknowledgement of the source of Material in all publications.

6. Confidentiality. Both parties shall safeguard confidential data supplied by the other with the same degree of care as it exercises with its own data of a similar nature. Neither party shall use such data, except as to perform its obligations under this BMTA, and shall not disclose such data to others (except to its employees who are bound by a like obligation of confidentiality) without the express written permission of other party, except that either party is not prevented from using or disclosing any of the data that:

6.1. RECIPIENT can demonstrate by written records was previously known to it;
6.2. is now or becomes in the future public knowledge other than through acts or omissions of the RECIPIENT; OR
6.3. is lawfully obtained by RECIPIENT from sources independent of SUPPLIER.

The secrecy obligations under these terms shall remain in effect for five (5) years from the termination of this BMTA.

7. Use of Name. Except as set forth in paragraph 6, RECIPIENT shall not use the name of the SUPPLIER in any public announcements, publicity, or advertising with respect to the subject of the BMTA without the prior written approval of SUPPLIER.

8. Liability. In no event shall the SUPPLIER be liable for any use of such Material, and RECIPIENT hereby agrees, where not precluded by federal or state law, to defend, indemnify, and hold
SUPPLIER harmless from any loss, claim, damage or liability, of whatsoever kind or nature, which may arise from or in connection with this BMTA or the use of such Material hereunder.

10. Compliance. RECIPIENT’s use of Material shall be in compliance with all applicable local, state, and federal procedures, rules, regulations, and laws, including health information privacy rules and export control laws. Material shall not be used in human subjects, human cloning, clinical trials or for diagnostic purposes involving human subjects.

11. Survival of Terms. Paragraphs for No Warranties, Limitations on Rights, Publication, Confidentiality, Use of Name, and Liability shall survive termination of this BMTA.

State of Arizona Required Clauses:

12. Parties acknowledge receipt of notice that ARS § 38-511 regarding SUPPLIER conflict of interest applies to this BMTA.

13. The Parties shall comply with all applicable state and federal statutes and regulations governing equal employment opportunity, non-discrimination and immigration.

14. Parties recognize that the performance by SUPPLIER may be dependent upon the appropriation of funds by the State Legislature of Arizona. Should the Legislature fail to appropriate the necessary funds, SUPPLIER may cancel its future obligations under this MTA without further duty or obligation. The SUPPLIER agrees to notify the other party as soon as reasonably possible after the unavailability of said funds comes to its attention.

15. In the event of a dispute hereunder that involves the sum of Fifty Thousand Dollars ($50,000) or less, in money damages only, the Parties will submit the matter to binding arbitration pursuant to the Arizona Arbitration Act, ARS § 12-1501, et seq., (the “Act”) whose rules shall govern the interpretation, enforcement and proceedings pursuant to this paragraph.

SUPPLIER

Arizona Board of Regents
On behalf of
The University of Arizona

Authorized Representative

By:

Date: April 15, 2008

Name: Patrick L. Jones, PhD, MBA
Title: Director, Office of Technology Transfer

RECIPIENT

Authorized Representative

By:

Date:

Name:
Title:
SUPPLIER Scientist

By: [Signature]

Date: 4-10-08

Name: Rod A. Wing or Dave A. Kudrna
Title: Director, Arizona Genomics Institute

Address: Department of Plant Sciences
University of Arizona
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Tel: 520.626.9596
Fax: 520.621.1259
Email: dkudrna@ag.arizona.edu

RECIPIENT Scientist

By: ____________________

Date: ____________

Name: ____________________
Title: ____________________
Address: ____________________
Exhibit A

Limited Use Label License

This product and its use is the subject of one or more of U.S. Patent Nos. 5,888,732, 6,143,557, 6,171,861, 6,270,969, and 6,277,608 and/or other pending U.S. and foreign patent applications owned by Invitrogen Corporation. The purchase of this product conveys to the buyer the non-transferable right to use the purchased amount of the product and components of the product in research conducted by the buyer (whether the buyer is an academic or for profit entity). The purchase of this product does not convey a license under any method claims in the foregoing patents or patent applications, or to use this product with any recombination sites other than those purchased from Invitrogen Corporation or its authorized distributor. The right to use methods claimed in the foregoing patents or patent applications with this product for research purposes only can only be acquired by the use of Clonase™ purchased from Invitrogen Corporation or its authorized distributors. The buyer cannot modify the recombination sequence(s) contained in this product for any purpose. The buyer cannot sell or otherwise transfer (a) this product, (b) its components, or (c) materials made by the employment of this product or its components to a third party or otherwise use this product or its components or materials made with this product or its components for Commercial Purposes. The buyer may transfer information or materials made through the use of this product, provided that such transfer is not for any Commercial Purpose, and that such collaborator agrees in writing (a) not to transfer such materials to any third party, and (b) to use such transferred materials and/or information solely for research and not for Commercial Purposes. Transfer of such materials and/or information to collaborators does not convey rights to practice any methods claimed in the foregoing patents or patent applications.

Commercial Purposes means any activity by a party for consideration and may include, but is not limited to: (1) use of the product or its components in manufacturing; (2) use of the product or its components to provide a service, information, or data; (3) use of the product or its components for therapeutic, diagnostic or prophylactic purposes; or (4) resale of the product or its components, whether or not such product or its components are resold for use in research. Invitrogen Corporation will not assert a claim against the buyer of infringement of the above patents based upon the manufacture, use or sale of a therapeutic, clinical diagnostic, vaccine or prophylactic product developed in research by the buyer in which this product or its components was employed, provided that none of (i) this product, (ii) any of its components, or (iii) a method claim of the foregoing patents, was used in the manufacture of such product. Invitrogen Corporation will not assert a claim against the buyer of infringement of the above patents based upon the use of this product to manufacture a protein for sale, provided that no method claim in the above patents was used in the manufacture of such protein. For information on purchasing a license to use this product for purposes other than those permitted above, contact Licensing Department, Invitrogen Corporation, 1600 Faraday Avenue, Carlsbad, California 92008. Phone (760) 603-7200.