

## IMPORTANT – PLEASE READ

### TERMS AND CONDITIONS

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**Effective: May 21, 2008**

#### 1. Acceptance of the Terms and Conditions.

1.1 Introduction; Acceptance. BioArts International Ltd., a Delaware corporation having a principal place of business located at 38 Miller Avenue, Suite 12, Mill Valley, California 94941 (herein referred to as the “**BioArts**,” “**we**,” “**us**” or “**our**”) provides and makes available this online auction web site hosted by ProxiBid and located at <http://www.proxibid.com/bioarts> or any subsequent URL used by us (the “**Web Site**”) which allows users to bid for certain animal cloning services as further described on the Web Site (the “**Auctioned Services**”) pursuant to Auctions (as defined below) that are conducted by McCormack Auction Company (the “**Auctioneer**”) on behalf of BioArts. All use of the Web Site is subject to the terms and conditions contained in these Terms and Conditions and the Privacy Policy (collectively, this “**Agreement**”). Please read this Agreement carefully. By participating or continuing to participate in any Auction or accessing, browsing or otherwise using the Web Site, you acknowledge that you have read, understood, and agree to be bound by this Agreement. We recommend that you print this Agreement and keep copies for your records. If you do not accept the terms and conditions of this Agreement, you shall not participate or continue to participate in any Auction or access, browse, or otherwise use the Web Site. References to “**you**” mean the person participating or continuing to participate in any Auction or accessing, browsing, or otherwise using this Web Site and/or the entity such person represents during the course of employment or engagement by that entity. For the avoidance of doubt, notwithstanding anything on the Web Site or other materials related to the Web Site to the contrary, you hereby acknowledge that the Auctions are conducted by the Auctioneer (on behalf of BioArts).

1.2 Changes. You understand and agree that we may change this Agreement at any time without prior notice. You may read a current, effective copy of this Agreement at any time by selecting the “Terms and Conditions” link on the Web Site. The revised terms and conditions will become effective when we send notification to you of such revised terms and conditions. Any use of the Web Site after such date shall constitute your acceptance of such revised terms and conditions. If any change to this Agreement is not acceptable to you, your sole remedy is to cease participating in any Auction or accessing, browsing or otherwise using the Web Site.

#### 2. Auctions.

2.1 Definitions. The following terms shall have the following meanings:

(a) “**Auction(s)**” means the content, features and functionality provided via this Web Site to facilitate the online auction operated by the Auctioneer through which BioArts offers to sell and you bid to buy the Auctioned Services.

(b) “**Buyer’s Premium**” means a NON-REFUNDABLE and NON-CREDITABLE ten percent (10%) of the winning bid price of each Auctioned Service purchased, which winning bidders are required and agree to pay in addition to payment of the winning bid price.

(c) “**Qualification Requirements**” means the conditions that you must meet before registering for or participating in any Auction, including without limitation that you must (i) be aged 21 years or over and be legally capable of forming binding contracts and incurring binding contractual obligations, (ii) own a live dog from which your veterinarian can obtain a viable tissue sample, or have gene-banked viable tissue of a live or deceased dog, in each case that you would like to clone, and (iii) have available cash or a credit line, or other liquid assets, of at least US\$250,000. The Qualification Requirements are available at <http://BestFriendsAgain.com/Auction> and are subject to change at our discretion.

2.2 Registration. Subject to the terms hereof, you can browse the Web Site at any time without registering; however, to participate in any of the Auctions, you must meet the Qualification Requirements and register by completing the online “Create Bidder Account” form (the “**Registration Form**”) on the <http://www.proxibid.com/bioarts> Web Site and you must agree to both ProxiBid’s terms and conditions and these Terms and Conditions during registration. Please note that registering one time will grant you access to participate in any of the five (5) initial dog cloning Auctions that are conducted on the Web Site. If you do not want to provide any information requested in the

Registration Form, you shall not register for or participate in any Auction. By registering, you represent and warrant that all information you provide on the Registration Form is true, accurate and complete, that you will immediately update any such information to make it true, accurate and complete (by using the "Personal Profile" tab in your "Bidder Account"), and if you are registering on behalf of an entity, you further represent and warrant that you have the right, power and authority to bind such entity to this Agreement. You will provide any evidence requested by us to verify any information you provide to us or any of the foregoing representations and warranties. We reserve the right in our sole discretion to refuse any application to register for or participate in the Auction.

2.3 Username and Password. Upon registering, you will be asked to create a unique username and password. You shall hold and secure your username and password as strictly confidential, and you shall not allow any other person or entity access to or use of such username and password. You should not share, display, disclose or permit your username or password to be disclosed to any other party. You are responsible for participation in the Auction and any other activity on the Web Site when access is obtained through the use of your username and password, whether authorized or unauthorized. You agree not to impersonate any other person or entity or use any false name or use any other person's user name and password to access any Auction. If you believe that your username and/or password has become known to another person or you are aware of any other breach of security regarding the Auction or Web Site, then you shall notify us immediately in accordance with Section 9. You shall ensure that you properly exit the Web Site at the completion of your session.

2.4 Bidding. You can only make a bid for Auctioned Services and otherwise participate in any Auction if you are registered in accordance with Section 2.2. You shall comply with any instructions or notifications posted on the Web Site from time to time in relation to bidding in any Auction. All Auctions will be conducted in U.S. Dollars ("\$"). You are responsible for ensuring that you have sufficient funds to cover the cost of all of your bids and the Buyer's Premium and to make payment in accordance with the applicable payment method. Any bid for Auctioned Services that you make via this Web Site constitutes a legal offer to buy the Auctioned Service from BioArts. You shall have no right to retract a bid except to the extent BioArts is required to allow you to retract such bid under applicable law. We shall have the right to set applicable minimum bids or reserve requirements and are entitled to change such minimum bids and reserve requirements at any time before or during the Auction period. If an Auction subject to a reserve ends and the reserve price is not met, you and BioArts are released from any obligation to purchase and sell, respectively, the Auctioned Service. Any bid you make will remain open for the time period specified on the Web Site. To help prevent "sniping" (i.e., bidding at the last second of an Auction), this Web Site supports extended bidding on timed Auctions, which means that if a bid is placed during the final five minutes of an Auction, the Auction is automatically extended for five more minutes, and so on. The winning bid in any Auction will be the highest bid to be registered by us at the end of each Auction that exceeds the reserve price (if any) and meets the conditions that are specific to that Auction. Should a tie or a dispute arise between two bidders, we or the Auctioneer may, at our discretion, re-open the bidding until the Auctioned Service is sold. The record of the Auction made by us and/or the Auctioneer shall be conclusive.

2.5 Winning Bids; Client Agreement. By bidding for an Auctioned Service you agree (i) to be bound by any conditions of sale included in the Auctioned Service's description on the Web Site and (ii) that, if you have placed the highest bid which is (where applicable) at or above any reserve price and we have confirmed acceptance of your bid, you have entered into a legally binding contract to buy the Auctioned Service from us. If you are the winning bidder, we will contact you immediately after the Auction to confirm acceptance of your bid and the amount of the winning bid. We will also send you (a) details related to the performance of the Auctioned Services, (b) the client service agreement for the Auctioned Services (the "Client Agreement"), which you shall sign and return to us within three (3) business days of receipt, and (c) an invoice sent by ProxiBid for the full amount of the winning bid, plus the Buyer's Premium, by postal mail, which you shall pay by money order, certified cashier check or wire transfer within three (3) business days of receipt. You also agree to provide us with the following: (i) bank wire instructions information if you are paying by wire transfer; (ii) information about the animal for which the service would be performed, including name, species, breed, health, and gender; information about the animal owner including name, address, phone number, and email address; and information about the animal's veterinarian, including such veterinarian's name, clinic name, address, and phone and fax numbers.

2.6 If we are unable to contact you within 48 hours of the conclusion of the Auction or at any time we believe there is or may be a problem with your payment for any Auctioned Service, then we will be entitled in our discretion to offer the Auctioned Service to the next highest bidder or to conduct another Auction for such Auctioned Service. Notwithstanding the foregoing, the execution of the Client Agreement and payment of such invoice are express conditions that you must fulfill prior to BioArts being obligated to provide the Auctioned Service to you. If you are a winning bidder, you shall be responsible for all taxes (including sales tax) applicable to your purchase of the Auctioned Services, and you shall indemnify and hold us harmless against any claim arising from your failure to pay such taxes.

### 3. Use of the Web Site.

3.1 Content; Trademarks. This Web Site contains material, including but not limited to software, text, graphics and images (collectively referred to as the “**Content**”) owned or licensed by us. The Content is protected by intellectual property laws. You have no rights in or to the Content, and you will not use, copy or display the Content except as permitted under this Agreement. Without limiting the foregoing, you must retain all copyright and other proprietary notices contained in the original Content on any copy you make of the Content. The use or posting of any of the Content on any other web site or in a networked computer environment for any purpose is expressly prohibited. If you violate any part of this Agreement, your right to access and/or use the Content and Web Site shall automatically terminate and you shall immediately destroy any copies you have made of the Content. Nothing on this Web Site or in this Agreement should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any trademark of BioArts displayed on this Web Site (the “**Trademarks**”) without the prior written consent of BioArts specific for each such use. The Trademarks may not be used to disparage BioArts, the Auctioned Services, or in any other manner that may damage any goodwill in the Trademarks. All goodwill generated from the use of any Trademark shall inure to BioArts’ benefit.

3.2 Other Restrictions. You agree not to: (i) take any action that imposes an unreasonable load on the Web Site’s infrastructure, (ii) use any device, software or routine to interfere or attempt to interfere with the proper working of the Web Site or any activity being conducted on the Web Site, (iii) attempt to decipher, decompile, disassemble or reverse engineer any of the software comprising or making up the Web Site, (iv) delete or alter any material posted on the Web Site by BioArts or any other person or entity, or (v) frame or link to any of the materials or information available on the Web Site.

3.3 External Sites. The Web Site may contain links to third-party web sites (“**External Sites**”) that are provided solely as a convenience to you and not as an endorsement by us of the content on such External Sites. We are not responsible for the content of any linked External Sites and do not make any representations regarding the content or accuracy of any materials on such External Sites. You should take precautions when downloading files from all web sites to protect your computer from viruses and other destructive programs. If you decide to access any External Sites, you do so at your own risk.

3.4 Auctioneer. All Auctions are conducted by the Auctioneer (on behalf of BioArts). You agree to defend, indemnify and hold harmless the Auctioneer from and against any claims, actions, liability, costs, expenses or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from your breach of this Agreement or the Client Agreement.

### 4. Limitation of Liability and Disclaimer of Warranties

4.1 NO WARRANTIES. BIOARTS, ITS AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS AND LICENSORS (COLLECTIVELY, THE “**BIOARTS PARTIES**”) MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE WEB SITE, AUCTION OR CONTENT, INCLUDING BUT NOT LIMITED TO ITS ACCURACY, RELIABILITY, COMPLETENESS, TIMELINESS OR RELIABILITY. THE BIOARTS PARTIES SHALL NOT BE SUBJECT TO LIABILITY FOR THE TRUTH, ACCURACY OR COMPLETENESS OF THE WEB SITE, AUCTION OR CONTENT OR ANY OTHER INFORMATION CONVEYED TO YOU OR FOR ERRORS, MISTAKES OR OMISSIONS THEREIN OR FOR ANY DELAYS OR INTERRUPTIONS OF THE DATA OR INFORMATION STREAM FROM WHATEVER CAUSE. YOU AGREE THAT YOU USE THE WEB SITE, AUCTION AND CONTENT AT YOUR OWN RISK. THE BIOARTS PARTIES DO NOT WARRANT THAT THE WEB SITE OR ANY AUCTIONS WILL OPERATE ERROR-FREE OR THAT THE WEB SITE, ITS SERVER OR THE CONTENT ARE FREE OF COMPUTER VIRUSES OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES. IF YOUR USE OF THE WEB SITE OR THE CONTENT RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, NO BIOARTS PARTY SHALL BE RESPONSIBLE FOR THOSE COSTS.

THE WEB SITE, AUCTION AND CONTENT ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OF ANY KIND. THE BIOARTS PARTIES HEREBY DISCLAIM ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTIES RIGHTS AND FITNESS FOR PARTICULAR PURPOSE.

4.2 LIMITATION OF LIABILITY. IN NO EVENT SHALL ANY BIOARTS PARTY BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL AND CONSEQUENTIAL DAMAGES, LOST PROFITS AND DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION)

RESULTING FROM THE USE OR INABILITY TO USE THE WEB SITE, ANY AUCTION, THE AUCTIONED SERVICES OR THE CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF SUCH BIOARTS PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4.3 **Exclusions.** Some jurisdictions do not allow exclusion of implied warranties or limitation of liability for incidental or consequential damages, so the above limitations or exclusions may not apply to you. IN SUCH JURISDICTIONS, THE LIABILITY OF THE BIOARTS PARTIES SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

5. **Indemnification.** You agree to defend, indemnify, and hold harmless the BioArts Parties from and against any claims, actions, liability, costs, expenses or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from your breach of this Agreement or your access to, use or misuse of the Content, any Auctions or the Web Site. We shall provide notice to you of any such claim, suit, or proceeding. We reserve the right to assume the exclusive defense and control of any matter which is subject to indemnification hereunder. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter.

6. **Restriction, Suspension and Termination.** We reserve the right, in our sole discretion, to (i) terminate this Agreement, (ii) restrict, suspend, or terminate any Auction and your access to all or any part of the Web Site, any Auction or any Content, (iii) discontinue any Auction or bid, or (iv) exclude you from using the Auction, in each case at any time and for any reason without prior notice or liability. We reserve the right to change, suspend, or discontinue all or any part of the Web Site, any Auction or the Content at any time without prior notice or liability (including without limitation if we have reason to believe your username and password have been used in any unauthorized manner). Sections 1, 2.1, 2.5, 2.6, 3, 4, 5, 6, 7, 8, 9 and 10 and all other obligations that have accrued, and all representations and warranties that have been made, in each case under this Agreement shall survive the termination of this Agreement.

7. **Compliance with Applicable Laws.** We make no claims concerning whether the Content may be downloaded, viewed or be appropriate for use or whether you can participate in any Auction outside of the United States. If you access the Web Site or the Content from outside of the United States, you do so at your own risk. Whether inside or outside of the United States, you are solely responsible for ensuring compliance with the laws of your specific jurisdiction. The United States controls the export of products and information. You expressly agree to comply with such restrictions and not to export or re-export any of the Content to countries or persons prohibited under the export control laws. By downloading any Content, you are expressly agreeing that you are not in a country where such export is prohibited or are a person or entity for which such export is prohibited. You are solely responsible for compliance with the laws of your specific jurisdiction regarding the import, export, or re-export of the Content.

8. **Dispute Resolution.** In the event of any dispute with us arising in relation to this Agreement, the Web Site or any Auctions, you agree to follow the following dispute resolution procedure: (i) you will notify us of the nature of the dispute as soon as possible by email or by mail in accordance with Section 9; (ii) if any dispute is not resolved within 30 days from the date on which a notice setting out the nature of the dispute is received by us, either you or we may request a meeting within 14 days with the relevant representatives who have the power to resolve the dispute; and (iii) if any dispute is not resolved within 14 days following such meeting, you or we may take such other lawful action as you or we deem appropriate.

9. **Notice.** Except as explicitly stated otherwise, notices to you shall be served to the email address you provide to us during the registration process; alternatively, we may give you notice by mail to the address provided during the registration process. You shall send notices to us by sending such notice to the email address [inquiries@bioarts.com](mailto:inquiries@bioarts.com), or sending notice by mail to 38 Miller Avenue, Suite 12, Mill Valley, California 94941, Attn: Lou Hawthorne. Notices by email shall be deemed given 24 hours after the email is sent, and notices sent by mail shall be deemed given three days after the date of mailing.

10. **Miscellaneous.** This Agreement is governed by the internal substantive laws of the State of California, without respect to its conflict of laws provisions. You expressly agree to submit to the exclusive personal jurisdiction of the state and federal courts sitting in the City of San Francisco in the State of California. If any provision of this Agreement is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not

affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect. Failure of BioArts to act on or enforce any provision of the Agreement shall not be construed as a waiver of that provision or any other provision in this Agreement. No waiver shall be effective against BioArts unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance. Except as expressly agreed by BioArts and you, this Agreement constitutes the entire Agreement between you and BioArts with respect to the subject matter hereof, and supersedes all previous or contemporaneous agreements, whether written or oral, between the parties with respect to the subject matter hereof. The section headings are provided merely for convenience and shall not be given any legal import. This Agreement will inure to the benefit of our successors, assigns, licensees, and sublicensees. BioArts is not liable for protection of privacy of electronic mail or other information transferred through the Internet or any other network that you may use.