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COVER SHEET

U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office

ILY

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

## 1. Name of conveying party(ies):

BIOVANCE NEBRASKA, INC. and William E. Julien

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

## 2. Name and address of receiving party(ies):

Name: BIOVANCE TECHNOLOGIES, INC.

Internal Address:

Street Address: 14050 North 78th Street

City: Omaha State: NE ZIP: 68122

## 3. Nature of conveyance:

- ☐ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☒ Other - Technology Transfer Agreement

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

Execution Date(s): October 30, 1998

## 4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No(s).

B. Patent No(s).

5,709,894  
5,783,238Additional numbers attached? ☐ Yes ☒ No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Chad A. Klingbell

Internal Address: 3400 Plaza VII Building

Street Address: 45 South Seventh Street

City: Minneapolis State: MN ZIP: 55402

Our File No.: 1530828

## 6. Total number of applications and patents involved: 2

## 7. Total Fee (37 CFR 3.41).....\$80.00.

- ☒ Enclosed  
☐ Authorized to be charged to deposit account  
☒ Authorized to charge any underpayment or credit any overpayment to deposit account.

## 8. Deposit account number:

15-0627

(Attach duplicate copy of this page if paying by deposit account.)

DO NOT USE THIS SPACE

## 9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Chad A. Klingbell

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and document: 8

Mail documents to be recorded with required cover sheet information to:  
U.S. Patent and Trademark Office, Office of Public Records, Crystal Gateway 4, Room 335  
Washington, D.C. 20231

PATENT TC2: 308573 v01 12/1/98  
REEL: 9624 FRAME: 0887

## TECHNOLOGY TRANSFER AGREEMENT

THIS TECHNOLOGY TRANSFER AGREEMENT, dated as of October 30, 1998 (the "Agreement"), is by and among BIOVANCE NEBRASKA, INC. ("Nebraska"), a Nebraska corporation, Dr. William E. Julien, an individual ("Julien"), and BIOVANCE TECHNOLOGIES, INC., a Delaware corporation (the Company "Company").

- A. Nebraska and Julien is the owner of the Technology (as defined below).
- B. Julien, is the sole stockholder of Nebraska, Nebraska is a principal stockholder of the Company and Julien is an officer and a member of the Board of Directors of the Company.
- C. Concurrently with the execution of this Agreement, Nebraska, Julien, the Company and Agio Capital Partners L.P., a Delaware limited partnership ("Agio"), are entering into a Stock Purchase Agreement, of even date herewith (the "Purchase Agreement"), pursuant to which Agio will purchase from the Company One Hundred Sixty-Nine Thousand One Hundred Fifty (169,150) shares of the Company's Class B Common Stock, \$.001 par value.
- D. One of the conditions of the Purchase Agreement is that the Company enter into a technology transfer agreement with Nebraska and Julien pursuant to which Nebraska and Julien will transfer and assign to the Company all rights, title and interest of Nebraska and Julien in and to the Technology.
- E. The Company desires to obtain such transfer and assignment of the Technology in furtherance of the consummation of the transactions contemplated in the Purchase Agreement, and the Nebraska and Julien are willing to grant the Company the benefits of this Agreement for such expressed purposes.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Nebraska, Julien and the Company, each intending to be legally bound, hereby agree as follows:

1. Transfer and Assignment of Technology. Nebraska and Julien each hereby sell, assign, transfer and convey to the Company all of their right, title and interest in and to certain technical know-how relating to fermentation by-products, amino acid supplements and other feed additives, products and technologies concerning improving the health and lactation performance of dairy cows, including, without limitation, any and all rights and interests whatsoever of Nebraska and Julien under United States patents numbered 5,709,894 and 5,783,238 (collectively, the "Technology"), together with the full and unrestricted right to use, develop, enhance, modify, improve, assign and license or otherwise transfer the same, and to make, use, sell and lease the Technology, including any products incorporating the Technology, free and clear of all liens, security interest, or other encumbrances of any character whatsoever (collectively, "Encumbrances"); provided, however, that the nothing in this Agreement will prevent Nebraska's license of United States patents 4,925,637 and 5,077,068 to C.S.D. of

**PATENT**  
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Nebraska, Inc. pursuant to the terms of that certain Patent License Agreement, dated April 14, 1994 (the "Patent License Agreement," a copy of which is attached hereto as Exhibit A); provided further, however, that nothing in this Agreement will prevent Julien's contemplated sale and assignment of certain enzyme formula assets to AGX Services, Inc. pursuant to a purchase and assignment agreement related thereto (the "AGX Transaction"), provided that the Board of Directors of the Company has approved such purchase and assignment agreement prior to the execution thereof by Julien and Nebraska for the purpose of ensuring that such purchase and assignment agreement does not in any way infringe upon, reduce, limit or adversely affect the transfer and assignment of the Technology hereunder. Subject to (a) certain license obligations of Nebraska pursuant to the Patent License Agreement and (b) the proposed AGX Transaction, the transfer and assignment of the Technology hereunder includes all of Nebraska's and Julien's rights, title and interests in and to all United States and Foreign patents, patent applications, patent rights, copyrights, copyright applications, trademarks, trademark applications, trade names, service marks, service mark applications, know-how, trade secrets, proprietary processes and formulae, similar statutory and common law protections which may apply to, or be applied for or granted with respect to, the Technology, without limitation. Each of Nebraska and Julien will execute promptly upon request whatever documents the Company reasonably deems necessary or desirable to carry out the provisions of this Section 1.

2. Transfer and Assignment of a New Invention. In the event that Julien discovers any patentable invention or technology relating to the Technology at any time during the period Julien holds any shares of the capital stock of Nebraska or Nebraska holds any shares of the capital stock of the Company, Julien and, to the extent so required, Nebraska will each immediately communicate, transfer and assign such invention or technology to the Company. Julien and, to the extent so required, Nebraska will each execute all documents and perform all acts necessary to perfect the Company's assignment rights in such invention or technology.

3. Warranties, Representations and Covenants of the Transferors. Nebraska and Julien each hereby, jointly and severally, warrants, represents and covenants as follows:

(a) Capacity. Each of Nebraska and Julien has the legal capacity to enter into this Agreement, and, when executed and delivered by each of Nebraska and Julien, this Agreement will constitute the valid and legally binding obligation on each of them, enforceable against each of them in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforceability of creditors' rights or as may be modified by a court of equity in an action for specific performance or other equitable relief.

(b) Conflicts. Neither the execution nor delivery of this Agreement (and all other agreements contemplated hereby to which either Nebraska and/or Julien is a party), nor the consummation of the transactions contemplated herein or therein, will violate any law, rule, regulation, writ, judgment, injunction, decree, determination, award or other order of any court, government or governmental agency or instrumentality, domestic or foreign, conflict with or result in any breach of any of the terms of or constitute a default under or result in the termination of the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest or other charge or Encumbrance of any nature

pursuant to the terms of any contract or agreement to which Nebraska or Julien is a party or by which Nebraska or Julien or any of the Technology is bound. No consent, approval order, notice to or other authorization of any governmental body, authority, agency, instrumentality or any other third parties is required in connection with Nebraska's or Julien's execution and delivery of, or their performance of the obligations under, this Agreement or any other agreement contemplated hereby to which either Nebraska or Julien is a party.

(c) Taxes. Each of Nebraska and Julien has filed or caused to be filed all federal, state, municipal and other tax returns, reports and declarations required to be filed by each of them on or before the date hereof so as to prevent any Encumbrance of any nature on the Technology, and, except as otherwise provided herein, has paid or will pay all taxes which have been or will become due with respect to the periods covered by said returns and any period prior to the date hereof, or pursuant to any assessment received by it in connection therewith. All assessments and charges (including penalties and interest, if any) have been paid by either of them, including any necessary adjustments with state and local tax authorities, and no deficiency in payment of any taxes for any period has been asserted by any taxing authority which remains unsettled at the date hereof.

(d) Title. Nebraska and Julien are the exclusive record and beneficial owner of the Technology free and clear of all Encumbrances. No adverse claims have been made and no dispute has arisen with respect to any of the said rights. The proposed use by the Company of the Technology will not involve infringement or claimed infringement of any patent, trademark, servicemark, tradename, copyright, license or similar right of any third party. Neither Nebraska nor Julien has not suffered or allowed any of the Technology to enter into the public domain.

(e) Disputes and Litigation. There is no action, suit, proceeding or claim, pending or, to the best of Nebraska's and Julien's knowledge, threatened, and no investigation by any court or government or governmental agency or instrumentality, domestic or foreign, pending or, to the best of Nebraska's and Julien's knowledge, threatened, against Nebraska or Julien and which relates to the Technology, before any court, government or governmental agency or instrumentality, domestic or foreign, nor is there any outstanding order, writ, judgment, stipulation, injunction, decree, determination, award or other order of any court or government or governmental agency or instrumentality, domestic or foreign, against Nebraska or Julien and which relates to the Technology. If an officer, employee or representative of Nebraska is needed, at any time, to give testimony, evidence, or opinions in any litigation proceeding involving the Technology, Nebraska agrees to make available and arrange for the appearance of such officer, employee or representative of Nebraska, at no expense to the Company.

4. Warranties, Representations and Covenants of the Company. The Company warrants, represents and covenants as follows:

(a) Organization. The Company is a corporation duly iorganized and validly existing under the laws of the State of Delaware.

(b) Valid and Binding Agreement. This Agreement is valid and binding upon the Company according to its terms, subject to bankruptcy, insolvency, reorganization or other laws of general application affecting the enforcement of creditors' rights, and the availability of the remedy of specific performance.

5. Confidentiality. Each of Nebraska and Julien agrees to keep strictly confidential and not to disclose to any third party any knowledge, know-how, practice, process or other information relating to the Technology, provided that such information (a) was not in the public domain at the time of disclosure to the third party or (b) is required to be disclosed to a government entity, in which case the Company will be provided with adequate written notice and given every reasonable opportunity to protect or contest such governmental disclosure. Each of Nebraska and Julien will use their reasonable efforts to ensure that none of their respective agents, employees or representatives violates the provisions of this Section 5. Each of Nebraska and Julien understands that if either of them fails to fulfill their obligations under this Section 5, the damages to the Company would be very difficult to determine. Therefore, in addition to any rights or remedies available to the Company at law, in equity or by statute, each of Nebraska and Julien hereby consents to the specific enforcement of this Section 5 by the Company through an injunction or restraining order issued by an appropriate court prohibiting the continuance of any violation of any breaching party.

6. Indemnification by Nebraska and Julien. Each of Nebraska and Julien, jointly and severally, agrees to indemnify and hold harmless the Company from and against any and all loss, liability or covenants, claims, costs, expenses and obligations suffered or incurred by it including, without limitation, reasonable fees and disbursements of counsel, arising from, relating to, or in any way sustained or incurred by reason of, the breach of any of the representations, warranties, covenants or agreements made by Nebraska or Julien hereunder.

7. Miscellaneous.

(a) Notices. Notices required or permitted hereunder will be in writing and will be sent to the addresses set forth below, by US mail, personal delivery or facsimile and will be deemed given on the earlier of (i) when delivered to a party or (ii) three days after mailing by prepaid first class mail.

Biovance Nebraska, Inc.  
c/o Dr. William E. Julien  
7207 Surrey Hills Drive  
Omaha, NE 68122

Dr. William E. Julien  
7207 Surrey Hills Drive  
Omaha, NE 68122

Biovance Technologies, Inc.  
14050 North 78th Street

(b) Validity of Provisions, Severability. If any provision of this Agreement is or becomes or is deemed invalid, illegal or unenforceable in any jurisdiction, (i) such provision will be deemed amended to conform to applicable laws of such jurisdiction so as to be valid and enforceable or, if it cannot be so amended without materially altering the intention of the parties, it will be stricken; (ii) the validity, legality and enforceability of such provision will not in any way be affected or impaired thereby in any other jurisdiction; and (iii) the remainder of this Agreement will remain in full force and effect.

(c) Nonwaiver of Rights. No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing. No waiver of any such right will be deemed a waiver of any other right hereunder.

(d) Governing Law. This Agreement has been negotiated and entered into in the State of Minnesota, will be deemed to be a contract, and will be governed by the laws of as to interpretation and performance.


(e) Successors and Assigns. This Agreement is binding on and inures to the benefit of each of the parties hereto and their respective successors and assigns, provided, however, that the Company may assign this Agreement in connection with a merger, consolidation, assignment, sale or other disposition of substantially all of its assets or business or to an entity which the Company controls, is controlled by or with which it is under common control.

(f) Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which will constitute together but one and the same document.


(g) Entire Agreement, Modifications. This Agreement, including the Exhibits attached hereto, sets forth the entire agreement of the parties with respect to the subject matter hereof, all prior and contemporaneous oral and written discussions and understandings are superseded. This Agreement may not be modified except by a writing signed by all parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

BIOVANCE TECHNOLOGIES, INC.

  
Dr. William E. Julien

By:   
Name: W. E. Julien  
Its: President

BIOVANCE NEBRASKA, INC.  
By:   
Name: W. E. Julien  
Its: President

**EXHIBIT A**

(Patent License Agreement, dated April 14, 1994)

**RECORDED: 12/07/1998**

◆TC3: 483864 V03 10/29/98

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REEL: 9624 FRAME: 0894**