

**AGREEMENT FOR PROVISION OF PLANT PCR PATHOGEN TESTING SERVICES**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation acting for and on behalf of the Davis campus FOUNDATION PLANT SERVICES ("University") and \_\_\_\_\_ ("USER").

RECITALS:

WHEREAS, the University has a constitutional mission of instruction, research, and public service; and

WHEREAS, the services of University may be extended to non-University users (including, when permitted by University policy, University students, faculty and staff requesting such services for their personal use) only when, in the sole judgment of the University, such action will serve purposes consistent with the University's objectives and will not adversely affect the conduct of University activities; and

WHEREAS, the services requested by USER have been determined to serve purposes consistent with University objectives and their provision to USER not to adversely affect the conduct of University activities; and

WHEREAS, USER has determined that the services in question cannot be adequately performed by other agencies or commercial firms;

NOW, THEREFORE, University agrees to furnish to USER certain services, subject to the following terms and conditions. USER agrees that no other terms and conditions, including those of any purchase order issued by USER, shall apply unless explicitly incorporated herein.

TERMSANDCONDITIONS

1. DEFINITION OF SERVICE. A total of \_\_\_\_\_ plant samples, as specified in the Sample Submission Form attached as Attachment A and made a part hereof, will be analyzed using polymerase chain reaction (PCR) to test for presence of plant pathogens. Upon completion of testing, a report of the results shall be provided to the USER.
  - A. Samples which are received in unsatisfactory condition or which have not been clearly identified will not be tested. University shall notify USER immediately of any samples that are unusable.

- B. It shall be the USER's responsibility to maintain its own records of the variety, clone, selection and/or field location associated with each sample submitted. University will maintain sample identity by sample number only.
2. TERM. The term of this agreement shall be 1-3 \_\_\_\_\_ year(s) from the date last signed.
3. TERMINATION. This agreement shall be subject to termination by either party at any time, upon five (5) days written notice to the other party.
4. ALTERATION, AMENDMENT. No alteration of the terms of this agreement shall be valid or binding upon either party unless made in writing and signed by both parties. This agreement may be amended at any time by mutual agreement of the parties, expressed in writing and signed by both parties.
5. RATES. Charges for services rendered under this agreement shall be in accordance with the rate schedule of the Facility found at <http://fpms.ucdavis.edu/CustomServices.html>, Grape PCR Disease Testing. USER agrees to pay a total not to exceed \$\_\_\_\_\_.
6. PAYMENT OF CHARGES/TAX INFORMATION. USER shall pay for services rendered by University within thirty (30) days following receipt of University's invoices. USER shall submit a W-9 form with tax identification number shown, or, if USER is an individual, University shall contact USER for its social security number. University shall have the right to terminate this agreement without notice if USER fails to pay charges for services rendered hereunder within sixty (60) days following USER's receipt of University's invoice. USER shall pay University for all services rendered up to the date of termination of this agreement, regardless of the reason for termination.
7. DISCLAIMER OF WARRANTY.
- A. Although PCR is currently one of the most sensitive tests for plant pathogens, it has its limitations. USER understands and agrees that:
- 1) The PCR tests performed under this agreement can only detect specific characterized pathogens. There may be other unidentified viruses, strains of already-known viruses, or other pathogens which can affect plant health for which PCR tests are not currently available. Therefore, use of this testing method cannot determine whether a vine is pathogen free. Rather, it determines whether or not a vine is infected with the specific pathogen(s) which the client has selected from the FPS test panel.
  - 2) Another factor that may affect test results is the distribution of a particular pathogen in the plant. Some pathogens may replicate and move slowly in a plant, and may not be uniformly distributed at the time of sample collection. Therefore, it is possible for a sample to test negative by PCR even though the pathogen is present in the vine.

3) Sample condition also affects PCR test outcome and is the sole responsibility of the client.

B. UNIVERSITY MAKES NO WARRANTY AS TO RESULTS TO BE OBTAINED BY THE USER FROM THE USE OF ANY SERVICES AND/OR FACILITIES PROVIDED BY UNIVERSITY UNDER THIS AGREEMENT, AND THERE ARE NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. NON-LIABILITY OF UNIVERSITY.

A. University shall not be liable, by reason of its performance under this agreement, for any loss of profits, claims against USER by any third party, or consequential damages even if University is advised of the possibility of such loss, claims, or damages. USER agrees that University's liability hereunder for damages, regardless of the form of action, shall not exceed the total of all charges paid by USER for the particular services rendered.

B. The foregoing to the contrary notwithstanding, USER agrees that University shall incur no liability to USER or to any third party for any loss, cost, claim or damage, either direct or consequential, arising from University's delay in performance or failure to perform services pursuant to this agreement.

C. University shall incur no liability to USER or to any third party for loss or destruction of or damage to any data, equipment, or other property brought upon University premises by USER or delivered to University by USER in connection with this agreement. USER accepts all liability for risk of loss to any and all such property.

9. INDEMNIFICATION. Each party agrees to indemnify and hold harmless the other party, its officers, employees and agents, from and against any and all liability, loss, expense, attorneys' fees or claims for injury or damages arising out of or in connection with this agreement, but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents or employees.

10. UNIVERSITY'S RIGHT TO USE DATA. University shall have the unrestricted right to use for its own purposes, including publication, any data or information that it may develop in connection with or as a result of performing the services described.

11. UNIVERSITY NAME. No form of University's name shall be used in any form or manner in advertisements, reports or other information released to the public without the prior written approval of University.

12. RELATIONSHIP OF THE PARTIES. The parties to this agreement shall be and remain at all times independent contractors, neither being the employee, agent, representative, or sponsor of the other in their relationship under this agreement.
13. NOTICE. Any notice, request, or inquiry regarding the provisions of this agreement, its termination, or similar matters shall be directed to the following addresses:

UNIVERSITY:

Business Contracts Office  
 University of California  
 One Shields Avenue  
 Davis, California 95616-8600 U.S.A.

USER:

Company Name: \_\_\_\_\_  
 Attn: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_

WITH COPY TO:

Foundation Plant Services  
 Attn: I & D Office  
 University of California  
 One Shields Ave.  
 Davis, California 95616-8600 U.S.A.

14. WHOLE AGREEMENT. This agreement constitutes the entire understanding of the parties respecting the subject matter hereof and supersedes any prior understanding or agreement between them, written or oral, regarding the same subject matter.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first written above.

THE REGENTS OF THE  
 UNIVERSITY OF CALIFORNIA

USER

By: \_\_\_\_\_  
 Deborah Fraga-Decker  
 Associate Director  
 Contracting Services  
 UC Davis

By: \_\_\_\_\_  
 Signature  
 \_\_\_\_\_  
 Print Name  
 \_\_\_\_\_  
 Title

Date \_\_\_\_\_

Date \_\_\_\_\_