

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.

TERMS AND CONDITIONS

1. **DEFINITION OF SERVICE.** A total of up to [] plant samples, as specified in Attachment A to this Agreement, will be analyzed using polymerase chain reaction (PCR) to test for presence of plant pathogens. Upon completion of testing, a written 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://fps.ucdavis.edu/CustomServices.html> fruit and nut tree PCR description & prices. 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.
Although PCR is a very powerful and sensitive detection tool, it has its limitations. USER understands and agrees that:
 - 1) The PCR tests performed under this Agreement are for specific pathogens that have been associated with causing certain symptoms in plants. However, these may not be the sole agents of a particular disease. There may be other agents that produce the same disease symptoms. USER understands that it is possible that a plant that PCR shows negative for a certain pathogen may still show symptoms of the disease caused by that pathogen.

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 by 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. Sample condition is the sole responsibility of USER.

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 AND INSURANCE OF USER. 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

WITH COPY TO:

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

Signature page follows:

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
Business Contracts
UC Davis

By: _____


Date _____

Date _____

Rev. 6/4/13

Attachment A

FPS FRUIT & NUT TREE PCR PATHOGEN TESTING REQUEST FORM

Please complete all information in top half of form, leaving shaded areas blank. Then specify below the pathogen(s) each sample is to be tested for. If full panel is desired, check "All tests" column. Please label & identify samples only by sample number, being sure to keep your own records of the identity of each sample.  pages if needed.

Date of Request: _____ FPS Order No.: _____

Total Number of Samples Submitted: _____ Page ____ of ____

Contact Person: _____ Phone #: (____) _____

Company Name: _____ FAX #: (____) _____

Mailing Address: _____ Email: _____

City, State, ZIP: _____

Comments/Special Instructions: _____

Pathogen Tests Requested (please /tests desired)

Sample #:	All Tests	CLRV-W	Phytoplasmas	PDV	PNRSV	ToRSV
1						
2						
3						
4						
5						
6						
7						
8						

Additional Samples & Disease Test Key follows:

Sample #:	All Tests	CLRV-W	Phytoplasmas	PDV	PNRSV	ToRSV
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						

KEY TO PATHOGEN TEST ABBREVIATIONS:

- CLRV-W = Cherry leafroll virus-Walnut isolate**
- Phyto = Phytoplasmas**
- PDV = Prune dwarf virus**
- PNRSV = Prunus necrotic ringspot virus**
- ToRSV = Tomato ringspot virus**