

UCD Agreement No. _____
DaFIS Doc# 01-_____ Amount \$ _____

Foundation Plant Services (FPS), University of California
One Shields Avenue, Davis, California 95616-8600 U.S.A.
Phone: 530-752-3590; FAX: 530-752-2132; Email: fps@ucdavis.edu

FPS TREATMENT, TESTING, AND QUARANTINE SERVICE AGREEMENT

THIS agreement ("Agreement") is made the ____ day of _____, 20__ by and between _____ ("Customer"), and The Regents of the University of California ("University") on behalf of its Foundation Plant Services ("FPS") located at University of California, Davis.

WHEREAS, FPS desires to provide custom services as outlined below, and;

WHEREAS, Customer desires to obtain custom services indicated below for plant Selection(s) listed and protected as indicated in Article #2; and

WHEREAS, in those cases where patent rights covering plant Selections are asserted, either, as of the date of contracting, or later by amendment to this Agreement, the provisions of Paragraph #11 below will apply.

NOW, THEREFORE, the parties agree as follows:

1. As used herein, the parties agree that:

"Non-Patented Proprietary" plant material is defined as plant(s), including all asexual repropagating material therefrom, of a horticultural selection, clone, variety or cultivar which is exclusively owned by an individual, commercial firm, private or public institution or organization who wishes such plant(s) and plant material to be kept as proprietary material by FPS and which is not currently covered by a United States plant patent Agreement;

"Patented" plant material is defined as plant material protected by United States plant patent laws;

"Non-Proprietary" plant material is defined as material that is without any propagation conditions or restrictions; the University is free to plant, propagate, and sell propagation materials from non-proprietary plant materials without any obligation to or restrictions from the Customer;

"Candidate" is defined as a single plant selection submitted for testing/treatment/ quarantine services;

"Selection" is defined as a single plant or a group of plants all propagated from a single plant;

“Prescribed” and “Required” means as required by California State Department of Food and Agriculture regulations for the corresponding Registration and Certification program and/or Federal quarantine regulations;

“ELISA Testing” refers to a type of test used to detect plant disease-associated agents using prescribed enzyme-linked immunosorbent assays;

“Greenhouse Graft Indexing” refers to a type of test used to detect plant disease using prescribed greenhouse indicator plants that are grafted with Candidate materials.

“Herbaceous Testing” refers to a type of test used to detect plant disease-associated agents using Prescribed Herbaceous plants,

“Field Testing” refers to a type of test used to detect plant disease using prescribed field plants/indicators;

“Micro Shoot Tip Culture” is a type of disease elimination treatment whereby a plant is regenerated in sterile culture from a very small shoot tip cut from a Candidate plant; and

“Heat Therapy” is a type of disease elimination treatment which involves subjecting Candidate material to high temperatures for a number of days.

2. The Selection(s) submitted by the customer to be covered by this Agreement and protected as indicated are:

Plant Type	Variety	Selection	CHECK 1 CATEGORY/SELECTION		
			Non-patented, Proprietary	Patented	Non-Proprietary

3. FPS agrees to test/treat/maintain plant Selection(s) submitted by Customer as described in Attachment A;
4. Customer agrees to provide plant materials and pay fees as described in Attachment A.
5. FPS reserves the right to refuse to treat, test, and/or maintain any plant materials if it is not in the best interest of the University to do so.
6. The Customer hereby represents and warrants that it has legal title to, and has the right to propagate the Selection(s) submitted for custom services.
7. The fact that Customer's plant materials have been submitted to FPS, including the terms of this Agreement, will become part of the FPS public record, provided however, that no information regarding plant material characteristics shall be part of the public record.
8. The Customer waives any and all claims (1) associated with the University's testing, research, asexual reproduction, maintenance and other acts performed in conjunction with rendition of the service and continued maintenance of the plant as provided herein; and (2) for any infringement, misappropriation, or other claim of right he/she may have with regard thereto. This waiver notwithstanding, FPS agrees not to intentionally transfer the subject plant(s) and/or plant materials designated as Non-Patented Proprietary or Patented to third persons without prior written authorization from Customer.
9. The Customer agrees to indemnify and hold the University harmless from any and all liability from claims against the University by a third party of:
 - a. conversion, patent infringement, or other proprietary interest misappropriation of the selection(s) as submitted pursuant to this Agreement;
 - b. any loss or damage, consequential or otherwise, resulting from, or alleged to be the result of, damaged, misidentified, and/or defective plant material(s) as submitted by Customer pursuant to this Agreement;
 - c. defects which develop and/or are discovered after the subject plant material(s) have matured;
 - d. latent defects in plant material(s) provided;
 - e. genetic or other defect which develops and/or manifests itself after plant material of the Candidate selection is returned to the Customer; and
 - f. genetic or other defect which develops and/or manifests itself in progeny of the subject plant material(s).
10. The University DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE with regard to all plant material(s) produced or tested pursuant to this Agreement, and with regard to the services and continued maintenance provided pursuant to this Agreement.

11. In the case where patent rights are asserted covering the Selection(s), then:
Customer further represents and warrants that it has the legal right to transfer to the University possession of the material submitted to FPS.

The Customer hereby transfers possession of the plant material submitted for treatment/testing/quarantine services to the University, and transfer ownership as of patent expiration.

If applicable, a copy of the U.S. Plant Patent Agreement will be attached to this Agreement and U.S. plant patent number(s) indicated here: _____

If the Customer intends to apply for U.S. plant patent protection, written indication of said intent will be attached to this Agreement. In addition, the Customer agrees to provide FPS with a copy of the U.S. plant patent and patent number when it issues.

12. This Agreement and Attachment A constitute the entire understanding between the parties on this matter and supersede all other Agreements, written or oral, between the parties.

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

CUSTOMER:

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:

Signature

By: _____
Deborah Fraga-Decker

Print Name of Signator

Associate Director, Contracting Services
UC Davis

Company Name

Mailing Address

City, State, ZIP & Country (if outside US)

(Area Code) – Phone Number

Email Address (if available)

Federal Tax ID Number (required to set up your contract account)