

**AGREEMENT FOR PROVISION OF DNA-BASED PLANT
VARIETAL IDENTIFICATION AND PROFILING SERVICES**

THIS AGREEMENT is made and entered into by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation ("University") acting for and on behalf of its Davis campus FOUNDATION PLANT SERVICES ("Facility") and LEGAL BUSINESS NAME ("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. Facility shall generate microsatellite DNA marker profiles for up to NUMBER OF SAMPLES plant samples provided by USER, as specified in Attachment A to this Agreement. These profiles will be analyzed to attempt to identify plant variety (or cultivar) by comparison to Facility's database of known standard profiles, or to provide the DNA profiles of the plant sample to the USER. Upon completion of testing, Facility shall provide a written report of the results to USER.

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.

2. TERM. The term of this agreement shall be (1-3) ____ year(s) from the date last signed below.

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. USER agrees to pay a total not to exceed \$ AMOUNT according to the rates shown at <http://fps.ucdavis.edu/dnamain.cfm>.
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 DNA-based plant identification and profiling technology is a very powerful and sensitive detection tool, it has its limitations. USER understands and agrees that:
- 1) Though Facility's reference database is extensive, it does not contain all known cultivars. If there is no reference profile for the cultivar of the submitted sample, then Facility cannot identify the sample. USER will pay for work performed by University regardless of whether or not sample can be identified.
 - 2) The technology used for the University's standard service cannot distinguish variants within a cultivar. Profiles for such variants, referred to in the industry as "somatic mutants", "clones" or "bud-sports", will be identical, though the difference in the appearance of the plant and/or the fruit may be significant.
 - 3) Numerical designations used to define microsatellite allele sizes may differ slightly between laboratories due to differences in methodology. Adjustments for inter-laboratory differences can be made by referencing common cultivars that have the same alleles as the samples being analyzed.
 - 4) Ambiguous genotypes at individual markers are occasionally observed. These ambiguities, a normal consequence of the methodology, can be resolved if the parents of the cultivar are also analyzed. Such ambiguities do not normally pose a problem in creating a profile unique to the tested cultivar, as the results for the other markers are usually unambiguous, and these alone can be expected to characterize the cultivar uniquely.

- 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, NON-INFRINGEMENT, 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, defend, 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 & Revenue Contracts
University of California, Davis
One Shields Avenue
Davis, CA 95616

AWARDEE

Business Name
Contact Name
Mailing Address
City, State, Zip Code

Phone Number

Email:

WITH COPY TO:

Foundation Plant Services
Attn: I & D Office
University of California, Davis
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 last signed below.

AGREED:

USER

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

By: _____
(authorized signature)

By: _____

Print name: _____

Kelly Gilmore
Associate Director - Procurement & Contracting Services
Contracting Services
UC Davis

Title: _____

Date: _____

Date: _____