GROWER AGREEMENT FOR FPS PLANT MATERIAL ORDERS

THIS AGREEMENT is made this _____ day of _____, 20 _____, by and between _____("Grower") and the Regents of the University of California ("University"), on behalf of its Foundation Plant Services ("FPS").

WHEREAS, FPS desires to provide for the propagation and distribution of various plant materials maintained at the University's Davis campus, and

WHEREAS, Grower desires to propagate and sell said materials;

NOW, THEREFORE, the parties agree as follows:

1. FPS shall deliver to Grower all those materials listed on the order form that are currently available. After delivery, FPS shall send Grower an invoice for the materials supplied; said invoice shall then become a part of this Agreement. All materials are shipped F.O.B. Davis. Buyer agrees to pay all costs of transportation and assumes all risks during shipment. A storage charge may be made for material not picked up within 30 days of notification that material is ready.

2. Grower agrees to pay for said materials at FPS prices on the date of the order by sending checks made payable to The Regents of the University of California to FPS, University of California, One Shields Ave., Davis, CA 95616-8600. Payment is due within sixty (60) days after invoicing. FPS may charge for costs incurred if order is changed by customer.

3. Grower is responsible for keeping account information and delegates up to date.

4. USER FEES

A) Specific to grape material: Grower agrees to pay to FPS by May 15 of each year a user fee for each propagative unit from all generations propagated from FPS grape materials which are sold, exchanged, or retained by Grower during the preceding calendar year, along with documentation from Grower's records supporting the amount of Grower's payment. A propagative unit is defined for purposes of this Agreement as the smallest vegetative unit used to produce a new plant, or as any unit derived in any way from the plant material provided hereunder, including transfer of genetic material whether by traditional breeding or biotechnology techniques including, but not limited to a cutting, rooting, bench grafted vine, graftstick, or budstick or transfer of genetic material by any means. The user fee rate is published annually by FPS and may be adjusted after consulting with stakeholders and FPS advisory committee.

B) Specific to budwood or trees of *Pistacia atlantica* and *Pistacia integerrima* parents of UCB#1 pistachio: Grower agrees to pay to FPS by October 1st of each year a user fee of twenty-five cents ($0.25) for each propagative unit produced using FPS budwood for sale, exchange or retention by Grower during the preceding calendar year, along with documentation from Grower's records supporting the amount of Grower's payment . A propagative unit is defined for purposes of this Agreement as a viable tree, seed or asexually propagated unit from a seedling

produced from the budwood purchased from FPS. Only the party originally purchasing budwood from FPS (Grower) is obligated to pay user fees to FPS on materials it produces.

C) Specific to cherry material: Grower agrees to pay to FPS by May 15 of each year a user fee of 1% of sale price for each propagative unit from all generations propagated from FPS cherry materials which are sold by Grower or Grower's licensees during the preceding calendar year, along with documentation from Grower's records supporting the amount of Grower's payment. A propagative unit is defined for purposes of this Agreement as the smallest vegetative unit used to produce a new plant, or as any unit derived in any way from the plant material provided hereunder, including transfer of genetic material whether by traditional breeding or biotechnology techniques including, but not limited to a cutting, rooting, bench grafted tree, graftstick, or budstick or transfer of genetic material by any means.

5. Grower shall maintain FPS identification in her/his plantings under this Agreement and shall, in accordance with generally accepted accounting standards, maintain records of all propagative units for which user fees are required. Plantings and records, including registration and certification records of the California Department of Food and Agriculture, shall be open to inspection and audit by an authorized FPS representative during normal business hours.

6. Grower agrees not to sell or otherwise transfer any budwood of UCB#1 parent trees to any other party.

7. This Agreement shall be in effect for a term of ninety-nine (99) years from the date of execution or the life of the planting, whichever is longer, and shall be binding on the heirs, successors and assigns of the parties.

8. Grower agrees to purchase all plant material "AS IS" AND "WITH ALL FAULTS." As to registered material, The University has attempted to locate and identify plant material which is true to variety and has tested negative by means of qPCR, HTS, ELISA, biological indexing, and/or other methods of detection, when applicable.

The University makes no warranty, express or implied, regarding plant material sold hereunder. The University disclaims any warranty of merchantability or fitness for a particular purpose or any further obligation or liability on the part of the University. The University further disclaims liability for any loss or damage, consequential or otherwise, resulting from damaged or defective plant materials.

It is understood and agreed that the University will not be responsible for any loss sustained by reason of defects or problems developed or discovered after the plant materials provided hereunder have matured. The University is not responsible for any latent defect in plant materials sold. The University is not responsible for any genetic defect or other defect which occurs or which becomes manifest after the sale of plant materials or which occurs or becomes manifest in progeny of materials sold hereunder.

It is understood and agreed that in no case will the purchaser of plant material be entitled to other than a refund of the purchase price thereof or, at the option of the University, replacement of plant materials.

9. This constitutes the entire understanding between the parties of this matter and supersedes all other agreements, written or oral, between the parties. By signature below, I agree that the terms of this agreement will apply to all orders from Grower placed online, by phone, fax, email, or other source. This Grower Agreement replaces and supersedes any previous or existing Grower Agreement between Grower and FPS.

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

Company Name (if applicable):_____

Name of Person representing Company: _____

Person's Title: _____

Mailing Address:_____

City, State, Zip: _____

Phone Number:_____

Email Address:_____

Signature:_____