CPCNW Proprietary Material Retention Agreement

This agreement ("Agreement") is made on the date of final signature below ("Effective Date"), between Washington State University, an institution of higher education and agency of the state of Washington, by and through its Clean Plant Center Northwest ("CPCNW"), located at the Washington State University Irrigated Agriculture Research and Extension Center ("WSU-IAREC"), Prosser, WA, and ________________________ ("Sponsor"), for the purpose of retaining proprietary plant material ("Material"), which is defined as plants, including all asexual re-propagating material therefrom, of a horticultural selection, clone, variety, or cultivar which is exclusively owned by an individual, commercial firm, public or private institution, or organization that has undergone virus testing and treatment at the CPCNW, in CPCNW facilities for a period of time defined in Section 2.

1. PROPRIETARY MATERIAL INFORMATION (CPCNW USE ONLY)
   
   a. Name of Material Variety / Cultivar: ______________________________________
   
   b. Species and/or Common Name of Material: ____________________________________
   
   c. Sponsor: ________________________________________________________________
   
   d. Country of Origin: ________________________________________________________
   
   e. Material released from virus testing and treatment process on: ________________

2. PROPRIETARY MATERIAL RETENTION STATUS

   Upon completion of the virus testing and treatment process, all Material under this agreement (listed in Section 1) is to be (choose only one):
   
   □ Retained at the CPCNW: A total of two (2) plants will be maintained under contained screen-house conditions in CPCNW facilities for a period of ___________ years, beginning on the Effective Date of this Agreement ("Term"). The Sponsor shall pay the appropriate retention fees annually as defined by the CPCNW in Attachment A, CPCNW Retention Fee Schedule.
   
   □ Returned to the Sponsor: The Sponsor will arrange and pay in advance for the shipment and/or retrieval of Material retained at the CPCNW. The Sponsor agrees to comply with all WSDA phytosanitary and or USDA permit conditions associated to the Material at time of retrieval. CPCNW agrees to destroy any excess Material within a reasonable period of time, as determined in the sole judgement of CPCNW, upon completion of its duties pursuant to this Agreement.
   
   □ Destroyed: All Material associated with this Agreement held at the CPCNW will be destroyed within a reasonable period of time, as determined in the sole judgement of CPCNW, after the Effective Date. Sponsor will be notified within thirty (30) days of Material destruction, as confirmation of the same.
3. **PRODUCTION AND MAINTENANCE OF ADDITIONAL MATERIAL**

If Material is retained at the CPCNW, the Sponsor may request additional material over and above the two (2) originally specified to be propagated and maintained under the contained screen-house conditions.

☐ **Additional Material**: The Sponsor requests _______ additional Material of the named selection in Section 1 to be propagated and maintained.

☐ **No Additional Material**: No additional Material beyond the original two (2) for retention will be maintained.

4. **DISTRIBUTION OF MATERIAL**: If Material is retained at the CPCNW, the Sponsor shall indicate its availability to third parties as limited or restricted release (choose only one):

☐ **Limited Release**: The Sponsor retains ownership of the Material while maintained at the CPCNW. The Sponsor agrees that the CPCNW may retain and advertise the presence and availability of the Material on publicly accessible websites and/or lists. Should a third party request this Material or any information pertaining to it, the CPCNW will contact the Sponsor listed in Section 7 and inform them of the request prior to the scheduled release date. The Sponsor will then be responsible for conducting licensing and/or Material transfer agreements with the third party. To the extent permitted by law, the CPCNW will only release Material or related information to the third party with the written approval of the Sponsor.

☐ **Restricted**: The Sponsor retains ownership of the Material while maintained at the CPCNW. To the extent permitted by law, the CPCNW will not release any information about the presence of this Material at CPCNW facilities, nor release any Material to a third party without the written approval of the Sponsor listed in Section 7.

5. **IN OBTAINING THESE SERVICES THE SPONSOR AGREES:**

a. To provide in writing, fax, or email any authorizations for desired distribution of propagating materials of the Material to any private or public person or entity. The Sponsor designated in Section 7 will provide said authorization.

b. To pay for services in full in accordance with this Agreement and its Attachment A, within thirty (30) days of the Effective Date.

c. That the Material is not in violation of state and federal laws regarding plant variety introduction and warrants that possession and use of the Material by the CPCNW in accordance with this Agreement does not infringe on any proprietary or intellectual property rights held by others.

6. **IT IS MUTUALLY AGREED BY THE SPONSOR AND CPCNW THAT:**

a. **Disease**: Should Material provided be found to contain diseases not subject to elimination by normal project procedures, or a significant exotic pest or pathogen, the CPCNW may, in its sole discretion and without notice to the Sponsor, choose to destroy any and all Material held.
b. **Termination.** The Sponsor designated in Section 7 may request removal of the Material from the program, thereby terminating this Agreement, upon thirty (30) days’ written notice. Sponsor shall remain liable for full payment of services up to and including the effective date of termination. Upon termination, Sponsor shall be responsible for coordination and payment of transfer and transportation services for all Material. Should such transfer not occur by the effective date of termination, CPCNW may destroy all Material held under the Agreement at no liability.

1. **For Cause.** Either party may terminate this Agreement for cause. “For cause” shall mean the default of either party in fulfilling any term or condition of this Agreement. Written notice of the default shall be provided by the non-defaulting party, after receipt of which, the defaulting party shall have thirty (30) days to cure such default. If the default is not cured, the non-defaulting party may thereafter elect to terminate this Agreement effective immediately, upon written notice to the defaulting party.

2. **For Convenience.** Either party may terminate this Agreement for any reason upon not less than thirty (30) days’ prior written notice to the other party, and the parties shall be liable only for obligations incurred up to the effective date of such termination.

c. **Liability.** Washington State University, its officers, agents, employees, and registered volunteers, when acting in good faith and within the scope of their official duties in the performance of this Agreement, are covered by the State of Washington’s Self Insurance Liability Program and the Tort Claims Act (RCW 4.92.060), and successful claims against WSU and CPCNW may be paid from the Tort Claims Liability Account as provided in RCW 4.92.130.

1. The CPCNW shall not be responsible for any spontaneous genetic change or performance change as a result of testing or treatment by CPCNW, nor shall the CPCNW be responsible for the release of any Material unknowingly having any genetic or other change. CPCNW encourages and may facilitate genotyping of Material by a third party at the Sponsor’s direction and expense.

2. The CPCNW shall not be held responsible for the loss, damage, or theft of Material owned by the Sponsor while retained in CPCNW facilities.

d. **Indemnity.** Each party to this Agreement shall be responsible for its own acts and omissions and for those of its officers, employees, and agents in the performance of this Agreement. No party to this Agreement shall be responsible for the acts or omission of those entities not a party to this Agreement.

e. **Tracking Documents.** CPCNW agrees to provide, upon request, dispatch notification to the Sponsor of Material shipped from CPCNW in accordance with this Agreement. Furthermore, if provided by the Sponsor, the CPCNW agrees to include intellectual property statements with all Material shipped from CPCNW in accordance with this Agreement.

f. **Authorship.** The CPCNW reserves the right to review, present and/or publish with limited attribution of the data. Authorship will be in accordance with academic standards, and ownership of the copyright of any publication(s) is under the policies of the author’s institution.

g. **Use of Marks.** The name, marks, brand, or logos of Washington State University, or any of its departments, personnel, or CPCNW project shall not be used in advertising of any kind in connection with the work or results under this project without express written permission of the authorized representative of Washington State University.
h. Amendments. This Agreement may be amended or modified only upon the mutual written consent of the parties.

i. Assignment. The rights and obligations of the parties hereunder may not be assigned in whole or in part without the express prior written consent of the other party.

j. Dispute Resolution. In the event that a dispute arises under this Agreement that the parties cannot resolve, they shall allow the dispute to be decided by a Dispute Panel in the following manner: each party to this Agreement shall appoint one member to the Dispute Panel, and the members so appointed shall jointly appoint a third member to the Dispute Panel. The Dispute Panel shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Panel shall be final and binding on the parties hereto. The parties shall share equally in the costs, if any, of the services of the Dispute Panel.

k. Attorneys’ Fees. In the event of litigation or other action brought to enforce the terms of this Agreement, each party shall bear its own attorneys’ fees.

l. Force Majeure. In the event that the parties’ obligations under this Agreement are substantially delayed, prevented, or rendered impractical or impossible by fire, flood, riot, earthquake, civil commotion, war, strike, lockout, labor disturbances, exposition, sabotage, accident or other casualty, act of God, any law, ordinance, rule, or regulation which becomes effective after the date of this Agreement, or any other cause beyond the reasonable control of either party, then the parties shall be released from performance under this Agreement. Both parties hereby waive any claim for damages or compensation for such delay or failure to perform, other than obligations incurred up to the date of such force majeure.

m. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Washington, and venue for any action brought hereunder shall be in the Superior Court of Whitman County.

n. Independent Capacity. The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees and agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

o. Public Records Act. The parties to this Agreement understand and acknowledge that Washington State University is an institution of higher education and agency of the state of Washington and, as such, is subject to the Public Records Act, RCW 42.56 et seq. If Washington State University receives a public records request for this Agreement and/or for documents or materials provided to it under this Agreement, generally such information will be a public record and must be disclosed to the public records requester. However, Washington State University agrees to endeavor to notify Sponsor if it receives such a public records request and the date it plans to release the records. If Sponsor fails to obtain a protective order from the applicable court prior to the time Washington State University releases the records, Sponsor gives Washington State University full authority to release the records on the date specified, and Sponsor understands that it has thereby given up all rights to challenge the disclosures in any forum.

p. Waiver. A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the party and attached to this Agreement.
q. **Entire Agreement.** This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto.

r. **Notice.** Notice to Washington State University shall be given at the address located in the footer of this Agreement. Notice to Sponsor shall be given at the contact information listed in Section 7. Notice shall be considered given immediately upon hand-delivery, or three days after deposit in U.S. mail service, postage prepaid, or upon successful confirmation of facsimile transmission.

7. **SPONSOR’S CONTACT INFORMATION:**

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8. **SIGNATURE:**

Approving
On behalf of Sponsor:

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On Behalf of Washington State University:

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