



## Material Introduction 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 contracting services listed in Section 3, on a "Proprietary" horticultural selection, variety, cultivar or clone of a plant ("Material") described in section 1, which is exclusively owned by an individual, commercial firm, public or private institution, or organization as described in Section 3.

### 1. CANDIDATE MATERIAL INFORMATION

Please provide a basic description of the Material to be submitted for the contracted service.

- a. Name of the Material: \_\_\_\_\_
- b. Plant Species and/or Common Name of the Material: \_\_\_\_\_
- c. Country of Origin: \_\_\_\_\_

### 2. DECLARATION OF GENETICALLY MODIFIED ORGANISM STATUS

Please indicate whether the Material to be submitted for the contracted service has been genetically modified. Note that the CPCNW will not receive genetically modified plant material that has not, at time of submission, been deregulated by USDA-APHIS Biotechnology Regulatory Services.

- ☐ No, the plant material has not been genetically modified.
- ☐ Yes, the plant material has been genetically modified, and;
  - ☐ Has been deregulated by USDA-APHIS BRS.
  - ☐ Has not been deregulated by USDA-APHIS BRS.

### 3. DECLARATION OF OWNERSHIP STATUS

Please indicate the ownership status of the Material to be submitted for the contracted service. Where applicable, please provide issued U.S. Plant or Utility Patent or U.S. Plant Varietal Protection (PVP) numbers, or application numbers. Note that the CPCNW will not recognize non-U.S. Plant or Utility Patents or non-U.S. Plant Varietal Protection / Plant Breeder's Rights.

- ☐ Material that has a valid and current U.S. Plant or Utility Patent (USPP), No. \_\_\_\_\_
- ☐ Material that has a valid and current U.S. Plant Varietal Protection (PVP), No. \_\_\_\_\_
- ☐ Material for which an application for a U.S. Plant or Utility Patent (USPP) or U.S. Plant Varietal Protection (PVP) has been made, but not issued. Application No. \_\_\_\_\_
- ☐ Material that has not, at time of submission, been protected by U.S. Plant or Utility Patent (USPP) or U.S. Plant Varietal Protection (PVP), or Material for which the Sponsor has not applied for and received a USPP or PVP application number.
- ☐ Material that is in the public domain, such as historic or heirloom cultivars, or germplasm for which the relevant U.S. Plant or Utility Patent (USPP) or U.S. Plant Varietal Protection (PVP) has expired.



**4. CONTRACTED SERVICE REQUESTED**

The contracted service requested to be performed on the Material defined in Section 1 (choose only one):

☐ **Initial Diagnostics:**

- a. Submission of Material to be propagated in CPCNW facilities as per CPCNW standard operating procedures in effect at the time of performance.
- b. Diagnostic PCR testing and high-throughput sequencing to determine pathogen infection status on domestic or imported Material, conducted as per CPCNW standard operating procedures in effect at the time of performance.

**OR**

☐ **Virus Elimination:**

- a. One (1) attempt at virus elimination of pathogens detected in Material held at the CPCNW that has undergone the Initial Diagnostic contracted service. Virus elimination will be performed using crop-specific methodology conducted as per CPCNW standard operating procedures in effect at the time of performance.
- b. Confirmation of the success or failure of the attempt will be conducted as per CPCNW standard operating procedures in effect at the time of performance.
- c. A maximum of two (2) consecutive attempts at virus elimination may be made, each requiring submission of a new contract and payment of fees.

**OR**

☐ **Final Diagnostics:**

- a. Diagnostic PCR testing and high-throughput sequencing on domestic or imported Material held at the CPCNW that either i) tested negative for targeted pathogens during the Initial Diagnostics contracted service, or ii) contained pathogens that were successfully removed during the Virus Elimination contracted service.
- b. Diagnostic testing will be conducted as per CPCNW standard operating procedures in effect at the time of performance.

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

- a. That the term of this Agreement is one (1) year from the effective date.
- b. At the conclusion of the contracted service, the Sponsor must submit a new contract for further services within 30 days, or the Material will be considered as abandoned and destroyed.
- c. To pay for services in full in accordance with this Agreement as per the CPCNW service schedule in effect at the date of issuance of this Agreement.
- d. The Sponsor is responsible for payment of fees due within 30 days of the issuance of an invoice by the CPCNW for the contracted services. If payment is not received within 30 days, the Agreement will be declared invalid, and all Material held destroyed.
- e. No refunds or credits for fees paid by the Sponsor for contracted services will be issued, and fees paid are not transferable to other Material or other Sponsors.
- f. 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.



- g. That an attempt at virus elimination may not be successful, and/or some pathogens may not be able to be removed using CPCNW standard operating procedures in effect at the time of performance.
- h. That the Material may test positive during Final Diagnostics for pathogens missed in prior diagnostic testing and/or for new or novel pathogens not known prior to the performance of Final Diagnostics, and as such will not qualify for designation as a G1 plant for U.S. state certification programs, or release from USDA-APHIS approved quarantine facilities.
- i. That the protocols used during, and results from, either Initial Diagnostics or Final Diagnostics for the Material may not meet the phytosanitary requirements of any foreign (non-U.S.) country, and that the CPCNW is under no obligation to increase, change, or alter its diagnostic procedures to meet such requirements.
- j. 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.
- k. The CPCNW shall not be held responsible for the loss, damage, or theft of Material owned by the Sponsor while retained in CPCNW facilities.
- l. Should the Material be lost or damaged to the degree that no further work can be performed on the Material, this Agreement will be terminated, and the Sponsor will receive no credit or refund for fees paid. Further, if the sponsor wishes to replace the lost Material, they must submit a new Material Introduction Agreement commencing with the Initial Diagnostics service.
- m. Should the Material be found to contain an actionable exotic pest or pathogen as defined by USDA-APHIS, the CPCNW may, in its sole discretion and without notice to the Sponsor, remove and destroy all Material held.
- n. That release of imported Material from quarantine will follow the regulations and procedures detailed by USDA-APHIS-PPQ and that should those regulations change during the performance of the contracted service, the Sponsor accepts that the CPCNW has the right to invoice the Sponsor for additional work over and above the fee-for-service paid at the time of submission.

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

- a. 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 the completion of the term of this contract. 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.
- b. 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.
- c. 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.
- d. 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.

- e. **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.
- 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, or personnel 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, pandemic, 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:

Print Name of Sponsor \_\_\_\_\_

Sponsor's Email Address \_\_\_\_\_

Sponsor's Mailing Address \_\_\_\_\_

Sponsor's Phone Number \_\_\_\_\_

Sponsor's Fax Number \_\_\_\_\_

## 8. SIGNATURES

### On behalf of Sponsor:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### On behalf of Washington State University

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Effective Date: \_\_\_\_\_