

University of California, Davis
Foundation Seed Program
Foundation Seed Advance Purchase Agreement

THIS AGREEMENT (Agreement) is made on the date last signed below by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California public corporation on behalf of its Davis campus Foundation Seed Program (University) and (enter name as appears on W-9)

, (Purchaser).

RECITALS

WHEREAS, University established the Foundation Seed Program to produce foundation seed of commercial crop varieties under such controls as are necessary to maintain the identity of said varieties for sale to California growers; and

WHEREAS, Purchaser wishes to procure Foundation Seed for production of Registered and/or Certified planting seed for future commercial sales; and

WHEREAS, the Foundation Seed Program may not carry sufficient inventory to meet demand for all Foundation Seed products offered; and

WHEREAS, the Foundation Seed Program may be required to enter into substantial financial risk to produce the seed (Seed) requested by the Purchaser;

NOW, THEREFORE, the parties hereto agree as follows:

1. Term. The term of this agreement is from the date last signed below continuing through , 20, unless earlier terminated as provided in section 4 below. Seed will be delivered in (season) of 20.

2. Conditions of Sale. In order to provide adequate lead time to schedule seed production, the Purchaser must submit a signed Agreement for all seed requested prior to the appropriate cut-off dates listed in Exhibit A attached and by this reference made a part hereof. In the event that adequate inventories of the requested seed are already on-hand and available, new seed production may not be necessary. In such event, late purchase requests will be considered on a case-by-case basis. If additional seed is required a new agreement must be submitted, this agreement shall not be amended for the purpose of adding an additional seed purchase.

2.1 Seed sold by the University shall meet minimum standards for Foundation Seed as required by the California Crop Improvement Association (CCIA). All application and certification fees for Foundation Seed production will be paid by University.

- 2.2 Purchaser shall not permit (directly or indirectly) any party to undertake any research, development or breeding activity of any nature utilizing the Foundation Seed purchased.
- 2.3 University shall have title to any Seed produced pursuant to this Agreement, but Purchaser shall take title to purchased Seed once it has been loaded for delivery to Purchaser. Freight arrangements and charges are the responsibility of the purchaser. The University shall not be responsible for lost, stolen, or damaged product once Seed has been loaded for delivery to Purchaser.
- 2.4 Purchaser shall not sell Foundation Seed to any other third party (excluding seed growers contracted by the Purchaser to produce Registered and/or Certified Seed for the Purchaser). Purchaser shall not destroy Foundation Seed without the University's written permission.
- 2.5 Purchaser agrees to apply for certification of fields planted with the Foundation Seed supplied under this agreement.
- 2.6 The University cannot, and does not guarantee the availability of any seed order. Purchaser acknowledges that growing conditions and other factors may affect the performance of any seed. Accordingly, except as may be expressly provided in this Agreement, University makes no warranty, express or implied, regarding the performance of the Foundation Seed provided to Purchaser. The University's liability for defective Foundation Seed will be limited to the replacement of such seed. In no event will University be liable for any special, incidental or consequential damages.

3. Pricing and Payment Terms for Seed Ordered and Delivered

- 3.1 Binding Agreement. This is a binding agreement. All sales are final. All Seed that is ordered must be purchased and cannot be returned.
- 3.2 Payment Terms. Purchaser shall take delivery and submit payment to the University for all Seed ordered under this Agreement within thirty (30) days after an invoice has been issued by the University. In the event Purchaser does not accept delivery of seed, Purchaser will still be liable for and must pay for all seed ordered.
- 3.3 Pricing. Product prices are specified in Exhibit B attached and by this reference made a part hereof. Purchaser shall specify in writing on Exhibit B the quantity of each variety to be purchased. The total amount to be paid by Purchaser to University is .

4. Termination. University may terminate this agreement at any time by giving Purchaser ten calendar days' written notice of such action.

4.1 For Cause. If either party breaches any provision of this agreement, and if such breach is not cured within thirty (30) days after receiving written notice from the other party specifying such breach in reasonable detail, the non-breaching party shall have the right to terminate this agreement by giving written notice thereof to the party in breach, which termination shall go into effect immediately on receipt.

4.2 Termination on Insolvency. Either party has the right to terminate this agreement where the other party becomes insolvent, fails to pay its bills when due, makes an assignment for the benefit of creditors, goes out of business, or ceases production.

5. Independent Contractor Status. The parties are independent contractors. In the performance of this agreement Purchaser will not be an agent or employee of University, will not be covered by University's workers' compensation insurance or unemployment insurance, is not eligible to participate in University's retirement programs, nor shall it be entitled to any University benefits.

6. Force Majeure. Neither party shall be liable for damages suffered by the other party because of University's or Purchaser's failure to perform if failure is due to any cause beyond that party's control.

7. Assignment. Purchaser may not assign or transfer this agreement, or any interest or claim, without the prior written approval of University, and any decision to grant or withhold such approval shall be within University's sole discretion. The terms and conditions of this agreement shall be binding upon any assignee or transferee.

8. Non-Waiver. Failure of either party to insist on strict compliance with any of the terms, covenants, and conditions of this agreement shall not be deemed a waiver of such terms, covenants, and conditions, or of any similar right or power hereunder at any subsequent time.

9. Severability. If a provision of this agreement becomes, or is determined to be, illegal, invalid, or unenforceable, that will not affect the legality, validity, or enforceability of any other provision of the agreement or of any portion of the invalidated provision remains legal, valid, or enforceable.

10. Governing Law. This agreement shall be construed pursuant to California law.

11. Compliance with Laws. Each party shall comply in all respects with all applicable legal requirements governing the duties, obligations, and business practices of that party and shall obtain any permits or licenses necessary for its operations. Neither party shall take any action in violation of any applicable legal requirement that could result in liability being imposed on the other party. Purchaser further warrants that the operation of Purchaser's business does not violate, nor at any time has it violated, any applicable local, state or federal laws, rules, regulations, or ordinances.

12. No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and, to the extent provided herein, Purchaser's affiliates.

13. Mutual Indemnification. The parties agree to defend, indemnify and hold one another harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising from the performance of this agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' 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, students, or employees.

14. Insurance. Each party agrees to maintain insurance in commercially reasonable amounts calculated to protect itself and the other party to this agreement from any and all claims of any kind or nature for damage to property or personal injury, including death, made by anyone, that may arise from activities performed or facilitated by this contract, whether these activities are performed by that company, its employees, agents, or anyone directly or indirectly engaged or employed by that party or its agents.

15. Warranty and Disclaimer: Foundation Seed is produced and labeled by the University's Foundation Seed Program in accordance with California standards for seed certification as established by the California Crop Improvement Association, the official seed certifying agency of the State of California. The University's Foundation Seed Program is not a marketing agency; it operates under the jurisdiction of The Regents of the University of California, a California public corporation, and supplies seeds solely as a service to the agricultural community. The University expressly warrants that the goods sold hereunder conform to the labels on their containers and to the standards for seed certification applicable at the time of sale, within recognized tolerances. This warranty is expressly in lieu of all other warranties, expressed or implied, including any warranty of merchantability and fitness for a particular purpose, and of any other obligations or liability on the part of the seller, including any liability for loss or damage resulting from the University's negligence or from damaged or defective goods. Purchaser's remedies are limited exclusively to replacement of non-conforming goods or the purchase price thereof, whether based on an action arising in contract, warranty or tort including negligence, or otherwise. In no event shall University be liable for incidental, special and consequential damages, whether arising out of contract, warranty, tort, including negligence, or otherwise.

Notice of non-conforming goods and request for replacement of such goods or purchase price thereof must be made in writing to the Director of the Foundation Seed Program at the University of California, Davis, with full particulars regarding the reason for determining that such goods are non-conforming; failure to give such notice within ninety (90) days after purchaser's receipt of the goods shall forever bar any and all claims under this contract which may be made on account of such non-conformity or otherwise. After the expiration date of said notification period, purchaser expressly assumes all liability for all loss or damage, irrespective of whether the alleged defect shall have occurred or been discovered prior to expiration of such period. The University will not be responsible for any loss sustained by the purchaser for defects which are initially discoverable after the seeds have matured, nor for any latent defects in the product sold.

16. Notice. Any notice required or permitted hereunder shall be sent to the parties via U.S. mail, e-mail, facsimile, or personal service at the addresses shown below. Either party may change its address by written notice to the other during the term.

UNIVERSITY

Foundation Seed Program
Department of Plant Sciences, Mail Stop One
University of California, Davis
One Shields Avenue
Davis, CA 95616-8780
Warehouse Physical Address: 2400 Hutchison Drive

Attn:

E-mail Address:

PURCHASER

Company Name:

Company Address 1:

Company Address 2:

City, State, Zip Code:

Attn:

E-mail Address:

Telephone Number:

17. Entire Agreement. This Agreement constitutes the entire understanding between the parties respecting the subject matter hereof and supersedes any prior understanding or agreement between them, written or oral, regarding the same subject matter.

18. Counterparts. This Agreement may be signed separately by the parties in counterpart and will be valid provided a copy of each signed signature page is affixed hereto to comprise the full and final Agreement.

Acknowledged:

John Palmer
Director of the Foundation Seed Program
Dated: _____

Signature page follows:

AGREED:

**THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA**

Signature: _____

Steven Kobayashi
Associate Director
Procurement & Contracting Services
UC Davis

Date: _____

PURCHASER

Company Name:

Company Address 1:

Company Address 2:

City, State, Zip Code:

Signature: _____

Printed Name:

Title:

Date:

Exhibit A
SEED ORDER CUT-OFF DATES

Purchaser shall submit a signed Foundation Seed Advance Purchase Agreement to the University for all seed requests by the following cut-off dates:

Crop	Order Cut-Off Date	Seed Delivery Date
Alfalfa	September 1, 2019	Fall 2020
Barley	September 15, 2019	Fall 2020
Oat	September 15, 2019	Fall 2020
Wheat	September 15, 2019	Fall 2020
Beans	April 1, 2019	Winter/Spring 2019-20
Cowpea	April 1, 2019	Winter/Spring 2019-20
Chickpea (Garbanzo)	Fall Cutoff = September 15, 2018; Spring Cutoff = February 15, 2019	Winter/Spring 2019-20
Lima	April 1, 2019	Winter 2019-20
Sudangrass	April 1, 2019	Winter 2019-20

Exhibit B
PRODUCT, PRICING AND PAYMENT

Seed Treatment (Optional): If requested by the Purchaser in advance in writing, seed treatments can be applied at a cost of \$4.00 per cwt plus the cost of the seed treatment materials applied.

Crop	Variety	Price FOB Davis (\$ per Lb.)	Quantity Ordered (Lbs.)
Alfalfa	CUF 101	\$10.06	
Alfalfa	Highline	\$10.06	
Alfalfa	Moapa 69	\$10.06	
Alfalfa	UC Cibola	\$10.06	
Barley	Ishi	\$0.81	
Barley	Butta 12	\$0.81	
Barley	Tamalpais	\$0.81	
Barley	Schaller	\$0.81	
Barley	UC 603	\$0.81	
Barley	UC 933	\$0.81	
Barley	UC 937	\$0.81	
Barley	UC 960	\$0.81	
Barley	UC Tahoe	\$0.81	
Barley	Schaller	\$0.81	
Barley	UC 969	\$0.81	
Beans	Black Turtle Soup T-39	\$1.44	
Beans	California Early Light Red Kidney	\$1.44	
Beans	Canario 707	\$1.44	
Beans	UC Cran 0801	\$1.44	
Beans	UC Nichols Dark Red Kidney	\$1.44	
Cowpeas	Ca Blackeye #46	\$1.31	
Cowpeas	Ca Blackeye #5	\$1.31	
Cowpeas	Ca Blackeye #50	\$1.31	
Chickpea (Garbanzo)	UC Pegasus	\$1.56	
Chickpea (Garbanzo)	Sierra	\$1.56	
Chickpea (Garbanzo)	UC-27	\$1.56	

PRODUCT, PRICING AND PAYMENT PRODUCT, PRICING AND PAYMENT
(Continued)

Crop	Variety	Price FOB Davis (\$ per Lb.)	Quantity Ordered (Lbs.)
Chickpea (Garbanzo)	UC Vega	\$1.56	
Lima	Beija Flor	\$1.44	
Lima	Cariblanco N	\$1.44	
Lima	Lee	\$1.81	
Lima	Mezcla Baby Lima	\$1.44	
Lima	UC 92 Large	\$1.81	
Lima	UC Haskell	\$1.44	
Lima	UC Luna	\$1.44	
Oat	Cal Red	\$0.81	
Oat	Kanota	\$0.81	
Oat	Montezuma	\$0.81	
Oat	Swan	\$0.81	
Oat	UC 113 (Exclusive To Baglietto Seed)	\$0.81	
Oat	UC 125 (Exclusive To Barkley Seed)	\$0.81	
Oat	UC 148 (Exclusive To Baglietto Seed)	\$0.81	
Oat	UC 132 (Exclusive To Barkley Seed)	\$0.81	
Oat	UC 125 (Exclusive To Barkley Seed)	\$0.81	
Wheat	Desert King	\$0.81	
Wheat	Desert King HP	\$0.81	
Wheat	Lassik	\$0.81	
Wheat	Miwok	\$0.81	
Wheat	Patwin	\$0.81	
Wheat	Patwin 515	\$0.81	
Wheat	Patwin 515 HP	\$0.81	
Wheat	Yecora Rojo	\$0.81	
Wheat	UC- Central Red	\$0.81	
Wheat	UC- Desert Gold	\$0.81	
Wheat	Yurok	\$0.81	
Sudangrass	Piper	\$1.70	