

**MONTANA STATE UNIVERSITY
MALT QUALITY LABORATORY
TESTING SERVICES AGREEMENT**

THIS AGREEMENT is entered into on this ____ day of _____, 20____, between “CLIENT” _____, with its principal place of business located at (full address) _____ and Montana State University, a state institution of higher education located in Bozeman, Montana, hereinafter referred to as “UNIVERSITY”.

RECITALS:

CLIENT desires Testing Services which the UNIVERSITY has the equipment, facilities and capability to provide; and the performance of the Testing Services is consistent, compatible, and beneficial to the role and mission of UNIVERSITY to provide educational experience for students and to encourage and support testing and related research and educational activities;

NOW, THEREFORE, the parties agree as follows:

1. Scope of Work.

Field Trials:

UNIVERSITY agrees to conduct the following Testing Services: Evaluation of client’s material in the statewide spring barley nurseries in up to 11 locations (5 irrigated/high rainfall, 6 dryland). Replicated data provided by the UNIVERSITY includes yield, percent protein and plump, test weight, plant height, and heading date across all successful locations. Pending favorable weather conditions, agronomic data will be returned to the client by December 15th and published as public information. The Testing Services will be provided under the direction and supervision of Jamie Sherman in the Department of Plant Sciences and Plant Pathology. The parties agree the UNIVERSITY shall have discretion to involve its students in the conduct of the Testing Services.

Lab Analysis:

UNIVERSITY agrees to conduct the following Testing Services: Evaluation of client’s material in accordance to ASBC protocols. Scope of evaluation will be based on CLIENTS selection of testing service package which may or may not include measurement of barley factors and malting via

evaluation of some or all of the following: malt moisture, friability, fine and course extract, filtration time, F/C difference, B-glucan, FAN, total protein, soluble protein, S/T, diastatic power, A-amylase, color, and clarity. Results will be compiled and provided to the client in the form of a Malt QA data sheet. The testing services will be provided under the direction of Hannah Turner in the MSU Barley Quality lab under the oversight of Jamie Sherman, Assistant Professor, Department of Plant Sciences. The parties agree the UNIVERSITY shall have discretion to involve its students in the conduct of the Testing Services.

2. Scheduling Tests.

UNIVERSITY agrees to make available laboratory facilities, equipment, and support personnel for these tests. The scheduling of such tests shall be arranged to avoid conflict with the UNIVERSITY'S educational and research programs. The UNIVERSITY shall control the scheduling of such tests, but will try to meet the convenience of the CLIENT.

3. Term and Termination.

3.1 This Agreement shall become effective upon entering agreement and shall be effective through the end of the year December 31, 20____, unless an extension is mutually agreed upon in writing between parties or the Agreement is otherwise terminated as provided herein.

3.2 Either party may terminate this Agreement upon thirty (30) days written notice to the other party. Upon such termination, UNIVERSITY will be paid for all expenses incurred through the termination date and for any uncancellable commitments.

4. Compensation.

CLIENT agrees to pay UNIVERSITY for services performed under this Agreement in accordance with the UNIVERSITY Fee Schedule as published on the Barley Program website (<http://www.montana.edu/barleybreeding/malt-quality-lab/testing-services.html>). Fees are subject to revision annually. Payment is required in US dollars and MSU is not responsible for any wire fees. All costs and risks of transporting Material to and from Client shall be borne by the Client and are not included in the Agreement amount Compensation shall be made under the following payment schedule:

Payment must be received within 30 days of service.

All payments shall be made payable to MONTANA STATE UNIVERSITY at the following address:

Barley and Malt Quality Laboratory
119 Plant Bioscience Building
Montana State UNIVERSITY
Bozeman, MT 59717-3150

5. Publication and Confidentiality.

5.1 UNIVERSITY, as an institution of higher education, engages in Testing Services that are compatible, consistent and beneficial to its role and mission of advancing educational opportunity, scientific knowledge, and providing for its dissemination and the transfer of technology related thereto. Therefore, significant results of testing activities on non-proprietary materials must be reasonably available for publication. Before publishing, UNIVERSITY agrees to give CLIENT a copy of any proposed publication and CLIENT shall have six (6) weeks to review the publication. UNIVERSITY shall consider CLIENT'S suggested modifications; however, with the exception of removal of information subject to the confidentiality of section 5.2, the decision of the UNIVERSITY as to what the publication shall contain is final.

5.2 UNIVERSITY, to the extent allowed by Montana law, agrees to keep confidential any CLIENT proprietary information supplied to it by CLIENT during the course of Testing Services performed by UNIVERSITY and designated as confidential, and such information will not be included in any published material without prior approval by CLIENT. CLIENT agrees that any data from experiments or tests using non-proprietary materials (controls or generic materials or samples) may be entered into UNIVERSITY database and be available for publication without approval by CLIENT.

6. Equipment.

Special equipment purchases under the terms of this Agreement become the property of UNIVERSITY unless otherwise specified herein.

7. Indemnification.

7.1 CLIENT hereby agrees to save, defend, indemnify and hold harmless UNIVERSITY and its employees, students, agents and their respective successors, heirs and assigns (the "Indemnified Parties") from and against any and all losses, damages, liabilities, expenses and costs, including reasonable legal

expenses and attorneys' fees to which any of the Indemnified Parties may become subject as a result of any third party claim, demand, action or proceeding that use of any of the materials provided by CLIENT infringes or violates any patent, copyright, trademark or other intellectual property rights of any third party.

7.2 CLIENT hereby agrees to save, defend, indemnify and hold harmless UNIVERSITY, its trustees, officers, employees and agents from and against all claims, demands, loss, liability, expense or damage, (including attorneys' fees) arising out of injuries (including death) or property damage suffered by any person as a result of a defect in the product tested under this Agreement or from CLIENT's use or possession of the results produced hereunder.

8. No Warranties.

UNIVERSITY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION THE WORK TO BE PERFORMED OR THE DELIVERABLES TO BE PROVIDED. IN NO EVENT SHALL THE UNIVERSITY BE LIABLE FOR ANY SPECIAL, INDIRECT (INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOST PROFITS, OR LOSS OF DATA), INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OF ANY KIND, RESULTING FROM WHATEVER CAUSE WHETHER IN AN ACTION UNDER THEORIES OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE WORK TO BE PERFORMED OR THE DELIVERABLES TO BE PROVIDED UNDER THIS CONTRACT.

9. Force Majeure.

UNIVERSITY shall not be liable for any failure to perform as required by this Agreement, to the extent such failure to perform is caused by any reason beyond the UNIVERSITY's control, or by reason of any of the following: labor disturbances or disputes of any kind, accidents, failure of any required governmental approval, civil disorders, acts of aggression, acts of God, energy or other conservation measures, failures of utilities, mechanical breakdowns, material shortages, disease, or similar occurrences.

10. Applicable Law.

Any dispute regarding or arising under this Agreement shall be subject to and resolved in accordance with the laws of the State of Montana.

11. Assignment.

Neither party shall assign or transfer any interest in this Agreement without prior written approval of the other party.

12. Intellectual Property.

12.1 UNIVERSITY's rights and interest in any intellectual property, including rights to patents and copyright that may result from Testing Services, shall be limited to any laboratory methodologies or techniques developed or used in the performance of Testing Services and any data from experiments or tests using non-proprietary materials (controls or generic materials or samples).

12.2 The originating breeder, institution, or company has certain rights to the unreleased material. These rights are not waived with the distribution of seeds or plant material but remain with the originator.

12.3 The recipient of unreleased seed or plant material shall make no secondary distributions of the germplasm without the permission of the owner/breeder.

12.4 The owner/breeder in distributing unreleased seeds or other propagating material grants permission for its use in tests under the recipient's control or as a **male parent** for making crosses from which selections will be made.

13. Similar Testing.

Nothing in this Agreement shall be construed to limit the freedom of UNIVERSITY or of its researchers who are not participants under this Agreement, from engaging in similar services made under other grants, contracts or agreements with parties other than the CLIENT. However, UNIVERSITY and its researchers who are participants under this Agreement warrant that performance of the Testing Services as provided for herein will not cause a conflict of interest because of work undertaken with others.

14. Publication of Test Results by Client and Use of Names.

CLIENT will not include the name of UNIVERSITY or any of its employees in any advertising, sales promotion or other publicity matter without prior written approval of same. UNIVERSITY does not endorse any product or service. Reports provided by UNIVERSITY under a Testing Services Agreement may be published by CLIENT. However, the published data or report shall include the following statement:

“This information was provided under a Montana State UNIVERSITY Testing Services Agreement and is not intended to endorse or recommend any product or service.”

UNIVERSITY will not include the name of CLIENT or any of its employees in any advertising, sales promotion or other publicity matter without prior written approval of same.

15. Evaluation of Samples and/or Materials.

UNIVERSITY agrees not to evaluate, reverse engineer, analyze, or otherwise attempt to identify CLIENT’s proprietary samples and/or materials, and not to use such samples and/or materials other than in the performance of the Testing Services, without the express written consent of CLIENT except for as a **male parent** for making crosses from which selections will be made. Grain or malt will NOT be returned to the client following testing.

16. Hazardous Material.

CLIENT will provide any applicable Material Safety Data Sheets, labeled (content and safeguards) Material, other hazard information, and appropriate shipping papers, permits and notifications in accordance with OSHA and DOT regulations and sufficient to permit reasonable safe use and operation of the Material and the proper interpretation of test results. The Investigator will return unused material within six months of the conclusion of testing. The CLIENT will take back any unused Material returned within this timeframe. All costs and risks of transporting Material to and from UNIVERSITY shall be borne by the CLIENT and are not included in the Agreement amount.

17. Export Control.

The University will not accept export-controlled materials or technical information under this

Agreement. Sponsor warrants that materials and technical information provided to University are not subject to U.S. Export Control laws.

18. Entire Agreement.

This Agreement contains the entire and only agreement between the parties respecting the subject matter hereof and supersedes or cancels all previous negotiations, agreements, commitments and writings between the parties on the subject of this Agreement. Should processing of this Agreement require issuance of a purchase order or other contractual document, all terms and conditions of said document are hereby deleted in entirety. This Agreement may not be amended in any manner except by an instrument in writing signed by the duly authorized representatives of each of the parties hereto.

The parties hereto have caused this Testing Services Agreement to be executed as of the date set forth herein by their duly authorized representatives.

CLIENT NAME:	MONTANA STATE UNIVERSITY
Signature:	Signature:
Signatory Name	Sandy Sward
Title	Associate VP for Research, Economic Development, and Graduate Education
Date:	Date: