

College of Agricultural Sciences Testing Services Agreement



This **Testing Services Agreement** ("Agreement") is entered into by and between:

Oregon State University
College of Agricultural Sciences
3051 SW Campus Way
100 Wiegand Hall
T: 541-737-4866
Elizabeth.tomasino@oregonstate.edu

and

Business Legal
Name: _____
Address 1: _____
Address 2: _____
Telephone: _____
Email Address: _____

(Hereinafter: "OSU")

(Hereinafter: "Purchaser")

WHEREAS, Oregon Revised Statute Chapter 352 allows for OSU to engage in the sale of goods and services to non-OSU entities for fees when such services or goods are directly and substantially related to the mission of OSU, which includes teaching, research, and public service; and

WHEREAS, Purchaser desires OSU to perform the service(s) and/or test(s) outlined in this Agreement and its attachments.

NOW Therefore, OSU and Purchaser agree to the terms and conditions that are set forth in this Agreement.

1. TERMS AND CONDITIONS

- 1.1. Term. The term of this Agreement will be from the date of last signature and will remain in effect, unless otherwise terminated, for six months from last signature. If work is not completed by this date, this Agreement will automatically renew and continue until completion of the work outlined in Attachment A.
- 1.2. Services. OSU agrees to test and analyze grape and wine samples provided by Purchaser for the existence of certain smoke impact indicator compounds including o-cresol, p-cresol, m-cresol, guaiacol, and 4 -methyl guaiacol, as more particularly described on Attachment A: Statement of Work.
- 1.3. Limitations on Services. Purchaser understands and acknowledges that (a) OSU does not hold any certifications or accreditations for smoke impact indicator compound testing; (b) the tests associated with the services have scientific and predictive limitations; and (c) the results of the tests and reports may not be ultimately reliable or determinative of the presence, the level, or the effect of smoke impact on the grapes or wine or other products made from the grapes.
- 1.4. Use of Results by Purchaser. The results of the tests and the reports will be used by Purchaser solely for informational purposes in connection with business decisions regarding use of the grapes
- 1.5. Fixed Scope. OSU's performance of work is limited to work within the scope described under the Fee listed in the OSU Fee Book. Any work beyond the scope provided in the description of the Fee in Attachment A must be executed in a separate agreement.
- 1.6. Priority for Oregon Grapes and Wine. In recognition of OSU's status as a land-grant institution, grapes grown in Oregon and wines produced in Oregon will receive priority in processing order.

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2. FINANCIAL CONSIDERATIONS

- 2.1. Fee Rate. Rates listed in Attachment 'A' are subject to change. Purchaser will be charged at the current published rate at the time the Agreement is fully signed or upon the date the Services are ordered, whichever occurs later. For current rates, refer to the OSU Fee Book found on-line at <http://fees.oregonstate.edu>.
- 2.2. Payment. Purchaser agrees to pay OSU the listed fees for the work outlined in Attachment A. Payment for each test must be made upon invoice. For invoices that exceed \$5,000 test results and reports will not be released until payment is made.
- 2.3. Late Payment. Amounts unpaid after thirty 30 days from the date of the invoice will accrue interest at the rate of 8% per annum until paid.

3. GENERAL PROVISIONS

- 3.1. Termination. Either party may terminate this Agreement, at any time, upon mutual written consent. All reasonable costs and non-cancellable obligations incurred by OSU at the time of termination will be reimbursed by Purchaser and OSU will return to Purchaser or destroy all unused materials provided by Purchaser.
- 3.2. Assignment. This Agreement is non-assignable and non-transferrable.
- 3.3. Confidentiality. Purchaser may disclose or make available to OSU information about its identity, vineyard location and characteristics, and grape condition and characteristics, and other sensitive or proprietary information concerning the samples, whether orally or in written, electronic, or other form or media (collectively, "**Confidential Information**"). Confidential Information includes but is not limited to the identity of Purchaser in connection with the samples, tests, results of the tests, and reports regarding the results of the tests. Confidential Information does not include information that, at the time of disclosure: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 3.3 by OSU or any of its representatives; (ii) is or becomes available to OSU on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of OSU or its representatives before being disclosed by or on behalf of the Purchaser; (iv) was or is independently developed by OSU without reference to or use, in whole or in part, of any of the Purchaser's Confidential Information; (v) incorporates the results of the tests or reports prepared by OSU regarding the samples or the tests that are anonymized and/or aggregated with other data without any source-identifying information, or is otherwise not traceable to or identifiable as connected with Purchaser or its samples; or (vi) is required to be disclosed under applicable federal, state or local law, regulation, or a valid order issued by a court or governmental agency of competent jurisdiction. OSU shall: (A) protect and safeguard the confidentiality of Purchaser's Confidential Information with at least the same degree of care as OSU would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; and (B) not use the Purchaser's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this agreement, unless OSU obtains the express written consent of Purchaser; and (C) not disclose any such Confidential Information to any person or entity without the express written consent of Purchaser, except as required by law or court order or to OSU's representatives who need to know the Confidential Information to assist OSU, or act on its behalf, to exercise its rights or perform its obligations under the agreement. In addition to all other remedies available at law, the Purchaser may seek equitable relief (including injunctive relief) against OSU and its representatives to prevent the breach or threatened breach of this Section 3 and to secure its enforcement.
- 3.4. OSU Use of Data. Purchaser acknowledges and agrees that, in connection with OSU's scientific research and educational purposes, OSU may use, disclose, and publish information and data regarding the samples, including but not limited to the results of the tests, the reports regarding

the results of the tests, and the varieties and general geographic location source of the samples, provided that such information and data is anonymized and/or aggregated with other data without any source-identifying information, or is otherwise not traceable to or identifiable as connected with Purchaser or its samples.

- 3.5. Liability and Indemnification. In no event will OSU be responsible for any damages or penalties resulting from OSU's testing services or reporting of results called for by this Agreement or from the use or distribution of the materials tested. Although OSU endeavors to provide accurate testing and reporting, the testing and reporting of results under this Agreement are provided by OSU without any warranty, express or implied, as to their accuracy. In no event will OSU be liable for any direct, indirect, special, punitive, or consequential damages resulting from the testing or reporting of test results under this Agreement. Purchaser agrees to indemnify and hold harmless OSU, its officers, agents, employees, and Board members against any claims arising out of Purchaser's use, sale, or distribution of materials tested and results received under this Agreement and against any claims arising out of Purchaser's breach of this Agreement.
- 3.6. Relationship of Parties. Nothing in this Agreement will be deemed to make OSU and Purchaser partners or joint venturers or to create a relationship of principal and agent between them. Neither party is or is considered an agent or employee of the other party for any purpose.
- 3.7. Publicity. Neither party will use the name, service mark, trademark, or abbreviation thereof of the other party in any publicity, advertising, or news release without the prior written approval of the authorized representative of the other party. Specifically, and without limitation, Purchaser agrees not to advertise or promote Purchaser's material or product as having been tested at OSU or to assert that testing at OSU demonstrates or suggests any conclusions or characteristics regarding Purchaser's sample, material, or product.
- 3.8. Governing Law and Venue. This Agreement will be construed and enforced in accordance with the laws of the State of Oregon, without giving effect to the conflict of law principles thereof. Any action or suit brought by the parties relating to this Agreement will be brought and conducted solely and exclusively in the Circuit Court of Benton County for the State of Oregon. Purchaser hereby consents to the personal jurisdiction of such courts, waives any object to venue in such courts, and waives any claim that such forum is an inconvenient forum.
- 3.9. Force Majeure. Neither party shall be held responsible for delay or default by an act or event that prevents the party from performing its obligations under this Contract where such cause is beyond that party's reasonable control and the nonperforming party has been unable to avoid or overcome the act by the exercise of due diligence. Such acts or events include without limitation fire, riot, acts of God, terrorist acts or other acts of political sabotage, pandemic or war, where such cause was beyond the reasonable control of OSU or Purchaser, respectively.
- 3.10. Conflicting Provisions. This Agreement and any/all attachments, schedules, and documents attached hereto are intended to be read and construed in harmony with each other. In the event any provisions in any attachment conflict with the provisions of this Agreement, then this Agreement shall control, and such conflicting provision shall be deemed removed and replaced with the governing provision herein.
- 3.11. Merger. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No amendment, consent, or waiver of terms of this Agreement will bind either party unless in writing and signed by the party to be bound. Any such amendment, consent, or waiver will be effective only in the specific instance and for the specific purpose given.

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The parties, by their signatures below, acknowledge having read this Agreement, understand it, and agree to be bound by its terms and conditions.

By OSU:

Department Signature Date

OSU Contract Services Date

Name Stamp

By Purchaser:

Signature: _____

Name: _____

Title: _____

Date: _____

Attachment A Statement of Work

AVAILABLE TESTS:

FREE SMOKE PHENOL ANALYSIS OF GRAPES OR WINE

Cost per sample (grapes and wine)

1- \$225 2-10 \$220 11+ \$210

ACID HYDROLYSIS & FREE SMOKE PHENOL ANALYSIS OF WINE

Acid hydrolysis is available for wines only. This will give a better estimation of the bound smoke compounds in your wine. Acid hydrolysis requires additional processing time.

Cost per sample (Grapes and wine)

1 - \$270 2-10 \$265 11+ \$250

SAMPLE COLLECTION AND DELIVERY INSTRUCTIONS:

GRAPE SAMPLING

4 clusters of grapes per sampling location are needed for free smoke and acid hydrolysis.

Clusters should be chosen from throughout the vineyard providing a representative sample. Undamaged berries are best if possible. Place clusters in hard plastic containers, like Tupperware. This will reduce potential crushing during shipping. If shipping samples, we recommend freezing them and shipping them frozen in your hard containers with ice packs. We do not accept juice samples.

Please provide a printed list of your sample labeling with requested information.

(see following page for example)

WINE SAMPLING

At least 100mL are required, a 375mL bottle is preferred.

If you are running micro-ferments then the wine sample should be taken at the end of fermentation or as close to (brix<0).

Samples should be in bottles or tubes with minimal headspace and tightly capped. We are not responsible if your sample leaks during shipping.

Please provide a printed list of your sample labeling with requested information.

(see following page for example)

SHIPPING

Samples can be accepted Monday-Friday. Do not send samples on Friday as they will not be delivered until Monday.

Oregon State University

Attn: Cole Cerrato

3051 SW Campus Way

100 Wiegand Hall

Corvallis, OR 97331

DROP OFF

Samples may be dropped off at the front door of Wiegand Hall, from 9-12pm M-F. Please call the below number and leave a message when dropping off samples and someone will come collect it. Do not leave the sample unless a person is there.

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Example – Grape Sampling table

Contact for results: Joe Smith, email, phone number

Code	Grape variety	GPS vineyard co-ordinates
1	Pinot noir	44.5638°N, 123.2794°W
2	Pinot noir	45.5111°N, 122.6834°W

Example – Wine Sampling Table

Contact for results: Joe Smith, email, phone number

Code	Grape variety	Yeast used	Ferm temp	MLF	GPS vineyards co-ordinates
1	Pinot noir	EC118	20 °C	Yes	44.5638°N, 123.2794°W
2	Pinot noir	BGY	18 °C	No	45.5111°N, 122.6834°W