



CAL POLY Partners

BULL PERFORMANCE TEST AND SALES PROGRAM SERVICE AGREEMENT 3-1-2024

This Bull Performance Test and Sales Agreement, the (“Agreement”) is made and entered into by and between the Cal Poly Partners (“CPP”), a nonprofit corporation and auxiliary that provides support to California Polytechnic State University (“the University”), and the Breeder/Stock owner named herein (“Breeder”), collectively (the “Parties”), for Breeder’s Bull(s) (“Stock”) to be entered into the Yearling Bull Performance Test and Sales Program at the University. This Agreement shall be effective on the date that the last authorized signature is affixed (“Effective Date”).

Breeder / Stock Owner, hereafter referred to as Breeder:	Amendment No.:	Agreement No.:
Breeder Address:	Federal ID No. / SSN	CPP Person/Entity ID No.:

Whereas, CPP serves as University’s exclusive auxiliary through which projects of this nature are administered.

Whereas, as an institution of higher education, the University includes an academic department devoted to the study of animal science. As an integral part of the animal science program, the University desires to further develop and broaden the instruction and practical experience of its students by providing them with the opportunity of participating in modern animal testing, data analysis, feeding and nutrition, and health skills projects. The Yearling Bull Performance Test and Sales Program (the “Program”) provides such an experience for students, and also serves a useful function to the beef industry by providing breeders with a valuable service at a reasonable cost.

Whereas, Breeder desires to enter Stock into the Bull Performance Test and Sales Program at the University;

Whereas, Breeder and CPP understand that the primary purpose of this Agreement is to enhance the educational mission of the University and that the relationship contemplated by this Agreement is not intended as a commercial or profit-making venture. Breeder hereby consigns to CPP, the Stock identified and described herein for the purpose of including said Stock in the Program;

Now Therefore: In consideration of the statements and conditions herein contained, the Parties agree as follows:

- Exhibits.** The terms of the Exhibits attached to this Agreement are hereby incorporated into this Agreement. The Exhibits attached to this Agreement include the following: Exhibit A: Stock Identification Schedule; Exhibit B: “Cost Schedule”.
- Term.** This Agreement shall terminate upon completion of the Program, unless terminated sooner in accordance with Section 13 of this Agreement.
- CPP Responsibilities.** CPP shall provide the following:
 - Facilities appropriate to a program of this nature;
 - Daily maintenance of Stock;
 - Conduct tests in accordance with published test schedule;
 - Publish weight reports;
 - Stock to be sorted and boarded by breed and weight, where appropriate;
 - Scheduled sale of eligible Stock and conduct the sale;
- Breeder Warranties and Responsibilities.** By executing this Agreement, the undersigned represents and warrants that he/she is the true and lawful Breeder/owner of the Stock listed in Exhibit A, or if not the Breeder/owner, then is a dually authorized

agent and representative of Breeder/owner having been granted the actual authority to enter into this Agreement, and to make any and all decisions regarding the Stock and its veterinary care.

Breeder shall be fully responsible for all charges incurred under this Agreement and shall be responsible for the Stock meeting Stock acceptance criteria described in Section 5.

5. **Stock Acceptance Criteria.** CPP reserves the right to sift and reject from the Program, any Stock failing to meet the following requirements at delivery:
 - (a) Minimum Adj. 205-day wt. – 550 lbs.
 - (b) Minimum WDA of 2.5 at delivery
 - (c) AI sired calves preferred
 - (d) Birth date between July 1 and October 31, 2023;
 - (e) Have written records of registration per the respective breed association. (Respective breed associations determine the minimum allowable percentage blood that is eligible to compete). Consignors will have 21 days after delivery to provide proof of registration before unregistered bulls will be removed from test at the consignor's expense;
 - (f) Weaned and preconditioned at least 3 weeks prior to shipment;
 - (g) Free of any structural defects or abnormalities;
 - (h) No evidence of ringworm, lice, etc.;
 - (i) Been vaccinated with a "7-way clostridial" and "modified-live" respiratory vaccinations;
 - (j) Negative laboratory test for PI-BVD;
 - (k) Have proper transportation and brand inspection papers;
 - (l) Test free of all genetic defects;
 - (m) All Angus bulls must have a Zoetis 50K (HD50K/i50k) or a Neogen GeneSeek Genomic Profiler Bovine HD (GGP-HD) genomic DNA test submitted prior to arrival;
 - (n) All individual bull data must be shared from Angus Herd Improvement Records or similar records respective of breed;
 - (o) Genomic and genotype data must be shared from the respective breed association;
 - (p) All items outlined in the Stock Acceptance Criteria must be provided within 21 days of bulls entering the facility. After the 21-day period, bulls will be removed from the test if documentation is not provided.

6. **Sale Qualification Criteria.** CPP reserves the right to exclude Stock from sale if the Stock fails to meet all applicable sales qualification criteria ("SQC"). To satisfy the requirements of SQC, Stock must meet either (a) or (b) or (c) as well as (d):
 - (a) Have a scrotal circumference of 32 cm. or better when adjusted to 365 days of age;
 - (b) Have no reproductive or soundness problems; and be free of or not prone to any structural unsoundness, i.e. feet, legs, sheath.
 - (c) Sale eligibility will be based on performance of an individual bull's feed conversion and growth performance when compared with average of their contemporaries during the contemporary group testing period (50% Feed Conversion Ratio and 50% Average Daily Gain Ratio)
 - (d) Sale order will be based on a Sale Index which is 60% Cal Poly Test index and 40% EPD profile;
 - (e) In no event will bulls be sold if not registered through their respective breed association

7. **Breeder Sale Rights and Responsibilities.**
 - (a) Breeder shall have discretion as to whether any or all of the Stock meeting all SQC standards ("Eligible Stock") shall be included in the sale scheduled under this program.
 - (b) Eligible Stock voluntarily pulled from the sale by Breeder less than fourteen (14) calendar days prior to the scheduled sale date will be assessed a \$500 non-refundable fee, or a fee that is equal to 10% of the sale average, whichever amount is greater.
 - (c) Breeder shall be required to submit official Expected Progeny Differences ("EPDs") of individual with sire and dam from breed association during the test. These EPDs will be used as official EPDs for sale catalog.

8. **Payments.**
 - (a) Payments. All payments are due upon receipt of invoice. Payments are considered late if not received by CPP within thirty (30) calendar days of original invoice date. Unpaid balances resulting from late payments will be subject to finance charges in accordance with section (b). It is Breeder's sole responsibility to ensure all outstanding balances are paid timely to avoid assessment of finance charges.

- (b) **Finance Charges and Collections.** A monthly finance charge of 1.5% will be assessed on outstanding balances resulting from late or non-payment. CPP reserves the right to refuse or suspend service if Breeder's account is past due more than forty-five (45) days. Any past due account which is not paid within sixty (60) days of billing shall be subject to collection action, including placing the account in the hands of an attorney for collection. Breeder assumes and agrees to pay all costs of collection, including charges, expenses, attorney fees and related costs which shall be incurred in the collection of this account.
- (c) **Lien.** Breeder acknowledges that CPP will hold a lien on Breeder's Stock for any unpaid fees owed by Breeder.
9. **Insurance.** CPP will not provide any insurance coverage on any of Breeder's Stock or property. It is recommended that Breeder obtain any insurance Breeder desires for any of Breeder's property related to this Agreement. If Breeder does not obtain insurance, Breeder acknowledges that he/she/it is self-insured and assumes full responsibility of any loss incurred with respect to Breeder's Stock or associated property.
10. **Risk of Loss.** Breeder bears the risk of loss and full responsibility for the cost of replacement, health, soundness, breeding condition, transportation and care of stock at all times during the duration of the program. After the death of an animal, an owner may request a necropsy by a licensed veterinarian, with all accrued costs the responsibility of the owner.
11. **Representations and Warranties.** Each party represents and warrants that (i) this Agreement constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with the terms of this Agreement, and (ii) its execution and delivery of this Agreement and its performance hereunder will not violate any applicable law, rule or regulation. CPP hereby represents and warrants, and that it undertakes performance under this Agreement on a best-efforts basis, applying generally accepted animal testing techniques and procedures. CPP does not guarantee or warrant any results under this Agreement. CPP will exercise reasonable care and practice in the management of all Program Stock based upon industry standards and practices. Breeder acknowledges that Breeder's Stock will be held in common pastures, pens, stables, or similar holding facilities among Program Stock from other Program participants and from which injury or death to Breeder's Stock is a known risk.
12. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, CPP PROVIDES ALL SERVICES IN CONNECTION WITH THE PROGRAM TO BREEDER ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE OR USE. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, CPP DOES NOT WARRANT THAT THE SERVICES OR ANY SERVICES RELATED THERETO WILL BE DELIVERED OR PERFORMED ERROR-FREE, WITHOUT LOSS, OR WITHOUT INTERRUPTION.
13. **Limitation of Liability.** EXCEPT FOR INDEMNITY OBLIGATIONS IN SECTION 14, CPP'S INDIVIDUAL MAXIMUM AGGREGATE LIABILITY UNDER, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100.00), AND TO THE EXTENT PERMITTED BY LAW, CPP WILL NOT BE LIABLE FOR LOST PROFITS, LOSS OF USE, COST OF REPLACEMENT, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, WHETHER OR NOT BREEDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT TO THE EXTENT THAT SUCH ARISE FROM THE WILLFULL MISCONDUCT OF CPP OR THEIR RESPECTIVE EMPLOYEES.
14. **Indemnification.** Breeder hereby agrees to release defend, indemnify, hold harmless and protect the Cal Poly Partners, the Trustees of the California State University, California Polytechnic State University, San Luis Obispo, their officers, directors, employees, representatives, agents, students and volunteers from and against any and all liability, loss, damage, expense, cost, judgments, fines and penalties (including without limitation to costs and fees of litigation) of every nature arising out of or in connection with any injury, escape, sickness, disability, or death, including consequential damages caused to any Stock or any other property of Breeder except such loss or damage which was caused by the gross negligence or willful misconduct of the Corporation, the Trustees of the California State University, or California Polytechnic State University, San Luis Obispo, their officers, employees, representatives, agents, students and volunteers.
15. **Termination.** The Parties agree that CPP shall have the right to terminate this Agreement at any time for its convenience, upon thirty (30) days written notice to Breeder. Upon termination, Breeder shall, at its own expense, make commercially reasonable efforts to collect Stock and, shall pay CPP, within fifteen (15) days of the termination date, for all outstanding balances, including and without limitation, any accumulated fees, costs, finance charges, or other expenses associated with

the Program. CPP will provide copies of supporting documentation upon Breeder's request. The obligations imposed by Section 8 Payments, Section 12 Indemnification, and Section 26 Confidentiality of this Agreement, shall survive termination under this Agreement.

16. **Taxes and Fees.** Each Party shall hold harmless, indemnify and defend the other Party, together with the other Party's officers, directors, agents and employees, from any liability, penalty, interest and expense by reason of such Party's failure to pay the taxes, charges or contributions for which it is responsible.
17. **Use of University or CPP Marks.** Breeder shall not use any image, logo, mark or intellectual property of CPP or University in any manner or form without the express written consent of CPP or the University, respectively.
18. **News Releases.** News releases pertaining to this Agreement shall not be made without the prior written approval of CPP.
19. **Amendments.** This Agreement may be modified or amended in writing signed by authorized signatories of Breeder and CPP, including changes altering, adding to, or deducting from the Agreement terms and conditions.
20. **Severability.** If any provision of this Agreement shall be, or shall be adjudged to be, unlawful or contrary to public policy, then that provision shall be deemed to be null and separable from the remaining provisions, and shall in no way affect the validity of this Agreement.
21. **Waiver.** A waiver by either party of any terms or conditions, provisions, or covenants of this Agreement in any instance shall not be deemed or construed to be a waiver of any such term, condition, provision, or covenant for the future, or of any subsequent breach of same. All remedies, rights, undertakings, obligations, and agreements contained in this Agreement shall be cumulative and shall not be in limitation of any other right, remedy, undertaking, obligation, or agreement of either party.
22. **Force Majeure.** Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.
23. **Assignment.** Neither party shall assign or transfer this Agreement or any interest herein without the prior written consent of the other party. The rights or duties of this Agreement may not be assigned or delegated by CPP.
24. **Notices:** All notices and all other matters pertaining to this Agreement requiring legal notice to a party shall be in writing, shall be hand delivered, or sent by Certified U.S. Mail return receipt required, and shall be deemed to have been duly given when received by the addressees at the following addresses:

Cal Poly Partners	Breeder:	
Executive Director	Point Of Contact:	
Cal Poly Partners	Address:	
Bldg. 15		
San Luis Obispo, CA 93407		
25. **Resolution of Disputed Claims.** Disputed claims between CPP and Breeder, for which prompt written notice has been given followed by adequate supporting data within a reasonable time, shall be settled by an informal conference to meet and confer for settlement of the issues in dispute, followed by mediation as allowed by law, or, if agreed to by both parties, by arbitration conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Unless otherwise directed by CPP, Service Provider shall proceed with the Services regardless of any dispute or claim.
26. **Applicable Law and Compliance.** This Agreement shall be governed under the laws of the state of California. Should either party institute legal action arising out of this Agreement, it is stipulated that the venue of such action shall be in San Luis Obispo County, California.

27. **Counterparts.** This Agreement may be executed in counterparts all of which taken together shall constitute one and the same Agreement. The exchange of copies of this Agreement by electronic mail in “portable document format” (.PDF) form or by other similar electronic means shall constitute effective execution and delivery of this Agreement and shall have the same force and effect as copies executed and delivered with original signatures.
28. **Confidentiality.** Except as set forth in this Section, Breeder shall hold in confidence all information supplied by CPP, University, or any other person (the “Disclosing Party”) to the other Party (the “Recipient”) under the terms of this Agreement that is marked or otherwise indicated to be confidential (“Confidential Information”). Breeder shall inform its Affiliates, subcontractors, suppliers, vendors and employees of its obligations under this Section and require such persons to adhere to the provisions hereof. Notwithstanding the foregoing, the Recipient may disclose the following categories of information or any combination thereof: (i) information which was in the public domain prior to receipt thereof by Recipient or which subsequently becomes part of the public domain by publication or otherwise unless by a wrongful act of Recipient; (ii) information that Recipient can show was lawfully in its possession prior to receipt thereof from the Disclosing Party through no breach of any confidentiality obligation; (iii) information received by Recipient from a third party having no obligation of confidentiality with respect thereto; (iv) information at any time developed independently by Recipient providing it is not developed from otherwise confidential information; (v) information disclosed pursuant to and in conformity with the law or a judicial order or in connection with any legal proceedings; or (vi) information required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries.
29. **Entire Agreement.** This Agreement, together with Exhibits, constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

THIS AGREEMENT is entered into by the CPP and Breeder as set forth by the terms and conditions set forth herein and is effective as of the date of the last signature of the Parties.

BREEDER

Name of Breeder

By: _____
Signature

Printed Name

Title

Date

CAL POLY PARTNERS

By: _____
Signature

Will Marchese
Printed Name

Associate Dean of Operations and Infrastructure
Title

Date

CONCURRENCE BY CPP Designated Representative

<<Name>>

Dept. / College Title

Date

EXHIBIT A – STOCK IDENTIFICATION SCHEDULE

	BREED	EAR TAG # / TATTOO
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EXHIBIT B – COST SCHEDULE

Breeder will pay for all costs according to the following Cost Schedule:

Initiation fee:	\$150 per head of Stock.
Yardage:	\$0.50 per head of Stock per day.
Feed	Prorated by monthly feed intake of individual head of Stock.
Ultrasound	Approximately \$50 per head of Stock
Veterinary Supplies	Cost plus 30%.
Veterinary Services	All charges when a veterinarian is called, including any consulting fees. (Any consulting fees will be prorated between all heads of Stock seen by the veterinarian on that call).
Semen Testing	Approximately \$50/head
Sale Cost:	Prorated on percent of gross sale per head (approximately 10% for sale Stock).
Private Treaty Sales:	\$50 per head of Stock.