



THE UNIVERSITY OF CALIFORNIA, DAVIS PURCHASE AGREEMENT

PA: A13936

Vendor PHOENIX BIOINFORMATICS CORPORATION 3124 S COURT PALO ALTO, CA 94306	Customer #	Payment Terms AS PER CONTRACT
	Phone Number 415-652-6025	Fax Number
	Email info@phoenixbioinformatics.org	
Notes to Vendor		

Begin Date 04-01-2014	End Date 03-31-2017
Not To Exceed Amount	Assigned Buyer [Text deleted]
UCOP/System-wide Agreement #	Agreement URL

Order Details
1-The Arabidopsis Information Resource (TAIR) Subscription Agreement For Non-Profit, Governmental, and Educational Entities.

Terms and Conditions

Order in effect from 04-01-2014 to 03-31-2017.

- All other terms & conditions of the "TAIR Subscription Agreement For Non-Profit, Governmental, and Educational Entities", as attached, shall apply to this order.

Address correspondence pertaining to this order to:

Contract Concerns	Invoice Concerns	Technical Questions
[Text deleted]	[Text deleted]	[Text deleted]

AUTHORIZED SIGNATURE

[Text deleted]

SIGNATURE

[Text deleted]

NAME PRINTED OR TYPED

**TAIR Subscription Agreement For Non-Profit,
Governmental, and Educational Entities**

This agreement ("Agreement") is effective the twenty-fourth day of March, 2014 ("Effective Date")

By and between

PHOENIX BIOINFORMATICS CORPORATION of 3124 South Court, Palo Alto, CA 94306 ("Phoenix")

and

The Regents of the University of California, on behalf of the University of California Davis Libraries, a non-profit academic institution, with its principal offices at 1 Shields Avenue, Davis, California, 95816, USA ("Licensee").

RECITALS

WHEREAS Phoenix maintains the TAIR database of materials related to Arabidopsis thaliana, "Licensed Materials" as defined herein;

WHEREAS, Phoenix has certain proprietary and copyright rights in the database and compiled materials comprising the Licensed Materials; and

AND WHEREAS subject to the terms and conditions of this Agreement, Licensee desires to utilize the Licensed Materials and Phoenix wishes to grant access to the Licensed Materials.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

The following terms shall have the following meanings:

1.1 "Licensed Materials" means The Arabidopsis Information Resource (TAIR) database, which may include gene structure, gene product information, gene expression information, DNA sequences and an inventory of available genetic constructs and seed stocks available from third parties, genome maps, genetic and physical markers, publications, and information about the Arabidopsis research community. The Licensed Materials contains information summarized by Phoenix from published research literature and also contains data and other information submitted by third parties.

1.2 “Authorized User” means current members of the faculty, staff, and graduate or undergraduate student body of Licensee and individuals using computer terminals physically located within Licensee’s library facilities. For campus locations, see Appendix B.

1.3 “Authorized Use” means use for the purposes of research, education or other non-commercial use conducted by Authorized Users of academic, governmental, or non-profit entities.

Article 2. Grant

2.1 Phoenix, under its copyright and proprietary rights in the Licensed Materials hereby grants to Licensee the non-exclusive, non-transferable, worldwide, right, to give Authorized Users access to the Licensed Materials for Authorized Use, in accordance with the terms and conditions of this Agreement.

2.2 Licensee acknowledges that Licensed Materials may contain or pertain to materials that are subject to proprietary rights, including copyright, trademark, and patent rights, of third parties. No licenses or rights to such proprietary rights are granted hereunder.

Article 3. Fees and Payment

3.1 In consideration of the licenses granted hereunder, Licensee agrees to pay fees according to the amounts, schedule, and payment terms set forth in Appendix A.

3.2 Licensee’s right to access the Licensed Materials is conditional upon Phoenix’s receipt of payment in Accordance with Appendix A. If payment is not received in a timely fashion, Phoenix reserves the right to immediately and without notice, either suspend Licensee’s access to the Licensed Materials or to terminate this Agreement. Licensee is required to pay any amounts still owed to Phoenix at the time Licensee’s account is suspended or terminated. Licensee is solely responsible for determining and paying any tax liabilities incurred by Licensee as a result of payments made under this Agreement.

Article 4. Access and Usage

4.1 Authorized Users shall be identified and authenticated by the use of Internet Protocol (“IP”) addresses provided by Licensee to Licensor. The use of proxy servers or other delegated authentication method, to be mutually agreed upon by both parties, is permitted as long as such method provided limits access to Authorized Users.

4.2 Licensee’s Authorized Users may print out or copy into digital media limited excerpts of the Licensed Materials for its Authorized Uses. In conjunction with this Authorized Use, Licensee’s Authorized Users may also publish data comprising

limited excerpts of the Licensed Materials, as reasonably necessary to support bona fide research projects, provided that TAIR is attributed as the source of any such published data. Authorized Users may use the licensed material to perform and engage in text or data mining activities for legitimate research and other educational purposes.

4.3 Other than as provided in Article 4.2, Licensee and its Authorized Users will not otherwise copy, download, upload or in any other way reproduce comprehensive portions of the Licensed Materials. Licensee and its Authorized Users will not sell, distribute, sublicense, provide access to, or transfer the Licensed Materials in whole or part, to third parties except under the fair use exceptions of 4.5 below.

4.4 Licensee and its Authorized Users will not modify or remove any copyright, trademark, patent, disclaimer notices, proprietary markings or restrictive legends placed on the Licensed Materials.

4.5 Licensee and Authorized Users may make all use of the Licensed Materials as is consistent with the Fair Use Provisions of United States and international law. Nothing in this Agreement is intended to limit in any way whatsoever Licensee's or any Authorized User's rights under the Fair Use provisions of United States or international law to use the Licensed Materials.

4.6 Licensee shall use reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Agreement. In the event of any allegation of unauthorized use of the Licensed Materials by an Authorized User, Licensor may terminate such offending Authorized User's access to the Licensed Materials while a verification and cure are sought. The Licensee shall have the right to remedy offending use within sixty (60) days upon receipt of notice from Phoenix.

Article 5. Provision of Access to the Licensed Materials

5.1 Phoenix will use reasonable efforts to make online access to the Licensed Materials available on a continuous basis seven (7) days a week with an average of 98% up-time per month. Availability will be subject to periodic interruption and downtime for server maintenance, software installation or testing, loading new files, and other reasons at the discretion of Phoenix. Phoenix will provide reasonable technical support and assistance to enable Licensee's access to the Licensed Materials, at specified hours during Pacific Time Zone business hours.

5.2 Phoenix reserves the right at any time to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable.

5.3 Licensee's access and use of the Licensed Materials may be monitored by

Phoenix with respect to elapsed time spent accessing the service, number of Authorized Users or computers accessing the Licensed Materials and/or the volume of Licensed Materials downloaded or printed by Licensee for the sole purpose of compiling aggregate use statistics.

5.4 Phoenix shall make reasonable efforts to comply with the Americans with Disabilities Act (ADA) requirements, Section 508 of the Rehabilitation Act Amendments, and provide Licensee current completed Voluntary Product Accessibility Template (VPAT) no later than one year after the effective date of this agreement.

Article 6. Warranties, Limitations of Liability, and Indemnity

6.1 Phoenix is not responsible for the content of any Licensed Materials comprising opinions, advice, statements, services, offers, or other information or content expressed or made available by third parties.

6.2 Phoenix does not guarantee the accuracy, completeness, or usefulness of any Licensed Materials. No assurance is provided by Phoenix that the Licensed Materials will reflect the most recent findings or developments with respect to *Arabidopsis thaliana* research.

6.3 Phoenix warrants that it has made reasonable efforts to ensure that it has obtained necessary permissions from third parties to use and distribute the Licensed Materials. Phoenix will hold harmless Licensee and its Authorized users for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Materials by the Licensee or any Authorized User in accordance with the terms of this Agreement, except in cases of gross negligence or criminal conduct. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO ARTICLE 6.3.

6.4 PHOENIX MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF DESIGN, ACCURACY OF THE INFORMATION CONTAINED IN THE LICENSED MATERIALS, MERCHANTABILITY OR FITNESS OF USE FOR A PARTICULAR PURPOSE. THE LICENSED MATERIALS ARE SUPPLIED 'AS IS'.

6.5 UNDER NO CIRCUMSTANCES, EXCEPT AS STIPULATED IN 6.3, WILL PHOENIX AND LICENSEE BE LIABLE TO EACH OTHER OR ANY OTHER PERSON, INCLUDING BUT NOT LIMITED TO AUTHORIZED USERS, FOR ANY SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER ARISING OUT OF THIS AGREEMENT.

Article 7. Term and Termination

7.1 This Agreement will remain in place from the Effective Date until the end of the subscription period specified in Appendix A. If a notice of intent not to renew this Agreement is not received from Licensee prior to the last day of the subscription period, Phoenix may automatically renew this Agreement for an additional one-year term upon the same terms and conditions of this Agreement. Should one or more campuses decide not to renew, the terms of this Agreement shall remain in effect for the remaining participants.

7.2 This Agreement shall be terminated:

7.2(a) if Licensee defaults in making payment of the Fee as provided in this Agreement;

7.2(b) if either party commits a material or persistent breach of any term of this Agreement and fails to remedy the breach (if capable of remedy) within sixty (60) days of notification in writing by the other party;

7.2(c) if either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.

7.3 On termination or expiration of this Agreement, all rights and obligations of the parties automatically terminate except Paragraph 4.3 (prohibition on unauthorized distribution of Licensed Materials to third parties), Article 6 (Warranties, Limitations on Liability), and Article 8 (General), which such obligations will remain in force.

7.4 Phoenix has a property ownership in the database and compilations comprising the Licensed Materials, as well as copyright rights covering the compilations and database which comprise the Licensed Materials. Institution hereby acknowledges that the business of Phoenix is dependent upon maintaining Phoenix's proprietary rights in and control of the Licensed Materials, and that any breach of the prohibitions of Article 4.3 or any other unauthorized reproduction, distribution, or furnishing of access to the Licensed Materials not remedied under the terms of Article 4.6 constitutes a fundamental breach of this Agreement, in which event, this Agreement will immediately terminate and Phoenix will be entitled to immediate injunctive relief without any rebate of the fees paid by Institution and without prejudice to any other rights or remedies to which Phoenix may be entitled.

7.5 Upon expiration of this Agreement or termination of this Agreement other than for breach of Article 4.3 or any other unauthorized reproduction, distribution, or furnishing of access to the Licensed Materials, Licensee may retain and continue to use any Licensed Materials obtained in accordance with the terms of this Agreement during the period this Agreement was in force for its Authorized Use as specified in Article 4.2. Licensee may receive from Phoenix one (1) copy of the entire set of Licensed Materials as required to exercise Licensee's rights under Article 2 of this

Agreement. Content will be delivered in a mutually agreed upon format, and Licensee agrees to incur reasonable costs for processing and shipping any media. Phoenix acknowledges that Licensee may engage the services of third-party trusted archives and/or participate in collaborative archiving endeavors to exercise Licensee's rights under Article 2, 'Grant', of this Agreement. Phoenix agrees to cooperate with such archiving entities and/or initiatives as reasonably necessary to make the Licensed Materials available for archiving purposes. Licensee may perpetually use the third-party trusted system to access or store the Licensed Materials, so long as Licensee's use is otherwise consistent with this Agreement.

7.6 Either party reserves the right to terminate this Agreement for any reason following thirty (30) days written notice to the other party. Should one or more campuses exercise the right of early termination, the terms of this Agreement shall remain in effect for the remaining participants.

7.7 In the event of early termination permitted by this Agreement, except for unremedied breach under 4.3 above, Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement from the date of termination.

General

8.1 This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this Agreement, whether oral or written.

8.2 Modifications to terms of this Agreement will be valid only if they are recorded in writing and signed by both parties.

8.3 Either party to this Agreement may assign this Agreement to a successor which has acquired substantially all the assets of that party by operation of merger, purchase, or otherwise, provided that the assignee agrees in writing to assume all the obligations of the assigning party under this Agreement.

8.4 This Agreement shall be interpreted and construed according to, and governed by, the laws of California, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in California shall have jurisdiction to hear any dispute under this Agreement.

8.5 All notices, consents, approvals or requests under this Agreement will be in writing and shall be deemed given when: mailed (by registered or certified mail, return receipt requested) to the receiving party at the address specified below (which may be amended by providing written notification of change of address to the other party):

PHOENIX BIOINFORMATICS CORPORATION
3124 South Court, Palo Alto, CA 94306
Phone: +1 415 652 6025
Email: info@phoenixbioinformatics.org

Licensee's Name:
Regents of the University of California
415 20th Street, 4th Floor
Oakland, California, 94612

Coordinating Contact:
[Text deleted]

Acquisitions Librarian
University of California, Davis
100 NW Quad
Davis, California 95616
Phone [Text deleted]
Email

8.6 Neither party's delay or failure to perform any provision of this Agreement, as result of circumstances beyond its control (including, without limitation, war, terrorism, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) will be deemed to be, or to give rise to, a breach of this Agreement.

8.7 The invalidity or un-enforceability of any provision of this Agreement will not affect the continuation or enforceability of the remainder of this Agreement.

8.8 Either party's waiver, or failure to require performance by the other, of any provision of this Agreement will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed by their duly authorized representatives as of the Effective Date recited on Page 1:

PHOENIX
[Text deleted]

LICENSEE
[Text deleted]

Signature
[Text deleted]

Signature
[Text deleted]

Name

Name

Executive Director

Buyer

Title

Title

April 28, 2014

April 25 2014

Date

Date

APPENDIX A

LICENSED MATERIALS, SUBSCRIPTION PERIOD, INVOICING AND PAYMENT

An Appendix dated March 24, 2014 to the License dated March 24, 2014 between Phoenix and Licensee

THE LICENSED MATERIALS

Title	Subscription Period	Fee
TAIR	4/1/2014 - 3/31/2017	[Text deleted]

Within a reasonable period following the Effective Date of this Agreement, Phoenix will provide an invoice to Licensee at the following address:

Licensee's Billing Contact

[Text deleted], Acquisitions Coordinator
Electronic Resources Unit
Acquisitions Department, Library
University of California, San Diego
9500 Gilman Dr. #0175A
La Jolla, CA 92093-0175
Phone [Text deleted]
Fax [Text deleted]
Em

All amounts due under this Agreement are payable in United States currency within sixty (60) days after invoicing by Phoenix. Payment may be made by check made out to Phoenix Bioinformatics Corporation, or by wire transfer. In the event of a wire transfer payment, Licensee will be responsible for payment of all bank fees and other taxes or charges associated with such wire transfer.

WIRE TRANSFER INFORMATION

Domestic Transfer, US Dollars:

Amount: U.S. Dollar Amount
Pay: Citibank NA
Citibank Address: 250 University Avenue, Palo Alto, CA, 94301, USA
Citibank ABA#: 321171184
For Credit to: Phoenix Bioinformatics Corporation
Account #: 205608045

International Transfer, US Dollars:

Amount: U.S. Dollar Amount
Pay: Citibank NA
Citibank Address: 250 University Avenue, Palo Alto, CA, 94301, USA

SWIFT Address: CITI US 33
FBO: Phoenix Bioinformatics Corporation
Account #: 205608045

International Transfer, Other Currency:

Please contact us for wire transfer instructions

APPENDIX B

Authorized Users will be recognized and authenticated by domain name and IP address and/or range.

List of addresses (including country where applicable) of Licensee's Premises or sites, Domain Name(s) and IP addresses and/or ranges:

Class B Network: first two network numbers plus asterisks for host addresses, i.e.: 125.64.**

Class C network: first three network numbers plus an asterisk for host address, i.e.: 125.64.133.*

Single station: all four numbers, i.e. 125.64.133.20; or ranges, i.e. 125.64.133.20-125.64.133.40

Network contact:

Name: [Text deleted], Acquisitions Librarian and License Coordinator, UC Davis

Telephone: [Text deleted] E-mail address: license@lib.ucdavis.edu

Licensee name & address	Domain name(s)	IP addresses/ranges
University of California, Berkeley (including Lawrence Berkeley Lab) 250 Moffitt Library Technical Services Dept. MC 6000 Berkeley, CA 94720 Contact:[Text deleted]	berkeley.edu [Text deleted]	[Text deleted]

[Text deleted]

University of California, Davis 100 NW Quad Davis, CA 95616-5292 Email: license@lib.ucdavis.edu Contact: [Text deleted]	ucdavis.edu [Text deleted]
University of California, Irvine Acquisitions PO Box 19556 Irvine, CA 92323-9556 Contact: [Text deleted] Email: librefn@uci.edu	uci.edu [Text deleted]
University of California, Merced Kolligian Library University of California, Merced P.O. Box 2039 Merced, CA 95344 Contact: [Text deleted]	ucmerced.edu [Text deleted]
University of California, Los Angeles 43458 Young Research Library University of California, Los Angeles Box 951575 Los Angeles, CA 90095-1575 Contact: [Text deleted]	ucla.edu [Text deleted]
University of California, Riverside University Library Technical Services/Acquisitions PO Box 5900 Riverside, CA 92517	ucr.edu [Text deleted]
University of California, San Diego Geisel Library - Electronic Resources 9500 Gilman Drive 0175A La Jolla, CA 92093-0175 Contact: [Text deleted] Email: electroniclib@ucsd.edu	ucsd.edu [Text deleted]

	<p>[Text deleted]</p> <p>[Text deleted]</p>
<p>University of California, Santa Barbara Davidson Library Santa Barbara, CA 93106 Contact [Text deleted] Email: nelson@library.ucsb.edu</p>	<p>ucsb.edu</p>
<p>University of California, Santa Cruz Serials Unit, University Library 1156 High St. Santa Cruz, CA 95064 Email: cdlacq@library.ucsc.edu</p>	<p>ucsc.edu</p>