

New Varieties Development & Management Corp.
P.O. Box 1113
Lakeland, Florida 33802
Peter Chaires
Executive Director
Phone: 863-682-0151
Fax: 863-688-6758
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MATERIAL TRANSFER AGREEMENT
USDA-ARS "Early Pride Tangerine"

PARTIES:

Provider: New Varieties Development & Management Corp.
P.O. Box 1113
Lakeland, Florida 33802

Peter Chaires
Executive Director
Phone: 863-682-0151
Fax: 863-688-6758
Email: jpchaires@bellsouth.net

Recipient:

This Agreement is entered into by and between Provider and Recipient as of the Effective Date, as hereinafter defined.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

1. Purpose. The US Department of Agriculture, Agricultural Research Service ("ARS"), has agreed to deliver to Provider grafted citrus trees and/or budwood for further delivery to growers and nurseries which have signed material transfer agreements with Provider in order to conduct confidential research to develop new citrus scion varieties and to evaluate their commercial potential. The plants and/or budwood delivered to Provider and, in turn, to Recipient, and any fruit or any other biological material from the plants, shall hereinafter sometimes be referred to as "Material." Fruit

produced on citrus hybrids will be harvested three times during the season to identify the maturity window for the particular selection. At the time of harvest, data will be collected on fruit appearance (size, shape, presence of disease) rind color, ease of peeling, presence of seeds, soluble solids, total acidity and taste (unacceptable, potentially acceptable or acceptable). Scion selections identified as worthy of further evaluation will be propagated onto commercial rootstocks for further evaluation. ARS has agreed to deliver Material to Provider subject to material restrictions on the use of the Material and execution by Recipient of this Material Transfer Agreement providing for restrictions on the use of the Material.

2. Terms and Conditions. Grafted citrus hybrid trees and/or budwood shall be delivered and released to Recipient subject to the following conditions:

- a. Material shall only be used for the purpose set forth hereinabove. In addition, it is the intention of Provider to perform a risk analysis of the Material summarizing its potential advantages and disadvantages to growers and sharing these analyses with the grower community as well as ARS. Recipient shall cooperate and assist Provider with developing the summary of potential advantages and disadvantages, from a citrus nursery perspective..
- b. The Material shall only be used for testing and evaluation purposes. Trees may only be propagated for growers which have signed a separate material transfer agreement with Provider. Recipient shall verify all orders with Provider in advance of propagation.
- c. The Material shall not be replicated beyond volumes approved by Provider. .
- d. The Material, including any progeny and products, shall not be transferred, in whole or in part, by the Recipient to any third party, other than growers approved in writing by Provider.
- e. Recipient shall inform Provider of any pertinent observations made relative to the Material and any and all applications of agricultural chemicals to such Material.
- f. Recipient shall comply with all applicable laws, regulations, and/or guidelines related to the use of citrus scion Material.
- g. NEITHER ARS NOR PROVIDER GIVE ANY WARRANTIES OR GUARANTEES, EXPRESSED OR IMPLIED, FOR THE MATERIAL, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- h. Upon completion of the evaluation, the Recipient shall destroy or otherwise dispose of the Material if requested by Provider.
 - i. Recipient shall inform Provider immediately of the discovery of any sports in the Material. Such sports shall be owned by ARS, and through the auspices of Provider, may be made available for evaluation under this Agreement.
 - j. Recipient agrees to execute a Land Use Agreement (Attachment 1) to allow ARS employees access to the candidate trees to facilitate data collection.
 - k. This Material Transfer Agreement may be terminated by Provider upon 90 calendar days' written notice.
3. Records. Recipient shall maintain accurate records and provide them to Provider, including, without limitation, the number of trees, their location, nursery observations, and, to the extent permitted, agricultural chemical applications.
4. Recommendations. Recipient shall make recommendations to Provider regarding the Material and whether the Material shall be released as commercial varieties.
- 5.
6. Patent. Recipient acknowledges that the Material is or may be the subject of a patent application. Except as provided in this Agreement, no express or implied licenses or other rights are provided to the Recipient under any patents, patent applications, trade secrets or other proprietary rights of the Provider or ARS, including any altered forms of the Material made by the Provider or ARS. In particular, no express or implied licenses or other rights are provided to use the Material, any modification to, or any related patents of the Provider or ARS for commercial purposes. Recipient shall cooperate and meet with ARS and Provider representatives to determine inventorship, if an invention shall arise from Recipient's work with the Material.
7. Assumption of Risk. Except to the extent prohibited by law, the Recipient assumes all liability for damages which may arise from Recipient's use, storage or disposal of the Material. Provider and ARS will not be liable to the Recipient for any loss, claim or demand made by the Recipient, or made against the Recipient by any other party, due to or arising for the use, storage or disposal of the Material.
8. No Endorsement. Recipient shall not in any way state or imply that this Agreement or the results of this Agreement is an endorsement by ARS or Provider of Recipient's employees, products, or services.
9. Compliance with Applicable Laws. Recipient acknowledges and agrees to comply with all applicable laws and regulations, including, without limitation, the

applicable laws and regulations of the Animal, Plant Health & Inspection Service, the Center for Disease Control, and/or Export Control Administration, Public Health Service, and National Institutes of Health, pertaining to possession or transference of technical information, biological materials, pathogens, toxins, genetic elements, genetically engineered micro-organisms, vaccines and the like.

Confidentiality.

- a. Recipient shall not disclose Material marked “Confidential” or “Proprietary” to any third party nor use such confidential information for any purpose other than that given herein without the written permission from ARS and Provider.
- b. Recipient shall use the same degree of care to protect confidential information received under this Agreement as it uses to protect its own information of a similar nature, but in any event, not less than reasonable care under the circumstances.
- c. The confidential information shall be excluded from those confidentiality restrictions if Recipient can demonstrate that (a) it had possession of the information prior to the disclosure, or (b) the information is generally available to the public at the time of the disclosure through no fault of Recipient, or becomes generally available, after disclosure, through no fault of Recipient; or (c) Recipient receives the information from a third party having the right to the information and who does not impose confidentiality.
- d. It shall not be a breach of this agreement if Recipient is required to disclose the confidential information by court order of a government body, or as otherwise required by law, or as necessary to establish the rights of either party under this Agreement, provided that Recipient shall provide prior notice thereof to ARS to enable ARS and/or Provider to seek a protective order or otherwise prevent such disclosure, and provided further that the confidential information otherwise shall continue to be confidential.

11. Applicable Law. This Material Transfer shall be construed in accordance with the United States of America federal law as interpreted by the Federal Courts in the District of Columbia.

12. Effective Date. Unless otherwise specified, this Agreement shall become effective upon the date upon which both parties have executed this Agreement.

With the intention of being legally bound, the parties have executed this Agreement as of the Effective Date.

Provider:

Recipient:

New Varieties Development
& Management Corp.

By: _____
Peter Chaires

By: _____

Date: _____

Date: _____