

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 Seedless Pineapple Orange

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 for further delivery to Provider’s members in order to conduct research to develop new citrus scion varieties and to evaluate their commercial potential. The plants 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 to Provider the grafted citrus hybrid trees 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 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.
- b. The Material shall only be used for testing and evaluation purposes.
- c. The Material shall not be replicated.
- d. The Material, including any progeny and products, shall not be transferred, in whole or in part, by the Recipient to any third party.
- e. Fruit from the Material may be sold or otherwise distributed to third parties only with the express written permission of Provider and ARS. Permission shall be granted or denied at the sole discretion of Provider and ARS. A request for permission to sell fruit from the Material must be received by Provider by April 30th of the year prior to the year which set sales may take place and permission shall be granted solely to enhance the commercial evaluation of the Material.
- f. Recipient shall inform Provider of any pertinent observations made relative to the Material and any and all applications of agricultural chemicals to such Material.
- g. Recipient shall comply with all applicable laws, regulations, and/or guidelines related to the use of citrus scion Material.
- h. NEITHER ARS NOR PROVIDER GIVE ANY WARRANTIES OR GUARANTEES, EXPRESSED OR IMPLIED, FOR THE MATERIAL, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- i. Upon completion of the evaluation, the Recipient shall destroy or otherwise dispose of the Material if requested by Provider.
 - j. 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.
 - k. Recipient agrees to execute a Land Use Agreement (Attachment 1) to allow ARS employees access to the candidate trees to facilitate data collection.
 1. 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, grower 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. No Commercial Purposes. Recipient may not use the Material for any commercial purposes. Commercial Purposes shall be defined as the sale, lease, license or other transfer of the Material to a for-profit organization and shall be prohibited from modifying Material or attempting to propagate the Material.
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: _____

Attachment One:

LAND ENTRY AGREEMENT

This Agreement is entered into this ____ day of _____, 20__, by and between _____, hereinafter called the “Landowner,” and the United States of America, by and through the Department of Agriculture, Agricultural Research Service hereinafter called the “Government,” pursuant to the Federal Property Administrative Services Act of 1949, as amended, and shall become effective on the day and year it is executed by the Landowner.

WITNESSETH:

1. The Landowner, for and in consideration of the promises contained herein, and the faithful performance by the Government of all covenants and conditions herein contained, hereby consents and agrees to allow the Government to make observations and to collect evaluation data on experimental citrus scion varieties. For this purpose The Landowner grants to the Government the right of ingress to and egress from the land described in Exhibit “A”.
2. The ingress and egress to the subject land by the Government shall begin on or about _____, and shall continue through _____.
4. Any equipment described in article 1 above, and all tools for the maintenance and utilization of this equipment placed in or upon said described property shall remain the property of the Government and shall be removed by the Government within a reasonable time after the expiration of this Agreement.
5. Upon termination of this Agreement, the Government shall remove its equipment and shall restore the described property, as nearly as possible, to the same state and condition existing prior to the use of the property by the Government.
6. This Agreement shall inure to the benefit of and be binding upon the successor, assigns, and transferees of the parties hereto, including the successors of the Government agency in control of the project or the portion thereof affected by the agreement provided that such uses are consistent with the original intent of this Agreement.
7. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this grant or to any benefit to arise there from. This provision shall not be construed to extend to this grant if made with a corporation for its general benefit.

8. If the death of or injury to any person, or the loss of or damage to any property, is caused by the Government in the course of its use of the land described in Exhibit A, the liability, if any, of the Government therefore shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act, 28 USC 1346 (b), 2671-2680.
9. The Government shall not suffer any waste to be committed in or about said premises; shall keep the premises free and clear of any and all refuse and other nuisance; and strictly adhere to applicable regulations; and observe all other applicable laws, rules, regulations, and ordinances relating to the maintenance, use and occupancy of the premises.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day of year signed below by the Landowner.

LANDOWNER

GOVERNMENT

Name

Vicki J. McNutt
Real Estate Warrant Officer
USDA, ARS, SAA

Address

Date

Date