番木瓜自交系境外有償讓與契約

**Agreement of Cross–Border Papaya Inbred Lines Purchase**

甲方：行政院農業委員會高雄區農業改良場

立契約書人：

乙方：

代表人：

Effective as of (“Effective Date”), Kaohsiung District Agricultural Research and Extension Station, Council of Agriculture, Executive Yuan, located at Pingtung, Taiwan (hereafter “Seller”), and represented in this act, by , (hereafter “Buyer”), agree as follows:

甲方為有效管理及運用研究發展成果，依據「行政院農業委員會科學技術研發成果歸屬及運用辦法」及「行政院農業委員會農業智慧財產權審議會第125 次會議」決議，同意依下列條件將本番木瓜自交系有償讓與乙方，經雙方本於誠信原則同意約定條款如下：

To effectively manage and utilize the inbred lines resulted from the course of research and development, the papaya inbred lines are sold exclusively to Buyer based on “Policy by the Council of Agriculture, Executive Yuan on Science and Technology Research and Development Results Application and Ownership” and the “125th Meeting conducted by the Intellectual Property Rights Committee, Council of Agriculture, Executive Yuan”. This Agreement shall be based on the following terms and conditions:

第一條 研發成果來源

本自交系係甲方執行「高雄區果樹品種改良計畫」之研發成果，甲方宣示擁有本契約授權自交系之所有相關智慧財產權與移轉的權利，為促進國際合作與技術交流，以提升產業技術水準，甲方同意依下列條件有償讓與本自交系予乙方。

**1. Technology Derived from Research and Development**

The sold inbred lines were derived from the “Fruit Breeding in Kaohsiung District Research Project”by Kaohsiung District Agricultural Research and Extension Station, Council of Agriculture, Executive Yuan”, who claims the ownership of all the intellectual property and any other related right to transfer all the rights of the inbred lines. To promote international collaboration and technological exchange, the Seller agrees to sell the inbred lines to the Buyer based on the following terms and conditions.

第二條 定義

本自交系：番木瓜育種編號Y6218及7028等二個自交系。

讓與自交系：係指乙方於下列讓與契約範圍內可以用任何形式使用本自交系之一部或全部內容，進行生產、育種、繁殖、製造或銷售衍生產品。

**2. Definitions**

2.1 “Inbred lines” means: Two Inbred Lines assigned by the breeder as ‘Y6218 and Y7028’.

2.2 “Transferred inbred lines” means the “Buyer” is free to use the inbred lines in any field or way to produce, breed, reproduction, manufacture, or sell derived products by using partial or complete the inbred lines included in this transfer contract.

第三條 雙方合意

一、實施範圍：

甲方同意將本自交系所有權轉移至乙方，對於本自交系乙方可自由使用。但乙方利用本自交系所生產之雜交品種不得回銷至中華民國臺灣地區。

二、乙方同意並承諾，於契約有效期間內，如甲方本國之其他業者有將與本產品相同物種之產品銷售至墨西哥地區時，乙方不得對該業者及其產品提出侵權訴訟。甲方亦不得在上述地區主張超過本自交系移轉契約有關之品種保護、專利或其他形式之智慧財產權保護。

三、乙方可不經甲方同意，於墨西哥地區申請本自交系之品種保護及轉移第三方。

四、於簽訂本契約後一個月內，甲方應交付乙方二自交系種子各1,000粒。

**3. Seller and Buyer agree on the following terms and conditions:**

3.1 Scope:

The scope of this Agreement is without any limitations to the use of Inbred lines considering the transfer of ownership from the “Seller” to the “Buyer”. However the hybrids produced by the “Buyer” derived from these inbred lines are prohibited from being sold to the Republic of China (Taiwan).

3.2 Under this Agreement, in the event of exporting products of the same plant species from Seller’s country to the United Mexican States, the Buyer shall not be entitled to sue the business or its products for patent or plant variety infringement. Also the “Seller” can not file any application for the protection of plant varieties, patents or any other intellectual property scheme, directly related with the inbred lines transferred in this Agreement in the United Mexican States.

3.3 “Buyer” does not need approval from ‘Seller’ in case of being granted avarietal rightor transferring one of both Inbred lines in United Mexican States.

3.4 Within one month after signing this Agreement, the “Seller” shall deliver 1,000 seeds of the Transferred inbred lines to the “Buyer”.

第四條 保密義務與諮詢服務

一、保密義務:

乙方就甲方認為機密之資料，無論甲方以口頭或以書面標示密件等類似字樣(以下簡稱「技術資料」)揭露時，乙方應盡善良管理人之注意義務，妥善保管並維持技術資料之機密性。乙方因本契約而知悉或持有之技術資料時，不得洩漏交付予任何第三人或運往授權地區以外之地區，亦不得挪作他用。如乙方之經銷商、代理商，或與乙方有委任、複委任、僱傭(無論在職或離職)及代理關係者違反本條約定，視為乙方違反本條約定，乙方應與該違約方對甲方負連帶損害賠償責任。

二、諮詢服務:

甲方同意乙方於必要時，得要求甲方指定適當之技術人員赴墨西哥現場技術指導，並由乙方支付保險費、住宿費、交通費及相關費用，該境外技術指導，於簽約後三年期間，但一年以一次為限。乙方充分了解並同意，甲方並無提供其他與本自交系無關之資料與乙方的義務，亦無提供代言或向消費者做任何說明或保證之義務。

**4. Duties of Confidentiality and Counseling Services**

4.1 Duties of Confidentiality: The both parties shall fulfill duties of confidentiality to maintain the secrecy of Technical Documents after the Seller discloses the content Classified Technical Documents (hereafter referred to as Technical Documents) in oral or written form. The Buyer shall not disclose any confidential information revealed by or obtained from this Agreement to a third party, deliver confidential information to regions outside the scope of this Agreement, or use confidential information for purposes not specified in this Agreement.

4.2 Counseling Services: the Buyer is entitled to request the Seller to travel to Mexico to provide on-site technical training if necessary, and the Seller has the obligation to select the most appropriate people for providing the support required. Insurance, accommodation, transportation and other related costs due to travelling shall be paid by the Buyer. Technical training conducted in Mexico is limited to once a year within three years after signing of this Agreement. The Seller shall not bear the responsibility of providing documents not related to the Inbred lines to the Buyer. The Seller shall not be obligated to provide counseling services to the consumers of Buyer.

第五條 價金及付款方式

一、價金:

為新台幣(以下同)○佰○拾○萬○仟○佰○拾○元（税後）整。雙方簽訂本契約後，乙方應給付價金總額百分之六十（60%）給甲方；並於甲方給付有償讓與標的後1個月內，給付剩餘價金總額之百分之四十（40%）給甲方。乙方同意本價金縱因本契約經終止或解除亦不退還。

二、付款方式:

乙方應於本契約生效後，於約定之期限(遇例假日順延)內，以現金、即期票據或電匯至甲方帳戶(收款行名稱：臺灣銀行屏東分行，收款行地址：屏東縣屏東市中山路43號，銀行代碼：BKTWTWTP017，戶名：高雄區農業改良場，帳號：01703709081-3)方式給付甲方。甲乙雙方因本契約之簽訂，依雙方國內法規規定應繳交之稅款，由雙方各自負擔。

**5. Amounts and Terms of Payment**

5.1 The “Buyer” agrees to make a total payment for the amount of: $ NTD (after tax). The first payment (60% of the total amount) shall be paid upon the signing of this Agreement and the second payment (40% of the total amount) shall be paid within one month after receiving the seeds of the Transferred Inbred lines. The “Buyer ”agrees that this amount shall not be refunded due to the termination or annulment of this Agreement. The payments shall be as follows:

5.2 Terms of Payment: The Buyer shall pay according to the due dates specified in Article 5.1 in cash, by a negotiable instrument payable at sight, or wired to Seller’s account (ACCOUNT WITH BANK: BANK OF TAIWAN PINGTUNG BRANCH; BANK ADDRESS: NO.43 CHUNG-SHAN RD. PINGTUNG CITY, TAIWAN; SWIFT CODE: BKTWTWTP017; BENEFICIARY’S NAME: Kaohsiung District Agricultural Research and Extension Station; ACCOUNT NO.: 01703709081-3). Taxes borne out of this Agreement shall be paid by both parties respectively, according to the respective laws of the countries of Seller and Buyer.

第六條 智慧財產權歸屬及侵權責任

一、甲乙雙方不因本契約創設代理、委任、居間或經銷等其他法律關係。乙方因本契約取得本自交系在墨西哥地區的所有權利，成為本自交系所有權人，甲方基於尊重乙方對本自交系之所有權，甲方不得與墨西哥地區任何第三方簽署相同契約。

二、甲方同意本自交系受到第三方侵害時，或得知可能被侵害時，甲方應立即通知乙方，若乙方決定採取任何法律行動，甲方必須提供相關資訊，並立即採取證據保全行動，並給予乙方所有可能之協助。

三、乙方利用本自交系進行開發、研究成果，智慧財產權歸屬於乙方。

四、乙方同意並承認其因使用本自交系而生產、繁殖、製造或銷售本產品，或因修改本自交系，或添加、擴張使用本產品，致侵害第三人之專利權、著作權、營業秘密或其他智慧財產權時，或致乙方或第三人發生任何損害時，除甲方有故意或重大過失外，甲方無須負擔任何責任。若因乙方之無權修改或擴張使用本自交系，致甲方受到任何損害(包括但不限於第三人向甲方主張損害賠償，以及相關之法院及律師費用)，乙方應負責賠償甲方。

**6. Ownership of Intellectual Property Rights, Infringement Liabilities, Prosecution and protection of new developments**

6.1 This Agreement does not create any agency, partnership, or other legal relationship between “Seller” and “Buyer”. “Buyer” reserves all rights as a holder of the inbred lines in the United Mexican States, and the Seller shall not sign a same Agreement with any third party in the United Mexican States.

6.2 “Seller” agrees that in the event of an infringement of Inbred lines by a third party or in the case that the “Seller” notices a possible infringement, will immediately notify the “Buyer”. IF the “Buyer” decides to take any actions, the “Seller” agrees to provide information or to collect evidence and provide every possible assistance.

6.3 The Ownership of Intellectual Property Rights belongs to the Buyer for products researched and developed using Inbred lines as reference.

6.4 The Buyer agrees and acknowledges that should the production, reproduction, manufacturing, or sales of product or the revision of Inbred lines or any addition or expansion to the product result in the infringement of patent rights, copy rights, trade secrets or other intellectual property rights of a third party, it should be solely liable. The Seller shall not be held liable unless it commits intentional or serious mistakes. Should the revision or expansion of Inbred lines by the Buyer result in the loss of the Seller including but not limited to a third party demanding damage compensation and related legal expense, the Buyer shall compensate the Seller for such losses.

第七條 無擔保規定

一、本自交系僅按其現有之狀況交付予乙方，甲方就前揭交付無庸負擔任何責任。甲方不保證提供諮詢服務後，乙方就具有生產、繁殖或製造本產品之能力；亦不擔保本自交系之移轉合乎乙方特定目的之用或具商品化之可能性。

二、甲方就本自交系不負任何瑕疵擔保責任，乙方因使用本自交系，或使用、生產、繁殖、製造本產品銷售或要約銷售本產品而發生之產品責任、瑕疵擔保、侵權責任等，乙方應自行負責。

**7. No Warranty**

7.1 The Inbred lines are provided to the Buyer in their current state. The Seller shall not be held liable after Inbred lines have been transferred to the Buyer. After counseling services have been delivered, Seller does not warrant that the Buyer becomes equipped with the ability to produce, reproduce, or manufacture the product. The Seller does not warrant that this transfer agreement fits any particular purpose, nor the merchantability of the Inbred lines.

7.2 The Seller shall not bear any liability for defects of Inbred lines. In the event of intellectual property right infringement, product liability, or product defect resulting from the Inbred lines through its use, production, reproduction, or manufacturing, the Buyer shall bear all liabilities.

第八條 違約效果

一、乙方未依本契約第五條約定於期限內繳付價金，每逾一日應另按總額之萬分之三計付遲延違約金。如逾一個月仍未付清，甲方得終止本契約。

二、乙方若違反本契約第四條第一項時，願給付參佰萬元之懲罰性違約金(不含稅)。乙方若違反本契約其他條款，甲方得定合理期限催告乙方終止本契約，並請求損害賠償。

**8. In Default of Agreement**

8.1 If the “Buyer” defaults in the payment of any amount specified in Article 5, a default fee of 0.03% shall be paid for each day the fees are overdue. In the event of more than one month overdue, the Seller shall be entitled to terminate this Agreement.

8.2 Shall the “Buyer” violate Article 4.1, a default penalty of $3,000,000 NTD (tax excluded) shall be paid to the Seller. In the event of the Buyer violating other articles, the Seller shall be entitled to terminate this Agreement after a reminder is issued to the Buyer to provide a reasonable time frame. The Seller shall be able to demand compensation from the Buyer for damages under such circumstances.

第九條 契約終止處理

一、乙方違反下列條件，甲方可終止本契約

1.未能於期限內付款

2.違反任何規定

3.提供任何關於本自交系不實報告或訊息，或其他契約內相關稅務報告或政府規定等

二、本契約第四條第一項，第六條，第七條，第十四條及本項，不因本契約終止、解除或屆期而失效。

**10. Termination of Agreement**

10.1 The Seller may terminate this Agreement if the Buyer:

(1) is delinquent of any payment on time;

(2) is in breach of any provision;

(3) provides any false report or information regarding the Inbred Lines or any other related with this contract such as tax reports, formats or government provisions; or

10.2 Article 4.1, Article 6, Article 7, Article 14, and the present Article shall still be in effect after the termination, annulment or expiration of this Agreement.

第十一條 契約修改

本契約得經雙方同意以書面修改增訂，並應將經雙方簽署之書面文件附於本契約之後，作為本契約之一部分，其增補協議內容補充或取代與本契約相衝突之原條文。

**11. Amendment of Agreement**

This Agreement may be amended with the written approval from both parties. Both parties shall provide signed documents as part of the amended Agreement. Amended articles shall serve as replacement or amendments to previous articles.

第十二條 合意管轄

一、本契約內容中、英文並列，具有同等效力，其解釋以中文版本為準。

二、本契約應依中華民國臺灣之法律予以解釋及規範;對於本契約或因本契約而引起之疑義或糾紛，雙方同意依誠信原則解決之。

三、本契約如有爭議糾紛，雙方同意涉訟時以屏東地方法院為一審管轄法院。

**12. Handling of Legal Dispute or Controversy**

12.1 The content of this agreement is documented in Chinese and English and both versions have equivalent validity. The interpretation of the agreement shall be based on the Chinese version.

12.2 Any dispute or controversy arising under or in connection with this Agreement may, upon consent by both parties, be resolved in accordance with the Arbitration Act of the Republic of China.

12.3 In the event of court litigation, both parties agree that the Pingtung District Court, located in Pingtung County, Taiwan, the Republic of China, shall be the competent court with jurisdiction in the first instance, and that the law of the Republic of China shall be the applicable law for resolution of the litigation.

第十三條 聯絡方式

一、本契約有關之通知或要求應以書面 送達下列處所及人員(以下簡稱聯絡人)，經送達該聯絡人者，即視為已送達該方當事人。

甲方聯絡人姓名:

職稱:

電郵:

電話:

傳真:

地址:

乙方聯絡人姓名:

職稱:

電郵:

電話:

傳真:

地址:

二、雙方聯絡人或聯絡資料有所更動時，應以書面通知另一方，並告知更新內容，自送達對方可支配之範圍時生效。

**13. Notices**

All notices under this Agreement are deemed fully given when written, addressed, and sent as follows:

13.1 The hard copy of this Agreement shall be delivered to the following representative (hereafter “contact person”). Delivery of the Agreement shall be official upon receipt by the contact person of both parties.

“Seller”

Contact person:

Title:

Email:

Telephone:

Fax:

Address:

“Buyer”

Contact person:

Title:

Email:

Telephone:

Fax:

Address:

13.2 In the event of a change of contact person for either party, the other party shall be notified in written form the revised contact information. Updated information shall come into effect upon receipt of the information by the other party.

第十四條 限制使用與注意事項

在未獲得甲方之書面同意前，乙方不得在商業推廣時(如推廣，產品投資說明等)利用甲方之員工、其所屬單位之名稱，如院、場、所徽、商標或以其他任何方式使大眾認知甲方與乙方商業發展之關聯性。

**14. Limitations and Special Notice**

Without written approval from the“Seller”, the“Buyer”shall not use the name of any employee or the logo/trademark of the“Seller”for commercial promotion. The Buyer shall not convey or imply to the general public by any means that the“Seller”is related to the commercial development of its product.

第十五條 完整合意

一、本契約及其附件構成雙方對本案完整的合意。任何於本契約生效前經雙方協議而未記載於本契約或其附件之事項，對雙方皆無拘束力。

二、本契約正本壹式参份，副本壹式参份，由甲方執正本貳份，乙方執正本壹份為憑，副本由甲方執存参份。

**15. Entire Agreement**

15.1 This Agreement and its appendix constitute the entire agreement between the two parties. Any agreements between the two parties not included in this Agreement or its annex before this Agreement came into effect shall not be legally binding.

15.2 This Agreement is executed in three counterpart originals, with two of the originals to be retained by the Seller and one of the original retained by the Buyer and all three copies are retained by the Seller.

立契約書人

甲方:行政院農業委員會高雄區農業改良場 (印信)

代表人: (職章) 職稱：場長

地址:

電話：

傳真：

乙方: 【公司名稱】 (印信)

代表人: (簽章)

地址:

電話：

傳真：

**By and between:**

**“Seller”**

**Kaohsiung District Agricultural Research and Extension Station, Council of Agriculture, Executive Yuan**

**Representative/Signature**:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: Director

Address:

Telephone:

Fax:

**“Buyer”**

**Representative/Signature**:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:

Address:

Telephone:

Fax: