

Mountain Horticultural Crops  
Research and Extension Center  
455 Research Drive  
Mills River, NC 28759  
828.684.3562 (phone)  
828.684.8715 (fax)

## Instructions for Completing the Tomato Seed Transfer and Breeding Agreement

1. Complete the agreement. Requests for more than one line can be listed on the same form.
2. Then, either:
  - a) If you do not require signature originals: please have it signed by an authorized individual and return a copy to NCSU via email (PDF) or via fax (919-515-3773). We will then have the agreement signed and will return a fully signed copy to you via e-mail.

OR

- b) If you prefer signature originals: please have two copies of the agreement signed by an authorized individual and send both signed originals mail or courier (your choice) to the address below. We will then have both originals signed and return one to your attention.  
Send both copies to:

**Address for US Postal Service:**

Office of Research Commercialion  
NC State University  
Campus Box 8210  
Raleigh, NC 27695- 8210

**Courier Address:**

Office of Research Commercialization  
NC State University  
Poulton Innovation Center, 2nd Floor  
1021 Main Campus Drive  
Raleigh, NC 27606

3. Once the agreement is fully signed, Dr. Panthee or Dr. Gardner will send the corresponding seed material.
4. For additional information on the agreement contact:  
Rob Whitehead  
Senior Licensing and Germplasm Agreements Associate  
Email: rewhiteh@ncsu.edu  
Phone: 919.515.7199

## TOMATO SEED TRANSFER AND BREEDING AGREEMENT

**Between:**

Company: _____	and	<b>North Carolina State University</b>
Street/PO Box: _____		Office of Research Commercialization
City, State, Zip: _____		Campus Box 8210
Country: _____		Raleigh, NC 27695-8210
Contact Name: _____		USA
Contact Email: _____		Phone: 919-515-7199
Phone: _____		Fax: 919-515-3773
Fax: _____		

**THIS AGREEMENT** is made and entered into as of the date of the last signature below (“Effective Date”), by and between \_\_\_\_\_, with principal offices at \_\_\_\_\_ (“Company”) and the North Carolina State University (“NCSU”), a North Carolina nonprofit educational institution with principal offices at Campus box 8210, Raleigh, North Carolina 27695.

**WHEREAS**, NCSU is the owner of tomato breeding line(s) \_\_\_\_\_ (the “Line”); and

**WHEREAS**, Company has requested access to and transfer of seed of the Line for potential breeding use; and

**WHEREAS**, University is willing to provide seeds of the Line to Company for breeding use subject to the terms below.

**NOW, THEREFORE**, the Parties agree as follows:

**1. Restricted License.** Upon receipt from Company of US\$200 per breeding line listed above (“License Fee”), NCSU will furnish 1 gram of seed of the Line to Company under bailment for breeding use and NCSU grants to Company a non-exclusive license to use the Line for breeding. The License Fee must be paid to:

North Carolina Foundation Seed Producers, Inc.  
Attn: Director  
8220 Riley Hill Road  
Zebulon, North Carolina 27597

Company shall, at its discretion, cross the Line with other tomato lines of Company’s choosing for the purpose of developing, and evaluating the commercial potential of, experimental F1 Hybrids (“Hybrid(s)”). In addition, Company may develop further progeny resulting from selfing or additional crosses using the Hybrid as a parent. Company shall not distribute or make available plants, plant parts, seed, or pollen from the Line to any third party. At all times during this Agreement, Company shall assert sole and direct control over the Line and shall take reasonable precautions to protect the Line from misuse, theft, damage or abandonment. Company agrees to use the Line and any plants derived from Line in a manner and in compliance with all applicable laws and regulations, including those for import, transport, use, and disposition.

**2. Commercialization.** Company shall, prior to any sale of the Hybrid or Hybrid seeds developed under this Agreement, negotiate with NCSU a license agreement for use of the Line as a parental line for seed

production of each Hybrid combination. The license shall include any other mutually agreed upon business, legal, and intellectual property terms and conditions. The Company acknowledges and understands its non-exclusive license for use of the Line, and that NCSU may provide the Line to other entities for breeding and development of hybrids. When more than one entity develops a hybrid for commercial production using the Line in the same parental combination, the first entity, including Company, to make application to NCSU will have the first opportunity to negotiate for rights to acquire an exclusive worldwide license for use of the Line as a parental line in the hybrid seed production and sales. Except as provided in this Agreement, no other express or implied rights are granted to Company.

**3. Reciprocal Agreement.** As part of this Agreement, Company shall provide NCSU with seed of any Hybrid(s) developed by Company using the Line, for purposes of research and evaluation of Hybrid. Company grants to NCSU a license to perform observational and replicated yield trials in NCSU research station plots and in commercial grower fields at NCSU's discretion.

**4. Intellectual Property and Ownership.** NCSU shall retain all intellectual and other proprietary rights, interest, and title to the Line and in all Hybrid(s) developed using two NCSU tomato breeding lines. In addition, NCSU shall own all Hybrids that are essentially derived from the Line or Hybrids whose essential characteristics fail to be clearly distinguishable from the Line. NCSU and Company will jointly own new Hybrid(s), not essentially derived and clearly distinguishable from the Line, developed by Company using the Line in crosses with other Company-owned breeding lines. Ownership in additional cross progeny will belong solely to the party creating those lines. Company may not, without a specific, written, and signed agreement with NCSU, use the Line or any information pertaining to the Line to seek or obtain patent protection or plant variety rights or any other intellectual property protection for this genotype, either within the United States of America or any other country, and may not authorize a third party to do so. For jointly owned Hybrids, as described above, Company must disclose in writing to NCSU its intention to seek intellectual property protection at least sixty (60) days prior to the submission of the application for protection so that NCSU can protect its interests when necessary.

**5. Reporting.** Company shall report in writing to NCSU the results of Company's evaluation and breeding of the Line. Company's report is due once per calendar year, on February 15 of each year, reporting on Company's evaluation and breeding activity during the previous calendar year just ended. Company's annual report must at least include information on any new parental breeding lines developed by Company using the Line and any additional cross progeny created by Company using the Line. Company must include parental breeding line and cross progeny pedigree information in its report. Reports shall be sent to:

North Carolina Foundation Seed Producers, Inc.  
ATTN: Director  
8220 Riley Hill Rd.  
Zebulon, NC 27597-8773

**With an electronic copy sent to: [ncsulicenses@ncsu.edu](mailto:ncsulicenses@ncsu.edu)**

**6. Compliance with Applicable Law.** Company shall be responsible for complying with, and adhering to, all applicable laws and regulations relating to the import/export of the Line, growing of the Line, Hybrid and its progeny, the disposition of fruit product or other plant material produced therefrom, and any other of its activities under this Agreement. All expenses necessary and incurred in connection with complying with the applicable laws and regulations shall be the responsibility of Company.

**7. Indemnification.** Company must indemnify, defend and hold NC State, its trustees, officers, employees and affiliates, harmless against all claims and expenses, including legal expenses and reasonable attorneys' fees, arising out of the death or injury to any person or persons or out of any damage to property and against any other claim, proceeding, demand, expense and liability of any kind whatsoever resulting from

Company's exercise of rights granted under this Agreement, including but not limited to, (a) possession of the Line and (b) from utilization of the Line in any way.

**8. Disclaimer of Warranties.** The material subject to this Agreement is provided by NC State on an "as is" basis WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY SORT, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR THAT EXERCISE OF ANY RIGHTS GRANTED UNDER THIS AGREEMENT DOES NOT INFRINGE ANY THIRD PARTY PROPERTY RIGHTS, INCLUDING BUT NOT LIMITED TO PATENT, COPYRIGHT, AND TRADEMARK RIGHTS.

**9. Confidentiality.** In addition to the plant materials described herein, NC State may provide confidential business or technical information relating to the plant materials. Company shall not disclose written information marked "Confidential" or "Proprietary" to any third party nor use such Confidential Information for any purpose other than carrying out the breeding and evaluation authorized in this Agreement without written permission from NC State. Company 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. Confidential Information shall not include any information that: (a) is already known or available to the public at the time of its disclosure; (b) is or becomes publicly known through no wrongful act by the parties; (c) is independently developed by the parties without reference to the work product or confidential information of the parties; (d) that is approved for release by written authorization by the Parties; (e) is learned through a third party entitled to disclose such information; or (f) is required to be disclosed by operation of law or court order.

**10. Integration.** This Agreement and its attachments embody the entire understanding of the Parties with respect to the matters herein, and supersede all previous communications, either oral or written. This Agreement may be amended only by mutual written agreement.

**11. No Assignment.** This Agreement may not be assigned by Company.

**12. Governing law.** This Agreement is entered into in the State of North Carolina and must be interpreted in accordance with and its performance governed by the laws of the State of North Carolina, without reference to its conflicts of laws provisions. Any and all litigation relating to this Agreement or the parties' performance hereunder must be in the State Courts of North Carolina with the venue being Wake County.

**13. Successors.** This Agreement shall inure to the benefit of NC State, its respective successors and assigns, and shall be binding on Company and its respective successors, assigns, heirs, administrators and personal representatives.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. Signature page follows.]

In witness hereof, the parties have caused this Agreement to be executed by their authorized representatives as of the Effective Date.

**AGREEMENT APPROVAL:**

FOR: \_\_\_\_\_, COMPANY

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

FOR: **NORTH CAROLINA STATE UNIVERSITY  
OFFICE OF RESEARCH COMMERCIALIZATION**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_