



**Addendum to**  
**Joint Research Agreement on**  
**Characterization and Evaluation of**  
**Plant Genetic Resources for Food and Agriculture**  
**between**  
**National Agriculture and Forestry Research Institute (“NAFRI”), Lao P.D.R.**  
**and**  
**National Agriculture and Food Research Organization (“NARO”), Japan**

This Addendum, made and entered into effective as of the date of Month/Day, 2018 (hereinafter referred to as the “Addendum Effective Date”), is by and between the **National Agriculture and Forestry Research Institute** (hereinafter referred to as “NAFRI”), a national research institute organized and existing under the laws of Lao People’s Democratic Republic, having its principal place of business at Nongviengkham Village, Xaythany District, Vientiane Capital, Lao P.D.R. and **National Agriculture and Food Research Organization** (hereinafter referred to as “NARO”), a national research institute organized and existing under the laws of Japan, having its principal place of business at 3-1-1 Kannondai, Tsukuba, Ibaraki 305-8517, Japan. NAFRI and NARO may be hereinafter referred to individually as a “Party” and collectively as the “Parties”.

**BACKGROUND**

On September 9, 2014, NAFRI and the National Institute of Agrobiological Sciences (hereinafter referred to as “NIAS”), Japan concluded the agreement titled “Joint Research Agreement on Characterization and Evaluation of Plant Genetic Resources for Food and Agriculture” (hereinafter referred to as the “Agreement”) for collaborative research project on plant genetic resources for food and agriculture (hereinafter referred to as the “PGRFA”) between Lao P.D.R. and Japan.

NIAS was merged into NARO in April in 2016 and, by this merger, all rights, title and interest of NIAS, including those in and to the Agreement by and between NAFRI and NIAS, was succeeded to NARO. After the merger, all activities of the research collaboration on the PGRFA have been continued as it was before.

In August 2018, Ministry of Agriculture, Forestry and Fisheries (hereinafter referred to as “MAFF”), a Japanese ministry and a competent authority of NARO, decided to extend implementation period of a research fund on the research project titled “Collaborative Research Project on Characterization and Evaluation of Plant Genetic Resources for Food and Agriculture” (hereinafter referred to as the “Research Project”), which has been allocated a budget to the activities of the Agreement.

Since 2016, in order to minimize transaction costs for payment of research expenses, NAFRI and NARO have been discussing the issues concerned to modify the operation of Article 4 (Payment of Research Expenses) in the Agreement and to remit the research expenses once a year.

Since 2015, NAFRI and NARO have been conducting collaborative breeding. However, NAFRI and NARO acknowledge that the Agreement does not specify the usage of the resulting collaborative breeding lines, and further it is necessary to define the rights of the Parties to the Agreement.

In the context mentioned above, NAFRI and NARO agree to make amendments of the current Agreement by this Addendum as follows: (a) changing the name of Japanese party from NIAS to NARO, (b) reducing transaction costs for payment of research expenses, (c) defining the rights and obligations of the parties to the Agreement on the use of the research results, (d) extending the term of the Agreement, and (e) adding some material provisions such as definitions, confidentiality, representation, warranties, indemnification, limitation of liability, dispute resolution, governing law and jurisdiction.

**NOW, THEREFORE,** NAFRI and NARO agree as follows:

## **Amendments of Agreement**

### **1. Name of Party**

The name of Japanese party to the Agreement shall be amended from “NIAS” to “NARO”. The term “NIAS” in the Agreement shall be read as “NARO” except that in the Background and Article 2.4 in the Agreement.

### **2. OUTLINE OF THE RESEARCH PROJECT**

The date “31 March 2019” shall be amended to “March 31, 2023”.

### **3. ARTICLE 2. RESEARCH PROJECT AND RESEARCH SUBJECT**

Article 2.4 shall be amended and Article 2.6 shall be added as follows:

#### **2.4 Duration of the Research Project**

The period of the Research Project (hereinafter referred to as the “Implementation Period”) hereunder shall be from the date of last signing of this Agreement between NAFRI and NIAS (hereinafter



referred to as the "Effective Date") to March 31, 2023 unless sooner terminated or extended pursuant to the provisions of Article 9 or 10 hereof.

- 2.6 The Genetic Resources Center, NARO (hereinafter referred to as "NGRC"), an inner research institute of NARO, may manage and implement the Research Project hereunder on behalf of NARO and under the direction thereof.

#### **4. ARTICLE 4. PAYMENT OF RESEARCH EXPENSES**

The second sentence shall be deleted.

#### **5. ARTICLE 5. INTELLECTUAL PROPERTY RIGHTS**

The provisions shall be amended as follows.

- 5.1 Upon request of the other Party, each Party may allow at its discretion the other Party free of charge to use its Background IP only for the Purpose hereunder within the scope approved thereby.
- 5.2 If any Foreground IP worth protecting is made hereunder, the Parties shall discuss the inventorship, ownership and each Party's share ratio thereof by taking into consideration the technical and inventive contribution of each Party thereto.
- 5.3 If acknowledged by the Parties that the Foreground IP has been made jointly thereby, the Parties (hereinafter referred to individually as a "Joint Owner" and collectively as the "Joint Owners") shall jointly have the right, title and interest in or to the Foreground IP (hereinafter referred to as the "Joint Foreground IP") and discuss any intellectual property strategy on whether to file an application covering such Joint Foreground IP for its statutory registration as the intellectual property rights such as the patent right, plant breeder's right and the like, or protect the Joint Foreground IP as their joint technical know-how without disclosing by filing an application thereof.
- 5.4 If decided to jointly file an application for the intellectual property rights to the Joint Foreground IP, the Parties shall discuss the timeline and conditions for such filing, execute a separate joint application agreement in writing before filing, and shall be jointly responsible for filing, prosecuting, maintaining, defending, and enforcing the Joint Foreground IP under such joint application agreement at the costs and expenses in proportion to the share ratio of each Party thereto. On the other hand, if decided to protect the Joint Foreground IP as their joint technical know-how without filing an application, the Parties shall discuss the issues concerned and establish appropriate measures to protect and manage the Joint Foreground IP.

- 5.5 In the event that either of the Joint Owners has provided the other Joint Owner with a written notice of the waiver of its right, title and interest in or to a particular Joint Foreground IP, the other Joint Owner shall have a right to take over such right, title and interest free of charge under the terms and conditions set forth in a written transfer agreement made separately by and between the Joint Owners and may solely file, maintain, abandon, license or transfer the Joint Foreground IP, the application or the statutory registration thereof pursuant to such transfer agreement, or protect the Information in the Joint Foreground IP as its sole technical know-how. The waiving Joint Owner as the assignor of the Joint Foreground IP shall cooperate with the other Joint Owner as the assignee thereof to ensure the statutory assignment proceedings and the assignee shall owe the costs and expenses incurred thereby.
- 5.6 In the event that either of the Joint Owners has committed the breach of the provision of Article 5.3 hereof and has solely filed an application of the Joint Foreground IP for the intellectual property rights thereto, or has not borne its own costs and expenses incurred due to filing, prosecuting, maintaining, defending or enforcing the Joint Foreground IP, the other non-breaching Joint Owner shall have the right to take over the breaching Joint Owner's right, title and interest in or to the Joint Foreground IP free of charge and may make a decision at its discretion on whether to solely maintain or abandon the application or the statutory registration thereof. Upon request of the non-breaching Joint Owner, the breaching Joint Owner shall cooperate with the non-breaching Joint Owner to ensure the statutory assignment proceedings and the non-breaching Joint Owner shall owe the costs and expenses incurred thereby. Upon failure of the assignment proceedings caused by the refusal of the breaching Joint Owner, the right, title and interest of the breaching Joint Owner in or to the Joint Foreground IP shall be deemed hereunder to have been entirely assigned to the non-breaching Joint Owner.
- 5.7 If acknowledged by the Parties that the Foreground IP has been made solely by either Party, such Party shall solely have the right, title and interest in or to the Foreground IP (hereinafter referred to as the "Sole Foreground IP") and may make a decision at its sole discretion on whether to file an application for the intellectual property rights or protect the Sole Foreground IP as its sole technical know-how; provided that such Party, if decided to file an application, shall notify the other Party any relevant information thereon in writing or via email without delay before filing, and, if filed thereafter, provide the other Party with a copy of the filed application without delay after filing. Such Party shall be solely responsible, at its own costs, expenses and discretion, for filing, prosecution, defense and maintenance of the Sole Foreground IP. Furthermore, such Party shall solely have the full right and title to grant any Third Party a license to use the Sole Foreground IP at its discretion without notification of such license to the other Party and the consent thereof.
- 5.8 Each Party shall manage and govern the Background IP of the other Party and the Foreground IP, if any, in strict accordance with the duty of diligence, and shall abide by any applicable guidelines, regulations, rules, statutes, laws and treaties within the extent permitted thereby.



5.9 Each Party shall be hereby granted a royalty-free, non-exclusive, non-sublicenseable and non-transferable license to use the Sole Foreground IP of the other Party, including the Joint Foreground IP assigned or deemed to have been assigned to the other Party pursuant to the provision of Article 5.5 or 5.6 hereof, only for the Purpose hereunder, and, if agreed in writing by the other Party, for the nonprofit purpose of research, experiment, investigation, practice and education after expiration or termination hereof within the scope approved thereby.

5.10 Notwithstanding the foregoing, the Parties shall owe the following obligations hereunder pursuant to the provision of Article 12 hereof:

- a) NARO shall report MAFF the information on the filing application of the Foreground IP for the acquisition of the intellectual property rights, consisting of the patent right, utility model right, plant breeder's right and design right, to the Foreground IP (hereinafter referred to as the "Intellectual Property Rights"), if any, and NAFRI shall cooperate with NARO for such report;
- b) Upon request of MAFF, the Parties shall grant MAFF a non-exclusive license free of charge to execute any and all Intellectual Property Rights in Japan for the public benefit and needs.
- c) Upon request of MAFF, the Parties shall grant a Third Party a non-exclusive worldwide license to execute the Intellectual Property Rights; provided that such Intellectual Property Rights have not been executed for considerable period of time by the Parties without any reasonable grounds.
- d) The Parties shall obtain prior consent of MAFF for transferring the Intellectual Property Rights to a Third Party or for granting a Third Party an exclusive license to execute the Intellectual Property Rights or a restrictive exclusive license retaining the title of the Parties to execute the Intellectual Property Rights.
- e) The Parties shall obtain prior consent of MAFF for executing outside Japan the Intellectual Property Rights thereby or by the licensee of the Parties.

## **6. ARTICLE 6. RESEARCH RESULTS**

a) Article 6.2 shall be amended as follows.

6.2 Passport, characterization and evaluation data of PGRFA obtained from the Research Project shall become open to the public within one year after the end of the Research Project through database of the NIAS Genebank.

b) New Article 6.4 shall be added as follows.

6.4 Notwithstanding the foregoing, NAFRI and NARO have equal rights to:

- (i) use the research results of the Research Project including collaborative breeding lines and their offsprings (hereinafter referred to collectively as the "Breeding Lines") without prior notification to each other,

- (ii) use the research results of the Research Project including the Breeding Lines for Commercial Use and non-Commercial Use without paying royalties to each other, and
- (iii) grant a license to any Third Party in LAO P.D.R. or in Japan to use the research results of the Research Project including the Breeding Lines for Commercial Use and non-Commercial Use without paying royalties to NAFRI and NARO.

## **7. ARTICLE 7. REPORT AND INSPECTION**

The wordings “once a year at the end of February” in Article 7.1 shall be amended to “once a fiscal year by the end of February”, respectively.

## **8. ARTICLE 9. CANCELLATION OF THE AGREEMENT**

Article 9.1 shall be amended as follows.

- 9.1 NARO may cancel or alter the Agreement, if MAFF cutbacks the budget for the Research Project or cancels all the Research Project before March 31, 2023.”

## **9. New Articles**

The following articles shall be added.

## **ARTICLE 10. EFFECT OF THE AGREEMENT**

- 10.1 This Agreement shall enter into full force and effect as of the Effective Date and shall remain in effect, unless sooner terminated or extended pursuant to the provisions of Article 9 or 10.3, until the date of June 30, 2023.
- 10.2 Four (4) copies of this Agreement shall be made available, and each Party shall have two (2) signed copies for the implementation of the Research Project hereunder.
- 10.3 If either Party desires to extend the Term of this Agreement, such Party shall notify the other Party in writing no later than three (3) months prior to the expiration hereof and discuss the issues concerned. If agreed by and between the Parties, this Agreement shall be extended for the period agreed in writing by the Parties, and if failed, this Agreement shall be terminated as is.
- 10.4 Notwithstanding the expiration or termination hereof, the provisions of Articles 5 to 9, 13.3 to 13.9, 14.5, 14.6, 15, 16, 19 and 20 hereof shall survive the expiration or termination hereof until agreed by and between the Parties in writing for the termination thereof, and the provisions of Articles 17 and 18 hereof for an indefinite period.



## ARTICLE 11. DEFINITIONS

For purposes of this Agreement, in addition to the terms as defined elsewhere herein, the following capitalized terms shall have the meanings as set forth below:

- 11.1 "Background IP" shall mean any IP, except the Foreground IP, generated and developed independently from the Research Project prior to the Effective Date or during the Term hereof and solely owned or controlled by either Party.
- 11.2 "Commercial Use" shall mean any sale, lease, license, transaction or transfer of the IP to a for-profit organization. The Commercial Use shall also include the use thereof by any organization, including the Party hereto, to perform any contract research, screen any compound libraries or manufacture any products for a general sale, or to conduct any research activities for any sale, lease, license, transaction or transfer to a particular for-profit organization.
- 11.3 "Confidential Information" shall mean any and all Information and Research Material per se disclosed or provided hereunder by a Party (herein referred to as the "Disclosing Party"), even if requested by the other Party, at its sole discretion to the other Party (herein referred to as the "Receiving Party") in connection herewith in oral, written, visual, graphic, photographic, electronic, magnetic form or any other form, clearly and distinguishably marked or designated as "Confidential", or, if disclosed in oral, visual or other intangible form, confirmed in written summary form clearly marked as "Confidential" and transmitted by the Disclosing Party to the Receiving Party within thirty (30) days of its disclosure.

Notwithstanding the foregoing, the Information or the Research Material concerned shall not be construed herein as the Confidential Information to the extent it is proved in writing by clear and convincing evidence that it:

- (a) is public knowledge at the time of its disclosure or provision by the Disclosing Party;
- (b) has become public knowledge without the breach hereof and beyond the liability of the Receiving Party after its disclosure or provision by the Disclosing Party;
- (c) is lawfully made available to the Receiving Party by a Third Party legally entitled thereto without any duty of confidentiality;
- (d) has been independently developed or discovered by the Receiving Party without using or relying on the Confidential Information of the Disclosing Party; or
- (e) is disclosed by the judicial or governmental authorities or other lawfully authorized entities.

Except as otherwise provided herein or agreed by and between the Parties, this Agreement per se shall be construed herein as the Confidential Information of both Parties and managed in a similar manner as set forth herein for the Confidential Information.

- 11.4 "Force Majeure" shall mean any event or circumstance that is beyond the reasonable control of the affected Party, including, but not limited to, acts of God, flood, earthquake, war, strike, terrorism, riot, fire, explosion and any other disaster.
- 11.5 "Foreground IP" shall mean the IP, including the Modified Research Material, conceived, invented, created, discovered, established, collected, acquired, constructed, generated, developed or reduced to practice hereunder solely by a Party or jointly by the Parties as a tangible or intangible work product in the course of implementing the Research Project hereunder.
- 11.6 "Implementation Sites" shall be the research sites in Lao P.D.R. and Japan for implementing the Research Project hereunder.
- 11.7 "Information" shall mean any proprietary information such as technical, scientific, business and financial information, including, but not limited to, trade secret, sequence, gene sequence, amino acid sequence, structure, protein structure, composition, formula, pattern, characteristics, expression, compilation, data, design, drawing, description, system, program, software program, software defined network (SDN), plan, protocol, report, tactic, strategy, process, method, formulation, knowledge, know-how, technique, skill, experience, advice, idea, improvement, results, research results, development, invention and discovery.
- 11.8 "IP" shall mean any intellectual property and intellectual property rights thereto including, but not limited to, patent, utility model, trademark, variety, plant variety, design, works, the Information, the Research Material, patent right, utility model right, trademark right, breeder's right, plant breeder's right, design right and copyright, regardless of whether or not worth protecting, patentable, patented, registerable or registered in any other way, wherein the patent shall mean any patent and patent application including, but not limited to, the divisional, continuation, continuation-in-part, substitution, addition, extension, renewal, reissue, revalidation and reexamination thereof.
- 11.9 "Modified Research Material" shall mean any Research Material, excluding the Unmodified Research Material, derived from the Original Research Material hereunder.
- 11.10 "Original Research Material" shall mean an original Research Material provided hereunder by a Party to the other Party.
- 11.11 "Participant Researchers" shall mean the researchers of the Parties assigned thereby for implementing the Research Project hereunder.



- 11.12 "Purpose" shall mean the achievement of the objective of the Research Project.
- 11.13 "Research Facilities" shall mean the facilities, which are useful for implementing the Research Project, including, but not limited to, machine, equipment, instrument, apparatus, installation, device and tool.
- 11.14 "Research Material" shall mean any tangible material or substance for research and experiment including, but not limited to, PGRFA, raw material, building material, sample, prototype, product, compound, reagent, strain, organism, microorganism, microbe, virus, bacteria, pathogen, antigen, antibody, insect, plant, seed, spore, stem, root, seedling, stock, nursery stock, rootstock, scion, organ, tissue, cell, amino acid, protein, carbohydrate, lipid, gene, vector, plasmid, DNA and RNA.
- 11.15 "Term" shall mean the effective period of this Agreement as set forth in Article 10.1 hereof.
- 11.16 "Third Party" shall mean a party, entity or individual other than the Parties and MAFF.
- 11.17 "Unmodified Research Material" shall mean a duplicate of the Original Research Material and a material or substance expressing substantially the same function of the Original Research Material.

#### **ARTICLE 12. RESEARCH GRANT**

- 12.1 The Parties shall acknowledge and agree that: (a) the Research Project is funded by the research grant of MAFF (hereinafter referred to as the "Research Grant"); (b) NARO shall participate in the Research Project as the representative organization thereof and the entrustee of MAFF under the Contract Research Agreement by and between MAFF and NARO, and NAFRI shall participate in the Research Project as the re-entrustee of NARO thereunder; and thus (c) the Research Project, Research Grant and Foreground IP shall be governed and controlled by MAFF as set forth in the Contract Research Agreement and herein.
- 12.2 The Parties shall acknowledge and agree that: (a) MAFF may conduct its on-site inspection at its discretion during the business hours of the Parties and audit any suspicion of unauthorized receipt or use of the Research Grant; and (b) the Parties shall pay back the Research Grant to MAFF under its direction in whole or in part, if any evidence of unauthorized receipt or use thereof has been confirmed by MAFF.

#### **ARTICLE 13. RESEARCH MATERIAL**

- 13.1 Each Party may request the other Party (hereinafter referred to as the "Provider") to provide the Research Material owned or controlled by the Provider for implementing the Research Project hereunder and the Provider may or may not provide the Research Material at its sole discretion. Furthermore, the Research Material shall be provided under the material transfer agreement separately agreed in writing by and between the Parties, if requested by the Provider.
- 13.2 Upon request of the Provider, the Party receiving the Research Material (hereinafter referred to as the "Recipient") shall submit a written certificate of the receipt thereof to the Provider without delay after receipt thereof.
- 13.3 Except as otherwise provided herein or unless otherwise waived by the Provider's written declaration, the Provider shall retain the ownership of right, title and interest in and to its Original Research Material and Unmodified Research Material (hereinafter referred to collectively as the "Provider's Research Material") even after receipt of the Research Material of the Provider by the Recipient, and such ownership shall not be restricted or infringed upon hereby.
- 13.4 Except as otherwise provided herein or unless otherwise agreed by and between the Parties, nothing herein shall be construed as granting any license or transferring any ownership of right, title and interest in or to the intellectual property rights relevant to the Provider's Research Material to the Recipient. Under such circumstances, the Provider shall not enforce such intellectual property rights against the act of the Recipient in the course of implementing the Research Project hereunder.
- 13.5 The Recipient shall use, handle, manage, maintain, store, treat, dispose or destroy the Provider's Research Material in strict accordance with the duty of diligence and in compliance with any applicable guidelines, regulations, rules, statutes, laws and treaties designated by the Provider and within the extent permitted thereby.
- 13.6 Except as otherwise provided herein or unless otherwise agreed by and between the Parties, the Recipient shall use the Provider's Research Material only for the Purpose hereunder within the scope approved by the Provider, and, without prior written consent of the Provider, shall not use, provide, transfer or distribute the Provider's Research Material for the Commercial Use or to any Third Party, and shall not reproduce, propagate or multiply the Provider's Research Material for any purpose other than the Purpose.
- 13.7 Unless otherwise agreed by and between the Parties, upon expiration or termination of the Implementation Period or this Agreement pursuant to the provision of Article 2.4 or 9 hereof, the Recipient shall dispose, destroy or return as requested or instructed by the Provider, at its own costs and expenses, any and all Provider's Research Material in its possession or control, and, if disposed



or destructed, the Recipient shall submit the certification thereof to the Provider without delay and shall obtain the acknowledgement of the Provider in writing as requested or instructed thereby.

- 13.8 Notwithstanding the foregoing, if agreed by the Provider, the Recipient may continue to possess and use the Provider's Research Material after expiration or termination of this Agreement under the terms and conditions defined separately by the Provider.
- 13.9 The Recipient shall acknowledge and agree that the Provider's Research Material is an experimental material or substance in nature, and may be insufficient, hazardous, dangerous, defective, inadequate for a specified purpose, and the Recipient shall bear all and any risk of loss and damage that may be incurred due to the use thereof by the Recipient hereunder.

#### **ARTICLE 14. DISPATCH OF RESEARCHERS**

- 14.1 Subject to prior coordination and agreement of the Parties, each Party may dispatch its Participant Researchers (hereinafter referred to as the "Dispatched Researchers") to the Implementation Sites of the other Party for the Purpose, wherein they may use the Research Facilities managed by the other Party (hereinafter referred to as the "Managing Party") free of charge within the scope approved by the Managing Party.
- 14.2 Unless otherwise agreed by and between the Parties, the Party dispatching its Dispatched Researchers (hereinafter referred to as the "Dispatching Party") pursuant to the provision of Article 14.1 hereof shall bear all costs and expenses incurred due to such dispatching, including, but not limited to, the costs and expenses for travelling, staying, insurance, visa application, personnel costs and the like. Furthermore, unless otherwise agreed by and between the Parties, if such dispatching is requested by the other Party, such costs and expenses shall be beard by the other Party on behalf of the Dispatching Party.
- 14.3 The Managing Party may approve at its discretion a request from the Dispatching Party to bring any transferable Research Facilities and Research Material of the Dispatching Party to the Implementation Sites of the Managing Party for implementing the Research Project hereunder.
- 14.4 The Dispatching Party shall take necessary measures to ensure that its Dispatched Researchers shall use and manage the Research Facilities of the Managing Party in strict accordance with the duty of diligence and in compliance with any applicable rules and regulations of the Managing Party, and follow the instructions and directions of the Managing Party.

- 14.5 If any of the Participant Researchers, the Dispatched Researchers or the Research Facilities of the Parties have had an accident or suffered a disaster at the Implementation Sites of either Party, both Parties shall cooperate each other in coping with and investigating such matters and strive to solve or relieve such accident or disaster.
- 14.6 Each Party may claim any compensation or remedy against the other Party for the loss or damage of its Research Facilities managed at its Implementation Sites or brought to the Implementation Sites of the other Party, if incurred due to willful misconduct or gross negligence of the Dispatched Researchers or any other researchers, employees or staff of the other Party.

#### **ARTICLE 15. LICENSE TO THIRD PARTY**

- 15.1 Except as otherwise provided herein, in the event that either Party intends to grant a Third Party a license to use the Joint Foreground IP, including the license for the Commercial Use, regardless of whether or not filed an application for the intellectual property rights, such Party shall provide the other Party with the relevant information thereon in writing or via email and discuss the issues concerned.
- 15.2 If decided to grant a Third Party a license to use the Joint Foreground IP, the Parties shall make a license agreement in writing with the Third Party.
- 15.3 For the avoidance of doubt, except as otherwise provided herein, any issues relevant to the license of the Sole Foreground IP of a Party, including the Joint Foreground IP assigned or deemed to have been assigned to the Party pursuant to the provisions of Article 5.6 hereof, may be decided, managed and controlled solely by the Party at its discretion without notification to or consent of the other Party.

#### **ARTICLE 16. CONFIDENTIALITY**

- 16.1 Except as otherwise provided herein, the Receiving Party shall use the Confidential Information of the Disclosing Party only for the Purpose hereunder within the scope approved thereby and hold the Confidential Information in strict confidence with the duty of diligence, but no less than a degree of confidentiality as it holds its own confidential Information, and shall not disclose or provide the Confidential Information in any manner whatsoever, in whole or in part, to any Third Party, nor use it for any purpose other than the Purpose without a prior written consent of the Disclosing Party.
- 16.2 In the event that the Receiving Party discloses or provides the Confidential Information of the



Disclosing Party to a Third Party with a prior written consent of the Disclosing Party, the Receiving Party shall ensure that it shall impose the same degree of the confidentiality obligation on the Third Party as it owes hereunder and shall be liable for such obligation together with the Third Party.

- 16.3 The Receiving Party may limit access to the Confidential Information of the Disclosing Party to its board members and employees within its organization who reasonably require such access for the Purpose hereunder; provided that the Receiving Party shall ensure that it imposes the same obligations on such individuals as it owes under this Article 16, and shall be liable for their implementation of such obligations.
- 16.4 For the avoidance of doubt, the Receiving Party may disclose or provide any Confidential Information of the Disclosing Party to its legal advisors and agents, attorneys and patent attorneys, who are in need of access thereto for the implementation hereof; provided that the Receiving Party shall ensure that they shall be bound by the confidentiality obligations which are no less strict than the terms and conditions as set forth herein.
- 16.5 Upon request, direction, order, coercion or enforcement by any judicial or governmental authorities or other lawfully authorized entities to disclose or provide the Confidential Information of the Disclosing Party, the Receiving Party shall provide the Disclosing Party with reasonably prompt notice thereof in writing or via email and discuss the issues concerned with the Disclosing Party so that the Disclosing Party may seek a protective order or any other appropriate remedy, and then the Receiving Party shall disclose or provide the Confidential Information to such authorities or entities by limiting the scope of the disclosure or provision only to such portion of the Confidential Information legally required to disclose or provide.
- 16.6 Notwithstanding the foregoing, NARO may disclose or provide any Information relevant to this Agreement and the Research Project, including, but not limited to, the Confidential Information disclosed or provided by NAFRI hereunder, to MAFF without prior notice to and consent of NAFRI; provided that the terms and conditions no less stringent than those of confidentiality obligation as set forth herein shall be maintained with MAFF.
- 16.7 Unless the ownership of right, title and interest in or to the Confidential Information of the Disclosing Party is waived in writing by the Disclosing Party, such ownership shall reside in the Disclosing Party even after receipt of the Confidential Information by the Receiving Party and the ownership shall not be restricted hereby.
- 16.8 Upon expiration or termination of this Agreement, the Receiving Party shall dispose, destroy or return as requested or instructed by the Disclosing Party, at its own costs and expenses, any and all

Confidential Information of the Disclosing Party in its possession or control together with the copies, duplicates, excerpts or abstracts thereof, including, but not limited to, the written documents, computer archive files, electromagnetic recording media or any other materials or media containing the intangible Confidential Information of the Disclosing Party, if any. If disposed or destroyed, the Receiving Party shall submit without delay the certification thereof to the Disclosing Party in writing or via email as requested or instructed by the Disclosing Party and receive the acknowledgement thereof from the Disclosing Party.

- 16.9 Notwithstanding the foregoing, the Receiving Party may retain one (1) copy of the Confidential Information of the Disclosing Party as a legal record thereof without consent of the Disclosing Party after expiration or termination hereof, and, if agreed in writing by the Disclosing Party, the Receiving Party may continue to possess and use such Confidential Information within the scope approved by the Disclosing Party.

#### **ARTICLE 17. REPRESENTATION, WARRANTIES AND INDEMNIFICATION**

- 17.1 In respect of the Information and the Research Material disclosed or provided hereunder, they are all disclosed or provided "as is", and neither Party makes representations and warranties of any kind, express or implied, that there is accuracy, integrity, fitness or merchantability for a particular purpose, or that the use thereof is safe, and does not or will not infringe any intellectual property rights including, but not limited to, patent right, copyright, trademark right, breeder's right or other proprietary rights of any Third Party.
- 17.2 To the best of its knowledge, each Party shall represent and warrant that the execution hereof does not and will not violate any agreement with a Third Party.
- 17.3 Except as otherwise prohibited by law or caused by the other Party's omission, gross negligence, recklessness, willful misconduct, violation of law or breach hereof, each Party shall defend, indemnify and hold harmless the other Party from and against any claim, liability, dispute, lawsuit, loss, damage, deficiency, costs and expenses, fine, civil penalty, personal illness or injury of any kind or nature, regardless of the defect of the Information or the Research Material of the other Party disclosed or provided hereunder, based upon, arising out of, relating to or otherwise attributable to the omission, gross negligence, recklessness or willful misconduct, violation of law or breach hereof of the indemnifying Party's employees in their acts of use, possession, management, handling, maintenance, storage, disposal or destruction of the Information or the Research Material of the other Party hereunder.



## **ARTICLE 18. LIMITATION OF LIABILITY**

- 18.1 If either Party commits a material breach hereof and the other Party incurs any loss or damage of its property, assets, right, title, interest or reputation due to such breach, the other Party shall have a right to claim damages against the breaching Party.
- 18.2 Notwithstanding the foregoing, either Party shall not be liable for any failure, default or delay in performance of its obligations hereunder, nor be deemed to be in breach hereof, and nor be liable for any compensation and remedy, if such failure, defaults or delays are caused by, arising out of or relating to any Force Majeure. However, the affected Party shall notify the other Party such Force Majeure in writing or via email or by any other way of transmission as soon as reasonably and practically possible, and the Parties shall use and make their reasonable effort to mitigate the loss and damage caused thereby.

## **ARTICLE 19. DISPUTE RESOLUTION, GOVERNING LAW AND JURISDICTION**

- 19.1 If matters not set forth herein emerge, or any doubts about the implementation of this Agreement arise, the Parties shall discuss and strive to solve such matters amicably and in good faith through mutual consultations.
- 19.2 Any disputes, controversies, claims or differences (hereinafter referred to as the "Disputes") which may arise between the Parties, out of or in relation to, or in connection with this Agreement shall be discussed in good faith by the Parties, and a settlement between the Parties shall be sought before resorting to arbitration. Upon failure of discussion between the Parties and except as otherwise prohibited by law, such Disputes shall be finally settled by arbitration in accordance with the applicable rules and regulations of the International Chamber of Commerce, and the award rendered by the arbitrators shall be final and binding upon the Parties. The arbitration tribunal shall be constituted in Tokyo and the applicable laws shall be the laws of Japan.
- 19.3 Notwithstanding the foregoing, in the event that the Disputes are caused by the other Party's material breach or default hereof, willful misconduct or gross negligence and are not relating to the Force Majeure, and any irreparable damage or loss is incurred thereby, the affected Party shall have the right to accuse such breaching Party to a court of competent jurisdiction for seeking any compensation or remedy under any applicable laws.
- 19.4 This Agreement shall be governed by and construed in accordance with the laws of Japan, without reference to conflict of laws principles.

## ARTICLE 20. MISCELLANEOUS

- 20.1 **Amendment.** Unless authorized in writing and signed by the duly authorized representatives of the Parties, any amendment, revision or modification hereof shall be null and void, unenforceable and non-binding upon the Parties.
- 20.2 **Export Control.** The Parties shall comply with any applicable export control laws, treaties and regulations, including, but not limited to, the Japanese export control law," Foreign Exchange and Foreign Trade Act", the Convention on Biological Diversity, the Nagoya Protocol and the International Treaty on Plant Genetic Resources for Food and Agriculture. Unless authorized by applicable government license or regulation, neither Party shall directly or indirectly export, re-export or transfer any technical Information or Research Material disclosed, provided, generated or developed hereunder by the Parties to any country subject to an embargo or sanction, and any resident or national of such country as specified in any applicable export control laws and regulations.
- 20.3 **Personal Information.** Each Party shall comply with any applicable laws and regulations in connection with the management of the personal information of any individuals acquired hereunder, if any.
- 20.4 **No Assignment.** Except as otherwise provided herein or except the event of merger or consolidation, neither Party shall assign, transfer or mortgage this Agreement or any rights and obligations contained herein, in whole or in part, to any Third Party without a prior written consent of the other Party; provided that the Party concerned with such merger or consolidation shall notify the other Party thereof prior to such event or without delay thereafter.
- 20.5 **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed as an original, but all of which together shall constitute one and the same instrument. Each Party may prepare the duplicates thereof in preparation for any loss or damage which may be caused by any unpredictable accident or Force Majeure, and such duplicates shall be deemed as the original counterparts with the same effect as if the Parties had executed the same documents.

This Addendum for the amendments of the Agreement shall enter into full force and effect as of the Addendum Effective Date and shall remain in effect until termination of the Agreement. All other terms and conditions set forth in the Agreement that are not hereby amended shall remain in full force and effect as is.



IN WITNESS WHEREOF, NAFRI and NARO have caused their duly authorized representatives to execute this Agreement as of the Addendum Effective Date.

For National Agriculture and Forestry  
Research Institute (NAFRI)



By: \_\_\_\_\_

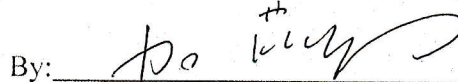
Name: Bounthong BOUAHOM, Ph.D.

Title: Director General,

National Agriculture and Forestry Research  
Institute,

Lao P.D.R.

For National Agriculture and Food  
Research Organization (NARO)



By: \_\_\_\_\_

Name: Hiroshi KATO, Ph.D.

Title: Director,

Genetic Resources Center, NARO,

Japan

Date: 1 March 2019

Date: 2 March 2019