

License Agreement and Membership Application Between MAIA and Tree Purchasers

Purchaser, whose name and address appear below, desires to purchase MAIA apple trees.

MAIA trees are owned by the Midwest Apple Improvement Association, an Ohio cooperative association (“MAIA”). MAIA has invested considerable time and money to develop several MAIA apple varieties (collectively called “VARIETY” or “VARIETIES”) and has protected its investment by securing patents and trademarks as stated in Exhibit B (collectively called “MAIA apple”). Copies of the registered names and logos are attached as Exhibit C (“Trademarks and Logos”). “APPLE” or “APPLES” refers to apples grown or developed from the licensed VARIETIES with their trademarks and/or logos as specified in Exhibit B. “VARIETY” or “VARIETY tree(s)” refers to one or more MAIA tree varieties developed by or licensed to or owned by MAIA alone or with one or more partners.

Before the Purchaser can buy VARIETY trees, the Purchaser must: (i) be a current MAIA member in good standing or simultaneously submit an MAIA Membership Application and Agreement (attached as Exhibit A), and further agree, by signing this License Agreement, (ii) to use only the VARIETY name(s) as listed in Exhibit B in connection with the VARIETY trees purchased, which Exhibit B may be amended from time to time based upon Purchaser’s future purchases of additional VARIETIES, (iii) to use only the Trademarks and Logos in connection with the actual apples as listed in Exhibit C, and (iv) to pay certain Trademark and Logo fees, as set forth below.

In consideration of the mutual promises set forth below, MAIA and the below named purchaser agree to the following terms of this License Agreement:

1. License Grant. Subject to the terms contained in this Agreement, MAIA grants to Purchaser, and Purchaser accepts, a limited-scope, non-exclusive, non-assignable, revocable license for Intellectual Property to grow VARIETY trees.

1.1 “Intellectual Property” includes MAIA’s intellectual property interests existing now, or in the future, in the VARIETY , including but not limited to MAIA’s business plans, technical documents, legal documents, trade secrets, names, designs, logos, trademarks and or other indicia, plant breeding rights, plant patents and any improvements (including sport varieties), inventions, enhancements, adaptations or modifications, improvements or discoveries made before or during the term of this Agreement. **By purchasing trees, becoming a member of MAIA, and signing this Agreement, Purchaser agrees it will produce and market the apples produced from the VARIETY as APPLE by using only the Trademarks and Logos as listed in Exhibit C. Use of other names and marks in connection with APPLE produced from the VARIETY is expressly prohibited and will constitute a material breach of this Agreement.**

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1.2 Scope of License Granted. The grant of rights under this Agreement is limited to use of the Intellectual Property rights, and any related non-intellectual property rights, in the United States. The territory covered by this grant of rights is only the United States. **If a member desires to export APPLES to other countries, the member must enter into a separate export license agreement with MAIA, or its successor or assigns, prior to any export of APPLES. Export of APPLES under this Agreement is expressly prohibited.**

1.3 Grant “As-Is”. The grant of rights under this Agreement is made “AS-IS”, without warranty of any kind, except that MAIA warrants the Trademarks and Logos are comprised of original works that, to the best of MAIA’s knowledge, do not infringe upon, violate or misappropriate any intellectual property right of any third party.

1.4 Acknowledgment of MAIA’s Ownership. Purchaser agrees the Intellectual Property is owned by MAIA alone. Purchaser will not attempt to claim or represent to others that Purchaser has any of MAIA’s rights in the Intellectual Property as Purchaser’s own, including propagation of the MAIA VARIETY, without first obtaining the express, prior written consent and authorization of MAIA to do so. MAIA reserves the right to make a final determination as to whether a specific use of the Intellectual Property is acceptable. Purchaser further agrees it will not use or authorize the use of any configuration, trademark, trade name or other designation confusingly similar to VARIETY’s name or the APPLE Trademarks and/or Logos as listed in Exhibit B.

2. Permitted Use of the Trademarks and Logos. **Purchaser may use the Trademarks and Logos for respective VARIETIES purchased on all labels, containers, packages, tags and displays, in all print advertisements and literature, in all television and radio commercials, on its website or other social media, and on any other materials used in relation to its marketing of the specific VARIETY of APPLE (“Trademark Displays”) listed and “checked” in Exhibit B.** Purchaser will use commercially reasonable efforts to ensure that the Trademark Displays will contain appropriate legends, markings and notices as MAIA may require from time to time. Except where size restrictions preclude it, in or on all packaging, literature and advertisements (i) the most prominent reference to any of the Trademarks shall include the registered trademark symbol ® or ™ symbol, whichever applies to the APPLE at the time, and (ii) the statement that APPLE’s trademark and/or logo is the registered trademark of MAIA. In addition, Purchaser will cause to appear on all Trademark Displays any notices that may be required by law or regulation. Purchaser will not use the Trademarks and Logos in any way that would jeopardize the goodwill associated with the Trademarks and Logos. Upon MAIA’s commercially reasonable request, Purchaser will submit to MAIA, at Purchaser’s expense, a true representation or example of any proposed use of the Trademarks, in any visible or audible medium, including proposed packaging, displays, advertisements and promotional materials depicting, referring to, or otherwise used in relation to the Trademarks and Logos, prior to use.

3. Term. **This Agreement shall take effect as of the date both parties have signed the Agreement and remain in effect for 20 years from the date trees are last delivered to the Purchaser.**

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4. Fees and Royalties. In exchange for the grant of rights under this Agreement, Purchaser agrees to pay the following fees and royalties based on U.S. dollars:

4.1 **Trademark, Logo Fees. Fees will be due on January 1 for years 4 through 20, according to the following schedule, with fees capped at 1,200 trees per acre of trees planted per year:**

Years 1 through 3	No fee due
Years 4 through 9	20 cents per tree but not more than \$240 per acre
Years 10 through 20	30 cents per tree but not more than \$360 per acre

The year count starts in the year trees are purchased. If Purchaser buys more trees in a later year, the older trees continue on their established schedule, and the newly purchased trees start with year 1.

4.2 **MAIA Membership Fee. Purchaser agrees to pay the annual membership fee established by the Board of Directors.**

5. Sports and Mutations. Purchaser agrees it will not register or otherwise seek protection for the VARIETY or any improvement, development, sport or mutation essentially derived from the MAIA varieties. Purchaser will immediately disclose to MAIA any improvements to or developments of the VARIETY, including any sport or mutation. Any improvement, development, sport or mutation is the exclusive property of MAIA; Purchaser shall transfer all intellectual property rights related to any improvement, development, sport or mutation to MAIA. Further, Purchaser agrees to assist MAIA in any documentation needed to obtain relevant intellectual property protections, such as but not limited to patents, certifications, and trademarks. Should the Parties agree a superior strain of any of the VARIETY has occurred, the superior strain shall enter commerce as an improved replacement of one of the original VARIETY under the same name and shall be subject to all terms and conditions set forth in this Agreement, including the payment of fees and royalties.

6. Grafts and Top Work. **Top working or grafting trees over to MAIA VARIETIES without MAIA's prior written consent is strictly prohibited.** If Purchaser would like to top work or graft existing trees to a MAIA VARIETY, Purchaser must first submit a filled-out "Top Work Request" document, which is attached as Exhibit D.

7. Right to Inspect. MAIA has the right to review Purchaser's relevant records and packaging to make sure Purchaser's use of the rights granted under this Agreement does not breach or exceed the scope of the Agreement, including but not limited to the limits on territory.

8. Default. If Purchaser defaults in the performance of any material provision of this Agreement, MAIA may give written notice of the default to Purchaser. If Purchaser fails to cure the default within thirty (30) calendar days (the "Cure Period") to the reasonable satisfaction of MAIA, MAIA may sue for specific performance, an injunction, or any other equitable or legal remedy, including but not limited to monetary damages, as the situation warrants. MAIA also reserves the right, in the discretion of its Board and in the circumstance

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of continued material default(s), such as repeated failure to pay royalties or membership fees, or due to particularly egregious circumstances, to terminate this Agreement with Purchaser and require destruction of Purchaser's VARIETY trees and plant material. Examples of material defaults include, but are not limited to, any of the following: an action or inaction by Purchaser that is harmful to MAIA's reputation, MAIA's rights in and to the Trademark(s) and Logo(s), or the value of the Trademark(s) and Logo(s); or an action by Purchaser that exceeds the scope or territory of the United States; or Purchaser's failure to cooperate with reasonable requests for information necessary for MAIA to protect its rights against misuse or infringement. **Export of APPLES without first obtaining a separate export license is a material default.**

9. Indemnification.

9.1 Indemnification by Purchaser. Purchaser will defend, indemnify and hold MAIA, its officers, directors, agents, lawyers, employees and any of its related entities (an "MAIA Indemnified Party") harmless against any and all legal actions, suits, proceedings, hearings, governmental investigations, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, penalties, fines, costs, liabilities, obligations, taxes, liens, losses, expenses, and fees, including litigation costs and reasonable attorneys' fees and expenses ("Adverse Consequences") an MAIA Indemnified Party will suffer resulting from, arising out of or related to: (i) any breach or alleged breach of any warranty, representation or covenant made by Purchaser in this Agreement; (ii) the operations by Purchaser, including without limitation product liability matters; (iii) any use of the Trademarks by Purchaser, its agents, employees, and/or any other individual or entity acting on Purchaser's behalf, not in conformance with this Agreement, and/or (iv) the negligence or willful misconduct of Purchaser or anyone acting on behalf of Purchaser.

9.2 Indemnification by MAIA. MAIA shall defend, indemnify and hold Purchaser, its shareholders, officers, directors, agents, lawyers, employees and any of its related entities (a "Purchaser Indemnified Party") harmless against any and all Adverse Consequences a Purchaser Indemnified Party may suffer resulting from, arising out of, or related to: (i) any breach or alleged breach of any warranty, representation or covenant made by MAIA in this Agreement, or (ii) any claim by a third party that Purchaser's use of any of the Trademarks infringes upon the rights of the third party. Notwithstanding the foregoing, MAIA will not be liable for any Adverse Consequences to the extent the Adverse Consequences result from Purchaser's violation of any material provision of this Agreement, including those relating to proper use of the Trademarks, if the Adverse Consequences would have been avoided in the absence of such violation.

10. No Third-party Beneficiaries. Under no circumstances will any customer of Purchaser or any other person, firm or other entity be considered a third-party beneficiary of this Agreement or otherwise entitled to any rights or remedies under this Agreement.

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11. Disclaimer of Warranties, Limitation of Liability.

EXCEPT FOR THE LIMITED WARRANTY IN SECTION 2, MAIA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT, THE TRADEMARKS OR ANY OTHER MATTER, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. MAIA WILL UNDER NO CIRCUMSTANCES HAVE ANY LIABILITY TO THE PURCHASER OR ANY THIRD PARTIES FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, OR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE, OR ANY PRODUCTS LIABILITY.

EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 9.1 AND 9.2, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, PROFITS OR INVESTMENT, OR THE LIKE), IN ANY WAY ARISING OUT OF OR AS A RESULT OF SELLING APPLES AS LISTED IN EXHIBIT A, THE TRADEMARKS, OR THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE), COST OF COVER, OR ANY OTHER PECUNIARY LOSS ARISING OUT OF THE USE OF OR INABILITY TO USE THE VERIFIED PRODUCTS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE.

12. Dispute Resolution.

12.1 Injunctive Relief. Purchaser acknowledges that the injuries suffered by MAIA as a result of a breach of the provisions of this Agreement would be irreparable and that an award of monetary damages to MAIA for such a breach would be an inadequate remedy. Consequently, MAIA will have the right, in addition to any other rights it may have, to obtain injunctive relief to restrain any breach or threatened breach or otherwise to specifically enforce any provision of this Agreement, and MAIA will not be obligated to post bond or other security in seeking such relief. This injunctive relief does not prevent or preclude a finding of other damages or relief by court or by an authorized arbitration committee.

12.2 Binding Arbitration for Disputes. Except as expressly described above, the parties agree that the sole remedy for resolution of any and all disagreements or disputes arising under or related to this agreement (including, but not limited to, any statutory or tort claims arising from the relationship between the parties and existing patent validity or infringement disputes) shall be through arbitration conducted by one arbitrator under the Commercial Arbitration Rules of the American Arbitration Association (the arbitration shall be conducted in Franklin County, Ohio); provided further that Purchaser consents to enforcement of the obligation to arbitrate disputes in any state or federal court and expressly waives the defenses of personal jurisdiction and venue with respect to any such action. The decision and award determined through arbitration shall be final and binding upon the parties. Judgment upon the arbitration award may be entered and enforced in any court having jurisdiction. The parties agree that any arbitration conducted under this Agreement is governed by the Federal Arbitration Act, 9 United States Code §§ 1-16, as now existing or amended in the future.

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12.3 Notice. In the event a claim is not amicably resolved within 30 days of the notice required pursuant to this Agreement, any party may initiate arbitration.

13. Miscellaneous.

13.1 No Waiver. No waiver of any provision of this Agreement will be effective unless in writing and signed by an authorized officer of the Party against which the waiver will be sought. No failure to exercise, delay in exercising, or single or partial exercise of any right, power, or remedy by MAIA will constitute a waiver of, or will preclude any other or further exercise of, the same or any other right, power, or remedy by MAIA. Any waivers granted to Purchaser by MAIA must be approved by the MAIA Board of Directors.

13.2 Governing Law. This Agreement will be governed by and construed in accordance with the laws of Ohio without giving effect to principles of conflicts of laws.

13.3 Notices. All notices, consents and other communications under or regarding this Agreement will be in writing and will be deemed to have been received on the earlier of (i) the date of actual receipt, (ii) three days after being mailed by first class, postage pre-paid, certified mail, return receipt requested, or (iii) if by next-day delivery service, upon such delivery. Any notice may be given by email, provided that a signed written original is sent by one of the foregoing methods within 24 hours thereafter.

13.4 Assignment, Binding on Successors, Heirs and Assigns. Any assignment by either party of this Agreement without the prior written consent of the other Party (which will not be unreasonably withheld) will be void. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, heirs and permitted assigns.

13.5 Enforcement. The existence of any claim against Purchaser or MAIA will not constitute a defense or bar to the enforcement of this Agreement. If any provision of this Agreement is found to be illegal or unenforceable, the remaining provisions of this Agreement will remain in full force without regard to the illegal or unenforceable provision.

13.6 Amendment. This Agreement sets forth the entire understanding between the parties with respect to the subject matter and supersedes all prior oral or written proposals, negotiations, understandings or agreements between the Parties. Any modifications to this Agreement must be made in writing and signed by both Parties.

13.7 Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The Parties agree that signatures transmitted electronically, whether sent via facsimile or as attached files via email or by other means (for example, a PDF), will be acceptable to bind the Parties and will not in any way affect the Agreement's validity.

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Exhibit A

MAIA License Agreement and Membership Application

I would like to become a member of the Midwest Apple Improvement Association and I agree to pay the annual membership dues which are currently \$100 US Dollars per year. Please include the \$100 US Dollars with your MAIA Membership Application.

Witness the execution and delivery of this Agreement by our signatures:

PURCHASER

Orchard Name

Orchard Contact Person

Signature

Date

Title

Mailing Address

Phone

City/State/Zip Code

Email Address

Physical Address

City/State/Zip Code

MIDWEST APPLE IMPROVEMENT ASSOCIATION
An Ohio agricultural cooperative association

By: Bill Dodd
Its: President

Date

P.O. Box 88
Oberlin, OH 44074
Phone: (440) 670-2883
Email: kburkhart@maiaapples.com

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Exhibit B

VARIETY and APPLE Covered by this Agreement

VARIETY Name	Plant Patent No. or Certificate No.	APPLE Trademark or Logo	“X” Indicates Variety(ies) Covered
MAIA1	USPP 24,579	EverCrisp®	
MAIA-Mitchell	*	EverCrisp®	
MAIA11	USPP 29,146	Rosalee®	
MAIA12	USPP 29,213	Summerset®	
MAIA-L	USPP 30,472	Ludacrisp®	
MAIA-Z	USPP 30,059	Sweet Zinger®	
MAIA-SM	USPP 34,437	SweetMAIA®	
MAIA-AM	USPP 36,071	+	
MAIA-T	USPP 30,088	Scruffy®	
MAIA-RZ	*	+	

* U.S. Plant Patent pending

+ U.S. Trademark registration pending

Exhibit C

Trademarks and Logos



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Exhibit D
REQUEST TO MAIA TO GRAFT OR TOP WORK TREES

DATE: _____ YEAR GRAFTING MAIA TREES: _____

MAIA ORCHARD NAME: _____

CONTACT PERSON'S NAME: _____

ADDRESS: _____

PHONE: _____ EMAIL: _____

NUMBER OF TREES TO GRAFT BY VARIETY:

_____ MAIA1 (EverCrisp®)

_____ MAIA-Mitchell (EverCrisp®)

_____ MAIA11 (Rosalee®)

_____ MAIA12 (Summerset®)

_____ MAIAL (Ludacrisp®)

_____ MAIAZ (Sweet Zinger®)

_____ MAIA-SM (Sweet Maia®)

_____ MAIA-T (Scruffy®)

_____ MAIA-AM

_____ MAIA-RZ

\$ _____ TOTAL AMOUNT DUE

ROYALTY PAYMENT DUE AUG. 1st OF YEAR TREES ARE GRAFTED @ \$1 per tree)

WHERE WILL BUD WOOD BE SOURCED? _____

SIGNED: _____ APPROVED BY: _____

BILL DODD, MAIA

Submit request to: kburkhart@maiaapples.com
Or mail: MAIA, PO Box 88 Oberlin, OH 44074