



## 2017 License Agreement Between MAIA and Tree Purchasers

Purchaser, whose name and address appear below, desires to purchase MAIA1 apple trees.

MAIA1 trees are owned by the Midwest Apple Improvement Association, an Ohio cooperative association (“MAIA”). MAIA has invested considerable time and money to develop the MAIA1 apple variety and has protected its investment by securing U.S. Plant Patent 13/573 033 and registering the **EverCrisp®** trademark and logo, No. 85570034. A copy of the registered name and logo is attached as Exhibit A (“Trademark and Logo”).

**Before the Purchaser can buy MAIA1 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 B), and further agree, by signing this License Agreement, (ii) to use only the varietal name MAIA1 in connection with the MAIA1 trees, (iii) to use only the EverCrisp® Trademark and Logo in connection with the actual apples, 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 above 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 MAIA1 apple trees. “Intellectual Property” includes MAIA’s intellectual property interests existing now, or in the future, in the MAIA1 apple 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 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 MAIA1 variety as EverCrisp® apples only by using the EverCrisp® Trademark and Logo. Use of other names and marks in connection with apples produced from MAIA1 trees is expressly prohibited and will constitute a material breach of this agreement.**

1.1 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 EverCrisp® 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 EverCrisp® apples. Export of EverCrisp® apples under this Agreement is expressly prohibited.**

2017 License Agreement  
Between MAIA and Tree Purchasers

1.2 Grant “As-Is”. The grant of rights under this Agreement is made “AS-IS”, without warranty of any kind, except that MAIA warrants the Trademark and Logo 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.

1.3 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 MAIA1 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 MAIA’s name or the EverCrisp® Trademarks.

2. Permitted Use of the Trademark and Logo. **Purchaser may use the Trademark and Logo 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 EverCrisp® apples (“Trademark Displays”).** Purchaser will use commercially reasonable efforts to insure 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 ® and (ii) the statement that EverCrisp® 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 Trademark and Logo in any way that would jeopardize the goodwill associated with the Trademark and Logo. 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 Trademark and Logo, prior to use.

3. Term. **This Agreement shall remain in effect for 20 years from its Effective Date, which is the date trees are delivered to the Purchaser.**

4. Fees and Royalties. In exchange for the grant of this License, 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 of the Term according to the following schedule, with fees capped at 1,200 trees per acre of trees planted:**

|                                |   |
|--------------------------------|---|
| <b>2017 through 2019</b>       | <b>No fee due</b>   |
| <b>2020 through 2026</b>       | <b>20 cents per tree but not more than \$240 per acre</b> |
| <b>Years 2027 through 2036</b> | <b>30 cents per tree but not more than \$360 per acre</b> |

**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 MAIA1 variety or any improvement, development, sport or mutation essentially derived from the MAIA1 variety. Purchaser will immediately disclose to MAIA any improvements to or developments of the MAIA1 variety, including any sport or mutation. Any improvement, development, sport or mutation shall become the exclusive property of MAIA. Should the Parties agree a superior strain of the MAIA1 variety has occurred, the superior strain shall enter commerce as an improved replacement of the original MAIA1 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. 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 exceed the scope of the license, including but not limited to the limits on territory.

7. 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 of continued material default(s) or due to particularly egregious circumstances, to terminate this Agreement with Purchaser and require destruction of Purchaser's EverCrisp® 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 and Logo, or the value of the Trademark and Logo; 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 EverCrisp® apples without first obtaining a separate export license is a material default.**

8. Indemnification.

8.1 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

2017 License Agreement  
Between MAIA and Tree Purchasers

conformance with this Agreement, and/or (iv) the negligence or willful misconduct of Purchaser or anyone acting on behalf of Purchaser.

8.2 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.

9. 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.

10. 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 8.1 AND 8.2, 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 EVERCRISP® APPLES, 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.

11. Miscellaneous.

11.1 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

2017 License Agreement  
Between MAIA and Tree Purchasers

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.

11.2 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.

11.3 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.

11.4 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.

11.5 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.

11.6 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.

12. 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.

*Signature page follows*

2017 License Agreement  
Between MAIA and Tree Purchasers

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

PURCHASER

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

\_\_\_\_\_  
City/State/Zip Code

\_\_\_\_\_  
Email Address

MIDWEST APPLE IMPROVEMENT ASSOCIATION  
An Ohio agricultural cooperative

\_\_\_\_\_  
By: Bill Dodd  
Its: Executive Director  
112 North Bridge Street, P.O. Box 70  
Newcomerstown, OH 43832  
Phone: (800) 466-5171  
Fax: (740) 498-8367  
Email: bill@ohioapples.com

\_\_\_\_\_  
Date