



This is a draft document for your information only. All terms are subject to revision.

GROWER AGREEMENT

This Grower Agreement ("Agreement") is effective on _____ (hereinafter "Effective Date") by and between _____ Licensed Nursery / Northwest Nursery Improvement Institute ("NNII"), and _____ ("Grower"), having a principal place of business at _____.

RECITALS

- A. Washington State University (WSU) is the owner of apple cultivar, 'WA 38,' (WSU-OC Case 1205), hereinafter as "Licensed Cultivar." WSU has entered into an exclusive Management Contract with Proprietary Variety Management, LLC ("PVM") for commercialization of the Licensed Cultivar.
- B. PVM has granted exclusive propagation rights to NNII through its group of member and affiliated nurseries of which Licensed Nursery is one.
- C. Grower grows and sells fruit from land owned in Washington State, and Grower wishes to obtain license rights from NNII upon the terms and conditions set forth herein to grow Licensed Trees and harvest and sell fruit of the Licensed Cultivar.

AGREEMENT

NOW THEREFORE, The parties hereby agree as follows:

1. DEFINITIONS

For the purposes of the Agreement, the following words and phrases shall have the following meanings:

- 1.1 "Licensed Cultivar" means the following WSU intellectual property: WSU apple cultivar No. WSU 38 patented under the name, 'WA 38,' as the subject matter of U.S. Plant Patent No. PP24,210 issued February 4, 2014.
- 1.2 "Licensed Trees" means trees, budwood or any other propagatable or non-propagatable part of a tree derived from the Licensed Cultivar, but excluding fruit.
- 1.3 "Licensed Nursery" means a nursery that has a license to produce Licensed Trees. A list of Licensed Nurseries can be obtained from the Northwest Nursery Improvement Institute ("NNII"). www.nniifruittrees.org.
- 1.4 "Territory" means the state of Washington.
- 1.5 "Trademarks" means the "Trademarks" that will be registered and used to denote the trademark developed jointly by WSU and PVM for the trees and fruit of the Licensed Cultivar. The Trademarks will be owned by WSU.

2. LICENSE

NNII hereby grants to Grower the nonexclusive right to purchase, plant, and grow Licensed Trees in the Territory subject to the terms and conditions of this Agreement. Grower is strictly prohibited from selling, transferring, planting, or growing Licensed Trees outside of the Territory, and all fruit harvested from the Licensed Cultivar must be packed and sold from the Territory, but the fruit may be sold and shipped to customers anywhere in the world. Grower shall not propagate the Licensed Trees without a separate propagation license from NNII. Grower must take all reasonable precautions to ensure that no third party obtains budwood or other propagatable materials from the Licensed Cultivar. Grower must use the Trademark in connection with the sale of fruit harvested from the Licensed Trees and on the condition that the fruit meet the Trademark quality standards described in Exhibit A.

3. ROYALTIES

NNII will collect a per-tree royalty from Grower at the time of purchase of the Licensed Trees. The initial tree royalty schedule is set forth in Schedule I, attached. The Schedule may be revised from time to time at the sole discretion of PVM in consultation with WSU. No royalty will be charged for replacements provided by a Licensed Nursery.

4. OWNERSHIP OF SPORTS

Any sports or mutations discovered on any Licensed Trees being grown by Grower under this Agreement will be immediately reported to WSU, PVM, and NNII and shall be the exclusive property of WSU.

5. SALE OF FRUIT/USE OF TRADEMARK

PVM will license packers to pack fruit harvested from the Licensed Trees in accordance with the Trademark quality standards described in Exhibit A. There will be a production royalty associated with the licensed packing, and the initial schedule is set forth in Schedule I, attached. The Schedule may be revised from time to time at the sole discretion of PVM in consultation with WSU. Grower must sell fruit harvested from the Licensed Trees only to licensed packers, but Grower is free to select among any of the licensed packers. PVM will also license marketing desks for use of the Trademark in connection with fruit sales.

6. RECORDS AND AUDIT

Grower shall keep full, true, and accurate records of account for six (6) years from the date of purchase of the Licensed Trees. Grower agrees that third party representatives designated by any of WSU, PVM, or NNII are authorized to inspect Grower's plantings and records.

7. INFRINGEMENT

7.1 Grower agrees to notify WSU, PVM, NNII, or Licensed Nursery promptly of any suspected asexual propagation, sale, or use of the Licensed Trees by persons not duly licensed to propagate, sell, or use such material.

7.2 Grower agrees to cooperate with WSU or PVM in any infringement proceeding instituted hereunder at the expense of WSU or PVM. Nothing herein shall be construed as conferring upon WSU, PVM, or NNII any obligation to bring or prosecute actions or suits against third parties for infringement.

7.3 Grower shall not contest WSU's title or ownership of the Trademark, and will not attack the validity of this Agreement. Grower covenants to always act in good faith to support and improve the strength and commercial value of the Trademark, including complying with reasonable requests from WSU, PVM, or NNII in that regard. Grower shall not infringe, induce, or contribute to any third party's infringement, of the Trademarks or the Plant Patent No. PP24,210 rights. Grower shall not sell fruit under any other trademarked name. Fruit that does not meet Trademark quality standards will be handled in accordance with Exhibit A.

8. LIMITATION OF WARRANTIES

8.1 WSU owns and has all rights to apple cultivar No. WSU 38 patented under the name, 'WA 38,' as the subject matter of U.S. Plant Patent No. PP24,210 issued February 4, 2014. [Additional warranty to be added when Trademarks are secured.]

8.2 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, WSU AND PVM MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OF ANY LICENSED TREES OR FRUIT OF THE LICENSED CULTIVAR THAT MAY BE PRODUCED AT ANY TIME NOW OR IN THE FUTURE. WSU AND PVM SPECIFICALLY MAKE NO WARRANTY, EXPRESS OR IMPLIED, THAT LICENSED TREES WILL BE GROWN SUCCESSFULLY FOR FRUIT PRODUCTION IN ANY AREA, AND WSU AND PVM DISCLAIM ANY RESPONSIBILITY FOR LOSSES INCURRED FROM ANY DEFECT OF LICENSED TREES.

8.3 Grower shall at all times during the term of this Agreement and thereafter, indemnify, defend, and hold PVM, WSU (and its regents and the state of Washington), NNII, and their respective employees harmless against all claims and expenses, including legal expenses and reasonable attorney's fees, arising out of the death of 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 (other than patent infringement claims) arising from any right or obligation of Grower hereunder or resulting from the production, manufacture, sale, use, lease, or consumption of the Licensed Trees or fruit of the Licensed Cultivar. Notwithstanding the above, PVM, WSU, and NNII reserve the right to retain counsel of their own to defend their respective interests.

.9. ASSIGNMENT

Grower may not sell, assign, or transfer this Agreement except with the prior written permission of NNII. Sixty (60) days prior to the transfer or sale to a third party of Grower's property that has been planted with the trees of the Licensed Cultivar, Grower will contact NNII to arrange assignment of this Agreement, a separate license agreement with the land purchaser, or other disposition of Licensed Trees on such property. If no agreement is reached between Grower and NNII as to a license or the disposition of the Licensed Trees, Grower agrees to destroy the trees of the Licensed Cultivar planted on the property prior to closing the sale with the third party.

10. TERM AND TERMINATION

This Agreement is contingent upon payment in full of the tree price and all royalties due for this Agreement. This Agreement shall be in full force and effect until the expiration of the plant patent or the expiration of the Trademark, whichever is longer. Any failure by Grower, or any subsequent purchaser, to strictly and timely comply with any requirement, prohibition, or condition of this Agreement shall immediately terminate this Agreement, without notice, and all Licensed Trees and fruit of the Licensed Cultivar will immediately become infringing trees and infringing fruit, subjecting the Grower and/or subsequent purchaser to monetary damages, injunctive relief, and destruction of trees, fruit, and packaging materials under U.S. patent and trademark laws.

11. MISCELLANEOUS

This Agreement embodies the entire understanding between the parties and shall supersede all previous communications, representations, or understandings, either oral or written, relating to the subject matter hereof. This Agreement shall be construed, interpreted, and applied in accordance with the laws of the state of Washington. None of the terms, covenants, and conditions of this Agreement may be waived except by the written consent of both parties. The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day and year set forth below:

[LICENSED NURSERY / NNII]

[GROWER]

EXHIBIT A

Trademark Issues/Quality Standards

[This section is under development and will be finalized before growers are asked to sign this Agreement. The Trademark quality standards ultimately decided upon are expected to be in line with normal industry and federal standards. In the future, such quality standards may be revised at the discretion of WSU and PVM.]

DRAFT

Schedule I

Subject to future review and revision by WSU and PVM

a. Gross Tree Royalties: The royalty charge for each Licensed Tree (tree, bud, or other propagatable plant part) used to facilitate the propagation of a tree is one dollar (\$1.00). This royalty charge shall remain at one dollar (\$1.00) at least through calendar year 2018.

b. Gross Production Royalties: The royalty on fruit production of the Licensed Cultivar, based on a 40-lb. tray pack equivalent system, is defined below:

- For fruit sold at less than \$20, no royalty will be due.
- At \$20/box, but less than \$35/box, a \$1 royalty will be due.
- At \$35/box, but less than \$50/box, a \$2 royalty will be due.
- At \$50/box, and above, a \$3 royalty will be due.