

Disclaimer and Waiver

_____ (“Nursery”) has provided the undersigned (“Recipient”) with a limited amount of budwood and/or scionwood cuttings (“plant materials”) from fruit trees described on attached Exhibit A. The plant materials are provided subject to, and conditioned upon, Recipient’s agreement to the provisions of this “disclaimer”.

1. Nursery is providing the plant materials to Recipient without any assurance, representation or warranty that the plant material is actually the variety and cultivar identified by Nursery on Exhibit A or otherwise. No Nursery employee or other party has any right or authority to provide any such assurance, representation or warranty. Recipient assumes all risk that the plant material may have been incorrectly identified by Nursery and hereby waives and releases all claims against Nursery with respect to any misidentification, including, without limitation, any allegation or claim of negligence, strict liability or misconduct by Nursery. Recipient is solely responsible for all risk of loss or damage to the plant material provided to Recipient.
2. NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND APPLY TO THE PLANT MATERIALS WHICH ARE THE SUBJECT OF THIS DISCLAIMER. ALL PLANT MATERIAL IS PROVIDED "AS IS" AND "WITH ALL FAULTS." SELLER DISCLAIMS (A) ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND (B) ALL WARRANTIES OF PRODUCTIVITY INCLUDING BOTH TONNAGE AND QUALITY. PRIOR EXHIBITION OF A SAMPLE PACKOUT, BLOCK OR ORCHARD SHALL NOT CREATE AN EXPRESS OR IMPLIED WARRANTY THAT THE PLANT MATERIAL BEING PROVIDED WILL CONFORM TO THE SAMPLE PACKOUT, BLOCK OR ORCHARD. SELLER DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE PLANT MATERIALS ARE FREE FROM NONVISIBLE PLANT DISEASES, VIRUSES, INSECTS OR OTHER LATENT DEFECTS. BUYER AGREES TO ASSUME ALL THOSE RISKS.
3. NURSERY SHALL NOT BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ECONOMIC LOSS (INCLUDING LOST PROFITS), GROWING COSTS, INSPECTION, TRANSPORTATION, AND OTHER SERVICES AND EXPENSES RELATING TO THE PLANT MATERIALS PROVIDED. BUYER AGREES THAT RECOVERY OF ANY KIND SHALL NOT EXCEED THE PRICE PAID BY BUYER FOR THE PLANT MATERIAL.
4. Recipient represents and warrants that it: (a) will fully comply with all applicable federal, state and local laws, rules, regulations and orders relating to the use the of the plant materials, including all obligations to pay applicable fees, charges, assessments and taxes, (b) holds and will fully comply with all required licenses, permits and approvals (including all obligations to charge and remit applicable fees, charges, assessments, taxes and royalties), to receive and to exploit the use of the plant materials for all purposes in which it uses the plant materials.
5. Recipient hereby releases and will defend, hold harmless, and indemnify Nursery, and/or its subsidiaries, affiliates, directors, officers, employees, agents, successors and assigns, from and against any allegation or claim based on, or any loss, damage, settlement, cost, expense and any other liability (including but not limited to reasonable attorneys' fees incurred and/or those necessary to successfully establish the right to indemnification) (collectively, "Claims"), arising from (a) Recipient’s use and activities relating to the plant materials, including, without limitation, any Claim that Recipients receipt, transer or use of the plant materials violate or infringe any third party’s patents, trade secrets, trademarks or other proprietary rights, (b) Recipient’s breach of any covenant, representation or warranty of this disclaimer.
6. The provisions of this disclaimer set forth the complete and exclusive agreement of the parties and supersede all prior agreements, oral or written, and all other communication between the parties with respect to the plant materials, including any advertisements, brochures or publications identifying or otherwise promoting the plant materials.
7. This Agreement is be governed by the laws of the State of Washington. Venue for any action between the parties shall be in _____ County, Washington. In the event any action is taken to enforce any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney fees’ and costs (which shall include the costs of expert witnesses if any).
8. The rights and benefits of this disclaimer to Recipient may not be assigned or transferred by the Recipient (voluntarily or involuntarily) without the prior written consent of the Nursery.

9. If any of the provisions of this disclaimer are deemed illegal, void or unenforceable for any reason, then that term or condition shall be severed from the disclaimer. All remaining terms and conditions shall remain in full force and effect.

Recipient:

(Entity Name)

By:

Its:

Dated:

Exhibit A
Description of Cuttings Provided