



GRAFTING SERVICES AGREEMENT

Between:

_____ (“Grower”) AND **MUBWONS LTD.** (“Grafter”)
(Grower Entity Name)

The above-named parties agree that the Grafter will provide Grafting Services to the Grower as set out below and in accordance with the terms and conditions set out in the Schedule to this Agreement.

SITE: (NAME AND KPIN)	Address:	
	FEMALES:	MALES:
Name of Variety to be grafted:		
Estimated number of vines to be grafted:		
Number of Scions per vine:		
Type of graft:		

Payment: Invoice to be sent on completion of grafting service. To be paid within 14 days.

SERVICES: The Grafter shall do the following, in accordance with the Specifications:

- Train and monitor all staff undertaking the grafting work;
- Complete grafting Winter 2021; and Check grafts in October and consult with the Grower re-grafting of any grafts that have not taken.

The Services do not include vine preparation or marking, or post-grafting orchard treatments – any such work will be charged as an additional cost.

- Grower to arrange and supply budwood.

Orchard grafting work is to be performed in accordance with best horticultural practices in the relevant district, including in light of relevant pest and disease pressures (including Psa-V in particular).

IGNED as an agreement this _____ day of _____, 2021

IGNED BY THE GROWER:

(signature)



1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires: **Agreement** means this agreement and the attached Schedules; **Business Day** means any day other than a Saturday or a Sunday on which registered banks are open for business in Tauranga;

Grafting Services means the services to be performed by the Grafter under this Agreement, as set out in **Schedule 1**;

GST means goods and services tax chargeable under the New Zealand Goods and Services Tax Act 1985;

Price means the amount payable by the Grower for the Grafting Services, as set out in **Schedule 1**;

Site(s) means the site or sites specified by the Grower from time to time at which the Grafting Services will be performed.

Specification means the specification for the Grafting Services, as set out in **Schedule 2**;

1.2 In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) headings are for ease of reference only and will be ignored in interpreting this Agreement;
- (c) a reference to a clause or to a schedule is to a clause in, or a schedule to, this Agreement;
- (d) references to any document include all modifications and replacement documents from time to time.

2. TERM

2.1 This Agreement commences on the Commencement Date and will continue until the Grafting Services are complete, unless earlier terminated in accordance with clause 8.

3. SERVICES

3.1 The Grafter will provide the Grafting Services to the Grower in accordance with the terms and conditions set out in this Agreement, and in accordance with all reasonable instructions given by the Grower.

4. PRICING AND PAYMENT

4.1 Unless otherwise stated in this Agreement, the Price is as set out in **Schedule 1**:

- (a) is plus GST (if any); and
- (b) is payable in accordance with the timetable set out in **Schedule 1**; and
- (c) includes all other costs (including the supply of materials used in or incidental to the provision of the Grafting Services), taxes, duties, or other charges, whether retroactive or not, levied on the Grafting Services and arising in New Zealand or elsewhere.

4.2 The Grafter must issue to the Grower a valid GST invoice that meets the requirements imposed by the Goods and Services Tax Act 1985, prior to payment being required to be made by the Grower.

5. OBLIGATIONS OF GRAFTER

5.1 The Grafter warrants that:

- (a) all Grafting Services supplied pursuant to this Agreement will comply with the relevant Specification;
- (b) it has the necessary skills and qualifications and will maintain an appropriate level of staffing to perform the Grafting Services and all Grafting Services will be supplied in accordance with best practice, using the highest standards of skill, care, hygiene and quality;
- (c) it will comply with all applicable industry standards, and all laws or regulations in performing its obligations under this Agreement (including for certainty but without limitation, the Biosecurity Act 1993 and the Hazardous Substances and New Organisms Act 1996) and, at its cost, hold and maintain in good standing all necessary licences, registrations, permits, authorisations, consents and approvals required by or from any governmental, provincial or local department or agency; and
- (d) the Grafter and its employees, representatives, agents or other parties under its control entering onto any Sites for purposes connected with or contemplated by this Agreement will:
 - (i) except as necessary to perform the Grafting Services, not interfere with the day to day operation of any business conducted on the Sites;
 - (ii) comply with all reasonable directions of the Grower and/or the person in charge of the applicable Site in relation to all health and safety, environmental, security or other requirements of entry (whether arising under statute or otherwise) including, without limitation, ensuring that all such persons comply with all site rules applicable to the relevant Site of which the Grafter has been notified.

5.2 Without prejudice to any other remedies available to the Grower, the Grafter will:

(a) immediately re-supply at its cost any Grafting Services that do not meet the relevant Specification and/or fail due to poor workmanship; and

6. in the event that more than 10% of the grafted stumps fail due to poor workmanship or not meeting the Specification, re-grafting will be performed at half price (50%). In the event that more than 20% of the grafted stumps fail due to poor workmanship, re-grafting will be free of charge.

7. INDEMNITY

7.1 Subject to **clause 8.2**, the Grafter will indemnify and keep indemnified the Grower, its employees, agents and contractors (each an **Indemnified Party**) against all claims, expenses, losses, damages and costs (hereafter **Liabilities**) (including all legal costs in relation to any **Liabilities**) sustained or incurred by any such Indemnified Party arising from:

- (a) any breach of this Agreement by the Grafter;



- (b) any negligent or wrongful act or omission of the Grafter or any of its employees, agents or contractors in the course of or related to the performance of, or failure to perform, any obligations of the Grafter under this Agreement; or
- (c) any fraud, dishonesty, misrepresentation or wilful default of the Grafter.

7.2 Except for the Grafter's liability under clauses 6.1(b) and (c) above, neither party will have any liability to the other for any indirect or consequential loss, loss of profits, business, income or savings.

8. FORCE MAJEURE

8.1 No party shall be liable for any failure or delay in complying, wholly or in part, with any obligation imposed on such party (other than payment) under this Agreement if the failure or delay arises from a cause beyond that party's reasonable control and without that party's fault (**Force Majeure Event**). If a party is unable to comply with any obligation imposed on it under this Agreement as a result of a Force Majeure Event for 10 consecutive Business Days, the other party may cancel this Agreement by giving written notice. Cancellation of this Agreement under this clause shall not prejudice the rights of any party against the other party in respect of any matter or thing occurring under this Agreement prior to cancellation.

9. TERMINATION

9.1 A party may (in addition to any other provisions permitting termination) terminate this Agreement with immediate effect by giving notice of termination to the other party (**Other Party**) if the other party: (a) breaches any provision of this Agreement and such breach is incapable of remedy or where capable of remedy the breaching party fails to remedy the breach within ten Business Days after receiving notice requiring it to do so; (b) the Other Party ceases to carry on business, or to be able to pay its debts as they become due; (c) any step is taken by a mortgagee to take possession or dispose of the whole or part of the Other Party's assets, operations or business; (d) any step is taken to enter into any arrangement between the Other Party and its creditors; or (e) any step is taken to appoint a receiver, a trustee and manager (or either of them) (including a statutory manager), a provisional liquidator, a liquidator, an administrator or other like person of the whole or part of the Other Party's assets, operations or business.

9.2 The Grower may terminate this Agreement at any time by providing one week's notice to the Grafter. Upon receipt of such notice, and unless otherwise agreed by the Grower in writing, the Grafter must:

- (a) immediately cease the performance of the Grafting Services;
- (b) estimate the time and cost to complete any work in progress, and complete such work in progress if requested by the Grower to do so.

10. AFTER TERMINATION

10.1 Upon termination, unless otherwise agreed in writing by the Grower, the Grower will only be liable to pay the Grafter for goods already supplied and services already rendered up to and including the date of termination.

10.2 Termination of this Agreement will not affect any rights or remedies each party may have accrued before the date of termination, and for the purposes of this clause, "accrued" will include matters arising prior to termination but not discovered until after termination.

11. MISCELLANEOUS

11.1 **Governing law:** This Agreement will be governed by and construed in accordance with the laws of New Zealand.

11.2 **Waiver:** No delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Agreement will operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this Agreement will not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed.

11.3 **Relationship between the parties:** Nothing in this Agreement will create any partnership, joint venture, agency, trust or employer/employee relationship between the parties.

11.4 **Entire Agreement:** Except as otherwise expressly provided in this Agreement, this Agreement constitutes the entire agreement, understanding and arrangement (express and implied) between the parties relating to the subject matter of this Agreement and supersedes and cancels any previous agreement, understanding and arrangement relating thereto whether written or oral.

11.5 **Severable Agreement:** If any provision of this Agreement is or becomes unenforceable, illegal or invalid for any reason it will be deemed to be severed from this Agreement without affecting the validity of the remainder of this Agreement and will not affect the enforceability, legality, validity or application of any other provision of this Agreement.

11.6 **Variations:** Any variation to this Agreement will be in writing, signed by each party.

11.7 **Notice:** Every notice to be given under, or in connection with, this Agreement will be given in writing by personal delivery or post to the addresses noted above

11.8 **Assignment:** The Grafter shall not assign or attempt to assign or otherwise transfer or subcontract any right or obligation arising out of this Agreement without obtaining the prior written consent of the Grower. A change in effective control or management of the Grafter, unless consented to by the Grower, shall be deemed to be an assignment under this clause 10.8.