

NON-PROPAGATION AGREEMENT dated 23rd April 2020

BETWEEN: NZ AVOCADO INDUSTRY LIMITED ("NZAI")

A N D: TECHO's Backyard Limited (the "Grower")

BACKGROUND

The Grower wishes to purchase plant material derived from avocado cultivars for which NZAI holds license rights and has agreed to enter into a non-propagation agreement based on the terms and conditions set out below.

AGREEMENT:

The Grower agrees to be bound by all TERMS AND CONDITIONS set out in Schedule 1 of this agreement.

For clarity, below are some of the fundamental obligations of the grower which have been summarised from the Agreements full Terms and Conditions:

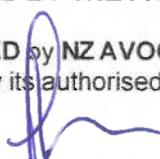
- 2.2 The Grower will not propagate or undertake the asexual reproduction of the plant material in any way, nor will they transfer or dispose of the Plant Material to any person.
- 5.1 The Grower will retain a plan or map identifying the location of the Plant Material on the Land, and make this available to the NZAI at request.
- 7.1 If the Land (or any part of the Land) on which the Plant Material is planted is to be sold or transferred, including any transfer in the effective control of the Land to another person, the Grower will require as a condition of such sale or transfer that the purchaser or transferee signs a new non-propagation agreement with NZAI.

This non-propagation agreement applies to the following Plant Material and Land:

1.	Physical Address:	19 Snodgrass Rd Whakamarama
2.	P-PIN Number:	P 97152
3.	Grower Postal Address:	PO Box 16425, Tauranga 3147
4.	Legal Description (as per rates bill):	Lot 2 Deposited Plan 9634
5.	QVNZ Reference Number:	06829-15100
6.	PVRs/Plant Material:	25 Hass on Bounty

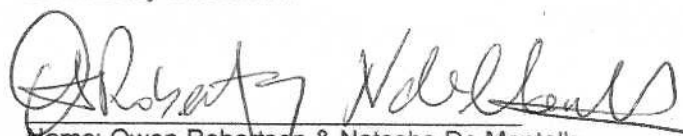
SIGNED BY THE PARTIES

SIGNED by NZ AVOCADO INDUSTRY LTD by its authorised signatory



Name: Jen Scoular

SIGNED by GROWER:



Name: Owen Robertson & Natasha De Montalk

SCHEDULE 1

NON-PROPAGATION AGREEMENT - TERMS AND CONDITIONS

1. DEFINITIONS

1.1 Definitions: In this agreement:

Intellectual Property Rights means all rights to the trademark, trade name, know-how, trade secrets, confidential information, research results, PVR rights and any other intellectual property for the Plant Material and any improvements to the foregoing.

IP Owner means the owner of a unique avocado cultivar, whether or not such owner holds a PVR for the cultivar.

Land has the meaning set out in the Schedule.

Master Licence means the licence agreement between NZAI and an IP Owner pursuant to which NZAI is granted rights in relation to a cultivar.

Nursery means a nursery approved to produce Plant Material pursuant to a Nursery Agreement between NZAI and the nursery.

Plant Material means plant material of the unique avocado cultivars that NZAI from time to time is licensed to distribute and commercialise in New Zealand and as are listed in, and/or added to, the Schedule from time to time and **Plant** will have a corresponding meaning.

PVR means a grant of plant variety rights under the Plant Variety Rights Act 1987.

Royalty means any royalty payable for the right to use the Plant Material.

2. GROWER'S RIGHTS AND OBLIGATIONS

2.1 NZAI grants the Grower the right to plant the Plant Material or graft the Plant Material onto existing root-stock (as applicable) on the Land for the sole purpose of producing fruit as part of the Grower's business.

2.2 The Grower will not:

- (a) transfer or dispose of the Plant Material to any person (other than the sale of fruit as part of the Grower's business);
- (b) propagate the Plant Material in any way;
- (c) undertake the asexual reproduction of the Plant Material; or
- (d) use any of the Intellectual Property Rights without the prior written consent of NZAI.

2.3 The Grower will comply with:

- (a) all obligations imposed by the PVR;
- (b) the terms of any Master Licence provided to the Grower in writing; and
- (c) all directions notified to it in writing by NZAI relating to growing of Plant Material.

2.4 The Grower acknowledges that it is not the owner of the Intellectual Property Rights in respect of the Plant Material or the PVR for that Plant Material.

2.5 If the Grower discovers any improvement or development to the Plant Material (including any sport or mutation), the Grower must disclose this to NZAI within 7 days. Any such improvements or developments will be owned by the IP Owner.

2.6 The Grower acknowledges that the Nursery will not be required to deliver the Plant Material to the Grower until the Grower has joined the New Zealand Avocado Growers Association.

3. RECORDS

3.1 NZAI may from time to time send the Grower the details it has of the number, date, source and rootstock/scion combinations of Plant Material received by the Grower. The Grower will confirm the details, or notify of any changes, to NZAI within one month.

3.2 The Grower will maintain and provide to NZAI written and/or electronic records relating to the Plant Material with the details NZAI requires from time to time.

4. ROYALTIES

4.1 In addition to the price of the Plants agreed between the Grower and the Nursery, the Grower will pay the royalties payable to NZAI for the Plant Material. Royalties shall be paid direct to the Nursery or NZAI direct as specified by the NZAI.

5. LOCATION/SECURITY OF LAND

5.1 The Grower will provide NZAI with a plan or map (including a GPS map if required by NZAI) identifying the location of the Plant Material on the Land.

5.2 The Grower will not remove the nursery labelling on Plants or Plant Material.

5.3 The parties will co-operate with each other to protect against unauthorised purchase propagation, distribution or sale of any Plant Material and in particular the Grower will take all reasonable measures to keep all Plant Material at the Land secure and notify NZAI of any breach of security or the removal, loss or theft of any Plant Material.

5.4 The Grower will allow any person authorised by NZAI to enter the Land where the Plant Material is planted at any reasonable time to inspect the Plant Material.

5.5 The Grower will not move the Plant Material from the Land or the location set out in the map provided to NZAI without notifying NZAI in writing at least 30 days beforehand.

6. EXCLUSIONS

6.1 The Grower accepts and acknowledges that:

- (a) the purchase of the Plant Material is at the sole risk of the Grower;
- (b) NZAI makes no representations or warranties as to the survival or ability to produce fruit of the Plant Material or the variety;
- (c) in the case of new fruiting cultivars none of NZAI, the Nursery or the IP Owner guarantee that any fruit will be suitable for exporting; and
- (d) neither NZAI nor the IP Owner are responsible for any disease or other failure which may be present in the Plant Material.

7. TRANSFER OF LAND

7.1 If the Land (or any part of the Land) on which the Plant Material is planted is to be sold or transferred, including any transfer in the effective control of the Land to another person, the Grower will require as a condition of such sale or transfer that the purchaser or transferee signs a new non-propagation agreement with NZAI.

8. CONFIDENTIALITY

8.1 All confidential information, including the Intellectual Property Rights and any information which relates in any way to the Plant Material or any part of it, the PVR and other information made available by NZAI in connection with this agreement or otherwise (**Confidential Information**) will be regarded as being confidential as between NZAI and the Grower. The Grower undertakes not to disclose to any third party the Confidential Information.

9. TERM AND TERMINATION

9.1 This agreement will continue to apply to Plant Material:

- (a) for the life of the Plant Material; or
- (b) where a PVR exists for the Plant Material, until expiry of the PVR.

9.2 If all of the Plant Material of a specific cultivar in the possession of the Grower dies or is destroyed by any means during the Term of this agreement, the Grower will notify NZAI of such death or destruction within 30 days.

9.3 NZAI may terminate this agreement on 30 days' notice where the Grower is in material breach of any term of this agreement.

9.4 On termination of this agreement for any reason, the Grower will have three calendar months to sell the fruit of the Plant Material that it has in its possession, and destroy the Plant Material remaining. NZAI may enter onto the Land to verify that the Grower has complied, and to remove and/or destroy the Plant Material if the Grower fails to comply with its obligations under this clause.

10. PVR OWNER MAY BECOME LICENSOR

10.1 In any circumstances under the Master Licence where the IP Owner becomes entitled to take over the responsibilities of NZAI under this agreement, the Grower acknowledges that the IP Owner may take the place of NZAI under this agreement and the rights and obligations of the Grower will continue as if IP Owner were the original contracting party to this agreement.

11. NO ASSIGNMENT

11.1 **No Assignment:** Subject to clause 7.1, the Grower may not assign or otherwise transfer any of its rights and obligations under this agreement without first obtaining the prior written consent of NZAI.