

SUPPLY AGREEMENT 2020



Agreement

relating to

the supply of Kiwifruit and Services

between

Zespri Group Limited (ZGL)

and

The Contractor as named in **Schedule 1 or 5**

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This Agreement is made

- Between** (1) Zespri Group Limited (“ZGL”)
And (2) The “Contractor” as named in **Schedule 1 or 5**

INTRODUCTION

- A. ZGL has received an export authorisation under the Regulations from Kiwifruit New Zealand to export Kiwifruit, which has conferred on ZGL the sole right to export Kiwifruit from New Zealand (other than to Australia) subject to any collaborative marketing approvals issued by KNZ.
- B. ZGL intends to purchase all Standard Supply Kiwifruit made available by the Contractor in the Season. ZGL may also acquire other Kiwifruit by agreement with the Contractor.
- C. The Contractor intends to do one or more of the following:
- (a) Supply Kiwifruit to ZGL produced from the properties owned or controlled by the Contractor;
 - (b) Supply Kiwifruit to ZGL produced by Option A Growers who have entered into an agreement with the Contractor for the supply of their Kiwifruit to ZGL; and/or
 - (c) Supply various logistics, delivery, planning and other services in respect of Kiwifruit to be supplied to ZGL by it or by Option B Growers to ZGL.
- D. If the Contractor is a Registered Supplier, the Contractor has also entered into (or will enter into at the same time it enters into this Agreement) the Enduring Funding Agreement.
- E. The provisions of this Agreement relating to the supply of Kiwifruit and the provision of services apply to all Kiwifruit to be acquired by ZGL:
- (a) For sale or disposal in Europe, Japan and other offshore markets;
 - (b) For sale or disposal in Australia; and
 - (c) Subject to the Regulations, for sale or disposal in New Zealand.
- F. Kiwifruit New Zealand may direct ZGL to enter into contracts with Collaborative Marketers as set out in Part 4 of the Regulations. In the event that ZGL receives directions in relation to Collaborative Marketing Arrangements and to the extent that these directions relate to Kiwifruit supplied under this Agreement, the Contractor intends to cooperate with ZGL to implement these directions subject to the provisions of Schedule 6.

PART A GENERIC PROVISIONS

A1 INTERPRETATION

A1.1 In this Agreement, unless the context otherwise requires it is agreed:

Act means the Kiwifruit Industry Restructuring Act 1999;

Agreement means this agreement, the Schedules to it and the **Supply Specifications**, and includes any variations to them;

Class 1 means Kiwifruit which meets the Class 1 requirements in the **ZIL Quality Manual** and falls within the sizes for each Pool as specified in **Appendix 1** of the **Pricing and Payment Manual**;

Collaborative Marketing Arrangement means any collaborative marketing arrangement approved by KNZ under Part 4 of the Regulations;

Crop Protection Programme means the programmes forming part of the ZGL Crop Protection Standard as described in the ZGL Grower Manual;

EDI Manual means the manual called the “EDI Specification for Suppliers,” as amended by ZGL from time to time;

Enduring Funding Agreement or EFA means the Enduring Funding Agreement between the parties dated 20th December 2017, as amended from time to time;

Family Kiwi[®] means HE, HW and GA Kiwifruit which meets the Class Family Kiwi requirements in the **ZIL Quality Manual** and falls within the sizes for each Pool as specified in **Appendix 1** of the **Pricing and Payment Manual**;

FOBS means stowed on board the ship or aircraft on which the Kiwifruit is to be exported or, in the case of Kiwifruit to be marketed or disposed of in New Zealand, stowed at a place in New Zealand specified by ZGL. In the case of a ship “stowed” means stowed and secured to the satisfaction of the ship’s master;

Grower means a person who:

- (a) is the owner, or lessee under a lease of one year or more, of a property on which Kiwifruit is produced and that is identified by a KPIN;
- (b) has title to that Kiwifruit while it is on the vine; and
- (c) includes Option A Growers and Option B Growers.

Grower Number means the 5 digit number made up of the 4 digits allocated by ZGL for each KPIN plus a 1 digit identifier allocated by ZGL to denote a Registered Supplier;

GST means goods and services tax imposed under the **Goods and Services Tax Act 1985**;

IAC means the Industry Advisory Council;

ISG means the Industry Supply Group;

Kiwifruit means the fruit of the genus *Actinidia* grown in New Zealand;

Kiwifruit New Zealand (KNZ) means the New Zealand Kiwifruit Board established under the Regulations;

Kiwifruit Titleholder means a person that is, at the relevant time prior to the delivery of title to ZGL at FOBS, the titleholder to Kiwifruit that is to be supplied to ZGL, and includes Option A Growers and Option B Growers;

KPIN means the 4 digit Kiwifruit Property Identification Number in respect of a property on which Kiwifruit is produced;

Non-Standard Supply means Kiwifruit which meets the specifications as described in **Appendix 1(b)** of the **Pricing and Payments Manual**;

NZKGI means New Zealand Kiwifruit Growers Inc;

Option A Grower means a grower who has through execution of **Schedule 5** appointed the Contractor as its agent for the purposes of this Agreement;

Option B Grower means a grower who has through execution of **Schedule 5** agreed to supply Kiwifruit directly to ZGL under **PART B** of this Agreement and appointed the Contractor to provide Services in respect of such Kiwifruit under **PART C** of this Agreement;

Packaging means the packaging material in which the Kiwifruit is packed for delivery to ZGL, including trays, pocket packs, pallets, palletisation materials and product labels;

Pool means a Pool or Pools as specified in **clause A2.1** of the **Pricing and Payments Manual**.

Pool Policy Manual is a document which sets out and stipulates the allocation rules in which revenue and costs are assigned.

Pricing and Payment Manual means the **Pricing and Payment Manual** produced by ZGL for the purpose of establishing the basis for payments to Contractors for Kiwifruit and Services under this Agreement;

PVR Kiwifruit means Kiwifruit of the GA or HE varieties;

Reasonable and Prudent Operator means, in the case of ZGL carrying out the responsibilities required under this Agreement (including clause **A3.5**), the exercise of that degree of skill, diligence, prudence, foresight and management, as determined by reference to good international practice, which would reasonably and ordinarily be expected from a skilled and experienced international fruit marketing and distribution company engaged in the same type of undertaking under the same or similar circumstances.

Regulations mean the Kiwifruit Export Regulations 1999, as may be amended from time to time;

Registered Supplier means a person registered by ZGL to provide Services to ZGL under this Agreement;

S&OP means sales and operations planning;

Season means the period of 12 months commencing on 1st April 2020 and ending on 31st March 2021;

Security Interest includes a mortgage, pledge, charge, lien, hypothecation, deferred purchase, title retention and/or a security interest under the **Personal Property Securities Act 1999**;

Services means:

- (a) the delivery of Kiwifruit from a coolstore to ZGL at FOBS;
- (b) the obligations of the Contractor specified in **Schedule 2**;
- (c) the obligations of Registered Suppliers as specified in the **Pricing and Payment Manual**;
- (d) the obligations of a Contractor under a **SLA**; and
- (e) any other obligations of the Contractor specified in **PART C** of this **Supply Agreement**.

Service Level Agreement (SLA) means a service level agreement entered into pursuant to **Schedule 6**;

Standard Supply means Hayward and PVR Kiwifruit which meets the Class 1 requirements in the **ZIL Quality Manual** and falls within the sizes for each Pool specified in **Appendix 1(a)** of the **Pricing and Payment Manual**;

Supply Specifications means:

- (a) the **ZIL Quality Manual**;
- (b) the **Pricing and Payment Manual**; and
- (c) the **EDI Manual**.

Tray Equivalent means a standard unit of measure which refers to the number of pieces of fruit in a pack by the size for that weight band (as defined in the **ZIL Quality Manual**);

Zespri® SunGold means the Kiwifruit grown from the Kiwifruit cultivar known as ZESY002 which is the subject of New Zealand Plant Variety Right No. KIW042, and which may also be referred to as **GA or Gold3** within this Agreement;

Zespri® Sweet Green means the Kiwifruit grown from the Kiwifruit cultivar known as ZESH004 which is the subject of New Zealand Plant Variety Right No. KIW044, and which may also be referred to as **HE or Green14** within this Agreement;

Zespri® Hayward means Kiwifruit grown from the Hayward Kiwifruit cultivar which may also be referred to as **HW or Green** within this Agreement;

ZGL means Zespri Group Limited;

ZGL Licensed Processor means an entity which has entered into a licence with ZGL to procure Class III PVR Kiwifruit from Contractors for the purpose of manufacturing processed products;

ZIL Quality Manual means the manual called the “**ZIL Quality Manual**,” as amended by ZIL from time to time in accordance with **clause A14**;

ZIL means Zespri International Limited, a wholly owned subsidiary of ZGL;

A1.2 In this Agreement, a reference to:

- (a) a person includes a reference to a body corporate, association or partnership;
- (b) a person includes a reference to that person's legal personal representatives, successors and permitted assigns;
- (c) a clause, unless the context otherwise requires, is a reference to a clause in the part of the Agreement that it appears;
- (d) a Part, unless the context otherwise requires, is a reference to a Part of this Agreement;
- (e) a Schedule, unless the context otherwise requires, is a reference to a schedule in this Agreement;
- (f) a document (including a manual) is a reference to that document as amended from time to time;
- (g) a day is a reference to a calendar day, unless expressly stated otherwise;
- (h) "including" and similar words do not imply any limitation; and
- (i) currency or dollars is a reference to New Zealand dollars.

A1.3 The headings in this Agreement do not affect its interpretation.

A1.4 The **SLAs**, **Schedules** and the **Supply Specifications** form part of this Agreement and are deemed to be included in it. If there is any conflict between the terms of this Agreement, any Schedule and/or the **Supply Specifications**, and a prevailing clause is not provided, then they will have priority in the following order:

- (a) **SLAs** entered into pursuant to **Schedule 6**;
- (b) clauses in **PART A**, **PART B** and **PART C** of this Agreement;
- (c) the **Supply Specifications**;
- (d) any other **Schedules** to this Agreement.

A2 SCOPE OF CONTRACT

A2.1 This Agreement will apply in respect of all Kiwifruit supplied and all Services provided to ZGL by the Contractor during the Season.

A2.2 **PART A** sets out generic provisions of this Agreement that apply to both the supply of Kiwifruit and the supply of Services. **PART B** sets out provisions applying to the supply of Kiwifruit. **PART C** sets out provisions applying to the supply of Services.

A2.3 **PART A**, **PART B** and **PART C** of this Agreement apply to the Contractor in respect of Kiwifruit supplied from Option A Growers.

A2.4 **PART A** and **PART C** of this Agreement apply to the Contractor, in respect of Kiwifruit supplied from Option B Growers.

- A2.5 **PART A** and **PART B** of this Agreement apply to Option B Growers, in respect of Kiwifruit supplied to ZGL from those Option B Growers. Where the Contractor is providing the Services to an Option B Grower in accordance with **PART C**, all references to Contractor in **PART A** and **PART B** shall be read as the Option B Grower.
- A2.6 In addition, **PART A** and **PART C** apply as provided in **clauses C1.5** and **C6**.
- A2.7 The expression “as applicable” where used in this Agreement shall be interpreted having regard to **clauses A2.3** to **A2.6**.

A3 ZGL OBLIGATIONS

- A3.1 ZGL will comply with this **PART A** in respect of both the supply of Kiwifruit under **PART B** and Services under **PART C** by the Contractor, as applicable.
- A3.2 ZGL will provide the **Supply Specifications** to the Contractor in written form. Where the Contractor is providing Services to an Option B Grower, the Contractor will provide such **Supply Specifications** to such Option B Grower.
- A3.3 ZGL must supply to the Contractor any information that is reasonably necessary to:
- (a) demonstrate adherence to contracted obligations under this Agreement; or
 - (b) assist the Contractor in meeting its obligations to ZGL under this Agreement
- except where ZGL reasonably believes that the information is confidential or commercially sensitive.
- A3.4 ZGL will take reasonable precautions to ensure that it meets the obligations of confidentiality as set out in **clause A10**. Given the need to provide limited access to all Contractors to its business database systems and recognising the risks associated with provision of that access to external parties, ZGL will not be liable for any breach of its obligations under **clause A10** caused by unauthorised access (excluding staff or third party service providers under **clause A3.6**) to its business database systems.
- A3.5 Subject to any special arrangements agreed under any applicable SLA pursuant to **Schedule 6**, ZGL is responsible for arranging carriage, discharge, storage and sale and distribution of Kiwifruit supplied under this Agreement beyond FOBS and for payments of the proceeds of sale of that Kiwifruit to the Contractor or as directed by the Contractor. ZGL is also responsible for developing policies and making arrangements which it considers appropriate for the purpose of managing financial risk, including risks relating to currency, price, credit, cash flow, interest rate and other similar risks. ZGL will use its best endeavours to carry out all of these responsibilities in a cost efficient manner and to the standard of a Reasonable and Prudent Operator.
- A3.6 If ZGL uses a third party service provider to carry out any of its obligations under this Agreement, then ZGL:
- (a) will take reasonable care in the selection and management of that third party service provider;
 - (b) will remain responsible for performing its obligations under this Agreement; and

- (c) warrants that that third party service provider will meet the obligations of ZGL under this Agreement which are relevant to the services provided by that service provider.

A3.7 ZGL will notify the Contractor immediately of any material adverse change to its financial condition or operations.

A3.8 ZGL will manage the grower registration process on an annual basis prior to the commencement of the Season.

A4 CONTRACTOR OBLIGATIONS

A4.1 The Contractor will comply with the provisions of this **PART A** in respect of both the supply to ZGL of Kiwifruit under **PART B** and Services under **PART C**, as applicable.

A4.2 The Contractor will exercise reasonable care, skill and diligence in the supply of Kiwifruit and Services up to and including FOBS in accordance with this Agreement. The Contractor warrants that all Kiwifruit supplied by the Contractor shall comply with the **Supply Specifications**.

A4.3 For purposes related to quality assurance and audit programmes in respect of Kiwifruit to be supplied by it to ZGL under this Agreement, the Contractor must, in accordance with the **Supply Specifications**:

- (a) keep, and ensure that all Growers, Kiwifruit Titleholders and other third party service providers involved in the handling of Kiwifruit to be supplied to ZGL under this Agreement (all together "Third Parties") keep, full and accurate records of compliance with the **Supply Specifications** in respect of that Kiwifruit in a readily understandable and accessible form; and
- (b) allow ZGL and its agents, and ensure all Third Parties allow ZGL and its agents to inspect during reasonable working hours the Contractor's operations (including any Kiwifruit), premises and records, and the premises and records of all Third Parties involved in the handling of Kiwifruit to be supplied to ZGL under this Agreement.
 - (i) In respect of **clause A4.3(b)** the Contractor agrees to provide assistance to ZGL with stacking, destacking, and other physical lifting as required, during any inspection activities.

A4.4 The Contractor must supply to ZGL any information that is reasonably necessary to:

- (a) demonstrate adherence to the contracted obligations under this Agreement; or
- (b) assist ZGL in meeting its obligations to the Contractor or any Third Party;

except where the Contractor reasonably believes that the information is confidential or commercially sensitive.

A4.5 If a third party service provider carries out any of the Contractor's obligations under this Agreement, then the Contractor:

- (a) will remain responsible for performing those obligations under this Agreement and for all acts and omissions of that third party service provider; and

- (b) warrants that those third party service providers will meet the obligations of the Contractor (including data transmission obligations) under this Agreement which are relevant to the services provided by those service providers, and agrees that any and all costs and charges incurred by ZGL as a result of those third party service providers' failure to meet those obligations shall be met by the Contractor.
- (c) To the extent that the Contractor acquires products or services for use in association with the Kiwifruit from a third party provider approved by ZGL from time to time, the Contractor will ensure that appropriate agreements are in place with such third party provider with respect to the quality and compliance of such products or services with the provisions of this Agreement. Such agreements shall at a minimum:
 - (i) Require the services or goods delivered to meet industry standard quality and in accordance with any approved specifications for the product/services;
 - (ii) Contain appropriate warranties with respect to the delivery of goods and services, fitness for purpose and merchantability of the goods and services;
 - (iii) Be on commercially reasonable terms;
 - (iv) Contain a requirement for the provider of products to hold a commercially reasonable amount of product liability insurance and for the provider of services to hold a commercially reasonable level of professional indemnity insurance.

A4.6 If ZGL receives a direction from Kiwifruit New Zealand in relation to a Collaborative Marketing Arrangement, the Contractor (to the extent that the direction relates to Kiwifruit subject to this Agreement) will cooperate with ZGL to implement the terms of that arrangement which may, for the avoidance of doubt, include altering any obligations in this Agreement or entered into under this Agreement, through entering into an **SLA**.

A5 PAYMENT, OVERPAYMENT, SET-OFF AND DEDUCTIONS

- A5.1 ZGL will make payments to the Contractor as provided in **clauses B4.1** and **C4.1**, as applicable. The Contractor will make payments to ZGL as provided in **clauses B4.2** and **C4.2**, as applicable.
- A5.2 The Contractor must refund any overpayments in accordance with **clause C9.1** of the **Pricing and Payment Manual** even when the payments have been made to a third party as directed by the Contractor under **clause B4.3** or **clause B4.5**.
- A5.3 Subject to **clause A5.4** no set-off or deduction is permitted under this Agreement in respect of payments due from ZGL to the Contractor or to a third party or third parties nominated to receive payment pursuant to **clause B4.3** or **clause B4.5**, except that ZGL may set-off or deduct:
 - (a) any liability of the Contractor under **clause A5.2** against any payment due to the Contractor under **PART B** for Kiwifruit in the same Pool to which the liability relates; provided that, where the payment is due to a third party or third parties under a direction listed by the Contractor under

clause B4.3 or **clause B4.5**, the set-off or deduction must relate to a liability arising in respect of Kiwifruit, Packaging or Services supplied under any of the Grower Numbers in respect of which the third party has been nominated to receive payment under **clause B4.3** or **B4.5**; or

- (b) any liability of the Contractor under **clause A5.2** in respect of payments made under **PART C**, against any payment due to the Contractor under **PART C** provided that if the amount due to the Contractor under **PART C** is less than the amount of the liability of the Contractor, against any payment due under **PART B** to the Contractor or a third party or third parties nominated by the Contractor to receive payment pursuant to **clause B4.3** or **clause B4.5** provided that where the Contractor notifies ZGL within seven days of receiving written notice from ZGL, of its intention to set off or deduct, that the set off or deduction should only be made against payments due to one or more of those third parties. ZGL will only set off or deduct against payments due to that third party or third parties; or
- (c) any liability for 5% Supplier Accountability Charges under **clause B11** or 15% Supplier Accountability Standard Costs under **C12.1** of **Schedule 11**;
- (d) any liability for costs incurred by ZGL under **clause A17.2(b)** or **(c)** provided that ZGL may set off or deduct payments only against the party to whom applicable payments are to be made or have been directed to be made under any provision of this Agreement.

A5.4 If the Contractor lodges a dispute under **clause A9.1** regarding the amount of a proposed set-off or deduction, ZGL may not set off or deduct the disputed amount until one month after the dispute is lodged. Notwithstanding the foregoing, where the dispute relates to **clause A5.3(d)** or to **clause C4.3** or **clause C9.1** of the **Pricing and Payment Manual**, ZGL may set-off or deduct the disputed amount immediately. Where the dispute is governed by **PART D** of **Schedule 11**, ZGL may set off or deduct any liability for 5% Supplier Accountability Charges or 15% Supplier Accountability Standard Costs to which the dispute relates as soon as those Charges or Standard Costs became otherwise payable under **clause B10.4** or **C13.2** of **Schedule 11**.

A5.5 Where:

- (a) the Contractor nominates a third party to receive payments under **clause B4.3** or **clause B4.5**;
or
- (b) other contractors nominate the Contractor to receive payments due to them under a Supply Agreement;

then

- (c) ZGL may make deductions from payments owing to the Contractor (whether paid either to the third party nominated by the Contractor or to the Contractor under **clause A5.1**) in order to meet the liabilities under a Supply Agreement of:
 - (i) the third party;
 - (ii) any other contractors who have in **Schedule 5** nominated the third party or the Contractor to receive payments due to those contractors under a Supply Agreement;

- (iii) the contractor that provided Services for the Contractor's Kiwifruit;

to the extent that if the other contractors or the third party formed part of the Contractor, ZGL could make a set-off or deduction under **clauses A5.3 and A5.4**.

A5.6 All amounts and payments referred to in this Agreement, its Schedules and the **Pricing and Payment Manual**, for supplies made pursuant to this Agreement are GST exclusive. GST at the rate prescribed by the **Goods and Services Tax Act 1985** will be added to payments for supplies made pursuant to this Agreement, and paid at the same time as the payment to which the GST relates is made.

A5.7 Where:

- (a) ZGL exercises a right of set-off or deduction against payments owing to the Contractor pursuant to this Agreement and such set off or deduction arises due to non-compliance with the terms of this Agreement caused directly by a Grower or Kiwifruit Titleholder other than the Contractor; and/or
- (b) Any debt owing from a Contractor to ZGL under this Agreement has not been paid and such debt arises due to non-compliance with the terms of this Agreement caused directly by a Grower or Kiwifruit Titleholder other than the Contractor;

ZGL shall provide reasonable assistance to the Contractor in recovering any such amounts from the responsible party. Such assistance may include, without limitation, the provision to the Contractor of relevant information in ZGL's possession or control which is not subject to legal restriction on disclosure, and making reasonably available ZGL personnel for the purpose of evidentiary assistance.

Notwithstanding the foregoing, nothing in this clause shall be construed as waiving ZGL's rights of recovery of any such amounts owing from the Contractor directly, nor as requiring ZGL to contribute to legal costs associated with such recovery.

A6 INSURANCE AND RISK

A6.1 ZGL will use its best endeavours to arrange insurance cover in respect of all Kiwifruit to be supplied to it during the Season under this Agreement, including any **SLA**, as set out in **Section B of Schedule 10** for the Kiwifruit and the Packaging.

Unless expressly agreed otherwise in an **SLA**, ZGL will not be responsible to cover any risk relating to:

- (a) storage bins in which unpacked Kiwifruit is stored; or
- (b) packaging materials held by the Contractor or any other party to be used for future packing of Kiwifruit.

A6.2 The terms, conditions and exclusions of the insurance cover arranged by ZGL are at its absolute discretion and ZGL will provide details of these to the Contractor on request except where ZGL reasonably believes that the details of the terms and conditions are confidential and/or commercially

sensitive. ZGL will not be liable to the Contractor as a consequence of the inclusion or omission of any particular term, condition or exclusion.

A6.3 ZGL will provide cover funded by the Pools in respect of:

- (a) the peril of hail while the Kiwifruit remains on the vine as set out in **Section D of Schedule 10**;
- (b) risks relating to the Kiwifruit and Packaging from the time the Kiwifruit is harvested until title passes to ZGL that would be covered by the Marine Cargo cover, to the amount of the deductibles in the commercial insurance policy or policies arranged by ZGL, as set out in **Section B of Schedule 10**.

A6.4 Any claims that arise under any policy of insurance arranged under **clause A6.1** or in relation to the risks described in **clause A6.3** will be dealt with in accordance with the terms of **Schedule 10**.

A6.5 Risk in the Kiwifruit and Packaging will pass to ZGL at FOBS.

A6.6 The rights and obligations created under **Schedule 10** are also for the benefit of ZGL's insurers from time to time, and may be enforced by ZGL's insurers pursuant to the **Contracts (Privity) Act 1982**.

A7 INTELLECTUAL PROPERTY

A7.1 All intellectual property including all brands, copyright, trademarks, packaging, fruit labels, labels, advertising, point of sale material, get-up, confidential information, know-how (including know-how set out in the **Supply Specifications**) belonging to ZGL and all improvements, amendments and modifications to that intellectual property (the "ZGL Intellectual Property") is and will remain the property of ZGL both during and after the Season. The Contractor has a non-exclusive right to use the parts of the ZGL Intellectual Property that are set out in the **Supply Specifications** during the Season solely for the purposes of supplying Kiwifruit to ZGL under this Agreement. For certainty, the Contractor may use or display ZGL Intellectual Property in preparation for export but if for any reason this is not exported, may not distribute [without prior written approval from ZGL] that fruit in any way unless all labels, packaging or other associations with ZGL have been removed from the fruit.

A7.2 All intellectual property (including all copyright, trademarks, confidential information and know-how) belonging to the Contractor and all improvements, amendments and modifications to that intellectual property is and will remain the property of the Contractor both during and after the Season.

A7.3 The Contractor will observe the following requirements when using any of the ZGL Intellectual Property at any time:

- (a) Indicate that ZGL is the exclusive owner of the Intellectual Property.
- (b) In the case of trademarks, use a TM or [®] symbol as directed by ZGL.
- (c) Obtain ZGL's approval for any use of the ZGL Intellectual Property in writing. The only exception is the use of packaging displaying ZGL Intellectual Property, provided this packaging is acquired from a ZGL authorised packaging supplier.

- (d) Immediately remedy as directed by ZGL any use of the ZGL Intellectual Property deemed unsatisfactory by ZGL.
- (e) Not encumber, sub-license, assign, transfer or otherwise deal with the rights of the ZGL Intellectual Property unless written consent from ZGL is obtained.
- (f) Immediately advise ZGL of any unapproved use of ZGL Intellectual Property which the Contractor becomes aware of.
- (g) Not seek to apply or register in its own name any Intellectual Property which is the same or similar to the ZGL Intellectual Property in New Zealand or anywhere else in the world.
- (h) Ensure that ZGL Intellectual Property is not used or associated with any other goods or services other than those of ZGL in New Zealand or anywhere else in the world.

A7.4 On the request of ZGL at the expiry or earlier termination of this Agreement:

- (a) the Contractor must immediately stop using the ZGL Intellectual Property; and
- (b) the Contractor must immediately return all confidential information, including the **Supply Specifications** and all copies of that information, to ZGL.

A8 TERMINATION

- A8.1 Either party may terminate this Agreement immediately by notice to the other if the other party becomes bankrupt, or goes or is put into liquidation, or has a receiver or statutory manager appointed of its assets or any of them, or becomes insolvent, or ceases to carry on its business, or makes any composition or arrangement with its creditors.
- A8.2 Termination under this Agreement does not affect a party's accrued rights and obligations at the date of termination. In particular, if this Agreement is terminated by either party, the Contractor must take all necessary steps to ensure that all Kiwifruit in respect of which a Standard Advance Payment has been made under **clause C2** of the **Pricing and Payment Manual** is supplied to ZGL in accordance with the provisions of this Agreement, unless ZGL is put into liquidation, in which case the Contractor shall repay to ZGL any Standard Advance Payment under **clause C2** of the **Pricing and Payment Manual** at the time of notification of the termination, and the Contractor is then under no obligation to supply the Kiwifruit to ZGL.
- A8.3 If this Agreement is terminated by ZGL pursuant to **clause A8.1**, the Contractor irrevocably agrees that payment obligations under this Agreement shall be deemed to be assigned by the Contractor to the Growers listed in **Schedules 3** and **4**, such that any amounts owing in respect of Kiwifruit supplied to ZGL by the Contractor shall be paid directly to the applicable Growers who provided such Kiwifruit to the Contractor, with the exception of any payments which relate solely to Services provided by the Contractor.

A9 DISPUTE RESOLUTION

A9.1 **Notice of Dispute:** Subject to **clause A9.6** any dispute arising out of, or in connection with, this Agreement will be dealt with in accordance with the provisions of this clause and shall be advised in writing by the disputing party to the responding party (the "Notice of Dispute"). The Notice of Dispute:

- (a) Shall state the issues in dispute;
- (b) Shall identify and provide preliminary disclosure of key documents and/or data relied on by the disputing party (if any);

May include a request for copies of any relevant documents and/or data believed to be in the possession of the responding party; and

- (c) Shall state that the Notice is given under **clause A9.1** of the Agreement.

A9.2 **Notice of Response:** Within 10 working days of receiving the Notice of Dispute the Responding Party shall:

- (a) Provide a written response to the issue/s in dispute ("the Notice of Response");
- (b) Provide preliminary disclosure of key documents and/or data relied on by the responding party and not already disclosed under **clause A9.1(b)**; and
- (c) Provide copies of any documents and/or data requested under **clause A9.1(c)** unless:
 - (i) The disclosure of the information would or would be likely to prejudice the commercial position of the responding party;
 - (ii) The disclosure of the information would or would be likely to prejudice the commercial position of any other person, whether or not that person supplied the information to the responding party;
 - (iii) The request for the information is frivolous or vexatious; or
 - (iv) The disclosure of the documents and/or data is not practicable in the circumstances and available time. Where this sub-clause is relied on an estimate of the time and costs involved must be provided.
- (d) Propose a time for a Dispute Resolution meeting in terms of **clause A9.4**.

A9.3 **Preliminary Disclosure Without Prejudice:** The disclosure of any documents or data provided under **clauses A9.1(b)** and **A9.2(b)** and **(c)** is for the purpose of attempting to settle the dispute and is provided on confidential and a "without prejudice" basis. The party who discloses any such document has the right to unilaterally waive that privilege in the event that the matter does not settle and proceedings are issued under **clause A9.5** below.

- A9.4 **Dispute Resolution Meeting:** Within 5 working days of receipt of the Notice of Response the parties shall agree to a time, no more than 20 working days from the date of receipt of the Notice of Dispute, to meet in good faith on a without prejudice basis and attempt to resolve the dispute.
- A9.5 **Issue Proceedings:** In the event of a resolution not being achieved or no meeting occurring within the specified time frames, the dispute may be pursued in the Courts as of right, or via arbitration or mediation if the parties agree.
- A9.6 **Exceptions:** The following exceptions to this **clause A9** apply:
- (a) Where the dispute relates to Supplier Accountability as set out in **Schedule 11**, the process above shall not apply and the parties shall resolve the dispute in accordance with **Section D of Schedule 11**.
 - (b) Where the dispute is of a type that is referred to in the Insurance and Risk provisions of **Schedule 10**, the process set out above shall not apply and the parties shall resolve the dispute in accordance with those procedures.
 - (c) Where the dispute relates to the Zespri Segment Allocation Manual referred to in the EFA or calculation of the Fruit Return Margin Percentage pursuant to the EFA, the process set out above shall not apply and the parties shall resolve the dispute in accordance with the dispute resolution process in the EFA.
- A9.7 Nothing in this **clause A9** shall prevent a party from seeking urgent injunctive relief or from issuing proceedings where a right of claim may be lost due to the provisions of the **Limitation Act 2010**.
- A9.8 **Continuing Obligations:** Pending resolution of any dispute, the parties will continue to perform their obligations under this Agreement without prejudice to their respective rights and remedies.
- A9.9 If mediation is elected:
- (a) The mediation must be conducted in terms of the LEADR New Zealand Inc Standard Mediation Agreement;
 - (b) The mediator must be appointed jointly by both parties;
 - (c) If the parties are unable to jointly agree on a mediator, the mediator will be appointed by the Chair for the time being of LEADR New Zealand Inc;
 - (d) If the parties are unable to agree on a resolution in the mediation, the disputer may within 20 days of the end of the mediation, elect arbitration or to take other legal action. If no such election is made, the dispute is deemed to have been withdrawn; and
 - (e) The cost of the mediator shall be shared jointly.

A9.10 If arbitration is elected:

- (a) Where the parties elect to resolve the dispute by arbitration, this will be conducted in accordance with the Arbitration Act 1996 by a single arbitrator to be jointly agreed upon and appointed by the parties;
- (b) The parties shall enter into an arbitration agreement prior to the hearing and agree to be bound by the final decision of the arbitrator, subject to the provisions of the Arbitration Act 1996; and
- (c) If the parties are unable to agree on the appointment of an arbitrator within 20 days of receipt of written notification of the desire of a party to have a dispute arbitrated, the dispute shall be submitted to the arbitration of a single arbitrator to be appointed by the President for the time being of the New Zealand Law Society. Any arbitration in terms of this clause shall be carried out in accordance with the Arbitration Act 1996.

A10 CONFIDENTIALITY

A10.1 Subject to **clause A10.2**, each party will keep confidential the terms of this Agreement, any **SLA's** or documents produced under it and any information supplied by or on behalf of the other party which that party has identified as being of a confidential nature. Nothing in this clause will prevent disclosure of information generally available to the public (other than as a result of unauthorised disclosure by one of the parties) or disclosure of information required by law, including pursuant to the Regulations. In particular:

- (a) the consolidated market and product development plans of ZGL are confidential and may be disclosed to the Growers or third party service providers only as necessary for the Contractor to meet its commitments to supply Kiwifruit under this Agreement and;
- (b) any sales, forecast, or Pool reports are confidential and:
 - (i) may only be disclosed to the principal manager and directors of the Contractor and, if required by ZGL, the Contractor must cause those persons to sign an acknowledgement that they agree to comply with the obligations of confidentiality in this clause;
 - (ii) may not be reproduced or published in any way;
 - (iii) may only be used to analyse, interpret and develop conclusions to support advice to Growers with respect to potential financial returns for the Season and;
 - (iv) must be returned or destroyed on request by ZGL.

A10.2 Despite **clause A10.1**, where the Contractor provides Services in respect of Kiwifruit from Option B Growers, ZGL may provide such Option B Grower with information relating to the Contractor's performance of the Services in respect of the Kiwifruit provided by that Option B Grower.

A10.3 The provisions of **clause A10.1** will apply in addition to the provisions of any other confidentiality agreement entered into between the Contractor and ZGL.

A10.4 Where any aspect of this Agreement requires a party to handle personal information, such party will not transfer personal information to the other party unless appropriate consents are in place.

A11 ASSIGNMENT OF CONTRACT

A11.1 Except as provided in this clause, the Contractor shall not assign or transfer its rights and obligations under this Agreement unless ZGL consents in writing to such assignment (which consent must not be unreasonably withheld). No purported assignment or transfer shall be effective unless this requirement is complied with.

A11.2 Any transfer of shares in the Contractor resulting in a change in effective management or control will be deemed to be an assignment for the purposes of **clause A11.1**.

A11.3 For the avoidance of doubt, a direction given by the Contractor under **clause B4.3** or **clause B4.5** is agreed not to be an assignment or transfer of the Contractor's rights and obligations.

A12 NOTICES

A12.1 Each notice or other communication under this Agreement shall be in writing and may be delivered personally or sent by certified or registered mail with postage prepaid, by facsimile or by email to the address, and made to the attention of the person, specified for that purpose in the **Pricing and Payment Manual**.

A12.2 All such notices or communications shall be deemed to have been duly given or made:

- (a) if sent by certified or registered mail, three days after being deposited in the mail by the sender with postage prepaid;
- (b) if delivered by hand, on delivery;
- (c) if faxed, on the next day following transmission of the facsimile; or
- (d) if emailed, on the next day following the email message being sent, as long as it has not been returned undelivered and/or the person sending the email does not have actual knowledge that it has not been received.

A13 AUTHORISATION AND RESTRICTIONS

A13.1 No failure or omission by either party to carry out or observe any of the terms of this Agreement shall give rise to any claim against it or be deemed to be a breach of this Agreement by it if that failure or omission arises from any cause reasonably beyond their control including without limitation:

- (a) any amendment to the Act or the Regulations; or
- (b) the revocation or alteration of ZGL's export authorisation; or
- (c) any direction to ZGL from Kiwifruit New Zealand under the Regulations; or
- (d) the provisions of any collaborative marketing approval; or

- (e) any export or import restrictions imposed by any country (including New Zealand); or
- (f) any act of God, war, riot, terrorist act, civil commotion, fire, flood or storm;
but excluding, without limitation: or
- (g) strikes, lockouts or other industrial disputes where; or
 - (i) the party is the employer of the workforce engaged in the strike, lockout or dispute; or
 - (ii) any Grower or other party who provides Kiwifruit, packhouse or cool storage services to the Contractor in connection with the Kiwifruit to which the failure or omission relates, is the employer of the workforce engaged in the strike, lockout or dispute and such strike, lockout or dispute causes a failure or omission by the Contractor under this Agreement;

unless the strike, or lockout or other industrial dispute applies to employers, across an industry or occupational group of employees;

provided that, where **clauses A13.1(e)** and **(f)** apply, the Contractor must:

- (h) comply with the provisions of the **Schedule 10** that deal with insurance claims (to the extent that they apply); and
- (i) take all reasonable steps to ensure that all Kiwifruit in respect of which a Standard Advance Payment has been made under **clause C2** of the **Pricing and Payment Manual** is supplied to ZGL in accordance with the provisions of this Agreement.

A13.2 The Contractor acknowledges that the provisions of Regulation 3 of the Regulations prevent the export of Kiwifruit to Australia otherwise than for consumption in Australia. The Contractor will take all reasonably necessary steps, including obtaining the written agreement from any purchaser of any Kiwifruit from the Contractor, to ensure that any Kiwifruit provided by the Contractor for consumption in Australia is not exported from Australia.

A13.3 The Contractor acknowledges that, with IAC agreement, ZGL is entitled to charge the costs of any reasonable action taken by ZGL to comply with any changes or directions received by it as referred to in **clause A13.1** as direct costs in the calculation of Pool returns under **clause A2** of the **Pricing and Payment Manual**.

A14 VARIATIONS TO AGREEMENT

A14.1 Subject to **clause A14.2**, any variation to this Agreement, including the **Supply Specifications** and any **Schedules**, requires agreement of both parties, unless the following process is followed and the variation is approved by the required majority:

- (a) ZGL will provide notice of and the proposed wording for any variation, together with a proposal for dealing with any financial impact on ZGL or the Contractor to:
 - (i) the IAC for variations to this Agreement, the **Pricing and Payment Manual** or any of **Schedules 10, 12 and 13**:

- (ii) the ISG for variations to the **ZIL Quality Manual**, the **EDI Manual**, **Schedule 2** or **Schedule 11**;
 - (iii) the Contractor for variations to an **SLA** entered into with that Contractor under **Schedule 6**;
- (b) Following notice pursuant to **clause A14.1(a)(i)** or **(ii)**, the IAC or ISG (as applicable) shall discuss and vote on the proposed variation on the basis that:
- (i) the contractors entitled to vote are Registered Suppliers responsible for supply of Kiwifruit under **PART B** of a **2020 Supply Agreement**;
 - (ii) the number of votes for each contractor will be the number of trays of Kiwifruit relating to each Grower Number listed in **Schedule 3** or **5**, as the case may be, of the Contractor's **2020 Supply Agreement**, calculated as follows:
 - a. for votes taken up to 30th June 2020, the number of tray equivalents supplied to ZGL at FOBS in the 2019 season from each Grower Number, provided that if there are two or more Grower Numbers listed in **Schedule 3** or **5** of two or more **2020 Supply Agreements** which relate to a single KPIN, the number of trays for each Grower Number will be the total number of trays supplied from that KPIN divided by the number of such Grower Numbers; and
 - b. for votes taken from 1st July 2020, the number equal to the Net Submit (as defined in **Schedule 2**) for the 2020 season from each Grower Number;
 - (iii) the proposed change must either:
 - a. be approved by not less than 70% of the votes cast at the applicable meeting; or
 - b. where one contractor casts 30.1% or more of the votes at the applicable meeting against the proposed change, and all other contractors vote for the proposed change, then the proposed change will be approved notwithstanding that less than 70% of the votes cast were in favour of the change; and
 - (iv) ZGL will use best endeavours to ensure each contractor entitled to vote has reasonable notice of the proposed change and a reasonable opportunity to grant a proxy to any person who is a member of IAC or ISG, if the contractor is not itself a member of, or represented on, IAC or ISG
- (c) If the proposed variation and proposal for dealing with any financial impact on ZGL or the Contractor is passed by the required majority at a properly convened meeting:
- (i) the variation will be binding on the Contractor and ZGL; and
 - (ii) if required by ZGL or the Contractor (acting reasonably) an amendment to this Agreement is required, ZGL and the Contractor will negotiate in good faith such amendment.

- A14.2 Where any provision in this Agreement (including the **Supply Specifications** and any **Schedules**) expressly authorises ZGL to vary a provision without agreement, **clause A14.1** shall not apply and ZGL shall be entitled to vary such provision without reference to the Contractor, IAC or ISG.
- A14.3 Where a variation is not approved or agreed by the relevant parties pursuant to **clause A14.1**, the provisions of this Agreement or the document sought to be amended shall remain in full force and effect.
- A14.4 For the avoidance of doubt, the Contractor acknowledges that this Agreement cannot be varied without the agreement of ZGL.

A15 SEVERABILITY

- A15.1 If a provision of this Agreement is determined to be illegal or unenforceable then, except where the basic nature of this Agreement is altered, or, as altered, is contrary to public policy, the remainder of this Agreement continues to have full force and effect.

A16 PVR KIWIFRUIT

- A16.1 In this clause, unless the context otherwise requires: "Licence Agreement" means an agreement between a contracted party and ZGL under which the contracted party is granted the right to grow (as applicable) GA or HE plant material and to sell the PVR Kiwifruit resulting from it to ZGL.
- A16.2 Where any PVR Kiwifruit comes within the control or possession of the Contractor (including where the Contractor is a contracted party under a Licence Agreement):
- (a) Except as provided in **Schedule 9**, the Contractor will not sell, transfer, export or otherwise provide any of that PVR Kiwifruit to any person other than ZGL or a person nominated in writing by ZGL;
 - (b) the Contractor will not dispose of or destroy any of that PVR Kiwifruit in any manner other than as agreed by ZGL;
 - (c) the Contractor will account annually to ZGL on its compliance with this clause, providing such information as requested by ZGL.
- A16.3 The Contractor will ensure that any contracted party under a Licence Agreement, Kiwifruit Titleholders and third party service providers involved in the handling of Kiwifruit subject to this Agreement (including any PVR Kiwifruit) agree to meet the obligations of the Contractor under **clause A16.2** in relation to PVR Kiwifruit.
- A16.4 For the avoidance of doubt, this **clause A16** applies to all PVR Kiwifruit that comes within the control or possession of the Contractor or any person referred to in **clause A16.3**.

A17 NON-APPROVED AGRICHEMICAL USE

- A17.1 For the avoidance of doubt, and notwithstanding any other provision of this Agreement "Non-Compliant Fruit" means any Kiwifruit or vine on which Kiwifruit has been produced on a KPIN that has had applied to it:

- (a) An agrichemical or compound that is not permitted for use on Kiwifruit under the ZGL Crop Protection Programmes or by law; or
- (b) A permitted agrichemical or compound applied otherwise than in accordance with the conditions listed in the Zespri Crop Protection Programme or under any regulatory approval provided by law.

A17.2 Where fruit is found to be Non-Compliant then the following provisions shall apply to all Kiwifruit produced on that KPIN:

- (a) ZGL is under no obligation to accept into inventory or purchase, and if already submitted may subsequently reject from inventory, all Non-Compliant Fruit;
- (b) Where Non-Compliant Fruit is in a Contractor's possession or control, the Contractor shall, at its own cost, comply with all directions from ZGL and from the Ministry of Primary Industry regarding the identification, segregation, destruction, or other means of managing such Non-Compliant Fruit; or
- (c) Where Non-Compliant Fruit is in ZGL's possession or control, and at any time after ZGL has taken ownership of Non-Compliant Fruit, ZGL may trace, recall and/or have such Non-Compliant Fruit destroyed.

A17.3 Where fruit is found to be Non-Compliant such that it is recalled or unable to be exported, the Grower is responsible for the costs associated with such Non-Compliant Fruit. In the first instance, ZGL shall meet with the Contractor and the relevant Grower with a view to working out, in good faith, a payment plan for the recovery of such costs. If this is not possible:

- (a) any payment made by way of standard advance, fruit incentive or progress payment to that KPIN will be deducted in accordance with **clauses C2.4(e), C3.3 and C4.3(e)** of the **Pricing and Payment Manual** ("Fruit Reversal"); and
- (b) Direct Costs attributable to the Non-Compliant Fruit will be charged to the Contractor. For the avoidance of doubt, ZGL does not have the right to offset Direct Costs from earnings.
- (c) For the purposes of this clause:
 - (i) "Direct Costs" include freight, duty, disposal and Recall Costs.
 - (ii) "Recall Costs"
 - i) include offshore coolstorage, transport in market, return transport in-market, dumping costs and labour costs; and
 - ii) exclude costs of residue testing or retesting for a failed sample, costs charged back from customers (to remove product from stores / administration), penalty fees for shortage of stock, loss of sales value (other than Fruit Reversal) or brand/reputation damage.



- (e) ZGL will also charge to the Contractor the Direct Costs of recalling Kiwifruit which has been batched with Non-Compliant Fruit and potentially compromised as a result, provided that the maximum volume, per incident, will be 20 pallets.

A17.4 Contractors must have legal arrangements with their supplying Growers to support recourse to the original grower.

A17.5 ZGL may, at its sole discretion, agree to purchase Kiwifruit produced on a KPIN which would otherwise be Non-Compliant Fruit, where it can be demonstrated to ZGL's satisfaction that:

- (a) such Kiwifruit contains no residue of an agrichemical that is not permitted under the Zespri Crop Protection Programme;
- (b) such Kiwifruit has not been exposed to an agrichemical that is not permitted under the Zespri Crop Protection Programme or by law; and
- (c) neither the Kiwifruit nor the vine on which such Kiwifruit has been grown have had a permitted agrichemical applied otherwise than in accordance with the conditions listed in the Zespri Crop Protection Programme or under any regulatory approval provided by law.

A17.6 Any Kiwifruit purchased under this **clause A17.6** will be purchased as Non-Standard Supply under an **SLA** pursuant to **Schedule 6**. The **SLA** will stipulate that the Grower will bear the costs of:

- (a) Any additional residue tests required;
- (b) Any pack transfers or additional conditions of export;
- (c) At Zespri's discretion, a penalty of \$0.20/TE; and
- (d) Any other additional costs that may be incurred.

For the avoidance of doubt, it shall be reasonable for ZGL to refuse to purchase any Kiwifruit from a KPIN on which Non-Compliant Fruit has been identified where the circumstances under which such Kiwifruit became Non-Compliant Fruit were not voluntarily disclosed to ZGL prior to ZGL collecting residue testing samples from the KPIN.

A17.7 Where a Grower has multiple KPIN's and varieties registered under the same Contractor, ZGL may make Fruit Reversals against those multiple KPIN's and varieties only. For the avoidance of doubt no Fruit Reversal may be made against Kiwifruit supplied from a KPIN which is held by the same Grower but supplied to ZGL by a different contractor.

- A17.8 Direct Costs to be charged to the Contractor pursuant to **clause A17.3** will be invoiced to the Contractor and such invoice shall be payable by the 20th of the following month.
- A17.9 The Contractor shall make all reasonable efforts to recover from the relevant Grower(s) the amount of any Fruit Reversals and Direct Costs attributable to that/those Grower(s) Non-Compliant Fruit ("Bad Debt"). The Contractor will provide evidence of this to ZGL in the form of a monthly written report.
- A17.10 ZGL will co-operate with the Contractor in all matters relating to the recovery of a Bad Debt. This may include, but is not limited to, attending hearings and trials, securing and giving evidence, obtaining the attendance of witnesses, assisting in effecting settlements and in conducting litigation, arbitration and other proceedings.
- A17.11 Any Direct Costs recovered by the Contractor will be applied:
- (a) firstly in payment of any unpaid invoice issued pursuant to **clause 17.8** and
 - (b) secondly to the account of the Contractor.
- A17.12 Subject to **clause 17.13**, any Bad Debt that is not recovered will be shared equally between the Contractor and the relevant ZGL Pool (as specified in **clause A2** of the **Pricing and Payment Manual**) and ZGL will issue a credit for its share of the outstanding Bad Debt to the Contractor.

- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
- A17.14 Any dispute regarding **clause A17** must be notified to the other party in writing. The dispute shall then be referred to an independent review committee in accordance with this **clause A17.14**. Such review committee shall comprise of three members, with each of ZGL and the Contractor to appoint one member and the third member shall be appointed by agreement between the ZGL appointed member and the Contractor appointed member. All members must be appointed within [14 days] of the dispute being notified in accordance with this clause.
- A17.15 The review committee will be administered by ZGL and funded by the relevant ZGL Pool.
- A17.16 The review committee will review the issue in dispute and provide a written report to both ZGL and the Contractor with its recommendation for any remedial action to be taken. Each of ZGL and the Contractor will provide all reasonable assistance to the review committee as required and shall procure the review committee to complete its report within 21 days (or such later time frame as agreed between the parties).
- A17.17 Upon the review committee report being available, ZGL and the Contractor shall meet and in good faith endeavour to resolve the dispute. The report of the review committee shall not be binding but each of ZGL and the Contractor agree to give the report due consideration. If the dispute remains unresolved after the report of the review committee is provided to ZGL and the Contractor, either party may refer the dispute for resolution pursuant to **clause A9**. For the avoidance of doubt, no dispute concerning **clause A17** may

be referred for resolution pursuant to **clause A9** of this Section until the parties have complied with this **clause 17.17** unless the report under **clause A17.16** is not provided within 21 days (or such later time period as agreed) in which case either party is free to seek resolution of the dispute pursuant to **clause A9** any time after the deadline for provision of the report has expired.

A17.18 The report of the review committee shall be confidential to ZGL and the Contractor unless disclosure of all or part of the report is agreed to by both ZGL and the Contractor.

A17.19 In the event of a product recall relating to Kiwifruit supplied by an Option B Grower:

- (a) the service costs (pack differential, time, kiwistart contracted weeks) will be reversed from the Contractor;
- (b) the fruit and incentive payments will be reversed from the Option B Grower or Supply Entity if there is an assignment in place; and
- (c) the recall costs are to the account of the Option B Grower.

A18 USE OF INFORMATION

A18.1 Each Contractor agrees that in the context of performing its obligations under this Agreement, ZGL will obtain information regarding the Contractor and its Growers. Each Contractor agrees that information held by ZGL relating to Kiwifruit and/or Services provided by the Contractor may be shared with

- (a) ZGL distributors and customers as necessary to satisfy traceability, origin and/or classification requirements relating to ZGL kiwifruit and services;
- (b) Any government organisation (whether in New Zealand or elsewhere) as necessary to satisfy legal requirements relating to phytosanitary, pest or other market access requirements; and
- (c) Third party entities which have been subcontracted by the Contractor for the purposes of providing Services under **Part C** of this Agreement.

A18.2 In addition to the express permission noted above, each Contractor acknowledges that information and communications to/from ZGL as part of the Contractor's commercial relationship with ZGL may be transferred to third parties or retained by third party services providers (including service providers outside New Zealand) for information assurance, storage and record-keeping purposes, on generally accepted commercial terms. Any third party will be required to comply with confidentiality obligations in respect of information and communications supplied which are the same as or greater than those set out in this Agreement.

A19 HEALTH AND SAFETY

- A19.1 Each party warrants that it is familiar with and shall comply with all relevant health and safety (H&S) legislation, codes of practice and standards while the Services are being carried out in its workplace or the other party's workplace.
- A19.2 Each party shall obtain a warranty from any contractor involved in the provision of the Services that the contractor shall comply with all relevant health and safety (H&S) legislation, codes of practice and standards when the contractor is providing services to that party in that party's workplace.
- A19.3 Each party will co-operate with the other to enable each party to comply with its obligations under all H&S legislation, codes of practice and standards applicable to the Services
- A19.4 Neither party shall have any liability for failure to comply with a provision of this agreement where the failure arises directly from that party taking steps to protect its employees, contractors or subcontractors from imminent risk of serious injury, provided that the causes of such risk is outside the control of the party.
- A19.5 Where the Contractor provides any orchard health and safety-related information to Eurofins Bay of Plenty Limited, the Contractor gives no warranty about the accuracy or completeness of that information. The Contractor shall remind the Grower, in writing, of the Grower's commitments in relation to providing health and safety related information as per Schedule 5 of the Supply Agreement.

A20 LABOUR COMPLIANCE

- A20.1 The Parties shall promptly notify each other in the event that either of them becomes aware that either of them or a contractor of theirs that is directly involved in the supply of Services becomes subject to formal legal process or proceedings in relation to a breach of labour standards occurring in that party's workplace.

A21 GLOBAL SUPPLY CODE OF CONDUCT AND ZESPRI POLICIES

- A21.1 The Contractor acknowledges that it has read and understands Zespri's Global Supplier Code of Conduct and policies set out at <http://www.zespri.com/company/information/policies>.

PART B SUPPLY OF KIWIFRUIT

B1 APPLICATION OF PART B

B1.1 **PART B** applies to the supply of Kiwifruit to ZGL:

- (a) by the Contractor on behalf of Option A Growers;
- (b) by Option B Growers; or
- (c) as provided in **clause B1.4**.

B1.2 ZGL's obligations under **PART A** and **PART B** in respect of Kiwifruit supplied by an Option B Grower are conditional on a Registered Supplier agreeing to provide Services under **PART C** to ZGL in respect of that Kiwifruit.

B1.3 The Registered Supplier may amend **Schedule 3** by adding or removing Grower Numbers by notice to ZGL.

B1.4 ZGL may, under an **SLA** with the Contractor developed and disclosed in accordance with **clause B1.5**, agree to acquire varieties of Kiwifruit other than Hayward Kiwifruit and PVR Kiwifruit or categories of Hayward and PVR Kiwifruit other than Class 1 from the Contractor. This **PART B** and the other terms of this Agreement shall apply to the acquisition of such Kiwifruit, subject to the terms specified in the **SLA** and a Registered Supplier agreeing to provide Services in respect of that Kiwifruit.

B1.5 Any **SLA** for the supply of Kiwifruit by the Contractor or any other contractor must be developed and disclosed in accordance with **Schedule 6** and **clause C1.6(b)** of **Schedule 12**.

B2 ZGL OBLIGATIONS

B2.1 In addition to the obligations in **PART A**, ZGL will comply with this **PART B** in respect of the supply of Kiwifruit by the Contractor.

B2.2 During the Season ZGL will acquire all Class 1 Kiwifruit from the Contractor in accordance with:

- (a) the provisions of this Agreement; and
- (b) the provisions set out in the Schedules that form part of this Agreement in respect of the Kiwifruit to be acquired by ZGL under this Agreement.

For the avoidance of doubt, the Contractor acknowledges that ZGL has the absolute discretion to determine the destination of any Kiwifruit acquired by it under this Agreement, subject to **Schedule 1** and an **SLA** in **Schedule 6**.

B2.3 Where any Kiwifruit is supplied by the Contractor to ZGL prior to the commencement of the Season but after 31st January 2020, that Kiwifruit will, for the purposes of this Agreement, be deemed to have been supplied to ZGL during the Season and the provisions of this Agreement will apply to such Kiwifruit.

B2.4 In procuring supply of Kiwifruit ZGL may:

- (a) elect to provide an opportunity to all Contractors to express an interest in providing new products to ZGL, but ZGL reserves the right to allocate any contracts on commercial grounds (including, without limitation, ZGL's judgement of the Contractor's capability in respect of such services or products); and
- (b) elect not to provide an opportunity to all persons who supply Kiwifruit to ZGL where the Contractor has, through innovation in product, created an opportunity for mutual advantage to both the Contractor and ZGL, and where, in ZGL's opinion, the innovation is of importance to the overall kiwifruit industry's profitability, then ZGL and the Contractor will cooperate to establish a commercial basis for the extension of such innovation across the industry.

B3 CONTRACTOR OBLIGATIONS

B3.1 In addition to the obligations in **PART A**, the Contractor will comply with this **PART B** in respect of the Supply of Kiwifruit to ZGL, on behalf of Option A Growers.

B3.2 Where the Contractor is providing services to an Option B Grower in accordance with **PART C** all references to the Contractor in this **PART B** shall be read as references to the Option B Grower.

B3.3 The Contractor must supply all Class 1 Kiwifruit to ZGL in accordance with the provisions of this Agreement excluding those provisions relating to the provision of Services under **PART C**.

B3.4 For the avoidance of doubt, an Option B Grower's liabilities under this **PART B** arise even if those liabilities have been caused wholly or in part by a breach by a Registered Supplier of its obligations relating to the provision of Services to ZGL under a Supply Agreement.

B4 PAYMENT

B4.1 ZGL will make payments for the supply of Kiwifruit by the Contractor as specified in **clauses B1.1(a) and (b)**, and **C2 to C5** of the **Pricing and Payment Manual** and any other payments due under this Agreement which are not payable under **clause C4.1**. Such payments will be made in accordance with **clauses C6.1, C6.2, C7**, and (where applicable) **C8** of the **Pricing and Payment Manual**.

B4.2 The Contractor will make payments to ZGL for 5% Supplier Accountability Charges in accordance with **clause B10** and 15% Supplier Accountability Standard Costs in accordance with **clause C10** of **Schedule 11**, except where the Grower has directed ZGL to make the payments in **clause C3.2(c)** of the **Pricing and Payment Manual** to a Registered Supplier in accordance with **clause B4.5**, and any other payments due from the Contractor under **Schedule 11**.

B4.3 The Contractor may irrevocably direct ZGL to make all of the payments referred to in **clause B4.1** which are to be made on account of the Option A Growers to a third party or third parties nominated by the Contractor in accordance with the Pricing and Payment Manual. The direction must:

- (a) be in respect of all payments to the Contractor under **clause B4.1** in respect of Option A Growers throughout the season;

- (b) be listed in **Schedule 7**; and
- (c) be signed by the Contractor.

B4.4 ZGL will amend **Schedule 7** in accordance with any request from the Contractor, following any amendment to **Schedule 3**.

B4.5 An Option B Grower may irrevocably direct ZGL to make any of the payments referred to in **clause B4.1** which are to be made on account of that Option B Grower to a third party or third parties nominated by the Option B Grower in accordance with the **Pricing and Payment Manual** (except that the payment specified in **clause C3.2(c)** of the **Pricing and Payment Manual** may be directed to be made only to the Registered Supplier who agrees to provide the Services under **PART C** to ZGL in respect of that Kiwifruit in accordance with **clause B1.2**). The direction may only apply to such categories of payments as may be determined by ZGL and must be listed in **Schedule 5** and signed by the Kiwifruit Titleholder.

B4.6 Where the Contractor has directed ZGL to make the payments specified in **clause C3.2(c)** of the **Pricing and Payment Manual** to a Registered Supplier, all rights to those payments will pass absolutely to the Registered Supplier. In all other situations, any payment made under **clause B4.3** or **clause B4.5** will be deemed, for the purposes of **clause B4.1**, to have been made to the Contractor and ZGL will not owe any obligations to the approved third party in respect of that payment.

B5 TITLE

B5.1 Subject to **clause B5.4**, the Contractor agrees that it shall cause legal and beneficial title to the Kiwifruit and Packaging to pass to ZGL at FOBS free of all Security Interests.

B5.2 The Contractor will in all cases pass title to the Kiwifruit and Packaging to ZGL either:

- (a) as principal (where the Contractor has, or has acquired, title to the Kiwifruit or the Packaging prior to FOBS); or
- (b) (in all other cases), on behalf of a Kiwifruit Titleholder from whom the Contractor has authorisation to pass title as agent.

B5.3 If the Contractor is passing title to Kiwifruit or Packaging on behalf of a Kiwifruit Titleholder, the Contractor:

- (a) will remain personally liable to ZGL to perform all of the Contractor's obligations under this Agreement; and
- (b) must enter into any agreements necessary to enable it to pass title to the Kiwifruit and Packaging to ZGL on behalf of those Kiwifruit Titleholders. These agreements must not be inconsistent with the terms of this Agreement and must include, without limitation:
 - (i) an acknowledgement that the Kiwifruit Titleholder is aware of the provisions of this Agreement and that if there is an inconsistency, the terms of this Agreement will prevail;
 - (ii) an authorisation for the Contractor to pass title to Kiwifruit and Packaging on behalf of the Kiwifruit Titleholder;

- (iii) an unconditional obligation, expressed as not subject to any set-off, counterclaim or withholding, to refund any payment made to the Kiwifruit Titleholder in respect of Kiwifruit and Packaging if that Kiwifruit and Packaging is not actually supplied to ZGL;
- (iv) appropriate dispute resolution provisions and an agreement that, if a dispute arises between the parties, both parties will continue to perform their obligations in accordance with the agreement, notwithstanding the dispute; and
- (v) a provision that, if the agreement is terminated for any reason whatsoever by a Kiwifruit Titleholder, the Kiwifruit Titleholder must take all necessary steps to ensure that all Kiwifruit and Packaging in respect of which a Standard Advance Payment under **clause C2** of the **Pricing and Payment Manual** has been made (whether or not the Kiwifruit Titleholder has received any amount of that payment) is supplied to ZGL in accordance with the provisions of this Agreement.
- (vi) an authorisation for the Contractor to access and share with ZGL any information of the Kiwifruit Titleholder that needs to be disclosed to ZGL to comply with the terms of this Agreement.

B5.4 Where any Kiwifruit or Packaging will not pass to ZGL free of Security Interests by virtue of the **Personal Properties Securities Act 1999** or otherwise, the Contractor must cause any such Security Interest to be removed prior to passing title to that Kiwifruit and Packaging to ZGL at FOBS, except for Security Interests created:

- (a) in respect of Kiwifruit and Packaging, by the Kiwifruit Titleholder;
- (b) in respect of Packaging, by a retention of title clause in any agreement between the Contractor, or any third party service providers in the supply chain between a Kiwifruit Titleholder and the Contractor, and with the supplier of the Packaging;

which the Contractor must cause to be removed as soon as reasonably practicable and in any event prior to the end of the Season, provided that if there are any direct costs or direct losses incurred by ZGL as a result of all Security Interests in respect of Kiwifruit or Packaging not being removed prior to the passing of title to that Kiwifruit or Packaging to ZGL at FOBS, the Contractor shall reimburse ZGL on demand for those direct costs or direct losses.

For the avoidance of doubt, the Contractor shall not be obliged to cause to be removed and released any Security Interests in any proceeds (as that term is defined in the **Personal Property Securities Act**) of the Kiwifruit and Packaging.

B5.5 The Contractor shall indemnify, and keep indemnified, ZGL on demand for all losses, liabilities, costs and expenses incurred by ZGL arising from any breach by the Contractor of the Contractor's obligations under **clauses B5.1, B5.3, B5.4, B5.6, B5.7 and B5.8**.

B5.6 Where any payment is made in accordance with the **Pricing and Payment Manual**, the Contractor must, if any Kiwifruit in respect of which that payment has been made is not supplied to ZGL in accordance with this Agreement, immediately repay that payment to ZGL.

- B5.7 The Contractor will notify ZGL immediately:
- (a) of any material adverse change to its operations or financial condition;
 - (b) if it becomes aware of any material adverse change to the financial condition or operations of any Kiwifruit Titleholder referred to in **clause B5.2** or any person receiving payment under **clause B4.3** or **clause B4.5**.
- B5.8 If the Contractor is passing title to Kiwifruit or Packaging as principal (Where the Contractor has acquired title to the Kiwifruit or the Packaging prior to FOBS the Contractor will ensure that any agreements (including any agreements under which the Contractor acquires title to Kiwifruit) necessary to enable it to pass title to the Kiwifruit and Packaging to ZGL must include, without limitation:
- (a) an unconditional obligation by the Kiwifruit Titleholder, expressed as not subject to any set-off, counterclaim or withholding, to refund any payment made to the Kiwifruit Titleholder in respect of Kiwifruit and Packaging if that Kiwifruit and Packaging is not actually supplied to ZGL; and
 - (b) a provision that, if the agreement is terminated for any reason whatsoever by a Kiwifruit Titleholder, the Kiwifruit Titleholder must take all necessary steps to ensure that all Kiwifruit and Packaging in respect of which a Standard Advance Payment has been made under **clause C2** of the **Pricing and Payment Manual** (whether or not the Kiwifruit Titleholder has received any amount of that payment) is supplied to ZGL in accordance with the provisions of this Agreement.
- B5.9 If the Contractor has entered into this Agreement as an agent for any other person ("Principal") it warrants:
- (a) either it has the authority to act as the Principal's agent; or
 - (b) it has received by way of delegation from the Principal's agent the power to act as the Principal's sub-agent in relation to this Agreement.

PART C PROVISION OF SERVICES

C1 APPLICATION OF PART C

- C1.1 Subject to **clause C1.2**, this **PART C** applies to the supply of Services to ZGL by the Contractor in respect of Kiwifruit to be supplied from the Grower Numbers specified in both **Schedules 3 and 4** and as provided in **clause C1.5**. For the avoidance of doubt, where there are no Grower Numbers specified in **Schedules 3 or 4** or **clause C1.5** does not apply, neither the Contractor nor ZGL owe any obligations under this **PART C**.
- C1.2 A Contractor may only list a Grower Number in **Schedule 4** if:
- (a) the Contractor is a Registered Supplier;
 - (b) the Grower Number is not listed in **Schedule 3** of this Agreement or any other Supply Agreement;
 - (c) the Grower Number is listed in **Schedule 5** of another Supply Agreement; and
 - (d) the person who has entered into the Supply Agreement referred to in paragraph (c) has agreed to the Contractor listing the Grower Number in **Schedule 4** of this Agreement.
- C1.3 The Contractor may, by notice to ZGL, add Grower Numbers to **Schedule 4**, subject to **clause C1.2(b) to (d)**.
- C1.4 The Contractor may, by notice to ZGL, remove Grower Numbers from **Schedule 4**, provided that the relevant Contractor (in terms of **clause C1.2(c)**) agrees.
- C1.5 Where ZGL and the Contractor enter into a **SLA** for the supply of services by the Contractor, the Contractor will provide those services in accordance with this **PART C** and the other clauses of this Agreement, subject to any terms specified in the **SLA** between ZGL and the Contractor.
- C1.6 Any **SLA** for the supply of services by the Contractor or any other contractor must be developed and disclosed in accordance with **Schedule 6** and **clause C1.6(b) of Schedule 12**.

C2 ZGL OBLIGATIONS

- C2.1 In addition to the obligations in **PART A**, ZGL will comply with its obligations under this **PART C** in relation to the supply of Services by the Contractor.
- C2.2 ZGL will acquire Services from the Contractor in accordance with:
- (a) the provisions of this Agreement; and
 - (b) the provisions set out in the Schedules that form part of this Agreement in respect of the supply of the Services, including the procedures and requirements set out in **Schedule 2**.

C2.3 In procuring supply of Services ZGL may:

- (a) elect to provide an opportunity to all persons who supply Kiwifruit to ZGL to express an interest in providing new products or services to ZGL, but ZGL reserves the right to allocate any contracts on commercial grounds (including, without limitation, ZGL's judgement of the Contractor's capability in respect of such services or products); and
- (b) elect not to provide an opportunity to all persons who supply Kiwifruit to ZGL where the Contractor has, through innovation in product or service, created an opportunity for mutual advantage to both the Contractor and ZGL, and where, in ZGL's opinion, the innovation is of importance to the overall kiwifruit industry's profitability, then ZGL and the Contractor will co-operate to establish a commercial basis for the extension of such innovation across the industry.

C3 CONTRACTOR OBLIGATIONS

- C3.1 In addition to the obligations in **PART A**, the Contractor will comply with its obligations under this **PART C** in respect of the supply of Services to ZGL.
- C3.2 The Contractor will provide the Services to ZGL in respect of all Kiwifruit to be supplied to ZGL both in respect of the Grower Numbers (and, if applicable, any identifiable volumes of Kiwifruit) listed in **Schedules 3 and 4** and as provided in **clause C1.5**.
- C3.3 The Contractor must deliver Kiwifruit to ZGL at FOBS and in all other respects provide the Services in accordance with the provisions of this Agreement, relating to the provision of Services.
- C3.4 For the avoidance of doubt, the Contractor's liabilities under this **PART C** arise even if those liabilities have been caused wholly or in part by a breach by an Option B Grower of its obligations to ZGL under **PART B**.
- C3.5 The Contractor will nominate representatives for the ISG and S&OP committees using the form provided in **Appendix 1**.

C4 PAYMENT

- C4.1 ZGL will make payments specified in **clauses B1.1(c) to (d), C6.3, C6.4, C8** (where applicable), and **Sections D & E** of the **Pricing and Payment Manual** and **Schedule 6** to the Contractor for Services supplied to ZGL under this **PART C**. ZGL will also make any payments specified in **clause C3.2(c)** of the **Pricing and Payment Manual** which another person has directed to be paid to the Contractor.
- C4.2 The Contractor will make payments to ZGL for 5% Supplier Accountability Charges in accordance with **clause B10** and 15% Supplier Accountability Standard Costs in accordance with **clause C12** of **Schedule 11**, infringement charges, labelling charges and other charges in accordance with **Schedule 13** and **Sections D & E** of the **Pricing and Payment Manual**, order and supply non-conformance premiums and charges in accordance with **Sections C, D, E & G** of **Schedule 2**.

C5 PORT SERVICES

- C5.1 For each port at which the Contractor provides Services under this Agreement, the Contractor will appoint an on port logistics provider (“On Port Logistics Provider”) to carry out the transport, on port storage, marshalling and stevedoring services (“Logistics Services”) required in order for the Contractor to meet its obligations under this Agreement in respect of that port. For the avoidance of doubt, the On Port Logistics provider may be the Contractor.
- C5.2 Where the Contractor nominates a third party to act as On Port Logistics Provider, the Contractor grants authority for ZGL to work directly with the On Port Logistics Provider in relation to the provision of Logistics Services for any Fruit provided by the Contractor on the following basis;
- a) Subject to clause C5.2(b) and except as otherwise expressly required by this Agreement, ZGL shall have no need to notify the Contractor about its dealings with the On Port Logistics Provider
 - b) ZGL shall promptly notify the Contractor of any matter it becomes aware in dealings with the On Port Logistics Provider or Services which:
 - I. May have a material adverse impact on the Contractor, or the Grower the Contractor is providing Services to; or
 - II. Is not a day to day business activity occurring between ZGL and the On Port Logistics Provider and this activity would have a materially adverse impact on the Contractor, or the Grower the Contractor is providing Services to;
- C5.3 ZGL will be liable for loss or damage arising from any wilful or negligent acts or omission in relation to its dealings with the On Port Logistics Provider.
- C5.4 The Contractor will be liable for loss or damage arising from any wilful or negligent acts or omission in relation to its dealings with the On Port Logistics Provider.
- C5.5 The Contractor will be responsible for the performance of the On Port Logistics Provider, in relation to its provision of the Logistics Services, and must ensure that:
- a) The On Port Logistics Provider develops a Documented Quality System (DQS) in respect of the Logistics Services to ensure that the Logistics Services are provided in accordance with the requirements of the Quality Manual and obtains ZGL’s written approval of such DQS prior to the commencement of the Logistics Services;
 - b. The On Port Logistics Provider holds appropriate insurance coverage in respect of the Logistics Services, to a level at least equivalent to that required to be held in Section E of Schedule 10.
- C5.6 ZGL will be responsible for auditing On Port Logistics Provider’s compliance with its approved DQS and with the requirements of the ZGL Quality Manual.
- (a) ZGL shall promptly notify the Contractor of any critical non compliances issued to the On Port Logistics Providers as a result of its failure to comply with the provisions of its approved DQS or the requirements of the Quality Manual.

C6 APPOINTMENT AS ZESPRI EXCLUSIVE SUPPLIER

- C6.1 The Contractor may apply to ZGL for the Contractor, and for any post-harvest operators who authorise the Contractor to apply on their behalf, to be appointed as Zespri Exclusive Suppliers.
- C6.2 ZGL must appoint the Contractor and the post-harvest operators as Zespri Exclusive Suppliers for the Season unless:
- (a) the Contractor's or post-harvest operator's, or any of their related parties, appointment as a Zespri Exclusive Supplier in a previous season was cancelled; or
 - (b) in ZGL's reasonable opinion, there are other good reasons for not doing so.
- C6.3 The appointment of the Contractor and the post-harvest operators as Zespri Exclusive Suppliers will take effect upon the execution of **Schedule 8** by the Contractor, on behalf of itself and the post-harvest operators, and by ZGL. The appointment will be on the terms set out in **Schedule 8** and may be cancelled in accordance with **Schedule 8**.

APPENDIX 1 ISG NOMINATION FORM

ISG NOMINATION FORM

To: Zespri Group Limited (“Zespri”)

The (“**Contractor**”), _____

Hereby nominates _____ the (“**ISG Representative**”);

To represent the Contractor on the Industry Supply Group (ISG), in accordance with the following terms:

1. The Representative has the right to attend all ISG meetings at their discretion or provide a proxy where deemed appropriate.
2. Any proxy provided must be communicated to the Chairperson of the applicable meeting prior to meeting start by the Contractor or the applicable Representative; and
3. The Contractor agrees that any proxy provided will accept all responsibilities on behalf of the Representative as laid out in this Appendix; and
4. The Representatives agree to accurately represent the Contractor’s views at all ISG meetings; and
5. The Contractor represents and warrants that the Representatives or any proxy provided hold the authority to make decisions in the ISG committee on the Contractor’s behalf; and
6. The Contractor agrees to be bound by the decisions made by the Representatives or any proxy provided in the ISG committee; and
7. The Contractor agrees to be bound by all decisions made by the ISG committee; and
8. This authority shall continue in force for the duration of the 2020 Season unless otherwise cancelled or amended by either party.

Signed on behalf of the **Contractor** (signatory must not also be either Representative)

Full Name
Title
Signature
Date

Signed by the **ISG Representative**

Full Name
Title
Signature
Date

EXECUTION

Executed as an Agreement

Signed on behalf of Zespri Group Limited	
Full Name	
Title	
Signature	
Date of Execution	

Signed on behalf of Contractor	
Full Name	
Title	
Signature	
Date of Execution	

Signed on behalf of Contractor	
Full Name	
Title	
Signature	
Date of Execution	

Schedule 1: Special Terms

Term: The period commencing on 1st April 2020 and ending on 31st March 2021.

Contractor:

Special Conditions

1. The parties acknowledge that:

Acknowledged by ZGL

Acknowledged by the Contractor

Schedule 2
Entire Schedule Exempt

Schedule 3: Kiwifruit and Services to be supplied by a Registered Supplier

The Contractor, who is also a Registered Supplier, will supply to ZGL both Kiwifruit from the Grower Numbers listed below and Services in respect of that Kiwifruit.

ZGL and the Contractor agree to complete as soon as practicable **Schedule 3** which when completed, will be deemed to be included in this Agreement.

<<Insert Grower Numbers>>

Schedule 4: Grower Numbers for which Services only will be provided by the Registered Supplier

The Contractor, who is also a Registered Supplier, will supply Services to ZGL in respect of Kiwifruit to be supplied to ZGL by other Contractors from the following Grower Numbers.

ZGL and the Contractor agree to complete as soon as practicable **Schedule 4** which when completed, will be deemed to be included in this Agreement.

<<Insert Grower Numbers>>

Schedule 5
Entire Schedule Exempt

Schedule 6: Service Level Agreements

ZGL and the Contractor agree that they may negotiate and enter into Service Level Agreements (SLA) during the Season which will become binding and part of the **2020 Supply Agreement** when executed by both parties in accordance with the following provisions.

ZGL and the Contractor agree that SLAs will fall into the following categories:

- Generic;
- Contractor initiated;
- ZGL initiated Expression of Interest (EOI)/Competitive
- ZGL initiated Contractor specific; or

Any SLA must be developed in accordance with the provisions contained in this schedule and will be disclosed in accordance with the disclosure requirements in **Schedule 12** and the Regulations.

It is accepted that ZGL may enter into SLAs with the Contractor and/or other contractors. SLAs are used to enable commercial flexibility to meet operational requirements and provide commercial space to support innovation and competition within the Supply Co-Operative structure. The use of SLAs must be balanced against:

- The application of the principle of equal opportunity so as not to undermine the SPE;
- Must not breach the New Zealand Kiwifruit Regulations;
- Should not materially deprive any contractor of its contractual rights unless it complies with the variation provisions of Clause A14; and
- ZGL having the ability undertake innovative programmes for the benefit of the industry.

Principles that will be observed by ZGL and the Contractor when entering into SLA's:

- ZGL, acting in the best interests of the grower Pools, will carefully consider the merit of an SLA to ensure it is in the best interests of ZGL (all growers) and the New Zealand Kiwifruit Industry and that it complies with all the provisions of this schedule.
- SLAs may be:
 - Initiated by the Contractor who wishes to carry out commercial/ technical initiatives & trials that will benefit any or all of: themselves, all Contractors, or ZGL. Contractor initiated SLAs will be confidential to the parties except as regards the disclosure requirements noted in this schedule;
 - Generic SLAs initiated by ZGL during or before the season and open to all Contractors;
 - SLAs initiated by ZGL for Pool benefit and made available to all Contractors selected on a basis which is consistent with the provisions of this schedule;
 - SLAs initiated by ZGL for Pool benefit and made available to specific Contractors provided the reason(s) for such commercial discrimination is considered as compliant with the New Zealand Kiwifruit Regulations by ZESPRI at the time the SLA is entered into, is compliant with the provisions of this schedule and that the details of the SLA are made available to the ISG.
- The SLA shall clearly state:
 - The parties entering into the agreement;
 - The party that initiated the SLA
 - The dates the agreement has been drawn up and executed;
 - The purpose and background to the agreement;
 - Operational factors such as the limited volume of the SLA, limited time in putting the commercial arrangements in place, Contractor capability in a specific area, etc.
 - The expected commercial benefits to the Pool & and the extent of risk or cost to the Pool;
 - The expected commercial benefits to the Contractor(s);
 - The specific terms of the agreement including the payment terms and duration;
 - The ownership of any Intellectual Property coming out of the SLA;
 - The terms under which any Intellectual Property, information, or know how coming out of the SLA will be made available to the broader industry;
 - A statement that ZGL has approved the SLA after having considered both the potential benefits and risks to both ZGL and the Contractor and is satisfied that the SLA is compliant with the provisions of this schedule.

Industry Governance and Regulatory Issues

- ZGL will publish a description of the various SLAs it has entered into and the quantum spent, on a quarterly basis, to the IAC and ISG per **Schedule 12 Clause C1.5(b)**.
- The fact and subject of various SLAs but not their content will be published in the Kiwiflier quarterly.

The Generic SLA

ZGL and the Contractor agree that the following services will be conducted pursuant to an Industry Generic SLA, and that the costs associated with these services will be determined by the Industry Supply Group (ISG):

- Fruit Labelling;
- Market Specific Labelling;
- Packaging Transfers;
- Pallet Base Transfers; and
- Consolidation of Shared Containers.

Schedule 7: Notice of Direction

List of Payment Directions made by the Contractor under **clause B4.3**.

ZGL and the Contractor agree to complete as soon as practicable **Schedule 7** which when completed, will be deemed to be included in this Agreement.

Schedule 8: Appointment as Zespri Exclusive Supplier

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SECTION A DEFINITIONS

Terms used in this Schedule have the meaning set out in **clause A1** of the **Supply Agreement**, except that:

“**Class 1 Kiwifruit**” for the purpose of this **Schedule 8** means any Class 1 Kiwifruit as defined in **clause A1** of this Agreement including, for the avoidance of doubt, any such Kiwifruit marketed under a Collaborative Marketing Arrangement, but excluding any such Kiwifruit sold in New Zealand or exported for consumption in Australia.

“**Loyalty Premium**” means the payment made to a Grower under a Three Year Rolling Grower Contract between a Grower and Zespri;

“**PHO**” means the post-harvest operators listed in **Appendix 1** of this Schedule;

“**Related parties**” means:

- 1) persons connected by blood relationship, marriage, or adoption, and for the purposes of this definition:
 - a) parents, children and siblings are connected by blood relationship;
 - b) a trustee of a trust under which a person, who is connected to another person by blood relationship, benefits or is eligible to benefit is connected to the other person by blood relationship;
 - c) persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other or they are in a de facto relationship or are civil union partners;
 - d) persons are connected by adoption if one has been adopted as the child of the other or as a child of a person to whom the other person is connected by blood relationship; or
- 2) persons who are partners to whom the **Partnership Act 1908** applies; or
- 3) bodies corporate that consist substantially of the same members, shareholders, or proprietors, or that are under the direct or indirect control of the same persons;
- 4) a body corporate and a person who has the power, directly or indirectly, to exercise, or control the exercise of, the rights to vote attached to 20percent or more of the voting securities of the body corporate;
- 5) a body corporate and a person who is a director or officer of the body corporate;
- 6) any trustee of a trust and any person who benefits or is eligible to benefit under that trust; or
- 7) any trustee of a trust and the settlor of the trust.

SECTION B APPOINTMENT AS EXCLUSIVE SUPPLIER

The following terms apply to the appointment of the Contractor and the PHOs as Zespri exclusive suppliers:

- B1.1 The Contractor and each of the PHOs are appointed by ZGL as exclusive suppliers to ZGL.
- B1.2 The Contractor and each of the PHOs agree that they will provide post-harvest services, including the Services, for Class 1 Kiwifruit only if it is supplied to ZGL (for marketing by ZGL alone or under a Collaborative Marketing Arrangement). The Contractor and each of the PHOs acknowledge that the benefit they receive from being Zespri exclusive suppliers is to be able to enter into agreements with Growers to provide post-harvest services.
- B1.3 The Contractor and the PHOs are entitled to publicise and otherwise advise Growers of their appointment as Zespri exclusive suppliers. Any publicity or other material must be in accordance with any directions given by ZGL.

SECTION C CANCELLATION OF APPOINTMENT

- C1.1 ZGL may cancel the appointment of the Contractor and/or any or all of the PHOs as Zespri exclusive suppliers if any of the Contractors, PHOs or any of their related parties provides post-harvest services for Class 1 Kiwifruit which is supplied to a person other than ZGL.
- C1.2 However, except where **clause C1.3** applies, if a PHO or related party has provided post-harvest services for Class 1 Kiwifruit which is supplied to a person other than ZGL, ZGL may not cancel the appointment of the Contractor under **clause C1.1** unless:
- (a) the Contractor or any of its related parties were involved in, influenced, or received a benefit from, the provision of services for such Kiwifruit by the PHO;
 - (b) the Contractor knew or should reasonably have known about the provision of services for such Kiwifruit by the PHO and did not take all reasonable steps to ensure that the PHO ceased to provide services for such Kiwifruit; or
 - (c) the Contractor did not, as soon as practicable, terminate its contract with the PHO.
- C1.3 Where the Contractor or any one or more of the PHOs provide post-harvest services for Class 1 Kiwifruit and that Kiwifruit is found by ZGL in a market outside New Zealand and Australia, and that Kiwifruit was not exported by ZGL or under a Collaborative Marketing Arrangement, ZGL may cancel the appointment of the Contractor and/or any or all of the PHOs concerned under **clause C1.1**.
- C1.4 However, ZGL may not cancel the appointment of the Contractor, or of a PHO, under **clause C1.3**, if:
- (a) the Contractor or the PHO proves that it took all reasonable steps to ensure that the Kiwifruit was exported for consumption in Australia and that neither it nor any of its related parties were involved in, influenced or benefited from, in any way, the export of the Kiwifruit from New Zealand to the other market or the re-export of that Kiwifruit from another market to the market where the Kiwifruit was found; and
 - (b) in relation to the Contractor, where a PHO has not proved the matters specified in **clause C1.4(a)**, the Contractor has, as soon as practicable, terminated its contract with the PHO.
- C1.5 ZGL will give notice in writing to the Contractor and the PHO of the cancellation of their appointment as Zespri exclusive suppliers. The notice will specify the date that cancellation takes effect. ZGL may also notify growers of the cancellation of the Contractor's and the PHOs' appointment as Zespri exclusive suppliers.
- C1.6 If the Contractor and any PHOs receive notice that their appointment as Zespri exclusive suppliers is cancelled they must:
- (a) immediately withdraw any publicity or other material that contains any statement affirming that the Contractor and the PHOs are Zespri exclusive suppliers; and
 - (b) continue to comply with this Schedule until the cancellation takes effect.
- C1.7 If the appointment of a Contractor or PHO is cancelled, ZGL makes no warranty that the Contractor and the PHO will be appointed as Zespri exclusive suppliers for the season following the Season to which this Agreement applies.

SECTION D PROVISION OF INFORMATION BY ZESPRI

- D1.1 ZGL will:
- (a) maintain a list of Contractors and PHOs who are currently appointed as Zespri exclusive suppliers on its website, and publish the list in the Kiwiflier (as at the date 5 days prior to publication) in April of the current Season, for the current Season;

- (b) inform each Grower who supplies Class 1 Kiwifruit to ZGL under a Three Year Rolling Grower Contract of the Loyalty Premium paid to the Grower;
- (c) disclose in its annual report the basis on which the Loyalty Premium for the Season was calculated; and
- (d) publish industry wide information on the Loyalty Premiums paid to Growers each year in the Kiwiflier.

SECTION E NOTICE

E1.1 Zespri may serve notice on the PHOs under this Schedule by serving notice on the Contractor.

SECTION F AUTHORITY TO BIND PHOs

F1.1 In agreeing to be a Zespri exclusive supplier, the Contractor warrants that it is authorised to bind the PHOs to the terms of this Schedule.

Contractor Execution Section	Zespri Group Limited Execution Section
I am authorised to sign this Schedule 8 on behalf of the Contractor named in and the Post-Harvest Operators listed in the Appendix 1 to this Schedule 8 .	
Full name:	Full Name:
Signature:	Signature:
Date:	Date:

APPENDIX 1 PHOs APPOINTED AS ZESPRI EXCLUSIVE SUPPLIERS

Post-Harvest Operators appointed as Zespri Exclusive Suppliers under this Schedule:

Schedule 9: Supply of Non-Class I PVR Kiwifruit

1. The Contractor may sell or otherwise supply Non-Class I PVR Kiwifruit only:
 - (a) To a ZGL licensed processor;
 - (b) To ZGL pursuant to an **SLA** entered into pursuant to **Schedule 6**; or
 - (c) For disposal by dumping.
2. ZGL will publish the names of the licensed processors on the Zespri Canopy website, <https://canopy.zespri.com>.
3. The Contractor is responsible for all costs relating to Non-Class I PVR Kiwifruit, and for negotiating the commercial arrangement with the licensed processor and any commercial arrangement for remuneration to Growers. No remuneration will be payable to ZGL by the Contractor in relation to sales of Non-Class I PVR Kiwifruit to a licensed processor.
4. The Contractor will provide ZGL with a summary of the total volume in kilograms of Non-Class I PVR Kiwifruit sold or otherwise supplied to each licensed processor and the average sales price per kilogram.
5. For the purposes of this schedule, a “ZGL Licensed Processor” means an entity which has entered into a licence with ZGL to procure PVR Kiwifruit from Registered Suppliers for the purpose of manufacturing processed products.
6. The Contractor acknowledges and agrees that Non-Class I PVR Kiwifruit may not under any circumstances be distributed or made available to any party other than ZGL for sale as fresh fruit in New Zealand or Australia. If the Contractor is found to breach this clause the opportunity to participate in any expression of interest to sell Class II PVR Kiwifruit will be lost or revoked.

Schedule 10: Insurance and Risk

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SECTION A ARRANGEMENT OF INSURANCE

- A1** Under **clause A6** of the **Supply Agreement**, ZGL will use its best endeavours to arrange Marine Cargo Insurance for the risks of loss or damage to fresh/chilled New Zealand Kiwifruit including New Zealand Kiwifruit stored under controlled atmosphere conditions on behalf of Grower interests up to the point at which title passes to ZGL. This **Schedule 10** set outs indicative terms for such insurance based on the 2020 policy, but the parties acknowledge that the final policy may result in amendments to this Schedule.
- A2** ZGL also arranges Marine Cargo Insurance to cover risks that arise after it acquires title to the Kiwifruit at FOBS. ZGL may also arrange cover for promotional material, point of sales items and other property on such terms as it considers appropriate.
- A3** Pursuant to **clause A6** of the **Supply Agreement**, ZGL will use its best endeavours to arrange Contaminated Products Insurance to cover the fruit from the time it has been picked in respect of the Grower interests up to the point at which title passes to ZGL subject to terms deductibles and limits of the policy as agreed by the ISG prior to the commencement of the Season. This **Schedule 10** set outs indicative terms for such insurance based on the 2020 policy, but the parties acknowledge that the final policy may result in amendments to this Schedule.
- A4** ZGL will seek to ensure that any Contaminated Products Insurance will continue on behalf of ZGL's interest after the point at which title passes to ZGL, subject to the same policy terms, deductibles and limits.
- A5** Under **clause A6.3** of the **Supply Agreement**, Contractors are also covered directly against the risk of hail strike for Kiwifruit on the vine as set out in **Section D** and for losses that come under the deductibles set out in the Marine Cargo Insurance that would otherwise be covered by that insurance as set out in **clause B1**.
- A6** All costs associated with the insurance referred to in **clause A6** of the **Supply Agreement** will be charged against the Pools as set out in **clause A2** of the **Pricing and Payment Manual**. These costs include:
- (a) Insurance premiums including:
 - (i) 95% of Marine Cargo Insurance premiums
 - (ii) Charterer's liability;
 - (iii) Pool Hail Policy Premiums;
 - (iv) 50% of product/public liability premiums;
 - (v) 75% of Contaminated Products Insurance premiums; and
 - (vi) 75% of Trade Credit Insurance premiums.
 - (b) Uninsured losses and costs which are less than the policy deductible or excess which are paid by ZGL including;
 - (c) Claims paid by ZGL to contractors for losses under the Marine Cargo Insurance policy deductibles;
 - (d) The Pool Earthquake Contribution (in accordance with **clause B3.4a**);

- (e) The balance of Contaminated Products Insurance deductibles where these are not met by the contractor (in accordance with **clause C3.4**);
- (f) Non-fruit loss costs which relate to the Marine Cargo Insurance policy such as survey and customs fees;
- (g) The costs of arranging and managing insurances including:
 - (i) ZGL policy administration and related costs;
 - (ii) Consultancy/brokerage fees;
 - (iii) Legal costs incurred as a result of policy interpretation;
 - (iv) Costs of any experts or external insurance assessors; and
 - (v) The bank guarantee fee for bank guarantee required for security of the Marine Cargo insurer for under deductible claims.
- (h) Costs incurred in attempting to make recoveries on losses, whether the recovery is successful or not; and
- (i) Other related costs.

A7 Amounts recovered from third parties for losses to Kiwifruit will be credited to the Pools as set out in **clause A2** of the **Pricing and Payment Manual**.

SECTION B MARINE CARGO INSURANCE AND ZESPRI DIRECT COVER

B1 The terms, conditions and exclusions of the Marine Cargo Insurance will be set out in the policy to be entered into between ZGL and its Marine Insurer for the Season (the "Marine Cargo Policy"). Subject to **clause A6.2** of the **Supply Agreement**, these terms, conditions and exclusions will be provided by ZGL to Contractors on request. ZGL will use its best endeavours to enter into the Marine Cargo Insurance substantially on the terms set out below. In the event of any inconsistency between the terms below and the Marine Cargo Policy, the Marine Cargo Policy will prevail.

B2 The Marine Cargo Policy covers the risk of physical loss or damage to fresh and chilled kiwifruit from the time of harvest, which means when the conveying vehicle wheels first stand on a public road on exiting the orchard enroute to the packhouse. The risk continues until the insured's interests in the kiwifruit ceases.

B3 INDICATIVE TERMS OF MARINE CARGO INSURANCE

B3.1 Period of insurance: 4pm 1st March 2020 to 4pm 1st March 2021.

B3.2 The Marine Cargo Policy will only cover the loss of, or damage to, Kiwifruit supplied, or to be supplied to ZGL in accordance with a Supply Agreement, including any SLAs, provided that the loss or damage falls within the scope of cover provided by the Marine Cargo Policy.

B3.3 The Marine Cargo Policy will only cover fresh or chilled Kiwifruit from the time of harvest:

- (a) In the case of Cost and Freight and FOBS sales, until the Kiwifruit crosses the overseas ship's rail, or is loaded into an aircraft for the overseas transit; or
- (b) In respect of all other sales, to ZGL overseas buffer stores or the purchaser or its Agent's premises depending on at which point the purchaser takes ownership.

B3.4 The deductible in the Marine Cargo Policy for all losses arising from earthquake, volcanic eruption, tsunami, hydrothermal activity and/or resulting fire (the Earthquake Site Deductible) is 2.5% of the value of the fruit at the site, with a minimum of two hundred and fifty thousand dollars (\$250,000) including GST, per site, per event, until the total Earthquake Site Deductible's exceed the cumulative total of three million dollars (\$3,000,000) (plus GST) per event. The apportionment of deductibles will be as follows:

- (a) The Pool will pay Earthquake Site Deductibles to a total value of three million dollars (\$3,000,000) in any one season (the Pool Earthquake Contribution); and
- (b) If the total value of Earthquake Site Deductibles within any one season exceeds the three million dollar (\$3,000,000) Pool Earthquake Contribution, then all Contractor claims within that season will be subject to Earthquake Site Deductibles. In this situation, the Earthquake Site Deductible will be borne by each Contractor and the Pool Earthquake Contribution will be prorated to Contractors in accordance with the value of the Earthquake Site Deductibles.

B3.5 Earthquake Site Deductibles described in **clause B3.4** are separate to other deductibles in the Marine Cargo Policy and in this section.

B3.6 For the avoidance of doubt the deductibles in **clause B3.4** are the only deductibles applicable in an earthquake or volcanic activity event.

B3.7 For the purpose of **clause B3.4** and **clause B7.1(d)** an event is defined as any loss or series of losses arising out of and attributable to any single cause during any one period of 72 consecutive hours. Occurrences within this period of time shall be deemed to be a single event.

B3.8 For the purposes of **clause B3.4** and **clause B7.1(d)** a site is defined as each warehouse or place of storage or complex of buildings constituting one set of premises, including craft and rail or road conveyances that form an integral part of such premises or any one conveyance.

B3.9 For insured perils other than those described in **clause B3.4** the deductible in the Marine Cargo Policy will be seven hundred and fifty thousand dollars (\$750,000) (plus GST) plus the Contractor's deductible as stated in **clause B7.1** per claim, per event, until the total deductibles for all claims (excluding the Contractor's deductible as stated in **clause B7.1**) within a season exceed the cumulative total of three million dollars (\$3,000,000) (plus GST). Thereafter, the deductible will be the Contractor's deductible as stated in **clause B7.1**.

B3.10 All loss or damage arising out of any one event is one loss for the purpose of the deductibles. Subject to **clause B3.4** and **clause B3.5** (Earthquake Site Deductible) and subject to **clause B3.7** where:

- (a) Multiple Contractors suffer loss or damage arising out of the same event;
- (b) A single Registered Supplier provides Services to all of those Contractors under **Part C** of the **Supply Agreement**; and

- (c) Such Contractors have different deductibles in respect of the claim;

Then each Contractor's deductible will be prorated in proportion to such Contractor's share of the total accepted claim value (exclusive of deductibles).

B3.11 Notwithstanding **clause B3.7**, where:

- (a) Multiple Contractors suffer loss or damage arising out of the same event; and
- (b) Not all of the Contractors have appointed the same Registered Supplier under **Part C** of the **Supply Agreement**;

Then each Contractor's deductible shall be paid by each Contractor separately, unless the loss or damage occurs at a single facility, in which case each Contractor's deductible will be prorated in proportion to such Contractor's share of the total accepted claim value (exclusive of deductibles). For the purposes of applying the tiered deductible for subsequent claims the Contractor's historic shared deductibles will be treated as if the full contractor deductible for the applicable tier has been applied.

B3.12 The maximum payable by the Marine Insurer under the Marine Cargo Policy for any one claim or series of claims or at any one site will be twenty million dollars (\$20,000,000) (plus GST where applicable) inclusive of deductibles unless:

- (a) In the Contractor's reasonable opinion a higher site limit is required and the Contractor makes a request to ZGL in writing for a specified higher limit for a named location (the "Agreed Amount") no later than 30 days prior to the commencement of the 2020 season. Such request must be submitted via email to the ZGL Insurance Manager at insurance@zespri.com; or
- (b) The Agreed Amount is agreed to by ZGL and the Marine Insurer in writing and the specified location is named in the Marine Cargo Policy prior to the commencement of the 2020 Season;

Then the maximum payable by the Marine Insurer under the Marine Cargo Policy for any one claim or any one event for the specified named site will be up to the Agreed Amount (plus GST where applicable) inclusive of deductibles. There may also be limitations on the maximum payable for some incidental costs.

B3.13 Notwithstanding **clause B3.12**, for all losses arising from earthquake, volcanic eruption, tsunami, hydrothermal activity and/or resulting fire, the insurers' payout is limited to an annual aggregate limit of 1 hundred million dollars (\$120,000,000) (plus GST where applicable) inclusive of deductibles. If the total claims exceed this limit, each individual's claim will be pro-rated in proportion to this limit.

B3.14 Unpacked fruit inventory in the event of a claim will be paid as Kiwifruit not packed. ZGL or its insurers reserve the right to use any data they consider appropriate for the purposes of determining the potential yield of unpacked fruit.

B4 ZGL COVER FOR LOSS LESS THAN DEDUCTIBLES

B4.1 In accordance with **clause A6.3(b)** of the **Supply Agreement**, coverage for any losses which are less than the deductibles under the Marine Cargo Policy (excluding the Contractors' deductible) and which relate to Kiwifruit and Packaging subject to Supply Agreements (including SLAs) is provided from the

Pools from the time the Kiwifruit is harvested until title passes to ZGL on the same terms as the Marine Cargo Policy.

B5 SETTLEMENT OF CONTRACTOR CLAIMS

B5.1 The basis of settlement by ZGL to the Contractor for loss occurring prior to FOBS under both the Marine Cargo Policy referred to in **clause A1** and the cover provided by ZGL referred to in **clause B4.1** will be the forecast FOBS values, as at the time of the loss, published monthly in the Kiwiflier, less any un-incurred charges.

B6 BAILEE'S LIABILITY

B6.1 In the event of loss or damage to Kiwifruit while it is under the care, custody or control of a party who is responsible for the care, custody or control of the Kiwifruit (a "Bailee"), ZGL or its Marine Insurer may exercise full recovery rights against that Bailee in respect of any loss or damage to that Kiwifruit for which the Bailee is responsible and that exceeds the Contractor's deductible referred to in **clause B7.1**.

B6.2 ZGL or its insurer will hold the Bailee liable up to the Maximum Limit per event and will waive recovery rights above the Maximum Limit per event provided that the Bailee takes up Bailee's liability insurance for the Minimum Limit in accordance with **clauses B6.3 to B6.6** and provided also that no action of the Bailee will prejudice the operation of this Bailee's liability insurance. This waiver of recovery rights above the Maximum Limit per event will not apply for situations involving willful or deliberate damage, misappropriation, fraud or recklessness.

B6.3 The Contractor will cause each Bailee, including an on port logistics provider, contracted by the Contractor to take up Bailee's Liability Insurance for Kiwifruit to the broadest extent possible for each of the Bailee's coolstores and/or any other facility holding fruit as bailees, for the Minimum Limit. For the purpose of **clauses B6.1 to B6.3** the Maximum Limit and Minimum Limit shall be one million dollars (\$1,000,000) (plus GST) per claim(s) event. It is expressly understood that the bailee is required to hold bailee liability insurance accordingly to meet the liability it faces per event for all claims arising while acting as a bailee for any and all contractors supplying fruit to ZGL pursuant to the Supply Agreement during the policy year. The Contractor must provide ZGL a copy of the policy including all terms and conditions before the commencement of the Season, and a copy of any policy renewal or change to policy terms and conditions which occur during the Season. If the policy contains any exclusions from cover which in ZGL's reasonable opinion are not standard or common exclusions contained in Bailee's insurance policies usually provided for perishable products ("unusual exclusions"), ZGL will notify the Contractor of those unusual exclusions, using best endeavours to do so within ten working days of identifying the unusual exclusions.

B6.4 If the Contractor makes a claim under either the Marine Cargo Policy or the cover provided under **clause B4.1** and in ZGL's opinion an unusual exclusion may result in the loss not being covered by the Bailee's insurance policy where ZGL or its insurer exercises recovery rights, **clauses B6.5 to B6.7** apply.

B6.5 Where a claim is made to which **clause B6.4** applies, ZGL will request the Contractor to provide ZGL with a bank guarantee or bank deposit, on terms acceptable to ZGL, to the value of one million dollars (\$1,000,000) (plus GST). If the Contractor provides such a bank guarantee or deposit within ten working

days of receiving ZGL's request, ZGL will exercise its recovery rights by recourse to the bank guarantee or deposit if the unusual exclusion results in the loss not being covered by the Bailee's insurance policy.

B6.6 If the Contractor does not provide such a bank guarantee or deposit within ten working days of receiving ZGL's request, the cover provided by ZGL under **clause B4.1** (but not the Marine Cargo Policy referred to in **clause A1**) will be subject to the same unusual exclusions which apply to the Bailee's insurance as notified by ZGL to the Contractor. ZGL will reverse any fruit and service payments made prior to the date the claim was lodged and will not make any insurance payments in accordance with the cover provided under **clause B4.1** (for example, by way of further fruit and service payments) until it determines that the loss is not covered by the unusual exclusion.

B6.7 If no appropriate Bailee's liability insurance is taken up by the Bailee or the Contractor does not provide a copy of the Bailee's liability insurance policy to ZGL, then ZGL's cover under **clause B4.1** (but not the Marine Cargo Insurance Policy referred to in **clause A1**) will not apply and ZGL will reverse any fruit and service payments made prior to the date the claim was lodged.

B6.8 A flowchart summarising the effect of **clauses B6.1 to B6.7** is attached as **Appendix 1**. In the event of any inconsistency **clauses B6.1 to B6.7** prevail over **Appendix 1**.

B6.9 The following are not covered by the insurance arranged by ZGL or the cover that ZGL provides under **clause B4.1**:

- (a) Claims for losses below the Contractor's deductible as per **clause B7.1** per claim, per event, these losses are the responsibility of the Contractor;
- (b) The Contractor's or their principals' or agents' contents, including but not limited to third party fruit in which ZGL has no insurable interest, unused packaging materials or owned, hired or borrowed chattels of any description;
- (c) Consequential loss including loss of profits of any kind whatsoever incurred by the Contractor are not covered under any of ZGL's insurance policies;
- (d) Any Kiwifruit which is not intended for or contracted to ZGL; or
- (e) Liquidated damages.

B7 CONTRACTOR'S DEDUCTIBLE

B7.1 The Contractor's deductible:

- (a) Is defined as the deductible of two hundred and fifty thousand dollars (\$250,000) (including GST) (or such higher amount as determined under paragraph (b) that applies per claim, per event to each of the Contractor's facilities as identified to ZGL by the Contractor and accredited under the Quality Systems Standard section of the ZIL Quality Manual (each a "Facility"). The Contractor's deductible applies to any claim lodged in the 2020 Season or following seasons in respect of a Facility that is accepted either under the ZGL Marine Cargo Policy or under the cover provided under **clause B4.1**, where the aggregate of any payments made by ZGL under **clause B4.1** in relation to the Facility during the season in which the claim is made is equal to or exceeds one hundred thousand dollars (\$100,000) (including GST) (a "Claim"); and

- (b) Will be determined by reference to the total number of Claims lodged in the current and, where relevant, previous seasons, as follows:
- (i) Tier 1: A Contractor's deductible of two hundred and fifty thousand dollars (\$250,000) (including GST) applies to:
 - (A) The first Claim by the Contractor in the 2020 Season; or
 - (B) Any Claim lodged in any subsequent season if:
 - (1) No other accepted Claim was made in the current season; or
 - (2) No other accepted Claim was made in the current or previous season and the Tier 2 amount would have applied if a Claim had been lodged in that previous season;
 - (ii) Tier 2: A Contractor's deductible of three hundred and fifty thousand dollars (\$350,000) (including GST) applies to:
 - (A) The second Claim lodged by the Contractor in the 2020 or any subsequent season, or in any two consecutive seasons; or
 - (B) Any Claim lodged in any season after the 2020 Season, if no other accepted Claim was lodged in the current or previous season but the Tier 3 amount would have applied if a Claim had been lodged in that previous season;
 - (iii) Tier 3: A Contractor's deductible of four hundred and fifty thousand dollars (\$450,000) (including GST) applies to:
 - (A) The third Claim lodged by the Contractor in the 2020 or any subsequent season, or in any two or three consecutive seasons, except where **clause B7.1(b)(ii)(B)** applies; or
 - (B) Any Claim lodged in any season after the 2020 Season, if no other accepted Claim was lodged in either the current or previous season but the Tier 4 amount would have applied if a Claim had been lodged in that previous season; and
 - (iv) Tier 4: A Contractor's deductible of seven hundred thousand dollars (\$700,000) (including GST) applies to the fourth or any further Claim(s) lodged in the 2020 or any subsequent season, or in any two or three consecutive seasons, except where **clause B7.1(b)(ii)(B)** applies.
- (c) For claims made in respect of loss occurring due to an event:
- (i) Between the time of harvest and delivery to the packhouse door; or
 - (ii) Occurring between coolstore load out and vessel stowing;

Shall be 10% of the gross amount of the claim, per event with a minimum deductible of two thousand dollars (\$2,000) (including GST) and a maximum Contractor deductible of fifty thousand dollars (\$50,000) (including GST).

- (d) For claims made in respect of loss arising from earthquake, volcanic eruption, tsunami, hydrothermal activity and/or resulting fire for the purposes of this clause, the contractor's deductible shall be 2.5% of the value of the fruit, at the site, at the time of the loss, with a minimum of two hundred and fifty thousand dollars (\$250,000) per site, per event.

B8 CLASS 2 SUPPLY AND NON-STANDARD SUPPLY VOLUMES

- B8.1 To ensure that Class 2 Supply and Non-Standard Supply volumes are insured under ZGL Marine Cargo Policy or covered by ZGL under **clause B4.1**, the Contractor must sign and return a copy of a SLA for the Class 2 Supply and Non-Standard Supply to ZGL. Without a signed SLA, ZGL and its insurers reserve the right to decline a claim.

B9 INSURANCE ARRANGED BY CONTRACTOR

- B9.1 It is the responsibility of the Contractor to ensure that any insurances arranged by it or any of its principals or agents comply with the terms and conditions of ZGL's Marine Cargo Policy.

B10 CLAIM PROCEDURES

- B10.1 In the event of the Contractor becoming aware of an event, circumstances, and/or actual or potential loss which may give rise to a claim under either the Marine Cargo Policy or **clause B4.1**, the Contractor or nominated representative shall:

- (a) Firstly notify the ZGL Insurance Manager verbally on 0800 155 355, no later than 48 hours following the event, in order that ZGL can make immediate arrangements to assess the damage;
- (b) Follow up by providing written notification of the circumstances and potential claim to the ZGL Insurance Manager at insurance@zespri.com no later than seven working days after the discovery of the loss or damage. This notification must state the following:
- (i) Variety of the Kiwifruit involved;
 - (ii) Nature of the damage to Kiwifruit;
 - (iii) Timeframe of loss;
 - (iv) Cause of loss;
 - (v) Coolstores where affected fruit was stored;
 - (vi) Quantity of fruit affected by loss;
 - (vii) Estimated value of loss; and
 - (viii) Any other relevant information.

- B11** The Contractor is required to supply the ZGL Insurance Manager or the independent loss assessor with a complete readable electronic copy of the applicable facility's EDI inventory records within 48 hours from the date of the official written notification provided pursuant to **clause B10.1**.

- B11.1 ZGL and/or its insurers reserve the right to decline a claim if a late notification results in any difficulty and/or causes an inability in assessing, quantifying or verifying the cause or quantum of any loss or damage and where ZGL and/or its insurers are therefore prejudiced in being able to determine any claim. Late notification occurs when the provisions of **clauses B10.1(a) or (b)** are not complied with. Irrespective of whether late notification has occurred, the onus of proving any loss lies with the party making the claim and full supporting documentation is required by ZGL and/or its insurers to assess any liability under ZGL's Marine Cargo Policy or **clause B4.1**.
- B11.2 Further, in the event that late and/or incomplete notification is given, ZGL reserves the right at ZGL's discretion to on-charge to the Contractor up to 50% of the total costs incurred by ZGL in investigation of the claim, irrespective of whether the claim is met or not.
- B11.3 Detailed procedures or forms can be obtained directly from any ZGL Quality Assessor or from the ZGL Insurance Manager. A copy of the procedure and forms will be sent directly to the Registered Supplier and NZKGI executive and will be available on the ZGL Canopy website.
- B11.4 The Contractor will promptly supply to ZGL any information that ZGL considers is reasonably necessary to assist in the resolution of any claim made by ZGL under any policy of insurance or by ZGL against any third party or by any third party against ZGL and any data required by ZGL's insurers to enable ZGL to effect insurance cover for the Marine Cargo Policy. Failure to provide any requested information under **clause B10.1** or this **clause B11.4** will result in the suspension or reversal of payments as referred to in **clauses B14.1 and B14.2**.
- B11.5 The Contractor will co-operate fully with any Insurance Assessor appointed by ZGL's insurers. For any claims coming within **clause B4.1**, ZGL may either assess the loss itself or employ the services of an independent Insurance Assessor to assess claims. Unless the parties agree otherwise in writing prior to the assessment being concluded, the assessment of ZGL or the Insurance Assessor, as the case may be, will be binding on the parties. ZGL agree to consult with the Contractor on the Insurance Assessor employed however; it is agreed that ZGL's insurers will have the final say on appointing the Insurance Assessor.

B12 MARINE CARGO DISPUTES PROCEDURE

- B12.1 With the exception of the loss assessment under **clause B11.5** (which may not be disputed), any dispute under the Marine Cargo Policy or coverage pursuant to **clause B4.1** must be advised by the Contractor to ZGL in writing within 28 days of the Contractor's receipt of the claim subrogation and discharge form. This official written notification must set out the reasons for dispute and documentation in support of the dispute.
- B12.2 ZGL must respond in writing to any official written notification of dispute received under **clause B12.1** no later than 28 days from receipt of that notification and must provide supporting documentation with the response. Either party may then propose within 14 days that the parties proceed to mediation and to a mutually acceptable mediator.
- B12.3 Where the parties agree to mediation, the mediation process must be completed as soon as possible thereafter.
- B12.4 In the event mediation is not agreed, or if agreed does not result in a resolution, the parties may:

- (a) Elect to agree by mutual consent that the dispute be referred to arbitration. If so then the arbitration process will be commenced by one party writing to the other seeking agreement to the dispute being referred to arbitration and calling upon the other party to concur the appointment of a sole arbitrator;
- (b) If the parties agree to arbitration, but cannot agree a sole arbitrator, then either party may apply to the High Court for the appointment of a sole arbitrator with the costs of such application being shared equally;
- (c) If arbitration is mutually agreed between the parties, then it will be governed by the provisions of the Arbitration Act 1996 as amended.

B12.5 Where the parties have not agreed that the matter be referred to mediation, or where a resolution is not reached through mediation, or where the parties have not mutually accepted that the matter be referred to arbitration, then any such dispute shall be subject to the jurisdiction of the Courts of New Zealand, and either party may thereafter refer the matter to the Courts.

B12.6 For certainty, the Contractor acknowledges and agrees that the disputes resolution process set out in **Clause A9** of the **Supply Agreement** shall not apply to any dispute relating to insurance.

B13 MITIGATION OF LOSS

B13.1 It is the responsibility of the Contractor to use due diligence and take all such measures as may be reasonable to avoid or diminish any loss arising from an insured event and shall immediately give all information and evidence of such measures to the insurer and/or ZGL as they may reasonably require to assess and consider a claim under the Marine Cargo Policy or coverage under **clause B4.1**. Failure to take such measures could result in the amount of the loss covered under the Marine Cargo Policy or **clause B4.1** being reduced to the extent that the loss may have been reduced if such measures had been taken.

B14 FRUIT PAYMENTS

B14.1 With the exception of Tray Equivalents that have been reversed for Fruit Loss, the total volume of Kiwifruit submitted into the ZGL Inventory System that is subject to a claim under either the Marine Cargo Policy or coverage pursuant to **clause B4.1** will, subject to **clauses B6.6** and **B6.7**, receive insurance payments by way of a Standard Advance Payment and Progress Payments in accordance with clauses **C2.1** and **C4.1** of the **Pricing and Payment Manual** from the time of official written notification of the claim until the claim has been accepted under the Marine Cargo Policy or **clause B4.1**. No insurance payments by way of Fruit Incentives or Service Costs will be payable on that Kiwifruit, and any Fruit Incentives or Service Costs already paid on that Kiwifruit at the time of official written notification will be reversed, until the claim has been accepted. If the claim is not accepted then all payments made in respect of that Kiwifruit will be reversed and may be deducted or setoff in accordance with the provisions of the **Pricing and Payment Manual**.

B14.2 In the event payments are made pursuant to **clause B14.1**, ZGL shall be entitled, at sole discretion, to limit Progress payments for the Kiwifruit said to be lost and/or damaged in that claim to an amount of 70% of the Fruit Return due, until finalisation of the claim and application by ZGL of the applicable deductible.

B14.3 If a claim is accepted under either the Marine Cargo Policy or **clause B4.1** but the amount of any Standard Advance Payment and Progress Payments as referred to in **clause B14.1**, and of any other payments, that have been made in respect of the Kiwifruit subject to the claim, less the Contractor's deductible referred to in **clause B7.1**, exceeds the net amount of the claim (the "Surplus"), the Surplus will be treated as an amount owing from the Contractor to ZGL and may be deducted in accordance with the provisions of the **Pricing and Payment Manual**.

B14.4 The Contractor will:

- (a) Notify each Grower for whom a Grower number is listed under **Schedule 3**, in writing, of any insurance claim lodged with ZGL under either the Marine Cargo Policy or under **clause B4.1**, within 5 working days of the receipt of the ZGL claim notification as per **clause B10.1**. Such notification to the Growers must specify the variety and the quantity of Kiwifruit subject to the claim; and
- (b) Provide ZGL with a copy of the Grower claim notification at the same time the notification is sent to the Growers.

B15 MARINE CARGO INSURANCE COVER FOR HE

B15.1 The terms of cover for HE are as per the Marine Cargo Policy but are subject to policy limits and deductibles in **clause B15.2**. For claims made in coolstore in New Zealand, or in the normal course of transit, deductibles in **clause B15.2** will apply.

B15.2 For all claims a Contractor's deductible and/or a policy deductible will apply. Where the policy deductible exceeds the Contractor's deductible, any deductible remaining will be covered by the HE Pool. The deductibles for HE will be:

- (a) For all losses arising from earthquake, volcanic eruption, tsunami, hydrothermal activity and/or resulting fire, a contractor's deductible of 5% of the value of the HE fruit at the site, at the time of the loss, with a minimum of ten thousand dollars (\$10,000) (plus GST) per site, per event in New Zealand;
- (b) Excluding losses described in **B15.2(a)** the Contractor's deductible for events in coolstore, in New Zealand will be ten thousand dollars (\$10,000) (plus GST) per event;
- (c) For claims made in respect of loss occurring due to an event:
 - (i) Between the time of harvest and delivery to the pack house door; or
 - (ii) Occurring between coolstore load out and vessel stowing;

The Contractor's deductible shall be 10% of the gross amount of the claim, per event with a minimum Contractor's deductible of two thousand dollars (\$2,000) (including GST) and a maximum Contractor's deductible of ten thousand dollars (\$10,000) (including GST) per event. The policy deductible will be ten thousand dollars (\$10,000) (plus GST) per event inclusive of the Contractor's deductible. Cover for losses above the Contractor's deductible and below the policy deductible will be provided by the HE pool.

B15.3 ZGL also arranges Marine Cargo Insurance for HE to cover risks that arise after it acquires title to the Kiwifruit at FOBS.

B16 POLICY TERMS

B16.1 ZGL will publish the main policy terms of the Marine Cargo Policy in the Kiwiflier upon placement of the policy for the 2020 Season.

SECTION C CONTAMINATED PRODUCTS INSURANCE

C1 The terms, conditions and exclusions of the Contaminated Products Insurance will be set out in the policy to be entered into between ZGL and its insurer for the Season (the “Contaminated Products Insurance Policy”). ZGL will use its best endeavours to enter into the Contaminated Products Insurance Policy on substantially the terms set out below. In the event of any inconsistency between the terms below and the Contaminated Products Insurance Policy, the Contaminated Products Insurance Policy will prevail.

C2 The Contaminated Products Insurance Policy covers loss in excess of the deductible as specified in the policy but not exceeding the limits of the policy, which result directly from an insured event first discovered during the period of insurance as described in **clause C3.1** and reported to the Contaminated Products Insurer during this time or up to 30 days after expiry of this time.

C3 INDICATIVE TERMS OF THE CONTAMINATED PRODUCTS INSURANCE POLICY

C3.1 Period of insurance: 1st March 2020 to 1st March 2021.

C3.2 The Contaminated Products Insurance Policy will include cover for accidental or unintentional contamination of an insured product(s) which occurs during or as a result of its production, preparation, manufacture, picking, processing, blending, mixing, compounding, packaging or distribution; provided that the human use or consumption of such insured product(s) has resulted in or would result in bodily injury or property damage within three hundred & sixty (360) days following such use or consumption.

C3.3 The policy covers fresh or chilled Kiwifruit from the time of picking.

C3.4 The Contaminated Products Insurance Policy includes a deductible of one million dollars (\$1,000,000) (plus GST) which will apply separately to each and every insured event. Seventy-five thousand dollars (\$75,000) (plus GST) of the deductible in the Contaminated Products Insurance Policy will be met by the Contractor (the Contractor’s Deductible) unless:

- (a) All requirements of the **ZIL Quality Manual** and all other Quality Assurance procedures in place have been complied with so as to minimise the risk of contamination;
- (b) That notice is provided to ZGL at the earliest possible time of detection and/or the discovery of contamination and/or of circumstances giving rise to the risk of contamination;
- (c) The discovery of contamination occurred pre-FOBS;
- (d) First detection of contamination was not an interception by ZGL; and
- (e) The interception was not by another party post-FOBS;

then in the event the circumstances are covered by the Contaminated Products Insurance Policy, the deductible will be apportioned as follows:

- (a) The first five thousand dollars (\$5,000) plus GST will be charged to the Contractor; and
- (b) The balance of the deductible will be charged to the relevant Pool.

C3.5 In the event the claim is made, and the conditions in **clause C3.4** are not satisfied, then the Contractor will be required to meet the entire sum of seventy-five thousand dollar (\$75,000) to each and every insured event.

C3.6 Where a claim has been made and payable by either the Zespri pool and/or the contaminated products insurers the pool acting for the growers for the under deductible portion of the claim, and/or the insurer may exercise recovery rights against any party who may be liable for the loss or damage arising from the contamination event.

In the event the loss or damage is recoverable against either the contractor and/or under the post-harvest service agreement then the following applies:

- (a) Pursuant to the terms of any such applicable agreement, the growers claim will be notified to the contractor and/or the post-harvest service provider under any such agreement. The contractor and/or the post-harvest service provider will become liable for the loss or damage under that agreement but will take immediate steps to pass on that liability to its third party provider of services or products.
- (b) As a pre-requisite to having entered into contracts with those service providers and/or products suppliers, and as required by section A4.5(c)(iv) of the Supply Agreement all those suppliers will be required to have product liability insurance or professional indemnity insurance in a commercially reasonable level.
- (c) The contractor and/or the post-harvest service provider will use reasonable endeavours to recover the amount of loss up to the full extent of the service or product providers insurance. The Zespri Pool and the contaminated products insurers are to be consulted prior to any settlement being concluded.
- (d) Upon receipt of recovery from such providers, the recovery fund will be used to meet the loss presented by the pool and/or the contaminated products insurer against contractor and/or Post Harvest Service provider and any recovery proceeds so received will be offset against the contractors and/or post-harvest service providers liability cap of \$1m (excluding GST) per event
- (e) In the event the contractor and/or the post-harvest service provider is unable to make any recovery from its product or service supplier then its liability to the Zespri pool and/or the contaminated products insurer will remain but will be limited to the cap of \$1m (excluding GST) per event. For avoidance of doubt if there is any recovery from the third party provider of services or products, then clause (d) will apply.

C3.7 It is a condition of the Contamination Products Insurance Policy that the Grower/Contractor shall use due diligence and do and concur in doing all things reasonably practical to avoid and/or diminish any loss. In the

event of an incident, situation or occurrence which may give rise to an insured event, the Growers and the Contractor must provide immediate notification to ZGL as per the requirements of the **ZIL Quality Manual**.

- C3.8 The annual aggregate limit (“AAL”) for accidental contamination claims under the Contaminated Products Insurance Policy will be twenty million dollars (\$20,000,000).
- C3.9 Where a claim is made within the period of insurance as described in **clause C3.1** ZGL may at its sole discretion endeavour to purchase a reinstatement of the AAL from the Contaminated Products Insurer if a reinstatement is available from the Contaminated Products Insurer. Reinstatement premiums will be charged to the Pools in accordance with **clause A6**.
- C3.10 Unpacked fruit inventory in the event of a claim will be paid as Kiwifruit not packed. ZGL or its insurers reserve the right to use any data they consider appropriate for the purposes of determining the potential yield of unpacked fruit.
- C3.11 If a Contractor's product is involved in an insurable Contamination event ZGL will promptly notify the Contractor once ZGL becomes aware of the event and can confirm the Contractor(s) fruit is involved. ZGL will keep the contractor informed of all reasonable practical options available to dealing with the contaminated fruit prior to any decision being made. Notwithstanding the foregoing, all decisions with respect to contaminated fruit shall be in ZGL's sole discretion.

C4 SETTLEMENT OF CONTRACTOR CLAIMS

- C4.1 The basis of settlement by ZGL to the Contractor for loss occurring prior to FOBS under the Contaminated Products Insurance Policy will be the forecast FOBS values, as at the time of the loss, published monthly in the Kiwiflier, less any un-incurred charges, plus extra expenses incurred as a result of an insured event over and above the costs of such activities during the same period of time had no insured event occurred.

The following are not covered by the insurance arranged by ZGL

- (a) Claims for losses below the deductible set out in **clause C3.4**; these losses are the responsibility of the Contractor;
- (b) The Contractor's or their principals' or agents' contents, including but not limited to third party fruit in which ZGL has no insurable interest, unused packaging materials or owned, hired or borrowed chattels of any description;
- (c) Consequential loss including loss of profits of any kind whatsoever incurred by the Contractor;
- (d) Any Kiwifruit which is not intended for or contracted to ZGL; or
- (e) Liquidated damages.

C5 CLASS 2 SUPPLY AND NON-STANDARD SUPPLY VOLUMES

- C5.1 To ensure that Class 2 Supply and Non-Standard Supply volumes are insured under the Contaminated Products Insurance Policy the Contractor must sign and return a copy of a SLA for Class 2 Supply and Non-Standard Supply to ZGL. Without a signed SLA, ZGL and its insurers reserve the right to decline a claim.

C6 CLAIM PROCEDURES

C6.1 In the event of the Contractor becoming aware of an event, circumstances, and/or actual or potential loss which may give rise to a claim under the Contaminated Products Insurance Policy, the Contractor or nominated representative shall:

- (a) Firstly notify the ZGL Insurance Manager verbally on 0800 155 355, as soon as practicable following the insurance event, in order that ZGL can take appropriate actions to prevent contaminated fruit continuing through the supply chain;
- (b) Send a written notice of a claim as soon as practicable after the alleged insured event has occurred providing all the detailed particulars and regarding the cause of the insured event to the ZGL Insurance Manager, at insurance@zespri.com this notification must state the following:
 - (i) Variety of the Kiwifruit involved;
 - (ii) Nature of the incident;
 - (iii) Timeframe of contamination incident;
 - (iv) Suspected nature and cause of contamination;
 - (v) Coolstores where affected fruit was stored;
 - (vi) Quantity of fruit affected;
 - (vii) Pallet number, Grower Number(s) and location of affected fruit;
 - (viii) Estimated value of loss; and
 - (ix) Any other relevant information.

ZGL will then pass the notification to the insurer.

C6.2 ZGL and/or its insurers reserve the right to decline a claim if a late notification results in any difficulty and/or causes an inability in assessing, quantifying or verifying the cause or quantum of any loss or damage and where insurers are therefore prejudiced in being able to determine any claim. Late notification occurs when the provisions of **clauses C6.1** are not complied with. Irrespective of whether late notification has occurred, the onus of proof of loss lies with the party making the claim and full supporting documentation is required by insurers to assess any liability under the Contaminated Products Insurance Policy.

C6.3 The Contractor will promptly supply to ZGL or the Contaminated Products Insurer any information that ZGL or the Contaminated Products Insurer considers is reasonably necessary to assist in the resolution of any claim made by the contractor or by ZGL under any policy of insurance or by ZGL against any third party or by any third party against ZGL and any data required by ZGL's insurers to enable ZGL to effect insurance cover for the Contaminated Products Policy. Failure to provide any requested information under **clause C6.2** or this **clause C6.3** will result in the suspension or reversal of payments as referred to in **clause C8.1** and **C8.2**.

C6.4 The Contractor will co-operate fully with any insurance assessor(s) appointed by ZGL's insurers. Unless the parties agree otherwise in writing prior to the assessment being concluded, the assessment of the insurance assessor(s) will be binding on the parties.

C6.5 The Contractor shall co-operate with ZGL and its Contaminated Products Insurer in all matters relating to this insurance. This may include but is not limited to, attending hearings and trials, securing and giving evidence, obtaining the attendance of witnesses, assisting in effecting settlements, and in conducting litigation, arbitration and other proceedings.

C7 MITIGATION OF LOSS

C7.1 The Contractor shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any loss arising from an insured event and shall immediately give all such information and assistance to the insurer as it may reasonably require to enable it to investigate and to defend the claim and/or to enable the Insurer to determine its liability under the policy.

C7.2 The Contractor must not disclose the existence of the Contaminated Products Insurance Policy unless required by law to do so.

C8 FRUIT PAYMENTS

C8.1 With the exception of any Tray Equivalents which have been reversed for Fruit Loss, the total volume of Kiwifruit submitted into the ZGL Inventory System that is subject to a claim under the Contaminated Products Insurance Policy will receive insurance payments by way of a Standard Advance Payment and Progress Payments in accordance with **clauses C2.1 and C4.1** of the **Pricing and Payment Manual** from the time of official written notification of the claim until the claim has been accepted under the Contaminated Products Insurance Policy. No insurance payments by way of Fruit Incentives or Service Costs will be payable on that Kiwifruit, and any Fruit Incentives or Service Costs already paid on that Kiwifruit at the time of official written notification will be reversed, until the claim has been accepted. If the claim is not accepted then all payments made in respect of that Kiwifruit will be reversed and may be deducted or setoff in accordance with the provisions of the **Pricing and Payment Manual**.

C8.2 In the event payments are made pursuant to **clause C8.1**, ZGL shall be entitled, at its sole discretion, to limit progress payments for the Kiwifruit said to be lost and/or damaged in that claim to an amount of 70% of the Fruit Return due, until finalisation of the claim and application by ZGL of the applicable deductible.

C8.3 If a claim is accepted under the Contaminated Products Insurance Policy but the amount of any Standard Advance Payment and Progress Payments as referred to in **clause C8.1**, and of any other payments, that have been made in respect of the Kiwifruit subject to the claim, less the Contractor's deductible referred to in **clause C3.4** exceeds the net amount of the claim (the "Surplus"), the Surplus will be treated as an amount owing from the Contractor to ZGL and may be deducted or setoff in accordance with the provisions of the **Pricing and Payment Manual**.

C8.4 The Contractor will:

- (a) Notify each Grower for whom a Grower Number is listed under **Schedule 3**, in writing, of any insurance claim lodged with ZGL under the Contaminated Products Insurance Policy within 5 working days of the receipt of the ZGL claim notification as per **clause C6.1**. Such notification to the Growers must specify the variety and the quantity of Kiwifruit subject to the claim; and
- (b) Provide ZGL with a copy of the Grower claim notification at the same time the notification is sent to the Growers.

SECTION D COVER FOR HAIL DAMAGE

D1 The maximum aggregate hail indemnity limit for the HW and HW Organic Pools is a total of six million dollars (\$6,000,000) and the maximum aggregate hail indemnity for the GA, and GA Organic Pools is six million dollars (\$7,000,000). The cover consists of for HW and HW Organic Pools, three million dollars (\$3,000,000) and for GA and GA Organic Pools, four million dollars (\$4,000,000) funded directly by the Pools and three million dollars (\$3,000,000) commercially purchased insurance cover for each variety. The commercial cover is activated only if the applicable Pool cover (HW and HW Organic is three million dollars (\$3,000,000), and GA and GA Organic is four million dollars (\$4,000,000) is exceeded in the 2020 season. The maximum indemnity limit for the HE pool is \$270,000. The commercial cover is activated only if the \$20,000 pool-funded cover is exceeded in the 2020 season.

D2 The main policy terms and conditions of the hail cover are:

- (a) Cover is provided from the 1st August 2019 to 31st July 2020;
- (b) If hail strike causes damage to the 2020 season's export quality kiwifruit whilst on the vine anywhere in New Zealand during the hail policy period from 1 August 2019 to 31 July 2020 ("the Hail Policy Period"), the Pool and the Hail Insurer (where applicable) will pay ZGL Kiwifruit Growers whose Kiwifruit are exported by ZGL (the Insured), for the resulting loss of Class 1 Yield of Kiwifruit arising directly from hail strike, from a hail event, to the limits and agreed values set out in this policy. The aggregate total liability of the Pool and the Hail Insurers under the cover will not exceed the amount of twelve million, two hundred and seventy thousand dollars (\$12,270,000) in total during the Hail Policy Period, and is subject to additional sub-limits of six million dollars (\$6,000,000) in total for the HW and HW Organic Pools, six million dollars (\$6,000,000) in total for the GA, and GA Organic Pools and two hundred and seventy thousand (\$270,000) for the HE Pool. The amount of all claims paid from the Pool cover will be charged to the relevant Pools;
- (c) All ZGL costs, including without limitation, ZGL Policy/Claim administration, related Quality Assessors' costs, external assessors' fees, consultancy or any taxes are not included in the maximum aggregate and these will be charged to the relevant Pool; and
- (d) Within the affected orchard, the deductible percentages which will apply for claims made during the season are:
 - (i) 10% (ten percent) of the value of the Potential Yield of each Variety for any first claim increasing to;
 - (ii) Deductibles will further increase in increments of 5% for claims in consecutive seasons;
 - (iii) Any orchard which has two consecutive seasons without any claim will revert to the 10% deductible percentage.
- (e) Kiwifruit Growers blocks with solid cover or hail netting will be eligible for a rebate based on 80% total cost of the hail scheme for the season for the covered blocks production providing those Kiwifruit Growers have:
 - (i) A covered canopy erected by 1 October 2019.

- (ii) A minimum of 0.20 hectares covered or an entire variety on orchard covered.
- (iii) Volume submitted into Zespri inventory that is from the area covered with hail netting or solid cover (unless that area is assessed as a Constructive Total Loss).
- (iv) Indicated on their spray diary prior to 31st March 2020, blocks that have hail netting or solid cover.

D3 In respect of a hail event that occurs pre & post fruit setting on the vine, the agreed value for basis of settlement is:

Variety	Maximum Indemnity Limit *	Fruit Group	Agreed Value: Percentage of Industry Average Per TE by Variety **
Zespri Green	\$6 million	Zespri Green Zespri Green Organic	85% Industry Avg OGR per TE 85% Industry Avg OGR per TE
Zespri Sungold	\$7 million	Zespri SunGold (G3) including Organic	80% Industry Avg OGR per TE
Zespri Sweet Green	\$270,000	Zespri Sweet Green (G14)	85% Industry Avg OGR per TE

*Limit consists of \$3 million pool-funded cover and \$3 million commercially purchased insurance cover per Green varieties, \$4 million pool-funded cover and \$3 million commercially purchased insurance cover per Gold varieties, \$20,000 pool funded cover and \$250,000 commercially purchased insurance cover for Sweet Green variety.

**Applies for pre-fruit set and post-fruit set claims. Industry August OGR per TE published in the 2020 August Kiwiflier.

D3.1 For full policy details and definitions, please refer to the August 2019 Insurance Update, **Appendix 2**.

D4 CLAIM PROCEDURES

D4.1 In the event of a claim, the Contractor or nominated representative must notify the ZGL Contact Centre within 72 hours of the event or as soon as practicable thereafter, at Telephone Number: 0800 155-355. The Contractor acknowledges and agrees that failure to notify in a timely manner may affect the ability of ZGL to settle a loss or the final settlement amount of any loss. In addition:

- (a) A claim notification will be lodged in the ZGL Claims Register; and
- (b) ZGL may assign an approved Independent Loss Assessor to assess the damage, depending on the extent of damage.

D4.2 For details of the assessment process refer to **Appendix 2** and **Appendix 3**.

D4.3 Claim/Policy Clarification or Response: ZGL Insurance Manager, Tel: 0800 155 355 or Email: insurance@zespri.com.

SECTION E VESSEL LOADING

E1 INSURANCE REQUIREMENTS FOR ON PORT LOGISTICS PROVIDER

- E1.1 The Contractor is responsible for ensuring that the On Port Logistics Provider takes up liability insurance for a sum not less than one million dollars (\$1,000,000) for any claim(s) arising from an event resulting in loss or damage to fruit and associated packaging including its liability where it holds fruit as a bailee, and five million dollars (\$5,000,000) for all other claims. It is expressly agreed the On Port Logistics provider policy is to cover all claims per event by any and all contractors supplying fruit to ZGL under the Supply Agreement. A Contractor acting as an On Port Logistics Provider is required to take up liability insurance to the same level of cover.
- E1.2 On Port Logistics Provider means a party nominated by the Contractor or ZGL pursuant to **Clause C5** of the **Supply Agreement** to be responsible for transport, on port storage, marshalling and stevedoring services of product ordered by ZGL from the Contractor.

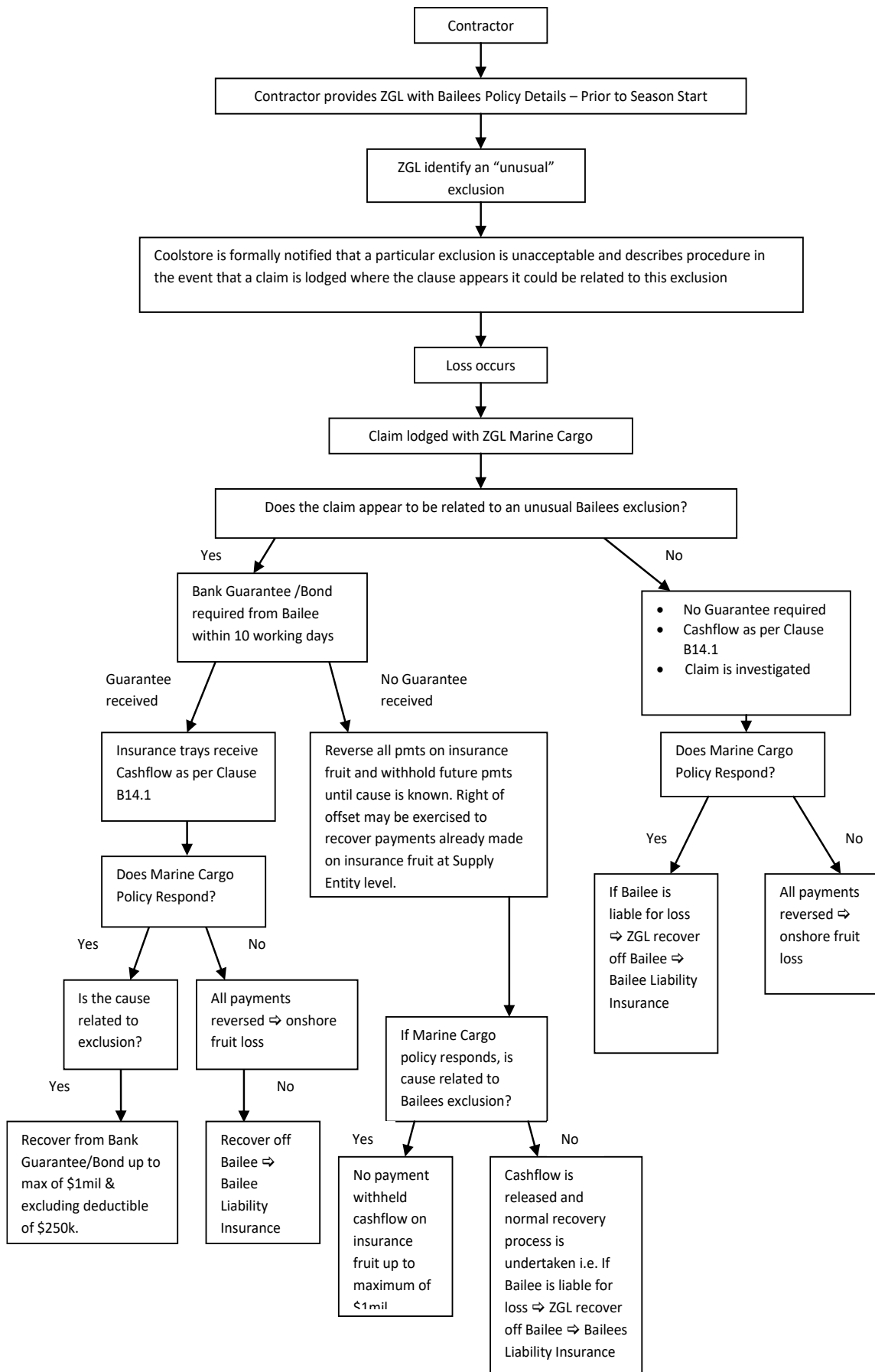
E2 REQUIREMENTS FOR ROAD TRANSPORT PROVIDERS

- E2.1 The Contractor is responsible for ensuring in their contracts with New Zealand domestic road transport providers that insured liability for loss or damage to fruit and associated packaging that occurs during road transport between coolstore load out and vessel stowing is at the following terms:
- (a) At the declared value of two thousand dollars (\$2,000) inclusive of GST per pallet to a maximum value of twenty thousand dollars (\$20,000) inclusive of GST per 20 foot container, or a maximum value of forty thousand dollars (\$40,000) inclusive of GST per 40 foot container, for pallets damaged or lost; and
 - (b) At limited carriers risk of two thousand dollars (\$2,000) inclusive of GST for the container itself.

SECTION F DEFINITIONS

Contaminated Products Insurance	Insurance that covers the risk of loss or damage in respect of contamination of Kiwifruit as described in clause C1 to C3 .
Contaminated Products Insurer	means AIG Insurance New Zealand Limited, a company registered under number 275881.
Cost and Freight	the common shipping term referring to the situation whereby the Contractor must pay the costs and freight necessary to bring the Kiwifruit to the named port of destination.
Fruit Incentives	as described in clause A2.11 of the Pricing and Payments Manual
Hail Insurer	Allianz Australia Insurance Limited ABN 15 000 122 850 (Incorporated in Australia) trading as Allianz New Zealand
Hail Policy	Insurance that covers the risk of loss or damage to Kiwifruit due to Hail Strike as described in Appendix 2 .
Marine Cargo Insurance	Insurance that covers the risk of loss or damage to Kiwifruit as described in clause B1 .
Marine Insurer	Vero Insurance New Zealand Limited, a company registered under number 1331.
Pool Hail Policy Premiums	Premiums paid to commercial insurers for hail insurance cover for the ZGL Grower Pool.
Service Costs	as described in clause B1 of the Pricing and Payments Manual .

APPENDIX 1 BAILEE'S EXCLUSION PROCESS (CLAUSE B6.8)



APPENDIX 2 COVER FOR HAIL DAMAGE (SECTION C)



Insurance Update

AUGUST 2019

The Zespri Group Limited 2020 Pool Hail Insurance Policy

These are the terms of the insurance cover for kiwifruit damage as a direct result of hail strike for the upcoming season, from 1 August 2019 to 31 July 2020. The policy pays for the loss of individual Zespri® Class 1 kiwifruit which is damaged by having been directly struck by hail, on the vine, and is unable to then meet Zespri export standards as a result of that damage.

The maximum indemnity limits are as follows:

- Zespri Green (including Organic) is \$6 million, consisting of \$3 million pool-funded cover and \$3 million commercially-purchased cover.
- Zespri SunGold (including Organic) is \$7 million, consisting of \$4 million pool-funded cover and \$3 million commercially-purchased cover.
- Zespri Green 14 (including Organic) is \$270 thousand, consisting of \$20 thousand pool-funded cover and \$250 thousand commercially-purchased cover.

The commercial cover is activated only if the pool-funded cover of the applicable variety pool is exceeded in the 2020 harvest season.

Orchards that have blocks with solid cover or hail netting erected before 1 October 2019 will receive a rebate. The rebate will be based on 80 percent of the total cost of the hail scheme for the season for the covered blocks production.

Zespri strongly recommends that all growers closely examine the cover provided by this policy. The Pool Hail Insurance Scheme provides partial compensation for yield loss due to hail strike. This policy does not provide full indemnity from hail losses and those growers who seek full indemnity or additional cover should consider purchasing additional private hail insurance or discuss with their grower entities hail insurance schemes available for entities through commercial insurers.

For the avoidance of doubt, this policy covers only individual kiwifruit pieces that are directly struck by hail and would otherwise be Class 1 export grade kiwifruit. It does not cover consequential damage such as water stain or softening. Growers need to be aware there may be additional cost or losses associated with hail events that are not covered by this policy. The Zespri Board and Industry Advisory Council approved the Pool Hail Insurance Policy under the policy conditions as set out below.

THE COVER

If hail strike causes damage to the 2020 season's export quality kiwifruit while on the vine anywhere in New Zealand during the Policy Period from 1 August 2019 to 31 July 2020, Zespri Group Limited (The Company) and the Insurer (where applicable) will pay Zespri Kiwifruit growers whose kiwifruit are exported by Zespri Group Limited (the Insured), for the resulting loss of Class 1 yield of kiwifruit arising directly from hail strike from a hail event to the limits and agreed values set out in this policy. Zespri Group Limited and the Insurers' liability under the cover will not exceed the amount of \$6 million in total for Zespri Green, \$7 million in total for Zespri SunGold and \$270,000 for Zespri Sweet Green.

THE INSURED

Zespri Kiwifruit growers in New Zealand whose kiwifruit on the vine is destined for Zespri Group Limited's export markets.

POLICY PERIOD

1 August 2019 to 31 July 2020.

THE COMPANY

Zespri Group Limited.



Insurance Update

AUGUST 2019

THE INSURER

Allianz Australia Insurance Limited ABN 15 000 122 850 (Incorporated in Australia) trading as Allianz New Zealand.

AGREED VALUE BASIS OF SETTLEMENT

- For hail damage, the loss shall be assessed as export grade kiwifruit which is unable to meet Zespri Group Limited's Class 1 export standards as a direct result of those kiwifruit being struck by hail on the vine.
- The agreed values below are subject to the application of the deductible percentage as described below

AGREED VALUES			
Varieties	Maximum Indemnity Limit	Fruit Group	Agreed Value
Zespri Green®	\$6 Million*	Zespri Green®	85% Industry Average OGR Per TE
Zespri SunGold®	\$7 Million*	Zespri SunGold®	80% Industry Average OGR Per TE
Zespri Sweet Green®	\$270,000*	Zespri Sweet Green®	85% Industry Average OGR Per TE

*Maximum Indemnity Limits consist of the below:

- Zespri Green (including Organic) is \$6 million, consisting of \$3 million pool-funded cover and \$3 million commercially-purchased cover.
- Zespri SunGold (including Organic) is \$7 million, consisting of \$4 million pool-funded cover and \$3 million commercially-purchased cover.
- Zespri Green 14 (including Organic) is \$270 thousand, consisting of \$20 thousand pool-funded cover and \$250 thousand commercially-purchased cover.

INDEMNITY LIMIT

The total cover for the Zespri Green variety is NZD \$6 million. The total cover for Zespri SunGold is NZD \$7 million. The total cover for Zespri Sweet Green variety is \$270,000. In the event the claims by the insured exceed the limit per the variety, then the total adjusted claims will be calculated on a pro rata basis per variety by dividing the total adjusted claims per variety into the total cover per variety and the claim payment will be adjusted accordingly.

DEDUCTIBLE PERCENTAGE

From each adjusted loss, the deductible percentage shall be deducted. Within the affected orchard, the deductible percentages which will apply from 1 August 2019 are:

Base deductible

- The base deductible is 10 percent of the potential yield of each variety for any first claim.

Illustrated example

Orchard A, a Green orchard, suffers a hail event. Zespri is notified and an external assessor visits the orchard to assess the damage. Orchard A has not had a claim for the two previous consecutive seasons. The result of Orchard A's claim is:

Variety	Potential yield	Export tray loss from hail strike	Trays subject to deductible*	Net tray loss	Agreed value: 85% of industry average per TE OGR**	Value of tray loss
Zespri Green	20,000	8,000	2,000	6,000	\$5.00 (Note: indicative only for the purpose of this example)	\$30,000

* Trays subject to deductible = 10 percent of potential yield of each variety (rising by five percent with claims in consecutive seasons). Potential yield is the quantity of Class 1 export grade kiwifruit remaining unharvested at the time of the hail event.

** \$5.00 is for example purposes only. Agreed value for Green is 85 percent of applicable season's industry per TE OGR as published in the August 2020 Kiwiflier.



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Seasonal increment

2. Deductibles will further increase in increments of five percent for claims in consecutive seasons. Any orchard which has **two consecutive seasons** without any claim will revert to the 10 percent deductible percentage.

Illustrated example

- a. Orchard A (which has not previously made a hail claim) has a hail claim for the 2020 season – the deductible applied will be 10 percent.
- b. Orchard B has previously had a claim in the 2019 season and also has a hail claim for the 2020 season. The deductible percentage will be 15 percent as there are two consecutive seasons with a claim. Orchard B then has no hail claim for the 2021 and 2022 seasons. The deductible percentage falls back to 10 percent as there are **two consecutive seasons** without any claim.

Orchards partially harvested at the time of a hail event

3. For an orchard that has been partially harvested at the time of the hail event, the deductible will be applied as a percentage of the potential yield that remained unharvested immediately before the hail event. In respect of the orchard deductible, one deductible (per claim variety) will apply for the aggregate of all losses arising from hail in respect of an individual KPIN in any given policy period unless otherwise stated in this policy.

Segregation

4. KPINs with total orchards 14 hectares and larger may be segregated into areas ('orchards') of seven hectares minimum respectively for claims for application of the deductible and/or the determinate of a constructive total loss (CTL). Segregation must be along visible geographic boundaries such as orchard blocks or internal and external shelter belts or roads. In the event of hail damage, any such segregation must be agreed at an initial preliminary inspection with the independent loss assessor. The independent loss assessor has sole discretion in approving the segregation. If segregation of areas cannot be agreed with the loss assessor, the entire KPIN will be assessed as a single claim. Once the segregation is agreed, that area will be treated as a single orchard for the purpose of making a claim, subject to the policy terms and conditions.
5. There should be automatic segregation of covered vs uncovered canopies on the same KPIN with no minimum size ha requirement i.e: a five ha gold orchard with two ha of covered canopy will be segregated into two areas.

CONSTRUCTIVE TOTAL LOSS (CTL)

The CTL limit is the level of assessed damage due to hail strike under the terms of the policy at which the crop is considered a write-off. An external loss adjuster will be appointed and will declare a CTL, or not, as the case may be, according to the limits set out below. A CTL can only be declared where these limits are breached. For an orchard that has been partially harvested at the time of the hail event, the CTL limit will be applicable to the yield that remains unharvested immediately before the hail event.

CTL limits for Zespri Green variety:

CTL limit for hail events on or before 31 December 2019

The CTL limit for all hail events occurring on or before 31 December 2019 is 70 percent damage.

CTL limit for hail events on or after 1 January 2020 but before 1 March 2020

The CTL limit for all hail events occurring on or after 1 January 2020 but before 1 March 2020 is 60 percent damage.

CTL limit for hail events on or after 1 March 2020

The CTL limit for all hail events occurring on or after 1 March 2020 is 40 percent damage.

CTL limits for Zespri SunGold variety:

CTL limit for hail events on or before 31 December 2019

The CTL limit for all hail events occurring on or before 31 December 2019 is 70 percent damage.

CTL limit for hail events on or after 1 January 2020 but before 14 February 2020

The CTL limit for all hail events occurring on or after 1 January 2020 but before 14 February 2020 is 60 percent damage.



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CTL limit for hail events on or after 14 February 2020

The CTL limit for all hail events occurring on or after 14 February 2020 is 40 percent damage.

CTL limits for Zespri Sweet Green variety:

CTL limit for hail events on or before 31 December 2019

The CTL limit for all hail events occurring on or before 31 December 2019 is 70 percent damage.

CTL limit for hail events on or after 1 January 2020 but before 1 February 2020

The CTL limit for all hail events occurring on or after 1 January 2020 but before 1 February 2020 is 60 percent damage.

CTL limit for hail events on or after 1 February 2020

The CTL limit for all hail events occurring on or after 1 February 2020 is 40 percent damage.

Basis of valuation for CTLs

In the event of a CTL being declared, the basis of valuation will be as per the Agreed Basis of Valuation.

Declaration of CTL

In the event of a CTL being declared by the external loss adjuster, a grower may choose to accept the CTL. Payment is then as per the Agreed Basis of Valuation for the Class 1 potential yield that remained unharvested immediately before the hail event, less the applicable deductible. This assessment will then become the final assessment and the grower will be required to remove the damaged kiwifruit off the vines and dispose of it and not receive any compensation revenue from the disposed kiwifruit.

In the event of a CTL being declared by the external loss adjuster, a grower may opt to forego the CTL and continue with harvest. The net claim trays will then be considered the actual loss of yield due to hail strike less the applicable deductible. For the avoidance of doubt where a grower forgoes the CTL the loss adjuster may reassess the volume loss following harvest and packing. The basis of valuation will be as per the agreed basis of valuation. The orchard will retain any of the Class 1 earnings received.

Illustrated Example

- a. Orchard A has an assessment of 62 percent hail loss after 1 January. Orchard A **accepts the CTL** and receives an insurance payment for 90 percent (100 percent less the 10 percent deductible) of their Class 1 Potential Yield. Orchard A cannot harvest.
- b. Orchard B has an assessment of 62 percent hail loss after 1 January. Orchard B **opts to forego the CTL**. Orchard B harvests their crop and the claim is reassessed following packing as a 61 percent loss. Orchard B receives an insurance payment for 51 percent (actual trays lost due to hail strike less the deductible). Any Class 1 return is not deducted from the claim.

GRADING/COOLSTORAGE PROCEDURES FOR HAIL-DAMAGED KIWIFRUIT

Packhouses must grade kiwifruit damaged by hail, which is the subject of a claim, within the following timeframes:

- For hail events before 15 February: within eight weeks of picking.
- For hail events on or after 15 February: within three weeks of picking.

If kiwifruit will not be graded within the required timeframes, the independent loss assessor must be notified by the grower (or a grower's nominated representative) before that kiwifruit is placed in coolstorage. That kiwifruit must have a five percent sample assessment completed within the timeframes specified above. This five percent assessment will then be the basis of the hail damage calculation. **No further assessment will be made once that kiwifruit is taken out of coolstorage.**

The initial assessment at the time of grading (where applicable) or the five percent sample assessment will be the basis of the hail damage calculation and **no subsequent assessments will be made after the kiwifruit is taken out of storage or at repack**. Graded and packed kiwifruit damaged by hail and subject of a claim and placed into coolstorage will not receive any subsequent assessment.

NOTE: The three-week timeframe was developed to give logistical flexibility to post-harvest suppliers in the event that significant volumes of kiwifruit are affected. However, it must be acknowledged that research by Plant & Food Research suggests that for best practice in respect to managing hail damaged crops, a shorter timeframe for grading and packing is ideal.

COVERED CANOPY HECTARES REBATE

Growers who have covered canopies are still covered by the scheme however, as hail risk to crops under covered canopies is significantly reduced, participation for covered canopy (solid cover or hail netting) production will be at a significantly discounted rate. Spray diary allows growers to indicate if a block has solid cover or hail netting. Orchards that have blocks with solid cover or hail netting will be eligible for a rebate under the 2020 scheme. The rebate will be based on 80 percent of the total cost of the hail scheme for the season for the covered blocks production.

In order to be eligible for the rebate, growers with covered canopies must:

- Have covered canopy erected by 1 October 2019.
- Have a minimum of 0.20 hectares covered or an entire variety on orchard covered.
- Have volume submitted into Zespri inventory that is from the area covered with hail netting or solid cover.
- Have indicated on their spray diary for the season, before 31 March 2020, blocks that have hail netting or solid cover.

Zespri must confirm and agree the covered area production, and will verify or audit this during the course of the season. The total costs of the hail insurance scheme will only be determined after August 2020 once all claims are resolved, and thus the amount of the coverage and rebate cannot be confirmed until after this date. Rebates to covered canopy production will be based on the industry average per TE cost of the scheme by varietal pool and the amount of covered canopy production. A rebate must be \$100 or more for the rebate to be processed.

EXAMPLE: covered canopy rebate mechanism (example: SunGold variety pool)				
x Cost of scheme (2020 Gold Actual)	Total Gold Volume (TE)	= Cost of scheme per TE	x 80% = Rebate Per TE Covered Canopy Production	Cost of participation Per TE for covered canopies
\$696,000	30,000,000	\$0.0232	\$0.0186	\$0.0046

DEFINITIONS

Orchard: an orchard where kiwifruit is grown with a registered KPIN issued by Zespri Group Limited.

Hail strike: the direct physical impact of hard pellets of ice upon individual kiwifruit while on the vine.

Potential yield: the quantity of Class 1 export grade kiwifruit remaining unharvested at the time of the hail event that a grower would have otherwise obtained had the hail event not damaged the kiwifruit.

Loss of yield: the loss of kiwifruit per orchard resulting from direct physical result of hail strike. The loss of yield is a measurement of the loss from hail strike either in the orchard or in the packhouse.

Constructive Total Loss (CTL): in terms of this policy is when the kiwifruit that is damaged as a direct physical result of hail strike exceeds:

- Zespri Green variety:
- 70% for all losses that occur on or before 31 December 2019
 - 60% for all losses that occur on or after 1 January 2020 but before 1 March 2020
 - 40% for all losses on or after 1 March 2020.

Zespri SunGold:

- 70% for all losses that occur on or before 31 December 2019
- 60% for all losses that occur on or after 1 January 2020 but before 14 February 2020
- 40% for all losses on or after 14 February 2020.

Zespri Green 14 variety:

- 70% for all losses that occur on or before 31 December 2019
- 60% for all losses that occur on or after 1 January 2020 but before 1 February 2020
- 40% for all losses on or after 1 February 2020.

The Zespri pool: the pool operated by Zespri Group Limited.

Export kiwifruit: is Class 1 kiwifruit accepted by Zespri Group Limited for its export markets including pursuant to collaborative marketing arrangements operated by Zespri Group Limited.

Variety:

- Zespri Green (including Zespri Green and Zespri Organic Green)
- Zespri SunGold (including Zespri SunGold and Zespri SunGold Organic)
- Zespri Sweet Green (including Zespri Sweet Green and Zespri Sweet Green Organic).



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EXCLUSIONS

The exclusions stated here do not imply that any cover is granted by this policy except coverage for hail strike as set out in earlier sections. That is the only cover granted by this policy.

This Policy does not cover:

1. Nuclear weapons materials.
2. Ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion, combustion includes any self-sustaining process of nuclear fission.
3. War, invasion, act of foreign enemy, warlike operations (whether war is declared or not), civil war, mutiny, rebellion, revolution, insurrection, military or usurped power.
4. Earthquake, subterranean fire or tsunami.
5. Consequential losses which may include but is not limited to any loss that arises after harvesting or from the grower not being able to meet any contractual obligations and also includes loss of profits of any kind whatsoever incurred by the Insured in respect of any claim.
6. Mismanagement or failure to apply acceptable horticultural practices.
7. Water stain.
8. Loss of leaves.
9. Loss of size profile.
10. Varieties that have not been commercialised by Zespri and are grown under pre-commercial trial agreements.
11. Loss of yield directly caused by the collapse of a covered canopy (solid cover or hail netting) onto a kiwifruit vine.

CANCELLATION

The policy shall remain in force from 1 August 2019 to 31 July 2020 and shall not be cancelled by either party.

CROP TENDING

The grower is required to tend the crop in a manner consistent with the generally accepted horticultural practices and procedures and must take all reasonable steps to ensure the protection and preservation of the kiwifruit crop.

MITIGATION OF LOSS

As the Insured, the grower must use all reasonable and usual care and take all practical measures to mitigate loss or damage that may result from a hail event.

EXTERNAL LOSS ADJUSTER

An independent loss adjuster to assess the loss as agreed to by both Zespri and the Insurer will be appointed by Zespri Group Limited for all hail damage which exceeds the orchard deductible. Assessors cost associated with hail claims will be paid by the grower pool (by Zespri Group Limited).

CLAIM NOTIFICATION

In the event of hail the grower, or the grower's appointed representative, must call the Zespri Contact Centre on 0800 155 355 within 72 hours. For early season hail, any delay in notification may result in the knocked off fruiting shoots being lost and therefore unable to be viewed for the assessment.

LATE NOTIFICATION

If no notification is received by Zespri within a reasonable period after the hail event, Zespri reserves the right to decline a claim if the delay in notification results in any difficulty or compromise to the accuracy of the assessment and quantification process by the external loss adjuster.

FURTHER INFORMATION

www.zespricanopy.com

GROWER QUERY

Please contact Zespri Grower Services:

Tom MacMorran:	Industry Liaison Team Leader	Phone 027 511 2005
Sue Groenewald:	Grower Liaison Manager	Phone 027 493 1987
Jane Ritchie:	Grower Liaison Manager	Phone 027 511 1056
Casie Rudnicki:	Grower Liaison Manager	Phone 027 271 2695
Sylvia Warren:	Grower Liaison Manager	Phone 022 101 8550

CLAIM/POLICY CLARIFICATION OR RESPONSE

Please contact:

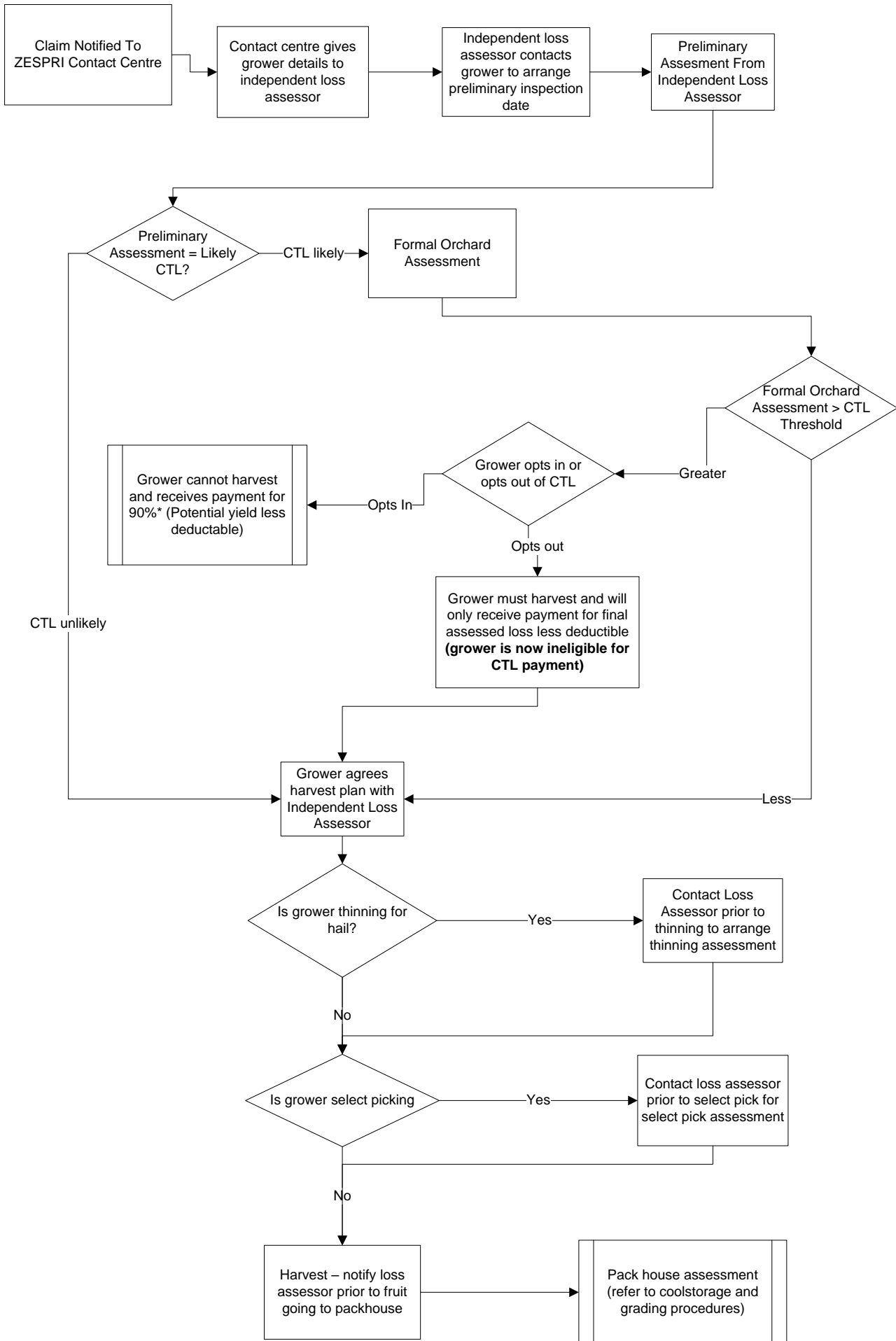
Zespri Insurance Team, Zespri Group Limited, Phone 07 572 7600 or email insurance@zespri.com

APPENDIX 3 INDICATIVE HAIL ASSESSMENT PROCESS

This assessment process is for the purpose of providing a simplified illustration of a common assessment process. The external assessor (the "Independent Loss Assessor") appointed by ZGL has complete discretion in choosing the appropriate methods of determining the level of hail damage and is not bound by this process in assessing the loss.

1. The Independent Loss Assessor will make a preliminary estimate of hail damage on orchard.
2. The preliminary estimate will determine if the loss is a likely CTL (Constructive Total Loss)
3. If CTL is likely a formal orchard assessment is conducted. If a CTL declared in formal assessment either:
 - a) Grower can accept the CTL. Once the CTL is accepted the Grower cannot harvest and receives payment for 90% (Potential yield less deductible). No further assessment is required.
- Or
- b) Grower can opt out of CTL. The Grower will only receive payment for the final assessed loss, less deductible (grower is now ineligible for CTL payment regardless of subsequent assessment outcomes)
4. If not a CTL or the Grower opts out of the CTL then the Grower must agree to a harvest plan with the Independent Loss Assessor
5. If the Grower is going to thin hail fruit or select pick they must notify the Independent Loss Assessor prior to doing so as the Assessor will need to count any discarded fruit so that it can be included in the count for final fruit loss.
6. At harvest the Grower or nominated representative must notify the Independent Loss Assessor that fruit is being sent to the packhouse.
7. The Independent Loss Assessor will do a final packhouse assessment when the fruit is picked and is being graded so that they can determine how much Class 1 fruit was rejected directly as a result of hail.

Process diagram is on the following page.



Schedule 11: Supplier Accountability

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[REDACTED]	[REDACTED]	
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SECTION A IN-MARKET QUALITY ASSESSMENT SYSTEMS

A1 Supplier Accountability is part of ZGL’s quality assessment system. ZGL operates these systems to monitor and ensure that good quality Kiwifruit is provided to the market. There are two frameworks within Supplier Accountability which have their own unique in-market checking processes and criteria.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

SECTION B 5% SUPPLIER ACCOUNTABILITY

1) INTRODUCTION

[REDACTED]

B1 APPLICABLE PALLETS

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
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■ [REDACTED]
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■ [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B4 INSPECTION PROCESS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) The maximum period for the applicable Market Region as set out in **Appendix 1**.

B6 DEFECT CATEGORIES

B6.1 The defect categories and calculation thresholds for all Market Regions are set out in the Grade Standards section of the **ZIL Quality Manual** and **Appendix 3**.

[REDACTED]

B7.1 The Market Regions and Market Categories are specified in **Appendix 1**.

B8 INFORMATION FLOW

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

B8.3 The Registered Supplier agrees that it will forward any information transmitted by ZGL to the Pay to Party associated with the applicable pallets.

B9 EXCLUSIONS

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

- [Redacted]
- [Redacted]
- [Redacted]

■ [Redacted]

■ [Redacted]

- [Redacted]

- [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

B11 INVOICES AND PAYMENTS

B11.1 Where a Contractor has directed under **clause B4.5** of the **Supply Agreement** that [REDACTED]

[REDACTED]

[REDACTED]

B11.3 Any payment due from a Contractor or Registered Supplier that is not received by ZGL by the due date as specified in **clause B10.4**, together with any interest payable under **clause B11.4** will be set-off under **clause A5** of the **Supply Agreement**.

[REDACTED]

B12 REPORTING

B12.1 ZGL will provide updates to the ISG as requested that include:

- (a) % of pallets checked at an Industry level;
- (b) % of random pallets checked at an Industry level;
- (c) Any abnormal [REDACTED] on a vessel at an Industry level; and
- (d) Periodic updates on carriage conditions and vessel temperature management.

B12.2 The ISG may request further information on vessel conditions as required.

B12.3 The ISG will examine the data relating to the carriage conditions of any vessel where results indicate potential problems and may make recommendations to ZGL which may include charges not being made and/or credit notes being raised. Acceptance of any recommendation is at ZGL's sole discretion.

B12.4 A recommendation by the ISG does not preclude a Contractor raising a dispute under **Section D**.

B12.5 The ISG has no role in disputes, which are confidential between Contractors and ZGL, except that ZGL will provide a monthly update to the ISG on the number of disputes pending, and the grounds for the dispute in each case.

[REDACTED]

C1 INTRODUCTION

C1.1 [REDACTED] to ensure that Zespri® Class 1 Hayward Conventional and Zespri® Class 1 SunGold Conventional, of an appropriate storage life, is delivered to [REDACTED] at specific times of the season.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C3 SELECTION OF PALLETS FOR SAMPLING

C3.1 ZGL (or its third party service provider) will use the [REDACTED] to select pallets for inspection within the Accountability Period specified in **clause C5** using the criteria in **clause C3.3** to **C3.4**.

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

C7 IN-MARKET ASSESSMENT PROCESS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C8 EXCLUSIONS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
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C11 INVOICES AND PAYMENTS

C11.1 ZGL will issue a buyer created advice for the cost payable by the Contractor in accordance with **clause C10** above, at the conclusion of each vessel assessment, [REDACTED]
[REDACTED]

C11.2 Payment shall be made by ZGL or the Pay to Party (as applicable) around the 20th of the month after receipt of the invoice and supporting data (“the Due Date”).

C11.3 Any payment due from a Contractor that is not received by ZGL by the Due Date, together with any interest payable under **clause C11.4** will be set-off under **clause A5** of the **Supply Agreement**.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

C12 REPORTING

[REDACTED]
[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED]

C12.2 ZGL will provide updates to the ISG as requested that include:

- (a) Industry in-market assessment results;
- (b) Industry financial outcome per TE per vessel (including industry premium rates for each vessel);
and
- (c) Fruit Loss % by vessel.
- (d) Quality Metric – outlining in-market checking consistency benchmarks - Content and timing of report to be agreed through ISG

- C12.3 The ISG will examine the data relating to the carriage conditions of any vessel where results indicate potential problems and may make recommendations to ZGL which may include charges not being made and/or credit notes being raised. Acceptance of any recommendation is at ZGL's sole discretion.
- C12.4 A recommendation by the ISG does not preclude a Contractor raising a dispute under **Section D**.
- C12.5 The ISG has no role in disputes, which are confidential between Contractors and ZGL, except that ZGL will provide a monthly update to the ISG on the number of disputes pending, and the grounds for dispute in each case.

SECTION D DISPUTES

- D1.1 [REDACTED] the terms of which for this Section will be referred to cumulatively as ("in-market checking"), or any other matter relating to the rights and obligations of the parties arising out of this **Schedule 11**, the procedures in this **Section D** must be followed. For certainty, no dispute relating to **Schedule 11** shall be considered under **clause A9** of the **Supply Agreement**.
- D1.2 The Contractor or the Registered Supplier who delivered a pallet subject to in-market checking, has 60 days from the notification by ZGL of the result of the in-market checking in accordance with **clause B8 and C12** to lodge a dispute in respect of that pallet. A Contractor or Registered Supplier may notify ZGL in writing, at any time prior to the expiry of the 60 day period, of their intention to lodge a dispute. A Contractor or Registered Supplier wishing to lodge a dispute in respect of any other matter arising out of this **Schedule 11** must lodge the dispute prior to the end of the Season.
- D1.3 Disputes must be lodged in writing on the pro-forma provided in **Appendix 5**. All sections of the pro-forma must be completed and accompanied by the \$375 (GST inclusive) fee which applies per shipment, per Contractor. This fee is refunded if the dispute is successful for the Contractor. Any related charges in accordance with **clause B10 and C10** will remain payable and eligible for set-off under **clause B11.3 and C11.3** unless, within 30 days from the date the dispute is lodged, an amount equivalent to the related charges that are disputed is lodged in escrow in accordance with **Appendix 6**. These charges shall not incur interest under **clause B11.4 and C11.4** until such time as the dispute is deemed to be withdrawn under **clauses D1.10(d), D1.11(d) or D1.13**.
- D1.4 Despite **Section D1.2**, a Grower who has made a direction under **clause B4.5** of the **Supply Agreement** may lodge a dispute in respect of the Grower Number subject to the payment direction where:
- (a) The applicable Contractor or Registered Supplier did not lodge a dispute in relation to that Kiwifruit; and
 - (b) The Contractor when lodging the dispute undertakes to pay the [REDACTED] [REDACTED] subject to any variations arising from the outcome of the dispute procedure.

For the avoidance of doubt an inconsistency between [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- D1.6 ZGL shall notify the disputing Contractor within 14 days from receipt of confirming their intention of a dispute by the Contractor, in accordance with **Section D1.2**, of the availability of any information/data requested by the disputing Contractor in the pro-forma, and a timeframe for providing such information. Such information/data shall include but is not limited to; Relevant Temperature Data, Supplier Accountability Data and Supplier Accountability Inspection records.
- D1.7 ZGL can request information/data to be provided by the disputing Contractor, following the formal lodgement of a dispute, in accordance with **Section D1.3** and the disputer shall notify ZGL within 14 days of the request of the availability of the information/data and a timeframe for providing such information. Such information/data shall include but is not limited to; [REDACTED]
- D1.8 All data collected as part of the Xsense cool-chain temperature monitoring (formerly RFID) will be admissible for use by both the Contractor and ZGL as supporting evidence in the event of a dispute. For the avoidance of doubt, availability of Xsense cool-chain temperature monitoring data will not be limited solely to Contractors collating Xsense cool-chain temperature monitoring data. Any such data will be provided in its raw format, and ZGL shall not be responsible for filtering or otherwise reporting on the data, other than to the extent that reports already exist within ZGL's records.
- D1.9 Within 30 days of the disputer receiving the requested information/data, the parties must meet and attempt to resolve the dispute. In the event the resolution was unsuccessful or did not eventuate, the disputer may within 20 days serve a dispute notice on ZGL. The dispute notice must:
- (a) Include the reason for the dispute; and
 - (b) Clarify that mediation will be the method initially used to resolve the dispute.
- D1.10 Mediation process when initiated:
- (a) The mediation must be conducted in terms of the LEADR New Zealand Inc. Standard Mediation Agreement;
 - (b) The mediator must be appointed jointly by both parties;
 - (c) If the parties are unable to jointly agree on a mediator, the mediator will be appointed by the Chair for the time being of LEADR New Zealand Inc;
 - (d) If the parties are unable to agree on a resolution in the mediation, the disputer may within 20 days of the end of the mediation, elect arbitration. If no such election is made, the dispute is deemed to have been withdrawn, and the in-market checking results will be included for the purposes of calculating [REDACTED]

[REDACTED]
[REDACTED] In such an event, interest calculated in accordance with **clause B11.4** and **C11.4** on the outstanding amount will apply from the date seven days after the dispute is deemed to be withdrawn; and

- (e) The cost of the mediator shall be shared jointly unless otherwise agreed by ZGL and the Contractor.

D1.11 Arbitration process when initiated:

- (a) The arbitration must be conducted in accordance with the Arbitration Act 1996 by a single arbitrator to be jointly agreed upon and appointed by the parties;
- (b) The parties shall enter into an arbitration agreement prior to the hearing and agree to be bound by the final decision of the arbitrator, subject to the provisions of the Arbitration Act 1996;
- (c) If the parties are unable to agree on the appointment of an arbitrator within 20 days of receipt of written notification of the desire of a party to have a dispute arbitrated, the dispute shall be submitted to the arbitration of a single arbitrator to be appointed by the President for the time being of the New Zealand Law Society. Any arbitration in terms of this clause shall be carried out in accordance with the Arbitration Act 1996;
- (d) If the parties are unable to agree on a resolution in the arbitration, the disputer may within 20 days of the end of the arbitration, elect to take other legal action. If no such election is made, the dispute is deemed to have been withdrawn, and the in-market checking results will be included for the purposes of calculating [REDACTED]

[REDACTED]
[REDACTED] In such an event, interest calculated in accordance with **clauses B11.4** and **C11.4** on the outstanding amount will apply from the date seven days after the dispute is deemed to be withdrawn; and

- (e) The cost of the arbitration shall be shared jointly unless otherwise agreed by ZGL and the Contractor.

D1.12 If any of the timeframes set out in this **Section D** are not met by the disputing Contractor, and ZGL has not agreed in writing to an extension of the timeframe, the dispute is deemed to have been withdrawn and the in-market checking results will be included for the purposes of calculating [REDACTED]

[REDACTED] Interest calculated in accordance with **clause B11.4** and **C11.4** on the outstanding amount will apply from the date 7 days after the expiry of the relevant timeframe.

D1.13 If ZGL does not meet any of the timeframes set out in this **Section D**, and the disputing Contractor has not agreed in writing to an extension, the dispute is deemed to have been accepted by ZGL and:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

SECTION E DEFINITIONS

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]
Contractor	Registered Supplier or Grower Party to the Supply Agreement under Option B.
[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
Net Premium	Premium rates less standard costs
Load Vessel Week	The ISO week of the relevant load end date for the shipment.
Pay to Party	A grouping of coolstores as specified pre-season by a Registered Supplier. This includes Contractors under clause B10.5 .
[REDACTED]	[REDACTED]
Shipment Number	This is the shipment number for the vessel based on shipment type. There may be multiple shipment numbers for a vessel e.g. charter and container shipment.
Vessel	This is the consolidation of all shipment numbers attached to the vessel.
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Market Categories

Stages

<i>Stages</i>	<i>HW</i>	<i>GA</i>	<i>HE</i>
<i>Stage 1</i>	<i>To end of Load Vessel week 21</i>	<i>To end of Load Vessel week 21</i>	<i>To end of Load Vessel week 21</i>
<i>Stage 2</i>	<i>Load Vessel week 22 to end of Load Vessel week 31</i>	<i>Load Vessel week 22 to end of Load Vessel week 27</i>	<i>Load Vessel week 22 to end of season</i>
<i>Stage 3</i>	<i>Load Vessel Week 32 to end of season</i>	<i>Load Vessel Week 28 to end of season</i>	<i>N/A</i>

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

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- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

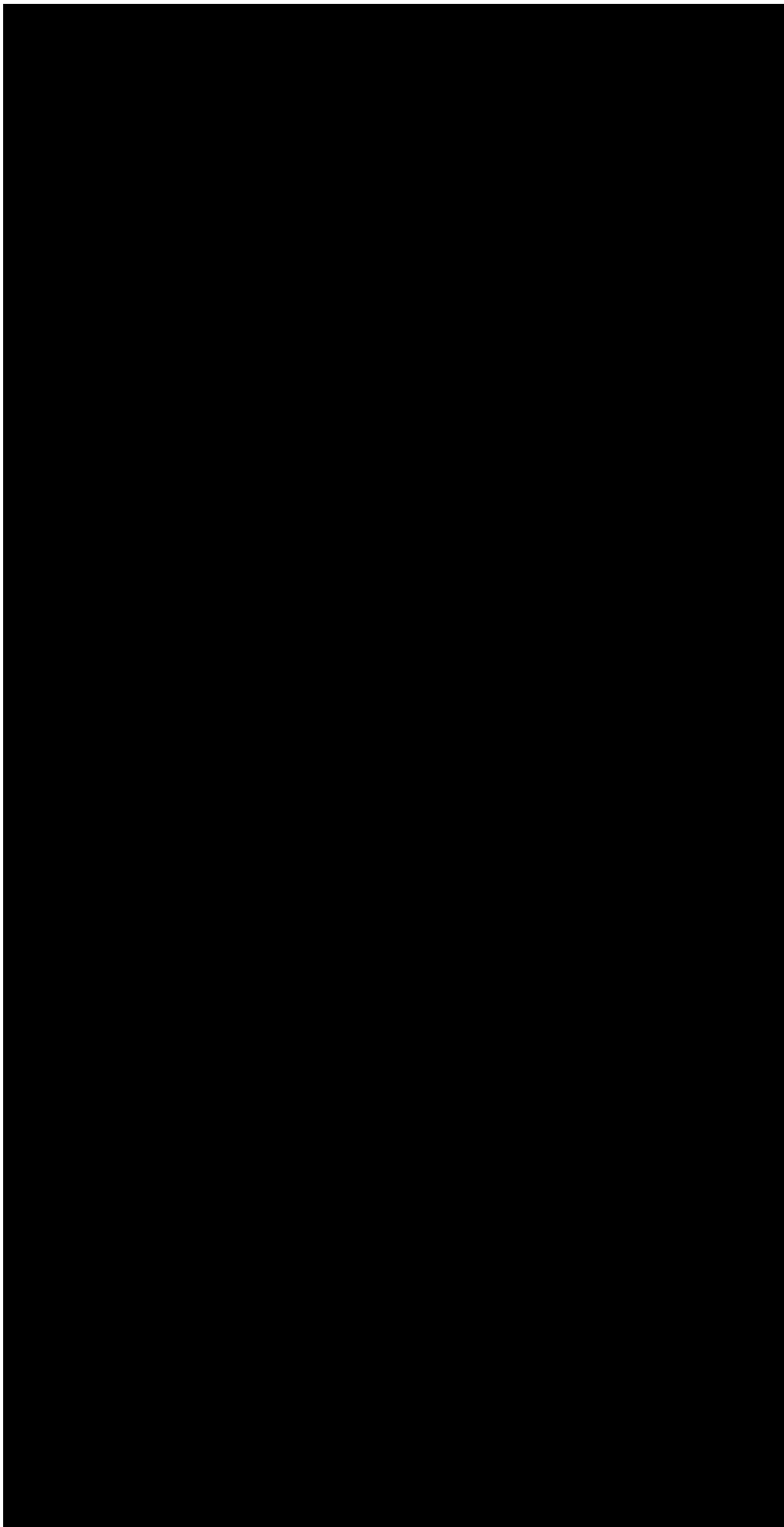
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]



APPENDIX 5 PRO FORMA - DISPUTES



ZESPRI INTERNATIONAL LIMITED

SUPPLIER ACCOUNTABILITY DISPUTE PRO-FORMA 2020

To :	COMMERCIAL MANAGER SUPPLY CHAIN	Date :	
Contractor Name :			
On behalf of: (if relevant)			
DETAILS OF DISPUTE (One Pro-forma per Invoice)			
Vessel Number:		Vessel Name:	
Discharge Port:		Number of Pallets:	
EXTENT/SCOPE OF DISPUTE : (Attach ALL relevant Pallet Card Numbers)			
REASON FOR DISPUTE (On what basis have you lodged this dispute?)			
INFORMATION/DATA REQUESTED:			
Dispute Fee - payment of \$375.00 (incl. GST) per shipment, per Contractor has been made: NB: your dispute is not valid until this fee is received.		Cheque Attached <input type="checkbox"/>	
		Direct Credit <input type="checkbox"/>	
		Date _____	
Signature of Authorised Person:			

ZGL OFFICE USE:

Date Received:

Received By:

Dispute Fee
Received:

Dispute Reference:

APPENDIX 6 ESCROW PROVISIONS

1. Where a Contractor has lodged a dispute under **Section D** of **Schedule 11**, the Contractor may elect to deposit an amount of money equivalent to the amount of the charges applied in accordance with **clause B10 or C10** of **Schedule 11** that are the subject of the dispute ("**Disputed Amount**") into the trust account of any New Zealand solicitor or firm of solicitors ("**Escrow Agent**"). Such deposit must be made in cleared funds and receipt must be confirmed to ZGL by the Escrow Agent within 30 days of lodgement of the dispute to which it relates.
2. The Contractor shall instruct the Escrow Agent to hold the Disputed Amount in escrow in the joint names of the Contractor and ZGL, in accordance with the terms and conditions of this **Appendix 6**. The Escrow Agent must confirm to ZGL that it has received and agrees to comply with the terms and conditions of this **Appendix 6**.
3. The Disputed Amount shall be held in an interest-bearing trust account with a New Zealand trading bank. All interest earned shall be capitalised and re-invested from time to time. Interest earned shall be for the credit of the party to whom the relevant funds are released.
4. Subject to **clause 5**, the Disputed Amount (or any part thereof) shall only be released by the Escrow Agent upon the earlier of any of the following events ("**Release Events**"):
 - a. ZGL giving written instructions to the Escrow Agent to pay all or part of the Disputed Amount to the Contractor;
 - b. The Contractor giving written instructions to the Escrow Agent to pay all or part of the Disputed Amount to ZGL;
 - c. A mediator appointed in accordance with **clause D1.10** of **Schedule 11** or an arbitrator appointed in accordance with **clause D1.11** of **Schedule 11** giving written instructions to the Escrow Agent to pay all or part of the Disputed Amount to ZGL and/or to the Contractor for the purposes of settling or determining the outcome of the dispute.
 - d. Five working days after:
 - i. ZGL giving written instructions to the Escrow Agent to pay all of the Disputed Amount to ZGL on account of the dispute being deemed to be withdrawn under **clause D1.12** of **Schedule 11**; and
 - ii. ZGL giving notice to the Contractor of the instructions issued under **clause 4(d)(i)**.
 - e. Five working days after:
 - i. The Contractor giving written instructions to the Escrow Agent to pay all of the Disputed Amount to the Contractor on account of the dispute being deemed to be accepted by ZGL under **clause D1.13** of **Schedule 11**; and
 - ii. The Contractor giving notice to ZGL of the instructions issued under **clause 4(e)(i)**.
 - f. By the order of a Court of competent jurisdiction giving written instructions to the Escrow Agent to pay all or part of the Disputed Amount to ZGL and/or to the Contractor.
5. The Escrow Agent shall only deal with or pay out the Disputed Amount (or any part of it) in accordance with written instructions received pursuant to **clause 4**. In the event the Escrow Agent receives notice from either ZGL or the Contractor of a dispute as to whether a Release Event has occurred or as to any other circumstances under which the Escrow Agent is required to release the Disputed Amount, then the Escrow Agent shall hold the Disputed Amount pending the following:
 - a. The agreement of both ZGL and the Contractor as to the release of the Disputed Amount, such agreement to be notified to the Escrow Agent in writing; or
 - b. In the event that such agreement cannot be reached, by an order of a court of competent jurisdiction.

6. Any fees charged by the Escrow Agent in respect of these escrow arrangements shall be for the account of the Contractor.
7. The party or parties entitled to payment of the Disputed Amount shall bear the risk of loss (in proportion to their entitlement) in the event that the Disputed Amount or part of it is lost for any reason whilst held in escrow under this **Appendix 6**.
8. ZGL and the Contractor acknowledge that the Escrow Agent shall have no other liability or responsibility to them otherwise than as expressly set out in this **Appendix 6**.

[Redacted]

[Redacted]

[Redacted]

- [Redacted]
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[Redacted]

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[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block]

Schedule 12: Invoices, Payment Documentation & Reporting

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SECTION C	DISCLOSURE REQUIREMENTS.....	2
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SECTION A BILLING AND PAYMENT PROCEDURES

- A1.1 For the amounts payable by ZGL for any Kiwifruit or Services supplied under the Supply Agreement, unless otherwise specified:
- (a) ZGL will issue a buyer created tax invoice on behalf of the Contractor, in the name of the Contractor, or, where an assignment is in place, in the name of the assignee, providing the Contractor or assignee is GST registered;
 - (b) Where the Contractor or assignee is not GST registered, Zespri will issue an invoice in the form noted in **Appendix 1** but without GST added to the transaction; and
 - (c) If ZGL has issued a buyer created tax invoice, neither the Contractor nor the assignee will issue its own duplicate invoice.
- A1.2 For the amounts payable under **clause C8** of the **Pricing and Payment Manual** (other payments) the Contractor will invoice ZGL for all Kiwifruit or Services within 30 days of the Kiwifruit or Service being supplied.
- A1.3 ZGL will not be obliged to pay the Contractor for any Kiwifruit or Services other than as set out under **clauses C2 to C6** of the **Pricing and Payment Manual** unless the Contractor provides to ZGL a copy of the Service Level Agreement signed between ZGL and the Contractor for the Kiwifruit or Services invoiced.

SECTION B PAYMENT DOCUMENTATION

- B1.1 ZGL will provide, for amounts payable by ZGL:
- (a) Hard copy printed or electronic invoices recording the payment type, quantity of Kiwifruit to which the payment relates and amount of the payment to the Contractor or where there is an assignment in place, to the assignee;
 - (b) Full payment detail in electronic format to the Registered Supplier or authorised third parties, for all payments directed to that Registered Supplier or authorised third parties, in RFI format according to the mechanism set out in the **EDI Manual**. ZGL will make best endeavours to ensure RFI information is available 7 working days prior to monthly payments; and
- B1.2 Payment information as set out in **clause B1.1(a)** will be in the form in **Appendix 1** or such other forms as may be notified by ZGL to the Contractor from time to time.

SECTION C DISCLOSURE REQUIREMENTS

- C1.1 ZGL will provide each Grower, in respect of whom the Contractor lists a Grower Number in **Schedule 3** or **Schedule 4**, with payment and inventory information relating to Kiwifruit supplied from that Grower Number, on ZGL's website and on request in writing, in the form determined, from time to time by ISG and approved by ZGL, for the purposes of this clause. Nothing in this **Supply Agreement** prevents ZGL from providing this information.
- C1.2 On request of a Grower in respect of whom the Contractor lists a Grower Number in **Schedule 3** or **Schedule 4**, the Contractor may provide the Grower with information as specified and in the form determined from time to time by ISG and approved by ZGL for the purposes of this **clause C1.2**, relating

to the Contractor's performance of the Services in relation to Kiwifruit supplied from all Grower Numbers listed in relation to the Contractor.

C1.3 In the event that the Contractor does not provide information at the request of a Grower in accordance with **clause C1.2**, ZGL will provide such information to the Grower after confirming that the Contractor is providing Services on behalf of the Grower requesting the information. ZGL will notify the Contractor of all information provided to a Grower under this **clause C1.3**.

C1.4 The Contractor will provide the following reports to ZGL either directly or via an independent third party approved by ZGL:

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

C1.5 ZGL will provide reports to the following parties:

(a) Reports for Contractors:

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Market Update	Kiwiflier	Commentary	Monthly commencing in July
Payment Breakdown	Kiwiflier	Payments by Pool and by size grouping. Reporting to also include average Taste Zespri® per TE for trays loaded out each month.	Monthly commencing in August
Forecast Fruit and Service Payment Summary	Kiwiflier	Forecast by Pool	Monthly commencing in August
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>

APPENDIX 1 FORM OF PAYMENT INFORMATION (clause B1.2)

ZESPRI Group Limited
 400 Maunganui Road, PO Box 4043, Mt Maunganui South 3149
 Telephone (07) 572 7600, Facsimile (07) 572 7646

TAX INVOICE

Buyer-Created Tax Invoice – IRD Approved

--

Account No.	
Document Date	
Document No.	
Cut-off Date	
Your GST No.	
ZGL GST No.	11-543-286
Page No.	1

2020 Kiwifruit Season

Internal Use	Run No:
--------------	---------

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INVOICE SUMMARY

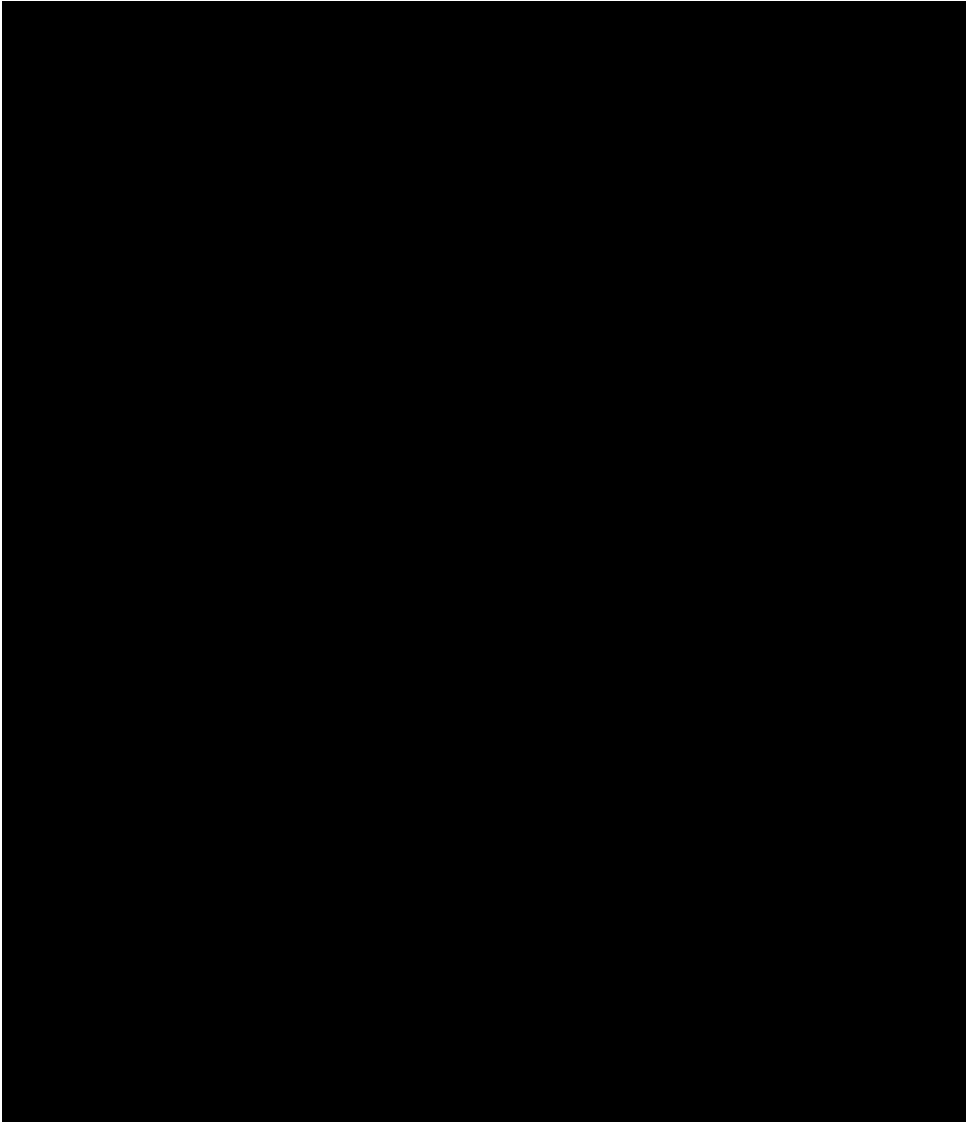
Description	Quantity	Rate \$	Amount \$
GST Standard Rate Transactions			
Progress	TE		
	TE		
	TE		
	TE		
	TE		
	TE		
	TE		
Fruit Loss Reversals			
Total GST Standard Rate Transactions			
Total before GST			
GST on Invoice			
Total Including GST			
Total Invoice - Owing to Supplier			

PAYMENT ADVICE

	Amount \$
This payment deposited on as follows:	

APPENDIX 2 POST HARVEST REPORTING REQUIREMENTS FORMAT (clause C1.4)

In accordance with **clause C1.4**, the Contractor must provide Post Harvest Costs to ZGL either directly or via an independent third party approved by ZGL in the following format:



Schedule 13: Infringement Charges

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SECTION A INFRINGEMENT CHARGES

A1.1 The Contractor is liable to pay the following charges for the infringements specified:

<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p>
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p>
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p>
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p>
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p>

<p>[REDACTED]</p> <ul style="list-style-type: none">[REDACTED][REDACTED][REDACTED]	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>

[REDACTED]	[REDACTED]
[REDACTED]	<p>[REDACTED]</p> <ul style="list-style-type: none">[REDACTED][REDACTED][REDACTED] <p>[REDACTED]</p> <ul style="list-style-type: none">[REDACTED][REDACTED] <p>[REDACTED]</p> <ul style="list-style-type: none">[REDACTED][REDACTED][REDACTED][REDACTED] <ul style="list-style-type: none">[REDACTED][REDACTED][REDACTED][REDACTED] <ul style="list-style-type: none">[REDACTED][REDACTED][REDACTED][REDACTED] <p>[REDACTED]</p> <ul style="list-style-type: none">[REDACTED][REDACTED][REDACTED] <p>[REDACTED]</p> <ul style="list-style-type: none">[REDACTED][REDACTED][REDACTED] <p>[REDACTED]</p> <ul style="list-style-type: none">[REDACTED][REDACTED][REDACTED] <p>[REDACTED]</p>

A1.2 ZGL will supply to the Contractor an invoice for the infringement charges payable (“Amount Due”). The Contractor will pay to ZGL the Amount Due by the 20th of the month following the month in which the invoice was received by the Contractor.

A1.3 The Contractor will supply to ZGL an invoice for the Amount Due payable by ZGL. ZGL will pay the Amount Due to the Contractor by the 20th of the month following the month in which the invoice was received by ZGL.

SECTION B DISPUTES

B1.1 The provisions of the Dispute Resolutions requirements set out in **clause A9** of the **Supply Agreement** will apply for management and resolution of the dispute.

Pricing and Payment Manual for Kiwifruit and Services

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SCOPE OF MANUAL

This **Pricing and Payment Manual**, subject to **Schedule 2**, sets out the manner in which prices are determined and payments are made in respect of:

- (a) Kiwifruit supplied to ZGL; and
- (b) Services supplied to ZGL;

under the **Supply Agreement** between ZGL and the Contractor for the current Season.

This Manual is a supply specification which forms part of, and is deemed to be included in, the **Supply Agreement**. The Interpretation provisions of the **Supply Agreement** apply in this Manual unless the context otherwise requires.

Unless otherwise stated in the **Supply Agreement** or in an **SLA** under **Schedule 6**, all payments made by ZGL to the Contractor will be in New Zealand dollars ("NZD").

SECTION A CALCULATION OF PRICE FOR KIWIFRUIT

A1 FRUIT PRICE FOR KIWIFRUIT

A1.1 ZGL will, on or before 31st May 2021, fix the price in NZD in accordance with this **SECTION A** for each Tray Equivalent of Kiwifruit supplied to ZGL in each of the Pools under the **Supply Agreement**.

A1.2 ZGL will fix the fruit prices for Kiwifruit supplied to it in each Pool in a way which returns all of the Fruit Returns (as calculated in accordance with **clause A2** of this **Manual**) to the Contractors that supplied Kiwifruit to ZGL in that Pool during the Season.

A1.3 Within each Class 1 Pool, different fruit prices, for different sizes of Kiwifruit, by size grouping, as set out in **clause (a)** of **APPENDIX 1** are calculated. ZGL may, in consultation with the ISG and IAC, smooth fruit prices within a Pool by size grouping where considered justified to manage market anomalies. In the event that payments by size grouping have been smoothed, ZGL will disclose fruit prices by Pool, by size grouping to the ISG and IAC. In agreement with ISG and IAC, ZGL at its discretion, may ungroup sizes for payment as it deems appropriate.

A2 CALCULATION OF FRUIT AND SERVICE PAYMENTS

A2.1 Kiwifruit supplied to ZGL under the **Supply Agreement** (other than Non-Standard Supply Kiwifruit as referred to in **SECTION G**) will be allocated by ZGL to the following Pools:

Pool	Variety	Class	Growing Method
Zespri Green Kiwifruit	HW	Class 1	Conventional, conversion and transition
Zespri Green Organic Kiwifruit	HW	Class 1	Organic: Biogro certified
Zespri Sweet Green Kiwifruit	HE	Class 1	All
Zespri Gold Kiwifruit	GA	Class 1	Conventional, conversion and transition
Zespri Gold Organic Kiwifruit	GA	Class 1	Organic: Biogro certified
Green Kiwifruit	HW	Class 2	Conventional, conversion and transition

Green Organic Kiwifruit	HW	Class 2	Organic: Biogro certified
Gold Kiwifruit	GA	Class 2	Conventional, conversion and transition
Gold Organic Kiwifruit	GA	Class 2	Organic: Biogro certified

Reference to a Pool or Pools in this Manual means a Pool or Pools as specified in this **clause A2.1**

A2.2 A Fruit Return for each Pool and size for the Season will be calculated by ZGL, in New Zealand dollars translated in accordance with **clauses A2.13 to A2.16**, as follows:

	Component	Reference
(a)	Net Sales	Defined in clause A2.3
	Less	
(b)	Promotion Costs	Defined in clause A2.4
(c)	Direct Costs	Defined in clause A2.5
(d)	ZGL Margin	Defined in clause A3
Equals	Total fruit and service payments	
	Less	
(e)	Service Costs	Defined in clause A2.7
(f)	Fruit Incentives	Defined in clause A2.8
Equals	Fruit Return	

A2.3 "Net sales" means gross revenues recognised by ZGL from the sale of the Kiwifruit in each Pool:

- (a) Less discounts, quality claims, credits, rebates, brokerage or commissions paid or provided to customers or agents, or, as the case may be, incurred by ZGL in relation to the sale of Kiwifruit in the Pool;
- (b) Plus the revenue, less costs for Kiwifruit in that Pool sold under a Collaborative Marketing Arrangement. The costs include a per tray fee for logistics/procurement and a fixed sum for administration both of which are negotiated with IAC and paid to ZGL;
- (c) Plus amounts recovered from insurers or other third parties for losses in relation to Kiwifruit post FOBS; and
- (d) Excluding other non-pool trading income of ZGL and interest received on financial products.

A2.4 "Promotion Costs" means costs incurred by ZGL in relation to the promotion of Kiwifruit in the Pool, including (but not limited to) promotional campaigns and material, giveaways and competitions and sample Kiwifruit

- A2.5** "Direct Costs" means the costs incurred by ZGL and its agents in relation to the purchase, export, marketing, handling and sale of Kiwifruit in the Pool including:
- (a) Freight;
 - (b) Insurance premiums including:
 - (i) 95% of Marine Cargo Insurance premiums;
 - (ii) Charterer's liability;
 - (iii) Pool Hail Policy Premiums;
 - (iv) 50% of product/public liability premiums; and
 - (v) 75% of Contaminated Products Insurance premiums;
 - (vi) 75% of Trade Credit Insurance premiums
 - (c) Uninsured losses and costs which are less than the policy deductible or excess which are paid by ZGL including:
 - (i) Claims paid by ZGL to contractors for losses under the Marine Cargo Insurance policy deductibles;
 - (ii) The balance of Contaminated Products Insurance deductibles where these are not met by the contractor (in accordance with **clause C3.4** in **Schedule 10**); and
 - (iii) The Pool Earthquake Contribution (in accordance with **clause B3.4 (a)** in **Schedule 10**);
 - (d) Non-fruit loss costs which relate to the Marine Cargo Insurance policy such as survey and customs fees;
 - (e) The costs of arranging and managing insurances including:
 - (i) ZGL policy administration and related costs;
 - (ii) Consultancy/brokerage fees;
 - (iii) Legal costs incurred as a result of policy interpretation: and
 - (iv) Costs of any experts or external insurance assessors;
 - (f) Costs incurred in attempting to make recoveries on losses, whether the recovery is successful or not;
 - (g) Other related costs;

under insurance policies procured or provided under **clause A6** of the **Supply Agreement** and Product and General Liability Insurance in so far as it relates to liability arising in respect of Kiwifruit subject to Supply Agreements;
 - (h) Losses and costs of providing cover for the peril of hail whilst the Kiwifruit is on the vine under **clause A6.3(a)** of the **Supply Agreement**;
 - (i) Offshore Direct Costs including:

- (i) Vessel discharge, including offshore dispatch, Duty and Customs and demurrage charges;
 - (ii) Coolstorage and handling;
 - (iii) Transport and distribution;
 - (iv) In-market condition checking, repacking and pre-packing;
 - (v) Bank charges relating to foreign exchange, letters of credit, customer guarantees, debt factoring and credit management services;
 - (vi) Bad debts and doubtful debts;
 - (vii) Fumigation; and
 - (viii) Other direct costs incurred offshore. Any costs exceeding \$50,000 are to be reported to IAC (per **schedule 12 clause C1.5(c)**);
- (j) Onshore Direct Costs including:
- (i) Labels, label rebates, label wastage charges and label application labour costs, packaging trials;
 - (ii) Port charges including onshore dispatch, demurrage charges, and export documentation;
 - (iii) Operational costs including sundry coolstorage, changes in pack types and sizes, transport and distribution, onshore and on-vessel conditioning costs, consolidation, crop estimation, maturity sampling, orchard monitoring, residue testing, RFID temperature monitoring, and pest lab costs (which includes salary costs incurred by ZGL for pest laboratory technician which otherwise would have been paid to an external provider);
 - (iv) Plant variety right royalties payable;
 - (v) Premiums and penalties paid to or by the Contractor in accordance with **Sections C, D, E, and G of Schedule 2** and as outlined in **APPENDIX 8**;
 - (vi) GLOBALG.A.P, Food Act and BRC costs including the costs of auditing and managing the GLOBAL G.A.P, Food Act and BRC programme;
 - (vii) Amounts recovered from insurers or other third parties for losses which occurred prior to FOBS in relation to Kiwifruit in the Pool;
 - (viii) Controlled Atmosphere/Bulk Storage Weight Loss compensation payments calculated and paid in accordance with **APPENDIX 5**;
 - (ix) Amounts for any other reconciliations not referred to;
 - (x) Costs for collation and auditing of Post Harvest Reporting Requirements referred to in **clause C1.5 of Schedule 12**;
 - (xi) Other direct costs incurred onshore. Any costs exceeding \$50,000 are to be reported to IAC (per **schedule 12 Clause C1. 5(c)**).
- (k) Kiwifruit New Zealand costs of funding and compliance costs under the Regulations;

- (l) Costs as referred to in **clause A13.3** of the **Supply Agreement**;
- (m) Net Interest, being:
 - (i) External seasonal borrowing costs (including bank charges and other related costs);
 - (ii) An internal interest charge from ZGL for the use of ZGL's funds where the ZGL funds are used to make payments to the Pool; and
 - (iii) Internal interest income from ZGL when the Pool has undistributed net positive cash

whereby the internal interest charge from ZGL and the internal interest income received will be calculated at the end of each month by splitting the ZGL Group balance sheet into Pool transactions and corporate transactions. For the avoidance of doubt, all external interest income received belongs to ZGL, with the Pool receiving interest income on net undistributed excess funds determined via the month end balance sheet allocation approach described in this clause. The interest rate for the internal interest charge will be the Official Cash Rate (OCR) applicable at the end of that month and the interest rate for the interest income earned will be the 30 day BKBM (Bank Bill Market) rate applicable at the end of that month. Any interest charged or earned by the Pool will be allocated to the Pool monthly;
- (n) Tax payable in relation to the sale of Kiwifruit which is not recoverable and is an outright cost to ZGL, and direct and withholding taxation in relation to the sale of Kiwifruit, to the extent that it is an unexpected tax liability not recoverable from any tax authority in either an offshore tax jurisdiction or in New Zealand.

(where: "tax payable" includes duties and customs charges incurred, indirect taxes (such as sales taxes and VAT), direct and withholding taxation, and any related interest and penalties.

"Unexpected tax liability" includes tax payable which in any given year increases the relevant tax expense of the Group (Zespri Group Limited and its subsidiaries) in relation to the relevant transaction(s) by more than 10% compared to the previously adopted tax position. An "unexpected tax liability" excludes a tax liability that originates in New Zealand from a matter relating to the New Zealand tax jurisdiction, but not a tax liability that originates in an offshore tax jurisdiction (i.e. outside New Zealand) which gives rise to a New Zealand tax liability.

For the avoidance of doubt, only the portion of "unexpected tax liability" above the 10% threshold will be included in "Direct Costs" for the purposes of calculating the Fruit Return defined in **clause A2.2**.
- (o) Any amount included in tax payable which exceeds NZD\$500,000 and is a result of a tax dispute must be reported to the IAC. Compliance costs, penalties, interest and countervailing duties incurred in relation to the duties, charges and taxes incurred under **clause A2.5(n)** and contractor costs incurred in minimising the risk and exposure for contractors of such duties, charges, taxes and penalties;
- (p) Compliance costs of applicable laws and regulations relating to duties and other indirect taxes which are otherwise unrecoverable and relate to the importation and sale of New Zealand grown Kiwifruit;
- (q) Without limiting the application of **clause A2.14**, any realised gains or losses on derivative contracts other than foreign exchange derivative contracts, relating to any cost that is a Direct

Cost. For the avoidance of doubt a derivative contract within this clause is a contract whereby Direct Costs are linked to a financial index such as an oil index, inflation index, interest rate index or other similar index which will require valuation under accounting standards.

- (r) Commodity Levy applied against all FOBS commercialised volume (excluding exports to Australia and New Zealand sales and crop managed (including quality withdrawal) trays) and paid to NZKGI pursuant to the Commodity Levies (Kiwifruit) Order 2017;
- (s) Kiwifruit Vine Health (KVH) will agree a per tray rate at the KVH annual general meeting pursuant to the National Psa V Pest Management Plan to fund the management of Psa in New Zealand and KVH will agree a per tray rate at the KVH annual general meeting pursuant to the biosecurity levy to be made under the Biosecurity Act to fund KVH's wider biosecurity activities. The deduction of an equivalent amount of funding will be applied against all FOBS commercialised volume (excluding exports to Australia and New Zealand and crop managed (including quality withdrawal) trays) of each commercial variety. In addition in the event that there is a biosecurity incursion the KVH Board pursuant to the biosecurity levy under the Biosecurity Act 1993 will have ability to increase the levy and the deduction of an equivalent amount of funding will be applied against the Class 1 FOBS volume of each variety. In the event of a variation to the KVH's levy rate during a season, the KVH funding will be deducted equally across all trays exported in the season regardless of the fact that some trays are subject to differing levy rates.

A2.6 Direct Costs exclude:

- (a) Commissions to Dole Japan Limited, except to the extent that debt factoring and credit management services costs charged by Dole Japan Limited are included in **clause A2.5(i)(v)**;
- (b) Research and development costs, including market research costs;
- (c) Offshore office costs including salaries, wages and other related staff costs, office and equipment and other related office costs, telecommunications, information technology and services;
- (d) Onshore office costs including salaries, wages and other related staff costs, office and equipment and other related office costs, telecommunications, information technology and services except those portion of costs in relation to the management of insurance (refer **clause A2.5(b) to A2.5(h)**) and GLOBALG.A.P/Food Act/BRC (refer **clause A2.5(j)(vi)**);
- (e) Taxation on profits generated for the benefit of ZGL other than those costs referred to in **clause A2.5(m) and A2.5(n)**; and
- (f) Without limiting the application of **clause A2.14**, any realised or unrealised gains or losses from derivative contracts other than foreign exchange derivative contracts, relating to costs defined in **clause A2.6(a) to A2.6(f)**.

A2.7 "Service Costs" means payments made by ZGL to Contractors as set out in **clause B1**.

A2.8 "Fruit Incentives" means payments made by ZGL to Contractors for:

- (a) Kiwifruit supplied in Period 1 as defined in **clauses C4 to C16 of Schedule 2** at the applicable rates as set out in **APPENDIX 4. APPENDIX 3** sets out indicative Period 1 rates based on the Zespri Standard Cost Model (calculated by taking into account the "Base Period 1 Rate Components" listed in **APPENDIX 7**) and the preceding year's December forecast Fruit Return and Maximum Taste Payments for Zespri Green Organic Kiwifruit, Zespri Gold Kiwifruit, Zespri

ZGL will report to the IAC on the aggregate amount of individual items of costs exceeding two hundred thousand dollars (\$200,000) and of individual items of revenues exceeding two hundred thousand dollars (\$200,000) respectively, which have been recognised in a season, under this **clause A2.12**, when the amount, in aggregate, or, by individual item as the case may be, is brought to account. The aggregate amount or amounts will be reported under the components of promotion costs, direct costs, and net sales as applicable as referred to in **clause A2.2**.

A2.13 ZGL operates a foreign exchange management policy. Foreign exchange losses and gains will be included in the calculation of each or any of the component items of cost and revenue that form part of the determination of Fruit Returns under this Manual. Subject to **clauses A2.14** to **A2.16**, for the purposes of calculation of Fruit Returns, the translation of costs and revenues denominated in foreign currencies into New Zealand dollars will be in accordance with GAAP.

A2.14 Gains or losses from foreign exchange derivative contracts which are realised in the Season (except under **clause A2.16(c)**), will be applied uniformly against all costs and revenues transacted in the relevant currency in the Season, whether attributed to ZGL or the Fruit Return.

A2.15 Gains or losses on any derivative contracts, including those relating to interest rates, foreign exchange, Direct Costs, and Promotion Costs, which are not realised in the Season will not be taken into account for the purpose of calculating the Fruit Return for the Season.

Gains or losses from any such derivative contracts which are not realised in the Season will be taken into account for the purpose of calculating the Fruit Return for the Season in which those gains or losses are realised. This **clause A2.15** shall survive termination on expiry of this Agreement.

A2.16 ZGL may exercise a derivative contract only during the Season in which it expires except in the event of:

- (a) Any change in legislation which means that ZGL cannot be sure that the Contractor will provide fruit in the following seasons;
- (b) ZGL reaching a position where it is holding more derivative contracts than are reasonable for foreseeable trading; or
- (c) ZGL exercising derivative contracts for the purpose of realising gains or mitigating losses under a ZGL Board approved strategy;

then ZGL, acting reasonably, may close out immediately any derivative contracts due to expire in the Season, or in any subsequent Season. In the case of **clause A2.16(a)** and **A2.16(b)** above, any gains or losses realised as a result of closing out such contracts will be brought to account for the purpose of calculating the Fruit Return in the Season. In the case of **clause A2.16(c)** above, the gains or losses realised must be brought to account in the season in which the derivative contract would have expired.

A3 ZGL MARGIN

A3.1 ZGL's Margin for each Pool will be in New Zealand Dollars and consists of:

- (a) 5% of Net Sales, as defined in **clause A2.3**, for the Pool, but excluding the net revenue of non-ZGL sponsored Collaborative Marketing Arrangements, as defined in **clause A2.3(b)** and excluding items in **clause A2.3(c)**, plus
- (b) the Fruit Return Margin Percentage of [Net Sales less the items in **clauses A2.2(b)**, **A2.2(c)**, **A3.1(a)**, **B1.1 (a)** and **B1.1(b)**].

A3.2 ZGL will ensure that external audit certification of the calculation of ZGL's Margin in accordance with **clause A3.1** is conducted in compliance with the Zespri Segment Allocation Manual referred to in the EFA, and ZGL will advise the IAC of the outcome.

A3.3 "Fruit Return Margin Percentage" has the meaning given in the EFA.

SECTION B CALCULATION OF SERVICE COSTS

B1 SERVICE COSTS

B1.1 ZGL will make the following payments to a Contractor:

- (a) Pack Differential payment for the delivery of Kiwifruit in pack types as specified in **APPENDIX 2** of the amounts specified in that **APPENDIX 2** based on the components listed in **APPENDIX 7**;
- (b) Payment for delivery of Kiwifruit to ZGL at FOBS in the ISO Weeks specified in **APPENDIX 4**, of the amounts specified in that **APPENDIX 4**. **APPENDIX 4** sets out indicative Time Rates based on the Zespri Standard Cost Model (calculated by taking into account the "Base Time Rate Components" listed in **APPENDIX 7**) and the preceding Season's December forecast Fruit Return for Zespri Green Organic Kiwifruit, Zespri Gold Kiwifruit, Zespri Gold Organic Kiwifruit and Zespri Green Kiwifruit. The indicative rates will be updated by ZGL with the final Time Rates, by updating the inputs listed under the heading "Basis for updating Time Rates" in **APPENDIX 7**, after the current year's August forecast has been approved by the ZGL Board. ZGL may, at any time after advising the final Time Rates, with the agreement of IAC, amend the Time Rates by fixing them at the level of a specific ISO Week effective for all ISO Weeks subsequent to that ISO Week;
- (c) Grower Pooled Payments (either where payments are not able to be attributed to a Grower Number or where full payment is not necessarily made to the Grower Number due to entity pooling rules) other than for costs classified as Direct Costs under **clause 2.6** including product variations or for costs relating to Collaborative Marketing Arrangements as described under **clause A2.3(b)**. Grower Pooled Payments include the following:
 - (i) Period 1 payment for Kiwifruit supplied under Maintenance Allocated Volume in **clause C17** of **Schedule 2** or under Period 1 Allocated Volumes in **clauses C11** to **C16** of **Schedule 2** at the applicable rates set out in **APPENDIX 3** sets out indicative Period 1 rates based on the Zespri Standard Cost Model (calculated by taking into account the "Base Period 1 Rate Components" listed in **APPENDIX 7**) and on the preceding year's December forecast Fruit Return for Zespri Green Organic Kiwifruit, Zespri Gold Kiwifruit, Zespri Gold Organic Kiwifruit and Zespri Green Kiwifruit. The indicative Period 1 rates will be updated by ZGL with the final Period 1 rates, by updating the inputs listed under the heading "Basis for updating Period 1 Rates" in **APPENDIX 7**, after 31st August. ZGL will advise the final Period 1 rates and reissue **APPENDIX 3** to the Contractor after 31st August.

SECTION C PAYMENT FOR KIWIFRUIT AND SERVICES

C1 PAYMENTS TIMETABLE FOR KIWIFRUIT

C1.1 The following timetable shall apply to payments made in accordance with the provisions of **clauses C2 to C5**:

Payment	Frequency	Cut-off	Payment Date
Standard Advance Payment (clause C2)	Weekly during harvest (until harvest completed)	Sunday midnight	Friday (5 days after cut off)
	Monthly after harvest (e.g. CA or bin stored Kiwifruit that is packed)	Last Sunday of the month	15 th of the month following cut off
Fruit Incentives (clause C3.1(a)) (HW, and GA Period 1)	Twice	As defined in clause C20 of Schedule 2	Prior to 15 th August and 15 th October in accordance with clauses C3.2(a) and C6.3(a)
Fruit Incentives (clause C3.1(b)) (Taste Zespri)	Monthly or as determined, in accordance with the Pool Policy Manual	Last Sunday of month	15 th of the month, in accordance with the Pool Policy Manual
Progress Payments (clause C4)	Monthly or as determined by ZGL Board	Last Sunday of month	15 th of the month following cut off
Final Payment (clause C5)	Once	May 2021	Prior to 31 st May 2021

C1.2 The payment types for Kiwifruit and Services are set out in **APPENDIX 9**.

C2 STANDARD ADVANCE PAYMENT

C2.1 ZGL will make a payment to a Contractor in accordance with this **clause C2.1** (a "Standard Advance Payment") for all Class 1 Kiwifruit to be supplied by the Contractor under the **Supply Agreement** which has been received into the ZGL Inventory System by means of an error free EDI Message correctly recording physical inventory volume from the Contractor.

C2.2 Standard Advance Payments will be made by direct credit to an account notified by the Contractor to ZGL:

- (a) Weekly on Friday until harvest is complete for Kiwifruit which ZGL is notified on, or before midnight, on the Sunday of the preceding week which has been received into the ZGL Inventory System; and
- (b) On the 15th day of each month thereafter for Kiwifruit which ZGL is notified on, or before the last Sunday of the preceding month which has been received into the ZGL Inventory System.

C2.3 The amount of the Standard Advance Payment for Class 1 Kiwifruit is two dollars twenty-five cents (\$2.25) per Tray Equivalent for HW and two dollars eighty cents (\$2.80) per Tray Equivalent for GA and HE.

C2.4 Where any Kiwifruit for which ZGL has made a Standard Advance Payment:

- (a) Fails to meet ZGL's requirements as specified in the **ZIL Quality Manual** on or before delivery to FOBS;
- (b) Is not supplied to ZGL as a result of over-estimates of Kiwifruit in controlled atmosphere and bulk storage;
- (c) Did not form part of the actual submit volume, but was recorded in the ZGL Inventory System;
- (d) Is Kiwifruit in respect of which Surplus is owed by the Contractor under **clause B14.3** or **C8.3** of **Schedule 10**; or
- (e) Is Kiwifruit which is deemed to be non-compliant in accordance with the provisions of **clause A17.1** of the **Supply Agreement**.

ZGL will deduct from any amount owing to the Contractor amounts equivalent to either the Standard Advance Payment made to the Contractor for that Kiwifruit, or the Surplus, whichever is greater.

This clause does not limit **clause B5.6** of the **Supply Agreement** (immediate repayment of any payment for non-supply).

C3 FRUIT INCENTIVES

C3.1 Payment:

- (a) ZGL will make payments for Fruit Incentives as defined in **clause A2.8(a)**(Period 1 rates) for HW, and GA Kiwifruit which has been confirmed into the ZGL Inventory System by means of an error free EDI Message correctly recording the physical inventory volume which has been supplied FOBS to ZGL during the applicable time frame. The timing of the payment will be in accordance with **clause C3.2(a)** and will be made only on Kiwifruit that has been supplied FOBS. Payment of such Fruit Incentives will be reversed where any of the events set out in **clause C2.4** occur in respect of such Kiwifruit.
- (b) ZGL will make payments for Fruit Incentives as defined in **clause A2.8(b)** (Taste Zespri) for Kiwifruit whose delivery to FOBS has been confirmed by ZGL's receipt of either a valid LV or SB inventory record (as defined in the **EDI Manual**) and completion of the vessel reconciliation. The timing of the payment will be in accordance with **clause C3.2(c)**. Payment of these Fruit Incentives will be reversed where any of the events set out in **clause A2.3** occur in relation to such Kiwifruit.
- (c) ZGL will make net payments for Fruit Incentives as defined in [REDACTED] in accordance with **clauses B10, C11** and **C12** of **Schedule 11**.

C3.2 Payment timing

ZGL will make the Fruit Incentives payments in accordance with the following provisions:

- (a) Payments for Fruit Incentives defined in **clause A2.8(a)**(Period 1 rates) will be made for Kiwifruit whose delivery has been confirmed on, or before midnight, on the Friday for HW and on the Tuesday for GA of the applicable Period 1 ISO Week:
 - (i) For HW, and GA – 50% of the total Period 1 payment calculated in accordance with the indicative Period 1 rates in **Appendix 3** no later than 15th August, and the balance, calculated on the basis of the reissued **Appendix 3**, no later than 15th October; or
- (b) Payments for Fruit Incentives defined in **clause A2.8(b)** (Taste Zespri) may be made by ZGL on the 15th day of any month during the Season. Taste Zespri payments will be made on all Kiwifruit whose delivery to FOBS has been confirmed on, or before midnight, of the last Sunday of the preceding month. Payments are subject to the ZGL Payment Policy. ZGL may make an adjustment payment for Taste Zespri on or before 30th November as outlined in **clause A2.8(b)**; and
- (c) Payments for Fruit Incentives defined in [REDACTED] will be made as set out in **clause B11** and **C10** of **Schedule 11**.

Payments will be made by direct credit to an account notified to ZGL by the Contractor.

C3.3 Where any Kiwifruit for which ZGL has made a Fruit Incentive payment is Kiwifruit which is deemed to be Non-Compliant Fruit in accordance with the provisions of **clause A17.1** of the **Supply Agreement**, ZGL will deduct or set off, from any amount owing to the Contractor, amounts equivalent to the Fruit Incentive payment made to the Contractor, for that Kiwifruit.

C4 PROGRESS PAYMENTS

C4.1 ZGL may on the 15th day of any month during the Season make a payment to the Contractor (a “Progress Payment”) by direct credit to the account notified by the Contractor to ZGL. Progress Payments are made on all trays of Kiwifruit submitted into the ZGL Inventory System, excluding those trays that have been reversed for Fruit Loss. Payments are subject to ZGL having sufficient funds, being in a position to comply with the covenants in its funding facility.

C4.2 The amount of any Progress Payment may be set by ZGL at its discretion. ZGL may set different amounts for different Pools and size groupings and may make Progress Payments for Kiwifruit in some Pools but not for Kiwifruit in other Pools.

C4.3 Where any Kiwifruit for which ZGL has made a Progress Payment:

- (a) Fails to meet ZGL's requirements as specified in the ZIL Quality Manual on or before delivery to FOBS;
- (b) Is not supplied to ZGL as a result of overestimates of Kiwifruit in controlled atmosphere and bulk storage;
- (c) Did not form part of the actual submit volume, but was recorded in inventory in the ZGL Inventory System;
- (d) Is Kiwifruit in respect of which a Surplus is owed by the Contractor under **clause B14.3** or **C8.3** of **Schedule 10**; or
- (e) Is Kiwifruit which is deemed to be non-compliant in accordance with the provisions of **clause A17.1** of the **Supply Agreement**.

ZGL will deduct or set off from any amount owing to the Contractor an amount equivalent to all Progress Payments made to the Contractor for that Kiwifruit, or the Surplus, whichever is greater.

C5 FINAL PAYMENT

C5.1 ZGL will on or before 31st May 2021 make a payment to the Contractor (the “Final Payment”) for all Kiwifruit supplied to ZGL by the Contractor in the Season. This clause will survive the termination or expiry of the **Supply Agreement**.

C5.2 The Final Payment is a fruit payment pursuant to **clause B4** of the **Supply Agreement**. The amount of the Final Payment to the Contractor will be:

- (a) The applicable fruit price as determined by ZGL under **clause A1** for all the Kiwifruit purchased by ZGL from the Contractor under the Supply Agreement; and
- (b) Less the amount of all Standard Advance Payments and Progress Payments made by ZGL to the Contractor in relation to that Kiwifruit.

C6 PAYMENT FOR SERVICE COSTS

C6.1 ZGL will make payments under **clause C4.1** of the **Supply Agreement** to the Contractor for the Service Costs as set out in **clause B1.1(a)** and **B1.1(b)** (Pack Differential and Time Rates) for Services provided in respect of Kiwifruit whose delivery to FOBS has been confirmed by ZGL receipt of either a valid LV or SB record (as defined in the **EDI Manual**) for that Kiwifruit and completion of the vessel reconciliation. The timing of the payment will be in accordance with **clause C6.2**. Payments for Service Costs as defined in **clause B1.1(b)** (Time Rates) will be made in accordance with the indicative time rates in **APPENDIX 4** until final time rates are calculated and **APPENDIX 4** is reissued by ZGL. The Load Start date for the applicable shipment will be the date used to determine which week time rate is payable in **APPENDIX 4**. An adjustment will be made prior to 31st December for all payments made prior to **APPENDIX 4** being reissued, to account for the difference between the indicative time rates and the final time rates. Payments for Service Costs as defined in **clause B1.1(c)(i)** (Period 1 payment) will be made in accordance with the indicative time rates in **APPENDIX 3** until final Period 1 rates are calculated and **APPENDIX 3** is reissued by ZGL. An adjustment will be made by ZGL prior to 31st December for all payments made prior to **APPENDIX 3** being reissued, to account for the difference between the indicative Period 1 rates and the final Period 1 Time rates.

C6.2 Payment Timing for Pack Differential and Time Rates. ZGL will make the payments under **clause C6.1**:

- (a) On each Friday during harvest (until harvest is complete) for Kiwifruit whose delivery to FOBS has been confirmed on or before midnight on the Sunday 12 days prior to payment;
- (b) Thereafter on the 15th day of each month for Kiwifruit whose delivery to FOBS has been confirmed on or before the last Sunday of the preceding month; and
- (c) By direct credit to an account notified to ZGL by the Contractor.

C6.3 ZGL will make the following payments under **clause C4.1** of the **Supply Agreement** directly to a Registered Supplier for Services provided in respect of Kiwifruit whose delivery to FOBS has been confirmed by ZGL by receipt of either a valid LV or SB record (as defined in the **EDI Manual**) for that Kiwifruit and completion of the vessel reconciliation:

- (a) For Service Costs set out in **clause B1.1(c)(i)** (Period 1 payment), payment will be made for Kiwifruit whose delivery has been confirmed on or before midnight on the Friday for HW and on the Tuesday for GA of the applicable Period 1 ISO Week up to the maximum allocation as set out in **clauses C11 to C16 of Schedule 2** as follows:
- (i) For HW, and GA – 50% of the total Period 1 payment calculated in accordance with the indicative Period 1 rates in **Appendix 3** no later than 15th August, and the balance, calculated on the basis of the reissued **Appendix 3**, no later than 15th October; or
- (b) For Service Costs set out in **clause B1.1(c)**, payment will be made on receipt of an invoice from the Registered Supplier or a buyer created invoice from ZGL on the 20th of the month after receipt of the invoice.

Payments will be made by direct credit to an account notified to ZGL by the Registered Supplier.

C6.4 SLA: ZGL will make payment for Service Costs pursuant to **SLA** as per the payment terms of the **SLA**.

C6.5 Where any Kiwifruit for which ZGL has made a Service Payment is Kiwifruit which is deemed to be Non-Compliant Fruit in accordance with the provisions of **clause A17.1** of the Supply Agreement, ZGL will deduct or set off from any amount owing to the Contractor amounts equivalent to the Service Payment made to the Contractor for the Kiwifruit.

C7 INTEREST ON LATE PAYMENTS

C7.1 In the event that any amount due under the **Supply Agreement** remains outstanding 60 days after the due date for payment, interest calculated at the rate of 10% per annum (such interest to accrue on the amount in default from the due date for payment) will be payable in addition to the amount in default. This **clause C7.1** does not apply in respect of outstanding amounts subject to a dispute which have been dealt with in accordance with **clause A9** of the **Supply Agreement**, or to invoices relating to [REDACTED] [REDACTED] the terms for which are set out in **clauses B11 and C10 of Schedule 11**.

C8 OTHER PAYMENTS

C8.1 Any payment due to a Contractor not paid directly under **clauses C2 to C5.2(b)** will be paid by ZGL to the Contractor on the 20th of the month following the month in which the Contractor's invoice is received by ZGL. Any such payment will be deducted under the relevant component in **clause A2.2**.

C9 REFUND OF OVERPAYMENT

C9.1 To the extent amounts paid by ZGL to the Contractor are excessive as a result of any of the following occurrences (each an "Overpayment"):

- (a) Any payment to a Contractor that has been wrongly calculated by ZGL and exceeds the correct amount due to the Contractor; or
- (b) Standard Advance Payments have been made to the Contractor in respect of Kiwifruit which:
- (i) Is not delivered to ZGL and repayment of the whole or part of the Standard Advance Payment is required under **clause B5.6** of the **Supply Agreement**; or
- (ii) Is Kiwifruit to which **clause C2.4** applies and repayment is required;

- (c) Progress Payments have been made to the Contractor in respect of Kiwifruit which:
 - (i) Is not delivered to ZGL and repayment of the whole or part of the Progress Payment is required under **clause B5.6** of the **Supply Agreement**; or
 - (ii) Is Kiwifruit to which **clause C4.3** applies and repayment is required;
- (d) The aggregate of the payments made to the Contractor for any Kiwifruit exceeds the amount that ZGL in its discretion, determines from time to time is a prudent total level of payment for that Kiwifruit at that time; or
- (e) The aggregate of the payments made to the Contractor for any Kiwifruit exceeds the final price, either determined under **clause C5.2**, or which ZGL forecasts it will determine under **clause C5.2**;

the Overpayment will be a debt due by the Contractor to ZGL.

If ZGL has made an Overpayment ZGL may, when it makes any subsequent payment due to the Contractor under **clauses C2** to **C5.2(b)**, as may be applicable, set-off the amount of the Overpayment or liability against that payment. ZGL will provide written notice seven days prior to any set-off.

Where the amount of the payment against which the Overpayment would be set-off is less than the Overpayment, the Contractor will pay the amount of the excess to ZGL within 14 days of notice being given by ZGL to the Contractor of the amount owing.

- C9.2** ZGL's Margin for each Class 1 Pool, as defined in **clause A3**, will be reduced by the amount of any reduction of any Overpayment and debt due under **clause C9.1**. For the avoidance of doubt, ZGL's Margin may, through the operation of this **clause C9.2**, become a negative amount.

SECTION D OTHER PAYMENTS DUE UNDER THE SUPPLY AGREEMENT

- D1** Except as specified elsewhere in this **Pricing and Payment Manual, Schedule 2** and the **ZIL Quality Manual**, ZGL or the Contractor, as the case may be, will, where there is any penalty or other amount due to it under the **Supply Agreement**, create an invoice.
- D2** Any invoice created under **clause D1** is payable on the 20th of the month following receipt of the invoice.

SECTION E LABELS

E1 ZGL RESPONSIBILITIES

- E1.1** ZGL will arrange availability of BioGro approved organic coupon labels through the approved label supplier.

E2 CONTRACTOR RESPONSIBILITIES

- E2.1** The Contractor will:
- (a) Negotiate labelling equipment leases with label equipment suppliers and pay the cost of leasing labelling equipment including any associated rebates and wastage;

- (b) Order directly from label suppliers any Kiwifruit labels required other than those pursuant to **clause E1.1** above; and
- (c) Pay a 2% wastage charge for Green and 8% wastage charge for Gold calculated by ZGL under **clause E4** at the end of the Season.

E3 APPROVED PACKAGING SUPPLIERS

E3.1 Zespri will set a specification for all packaging components and provided it informs the Contractor of that specification it shall be the Contractor's responsibility to check that the packaging complies with such specification.

E4 LABEL WASTAGE CALCULATION

E4.1 Labels used in excess of 102 labels per 100 pieces of HW, HE Kiwifruit (calculated as the number of fruit pieces) in Gross Submit are deemed wastage, and a label wastage charge will be applied. Labels used in excess of 108 labels per 100 pieces of GA Kiwifruit (calculated as the number of fruit pieces) in Gross Submit are deemed wastage, and a label wastage charge will be applied. The label wastage charge will be applied at the average ZGL Tray Equivalent cost of labels per 1,000 labels of wastage.

E5 PALLET/PALLET VISUAL LABELS

E5.1 The Contractor is responsible for the ordering and applying of labels as specified in the Product Identification Section 2 of the ZIL Quality Manual. ZIL reimbursement for certain labels, the printing of labels and applying of labels is outlined in the ZIL Generic Services SLA.

SECTION F CLASS 2 KIWIFRUIT SUPPLY

F1 Where ZGL and a Contractor have entered into an **SLA** for the supply of Class 2 Kiwifruit and related Services, the pricing and payment provisions of the wastage charge for will prevail over the provisions of this **Pricing and Payment Manual** to the extent specified in the **SLA**.

SECTION G NON-STANDARD SUPPLY

G1 Where ZGL and a Contractor have entered into a **SLA** for the supply of Non-Standard Supply Kiwifruit, as defined in **clause (b)** of **APPENDIX 1**, the pricing and payment provisions of the **SLA** will prevail over the provisions of this **Pricing and Payment Manual** to the extent specified in the **SLA**.

SECTION H MATURITY CLEARANCE SERVICES

H1 ZGL RESPONSIBILITIES

H1.1 ZGL will:

- (a) Arrange and hold the contracts with approved maturity clearance services supplier(s); and
- (b) On charge to the Contractor the costs of the maturity clearance services provided to Grower numbers under Schedule 3 and 4.

H2 CONTRACTOR RESPONSIBILITIES

H2.2 The Contractor will:

- (a) Pay ZGL the charges for the maturity clearance services provided to the Grower numbers under Schedule 3 and 4.

APPENDIX 1 STANDARD & NON-STANDARD SUPPLY (clauses A1.3 and G1)

(a) Standard Supply

The table below sets out Standard Supply for the 2020 Season and fruit size groupings for payment purposes.

Class 1 - Standard Supply						
Conventional						
Size						
Zespri® SunGold Kiwifruit	16/22	25/27	30/33	36	39 (taste band Y/T/R only)	n.a
Zespri® Sweet Green Kiwifruit	18/22	25/27	30/33	36/39	n.a	42
Zespri® Green Kiwifruit	18/22	25/27	30/33	36/39	n.a	42
Organic						
Zespri SunGold Organic Kiwifruit	16/22	25/27	30/33	36	39 (taste band Y/T/R only)	n.a
Zespri® Green Organic Kiwifruit	18/22	25/27	30/33	36/39	n.a	42

(b) Non-Standard Supply

The tables below set out the Class 1 and Class 2 Non-Standard Supply for the 2020 Season that may be procured for supply under a Service Level Agreement:

Class 1 Non-Standard Supply (NSS)		
Conventional		
	Size 42	Size 46
Zespri® SunGold Kiwifruit	Contracted Volume only taste band Y/T/R	Not Procuring
Zespri® Sweet Green Kiwifruit	Standard Supply	Not Procuring
Zespri® Green Kiwifruit	Standard Supply	Depends on size 42 volume
Organic		
Zespri® SunGold Organic Kiwifruit	Contracted Volume only taste band Y/T/R	Not Procuring
Zespri® Green Organic Kiwifruit	Standard Supply	Depends on size 42 volume

Class 2 Procurement		
Conventional		
	Size	
Zespri® SunGold Kiwifruit	18 - 39	All sizes contracted Volume. Size 39 only taste band Y/T/R
Zespri® Sweet Green Kiwifruit	22 - 42	Not Procuring
Zespri® Green Kiwifruit	22 - 39	Contracted Volume
Organic		
Zespri® SunGold Organic Kiwifruit	18 - 42	All sizes contracted Volume. Size 39/42s only taste band Y/T/R
Zespri® Green Organic Kiwifruit	22 - 42	Contracted Volume

APPENDIX 2 ZESPRI STANDARD COST MODEL: PACK DIFFERENTIALS (clauses B1.1(a), C6.1 and C6.2)

The Pack Differential is the differential cost as determined by the Pack Differential Standard Cost Model between each variety's Base Pack, cooled, delivered to wharf and stowed FOB, and an alternative pack and variety. The respective costs are calculated in accordance with the Zespri Standard Cost Model, utilising the service components listed in **Appendix 7** under the headings "Packaging Costs" and "PRE-FOBS costs".

2016 Base Pack Definitions

HW Base Pack = HW ENMB-2014 ZGL Pack Specification and Pallet Presentation

- *Euro Base, Normal Height, Modular bulk pack incorporating corrugated cardboard body with an integral display lid*
- *4 Colour Post Print Zespri Green Graphic*

HW Organic Base Pack = HWOB ENMB-2014 ZGL Pack Specification and Pallet Presentation

- *Euro Base, Normal Height, Modular bulk pack incorporating corrugated cardboard body with an integral display lid*
- *3 Colour Post Print Zespri Green Graphic*

GA Base Pack = GA ENML - 2014 ZGL Pack Specification and Pallet Presentation

- *Euro Base, Normal Height, Modular loose fill pack incorporating corrugated cardboard body with an integral display lid*
- *4 Colour Post Print Zespri SunGold Graphic*

HE Base Pack = HE ENMT (ML) - 2014 ZGL Pack Specification and Pallet Presentation

- *Euro Base, Normal Height, Modular loose fill pack incorporating corrugated cardboard body with an integral display lid*
- *4 Colour Post Print Zespri Sweet Green Graphic*

APPENDIX 2 ZESPRI STANDARD COST MODEL: PACK DIFFERENTIALS (clauses B1.1(a), C6.1 and C6.2) cont'd

Purchase Pool	Fruit Group	Pack	Code1	2020 Pack Differential (Base Pack By Variety)	Purchase Pool	Fruit Group	Pack	Code1	2020 Pack Differential (Base Pack By Variety)
16	GA1CK	ENML	GA1CKENML	\$0.0000	01	HW1CK	ENMB	HW1CKENMB	\$0.0000
16	GA1CK	E3J	GA1CKE3J	\$1.7843	01	HW1CK	IT (Jumbo)	HW1CKE3IT (Jumbo)	\$2.0501
16	GA1CK	H3J	GA1CKH3J	\$1.9167	02	HW2CK	IT (Jumbo)	HW2CKE3IT (Jumbo)	\$2.0501
16	GA1CK	ENJ	GA1CKENJ	\$1.8085	01	HW1CK	IT (Jumbo)	HW1CKH3IT (Jumbo)	\$2.1660
16	GA1CK	HNJ	GA1CKHNJ	\$1.8076	01	HW1CK	IT (Jumbo)	HW1CKENIT (Jumbo)	\$2.0665
16	GA1CK	E3IT	GA1CKE3IT	\$1.4556	01	HW1CK	IT (Jumbo)	HW1CKHNIT (Jumbo)	\$2.1187
16	GA1CK	H3IT	GA1CKH3IT	\$1.5714	01	HW1CK	E3IT	HW1CKE3IT	\$1.9575
16	GA1CK	ENIT	GA1CKENIT	\$1.4719	02	HW2CK	E3IT	HW2CKE3IT	\$1.9575
16	GA1CK	HNIT	GA1CKHNIT	\$1.5241	01	HW1CK	H3IT	HW1CKH3IT	\$2.0734
16	GA1CK	ENM2	GA1CKENM2	\$0.8806	01	HW1CK	ENIT	HW1CKENIT	\$1.9739
16	GA1CK	E2M2	GA1CKE2M2	\$0.8672	01	HW1CK	HNIT	HW1CKHNIT	\$2.0261
16	GA1CK	E2ML	GA1CKE2ML	-\$0.0196	01	HW1CK	E2LM	HW1CKE2LM	\$0.5364
16	GA1CK	H2ML	GA1CKH2ML	\$0.0819	01	HW1CK	ENLM	HW1CKENLM	\$0.5555
16	GA1CK	HNML	GA1CKHNML	\$0.0467	01	HW1CK	E2M2	HW1CKE2M2	\$1.4320
16	GA1CK	ESML	GA1CKESML	\$0.3847	01	HW1CK	ENM2	HW1CKENM2	\$1.4517
16	GA1CK	E2MX	GA1CKE2MX	\$3.7282	01	HW1CK	E2MA	HW1CKE2MA	\$0.9892
16	GA1CK	ENMX	GA1CKENMX	\$3.7568	01	HW1CK	ENMA	HW1CKENMA	\$0.9399
16	GA1CK	ENLM	GA1CKENLM	\$0.0000	01	HW1CK	E1MB	HW1CKE1MB	-\$0.0127
16	GA1CK	EN2L	GA1CKEN2L	\$0.0000	02	HW2CK	E1MB	HW2CKE1MB	-\$0.0127
16	GA1CK	E2LM	GA1CKE2LM	-\$0.0196	01	HW1CK	H1MB	HW1CKH1MB	\$0.0810
16	GA1CK	E22L	GA1CKE22L	-\$0.0196	02	HW2CK	H1MB	HW2CKH1MB	\$0.0810
16	GA1CK	ENP1	GA1CKENP1	\$1.0585	02	HW2CK	ENMB	HW2CKENMB	\$0.0000
12	GA1OB	E2ML	GA1OBE2ML	-\$0.0196	01	HW1CK	HNMB	HW1CKHNMB	\$0.0424
12	GA1OB	H2ML	GA1OBH2ML	\$0.0818	02	HW2CK	HNMB	HW2CKHNMB	\$0.0424
12	GA1OB	E2MX	GA1OBE2MX	\$3.6913	01	HW1CK	ENP1	HW1CKENP1	\$1.6430
12	GA1OB	E3IT	GA1OBE3IT	\$1.4453	01	HW1CK	HNP1	HW1CKHNP1	\$1.6957
12	GA1OB	H3IT	GA1OBH3IT	\$1.5612	01	HW1CK	ENP6	HW1CKENP6	-\$0.0602
12	GA1OB	ENIT	GA1OBENIT	\$1.4617	01	HW1CK	HNP6	HW1CKHNP6	-\$0.0174
12	GA1OB	HNIT	GA1OBHNIT	\$1.5139	01	HW1CK	ENBM	HW1CKENBM	\$0.0000
12	GA1OB	ENJ	GA1OBENJ	\$1.8047	01	HW1CK	ENBG	HW1CKENBG	-\$0.8100
12	GA1OB	ENM2	GA1OBENM2	\$0.8871	04	HW1OB	E3IT	HW1OBE3IT	\$1.9321
12	GA1OB	ENML	GA1OBENML	\$0.0000	04	HW1OB	H3IT	HW1OBH3IT	\$2.0479
12	GA1OB	HNML	GA1OBHNML	\$0.0467	04	HW1OB	ENIT	HW1OBEENIT	\$1.8728
12	GA1OB	ENMX	GA1OBENMX	\$3.7200	04	HW1OB	HNIT	HW1OBHNIT	\$2.0007
12	GA1OB	E3J	GA1OBE3J	\$1.7592	04	HW1OB	E1MB	HW1OBE1MB	-\$0.0126
92	GA2CK	ENML	GA2CKENML	-\$0.0675	04	HW1OB	H1MB	HW1OBH1MB	\$0.0803
92	GA2CK	E2ML	GA2CKE2ML	-\$0.0196	04	HW1OB	HNMB	HW1OBHNMB	\$0.0420
38	GA2OB	ENML	GA2OBEENML	\$0.0162	04	HW1OB	ENP1	HW1OBEENP1	\$1.7149
38	GA2OB	E2ML	GA2OBE2ML	\$0.0641	05	HW2OB	ENMB	HW2OBEENMB	\$0.0000
18	HE1CK	ENML	HE1CKENML	\$0.0000	05	HW2OB	E1MB	HW2OBE1MB	-\$0.0345
18	HE1CK	E3IT	HE1CKE3IT	\$1.4058					
18	HE1CK	ENIT	HE1CKENIT	\$1.4222					
18	HE1CK	E2ML	HE1CKE2ML	-\$0.0198					
89	HE2CK	E1MB	HE2CKE1MB	\$0.0000					
89	HE2CK	ENMB	HE2CKENMB	\$0.0000					

**APPENDIX 3 ZESPRI STANDARD COST MODEL: PERIOD 1 PAYMENT RATES
(CLAUSES A2.8(A), B1.1(C)(I) AND C3.2(A)(I))**

The following rates are indicative only and will be updated with final Period 1 rates after 31st August in accordance with **clauses A2.8(a) and B1.1(C)(I)**.

ZESPRI[®] GREEN Kiwifruit

ISO Week	Calendar Dates	16/18/22	25/27	30/33	36	39	42	Total Average
Week 12/13	21-Mar - 27-Mar	\$3.40	\$3.78	\$4.12	\$3.51	\$2.25	\$0.00	\$3.50
Week 13/14	28-Mar - 03-Apr	\$2.47	\$2.74	\$2.98	\$2.55	\$1.64	\$0.00	\$2.54
Week 14/15	04-Apr - 10-Apr	\$2.00	\$2.30	\$2.55	\$2.09	\$1.27	\$0.00	\$2.07
Week 15/16	11-Apr - 17-Apr	\$1.69	\$2.03	\$2.32	\$1.79	\$1.01	\$0.00	\$1.78
Week 16/17	18-Apr - 24-Apr	\$1.20	\$1.47	\$1.70	\$1.28	\$0.69	\$0.00	\$1.26
Week 17/18	25-Apr - 01-May	\$0.77	\$1.00	\$1.20	\$0.84	\$0.41	\$0.00	\$0.83
Week 18/19	02-May - 10-May	\$0.43	\$0.63	\$0.80	\$0.49	\$0.17	\$0.00	\$0.48

ZESPRI[®] GREEN Organic Kiwifruit

ISO Week	Calendar Dates	16/18/22	25/27	30/33	36	39	42	Total Average
Week 13/14	28-Mar - 03-Apr	\$4.04	\$4.34	\$4.61	\$4.41	\$4.35	\$4.05	\$4.41
Week 14/15	04-Apr - 10-Apr	\$3.18	\$3.49	\$3.78	\$3.57	\$3.51	\$3.19	\$3.57
Week 15/16	11-Apr - 17-Apr	\$2.54	\$2.89	\$3.21	\$2.98	\$2.91	\$2.55	\$2.97
Week 16/17	18-Apr - 24-Apr	\$1.82	\$2.12	\$2.39	\$2.20	\$2.14	\$1.83	\$2.19
Week 17/18	25-Apr - 01-May	\$1.20	\$1.46	\$1.69	\$1.52	\$1.47	\$1.21	\$1.52
Week 18/19	02-May - 10-May	\$0.65	\$0.87	\$1.07	\$0.93	\$0.88	\$0.66	\$0.92

ZESPRI[®] SUNGOLD Kiwifruit

ISO Week	Calendar Dates	16/22	25/27	30/33	36	39	Total Average
Week 11/12	14-Mar - 17-Mar	\$3.90	\$4.01	\$4.10	\$4.01	\$3.90	\$4.01
Week 12	18-Mar - 20-Mar	\$2.90	\$2.99	\$3.06	\$2.99	\$2.90	\$2.99
Week 12/13	21-Mar - 24-Mar	\$2.26	\$2.33	\$2.38	\$2.33	\$2.26	\$2.33
Week 13/14	25-Mar - 31-Mar	\$1.87	\$1.92	\$1.96	\$1.92	\$1.87	\$1.92
Week14/15	1-Apr - 7-Apr	\$1.22	\$1.34	\$1.44	\$1.34	\$1.22	\$1.34
Week15/16	8-Apr - 14-Apr	\$0.77	\$0.93	\$1.05	\$0.93	\$0.77	\$0.93

ZESPRI[®] SUNGOLD Organic Kiwifruit

ISO Week	Calendar Dates	16/22	25/27	30/33	36	39	Total Average
Week 12	18-Mar - 20-Mar	\$4.05	\$4.15	\$4.24	\$4.15	\$4.05	\$4.15
Week 12/13	21-Mar - 24-Mar	\$3.22	\$3.31	\$3.38	\$3.31	\$3.22	\$3.31
Week 13/14	25-Mar - 31-Mar	\$2.48	\$2.54	\$2.60	\$2.54	\$2.48	\$2.54
Week14/15	1-Apr - 7-Apr	\$1.60	\$1.74	\$1.85	\$1.74	\$1.60	\$1.74
Week15/16	8-Apr - 14-Apr	\$1.02	\$1.18	\$1.32	\$1.18	\$1.02	\$1.18

APPENDIX 4 ZESPRI STANDARD COST MODEL: TIME RATES HW (clauses B1.1(b), C6.1 and C6.2)

The following rates are indicative and will be updated with final Time Rates after 31st August in accordance with clause B1.1(b).

ZESPRI INTERNATIONAL LIMITED					
Industry Rates For 2020 Season					
Class 1 HW					
\$ per TE					
Week	Size Group 16/18/22	Size Group 25/27	Size Group 30/33	Size Group 36/39	Size Group 42
Pre 25	\$ -	\$ -	\$ -	\$ -	\$ -
25	\$ 0.1771	\$ 0.1779	\$ 0.1757	\$ 0.1710	\$ 0.1627
26	\$ 0.2565	\$ 0.2574	\$ 0.2545	\$ 0.2484	\$ 0.2376
27	\$ 0.3474	\$ 0.3486	\$ 0.3448	\$ 0.3369	\$ 0.3227
28	\$ 0.4520	\$ 0.4536	\$ 0.4487	\$ 0.4383	\$ 0.4198
29	\$ 0.5691	\$ 0.5713	\$ 0.5648	\$ 0.5514	\$ 0.5274
30	\$ 0.6932	\$ 0.6960	\$ 0.6877	\$ 0.6703	\$ 0.6393
31	\$ 0.8202	\$ 0.8238	\$ 0.8131	\$ 0.7909	\$ 0.7513
32	\$ 0.9506	\$ 0.9551	\$ 0.9417	\$ 0.9136	\$ 0.8634
33	\$ 1.0892	\$ 1.0949	\$ 1.0780	\$ 1.0428	\$ 0.9800
34	\$ 1.2427	\$ 1.2497	\$ 1.2287	\$ 1.1850	\$ 1.1071
35	\$ 1.4192	\$ 1.4278	\$ 1.4019	\$ 1.3479	\$ 1.2516
36	\$ 1.6288	\$ 1.6395	\$ 1.6076	\$ 1.5410	\$ 1.4221
37	\$ 1.8839	\$ 1.8971	\$ 1.8576	\$ 1.7754	\$ 1.6288
38	\$ 2.1980	\$ 2.2143	\$ 2.1655	\$ 2.0638	\$ 1.8824
39	\$ 2.5838	\$ 2.6041	\$ 2.5436	\$ 2.4173	\$ 2.1920
40	\$ 3.1846	\$ 3.2098	\$ 3.1344	\$ 2.9771	\$ 2.6964
41	\$ 3.8668	\$ 3.9004	\$ 3.8002	\$ 3.5912	\$ 3.2185
42	\$ 4.6943	\$ 4.7389	\$ 4.6059	\$ 4.3285	\$ 3.8336
43	\$ 5.7028	\$ 5.7619	\$ 5.5854	\$ 5.2173	\$ 4.5607
44	\$ 7.0723	\$ 7.1508	\$ 6.9166	\$ 6.4285	\$ 5.5577
45	\$ 8.6243	\$ 8.7283	\$ 8.4180	\$ 7.7710	\$ 6.6171
46	\$ 10.2934	\$ 10.4248	\$ 10.0326	\$ 9.2148	\$ 7.7562
47	\$ 12.4050	\$ 12.5713	\$ 12.0750	\$ 11.0401	\$ 9.1942
48	\$ 15.0811	\$ 15.2917	\$ 14.6630	\$ 13.3522	\$ 11.0142
49	\$ 18.4771	\$ 18.7441	\$ 17.9472	\$ 16.2856	\$ 13.3218
50	\$ 22.7908	\$ 23.1294	\$ 22.1186	\$ 20.0110	\$ 16.2518
51	\$ 29.0889	\$ 29.5325	\$ 28.2085	\$ 25.4480	\$ 20.5241
52	\$ 39.0678	\$ 39.6779	\$ 37.8567	\$ 34.0596	\$ 27.2866

APPENDIX 4 ZESPRI STANDARD COST MODEL: TIME RATES HW ORGANIC (clauses B1.1(b), C6.1 and C6.2) Cont'd

ZESPRI INTERNATIONAL LIMITED					
Industry Rates For 2020 Season					
Class 1 HW Organic					
\$ per TE					
Week	Size Group 16/18/22	Size Group 25/27	Size Group 30/33	Size Group 36/39	Size Group 42
Pre 25	\$ -	\$ -	\$ -	\$ -	\$ -
25	\$ 0.1854	\$ 0.1886	\$ 0.1902	\$ 0.1851	\$ 0.1750
26	\$ 0.2726	\$ 0.2770	\$ 0.2791	\$ 0.2723	\$ 0.2584
27	\$ 0.3709	\$ 0.3768	\$ 0.3795	\$ 0.3705	\$ 0.3522
28	\$ 0.4765	\$ 0.4840	\$ 0.4875	\$ 0.4760	\$ 0.4526
29	\$ 0.5826	\$ 0.5920	\$ 0.5963	\$ 0.5819	\$ 0.5529
30	\$ 0.6861	\$ 0.6974	\$ 0.7027	\$ 0.6852	\$ 0.6499
31	\$ 0.7898	\$ 0.8035	\$ 0.8098	\$ 0.7888	\$ 0.7463
32	\$ 0.8996	\$ 0.9160	\$ 0.9236	\$ 0.8984	\$ 0.8473
33	\$ 1.0217	\$ 1.0414	\$ 1.0506	\$ 1.0202	\$ 0.9587
34	\$ 1.1632	\$ 1.1873	\$ 1.1984	\$ 1.1615	\$ 1.0867
35	\$ 1.3322	\$ 1.3617	\$ 1.3754	\$ 1.3301	\$ 1.2382
36	\$ 1.5373	\$ 1.5739	\$ 1.5910	\$ 1.5346	\$ 1.4206
37	\$ 1.7877	\$ 1.8337	\$ 1.8550	\$ 1.7843	\$ 1.6413
38	\$ 2.0928	\$ 2.1509	\$ 2.1779	\$ 2.0885	\$ 1.9075
39	\$ 2.4613	\$ 2.5355	\$ 2.5699	\$ 2.4559	\$ 2.2251
40	\$ 3.0362	\$ 3.1314	\$ 3.1755	\$ 3.0292	\$ 2.7332
41	\$ 3.6791	\$ 3.8094	\$ 3.8698	\$ 3.6695	\$ 3.2641
42	\$ 4.4845	\$ 4.6631	\$ 4.7460	\$ 4.4715	\$ 3.9159
43	\$ 5.5121	\$ 5.7568	\$ 5.8704	\$ 5.4942	\$ 4.7329
44	\$ 6.9544	\$ 7.2897	\$ 7.4452	\$ 6.9299	\$ 5.8871
45	\$ 8.7283	\$ 9.1872	\$ 9.4001	\$ 8.6947	\$ 7.2670
46	\$ 10.7449	\$ 11.3441	\$ 11.6221	\$ 10.7010	\$ 8.8369
47	\$ 13.3575	\$ 14.1407	\$ 14.5041	\$ 13.3001	\$ 10.8636
48	\$ 16.7613	\$ 17.7861	\$ 18.2615	\$ 16.6864	\$ 13.4987
49	\$ 21.2096	\$ 22.5512	\$ 23.1735	\$ 21.1114	\$ 16.9382
50	\$ 27.0335	\$ 28.7907	\$ 29.6057	\$ 26.9049	\$ 21.4390

APPENDIX 4 ZESPRI STANDARD COST MODEL: TIME RATES GA (clauses B1.1(b), C6.1 and C6.2) Cont'd

ZESPRI INTERNATIONAL LIMITED					
Industry Rates For 2020 Season					
Class 1 GA Conventional					
\$ per TE					
Week	Size Group 16/18/22	Size Group 25/27	Size Group 30/33	Size Group 36	Size Group 39
Pre 22	\$ -	\$ -	\$ -	\$ -	\$ -
22	\$ 0.2763	\$ 0.2744	\$ 0.2718	\$ 0.2605	\$ 0.2475
23	\$ 0.3274	\$ 0.3251	\$ 0.3220	\$ 0.3085	\$ 0.2928
24	\$ 0.4086	\$ 0.4057	\$ 0.4017	\$ 0.3845	\$ 0.3645
25	\$ 0.5207	\$ 0.5169	\$ 0.5115	\$ 0.4884	\$ 0.4615
26	\$ 0.6904	\$ 0.6855	\$ 0.6787	\$ 0.6494	\$ 0.6154
27	\$ 0.8337	\$ 0.8280	\$ 0.8201	\$ 0.7860	\$ 0.7465
28	\$ 0.9632	\$ 0.9568	\$ 0.9479	\$ 0.9096	\$ 0.8651
29	\$ 1.0933	\$ 1.0862	\$ 1.0762	\$ 1.0334	\$ 0.9836
30	\$ 1.2326	\$ 1.2246	\$ 1.2134	\$ 1.1654	\$ 1.1096
31	\$ 1.4194	\$ 1.4097	\$ 1.3964	\$ 1.3390	\$ 1.2724
32	\$ 1.6329	\$ 1.6214	\$ 1.6055	\$ 1.5368	\$ 1.4572
33	\$ 1.8787	\$ 1.8650	\$ 1.8460	\$ 1.7639	\$ 1.6687
34	\$ 2.1626	\$ 2.1461	\$ 2.1234	\$ 2.0253	\$ 1.9115
35	\$ 2.4898	\$ 2.4702	\$ 2.4430	\$ 2.3256	\$ 2.1895
36	\$ 2.8659	\$ 2.8424	\$ 2.8099	\$ 2.6695	\$ 2.5067
37	\$ 3.4092	\$ 3.3811	\$ 3.3422	\$ 3.1742	\$ 2.9795
38	\$ 3.9123	\$ 3.8787	\$ 3.8322	\$ 3.6313	\$ 3.3983
39	\$ 4.4808	\$ 4.4406	\$ 4.3850	\$ 4.1447	\$ 3.8660
40	\$ 5.1231	\$ 5.0750	\$ 5.0085	\$ 4.7210	\$ 4.3878
41	\$ 5.8095	\$ 5.7541	\$ 5.6775	\$ 5.3465	\$ 4.9628
42	\$ 6.4804	\$ 6.4166	\$ 6.3283	\$ 5.9467	\$ 5.5043
43	\$ 7.2262	\$ 7.1525	\$ 7.0506	\$ 6.6102	\$ 6.0997
44	\$ 8.0623	\$ 7.9772	\$ 7.8595	\$ 7.3509	\$ 6.7612
45	\$ 9.0064	\$ 8.9080	\$ 8.7720	\$ 8.1841	\$ 7.5025

ZESPRI INTERNATIONAL LIMITED
Industry Rates For 2020 Season
Class 1 GA Organic

\$ per TE

Week	Size Group 16/18/22	Size Group 25/27	Size Group 30/33	Size Group 36	Size Group 39
Pre 22	\$ -	\$ -	\$ -	\$ -	\$ -
22	\$ 0.2860	\$ 0.2929	\$ 0.2884	\$ 0.2876	\$ 0.2789
23	\$ 0.3391	\$ 0.3473	\$ 0.3419	\$ 0.3410	\$ 0.3306
24	\$ 0.4235	\$ 0.4340	\$ 0.4271	\$ 0.4259	\$ 0.4126
25	\$ 0.5408	\$ 0.5549	\$ 0.5456	\$ 0.5440	\$ 0.5262
26	\$ 0.7158	\$ 0.7336	\$ 0.7219	\$ 0.7199	\$ 0.6973
27	\$ 0.8632	\$ 0.8840	\$ 0.8703	\$ 0.8680	\$ 0.8417
28	\$ 0.9964	\$ 1.0198	\$ 1.0044	\$ 1.0018	\$ 0.9722
29	\$ 1.1305	\$ 1.1566	\$ 1.1394	\$ 1.1366	\$ 1.1035
30	\$ 1.2742	\$ 1.3035	\$ 1.2843	\$ 1.2810	\$ 1.2439
31	\$ 1.4691	\$ 1.5041	\$ 1.4811	\$ 1.4773	\$ 1.4329
32	\$ 1.6923	\$ 1.7342	\$ 1.7067	\$ 1.7021	\$ 1.6491
33	\$ 1.9498	\$ 1.9998	\$ 1.9670	\$ 1.9614	\$ 1.8981
34	\$ 2.2476	\$ 2.3073	\$ 2.2681	\$ 2.2615	\$ 2.1857
35	\$ 2.5915	\$ 2.6630	\$ 2.6160	\$ 2.6081	\$ 2.5175
36	\$ 2.9875	\$ 3.0730	\$ 3.0168	\$ 3.0074	\$ 2.8990
37	\$ 3.5546	\$ 3.6569	\$ 3.5897	\$ 3.5784	\$ 3.4488
38	\$ 4.0863	\$ 4.2087	\$ 4.1283	\$ 4.1148	\$ 3.9597
39	\$ 4.6889	\$ 4.8353	\$ 4.7392	\$ 4.7230	\$ 4.5375
40	\$ 5.3720	\$ 5.5470	\$ 5.4320	\$ 5.4127	\$ 5.1908
41	\$ 6.0961	\$ 6.2977	\$ 6.1653	\$ 6.1431	\$ 5.8876
42	\$ 6.8108	\$ 7.0433	\$ 6.8906	\$ 6.8649	\$ 6.5704
43	\$ 7.6075	\$ 7.8757	\$ 7.6995	\$ 7.6699	\$ 7.3300
44	\$ 8.5027	\$ 8.8125	\$ 8.6090	\$ 8.5748	\$ 8.1822
45	\$ 9.5155	\$ 9.8735	\$ 9.6383	\$ 9.5988	\$ 9.1450

APPENDIX 5 CONTROLLED ATMOSPHERE/BULK STORAGE WEIGHT LOSS COMPENSATION (clause A2.5(j)(viii))

Controlled Atmosphere/Bulk Storage Weight Loss Compensation (CA Compensation) is paid on Zespri Green, Zespri Green Organic and Zespri Gold Kiwifruit to prevent Growers from being disadvantaged by the fruit weight loss that occurs when storing Kiwifruit in Controlled Atmosphere (CA) or Bulk Storage (BS). In addition, fruit packed out of CA or BS may be packed at 1.6% lower UFI weight bands as defined in the ZIL Quality Manual.

In order to be able to pack under the lower weight bands for CA or BS:

- The Kiwifruit must have been in CA or BS for a minimum of 36 days.

In order to be eligible for CA Compensation, the following criteria must be met:

- The Kiwifruit must have been in BS for a minimum of 15 days before compensation will be calculated.
- For both CA/BS, Kiwifruit must have been delivered to ZGL at FOBS.

The general methodology to calculate CA Compensation in summary is:

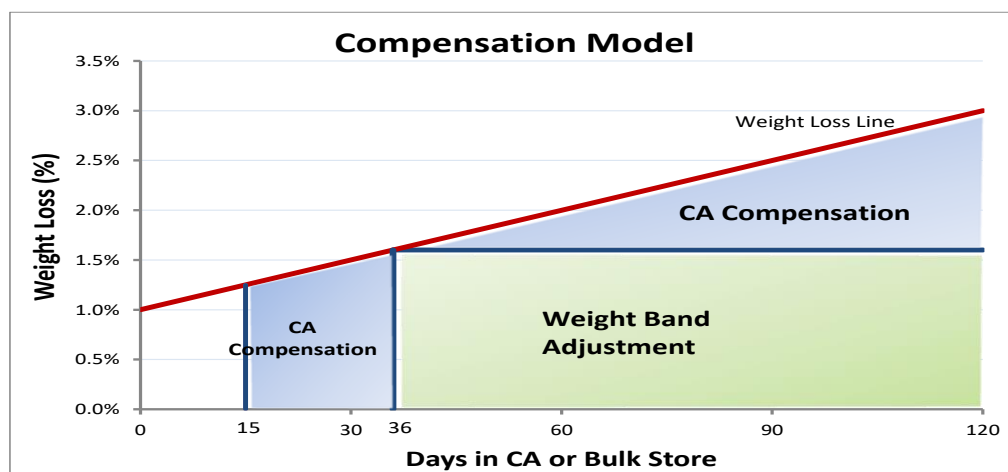
- The mean and standard deviation of the size of the Kiwifruit from each Grower and maturity area is determined based on the quantities that have been in storage.
- The percentage weight loss is calculated based on a linear function of 0.4% at 60 days and 1.4% at 120 days.

For each size of Kiwifruit, the weight of Kiwifruit that would have been in the next larger size is calculated using the percentage weight loss above.

- The distribution is weighted more towards the larger sizes than the size distribution of the kiwifruit that was actually packed out of CA or BS.
- A probability curve is used to calculate the proportion of Kiwifruit pieces in the weight band that would have been in the next higher weight band using the mean and standard deviation of the maturity area.
- The difference in each size band between the distribution calculated above and the actual distribution of the packed out Kiwifruit is calculated and expressed as a number of "Change Trays" for each Kiwifruit size band.
- The Change Trays data will be expressed as negative values for some small sizes of Kiwifruit (where the volume of Kiwifruit in that size under the distribution calculated above is less than the volume of Kiwifruit in that size under the actual distribution) and as positive values for some large sizes of Kiwifruit.
- The negative values for the small size Kiwifruit and the positive values for the large size Kiwifruit will be used to calculate corresponding negative and positive dollar amounts. The negative amounts will be deducted from the positive amounts to determine the amount of CA Compensation for each Grower and maturity area.

Weight Band Adjustment

Dates are approximate & are for illustration only.



The compensation is comprised of the following components (identified by their payment codes below):

- LOAD (LOAD BASE, LOAD TIME, LOAD TZ) – Loadout Time rate will be paid using the rate applicable seven days from the last Sunday of the packout ISO Week.
- EGRB – Loyalty premium is paid in the June payment.
- PROG – Progress payment.
- SUBM – Advance payment.
- TAST – Taste Payment is made according to the TZG of the Kiwifruit by maturity area.

- REDN – There is a deduction for the base pack cost included in the Kiwifruit value, as this cost has not been incurred.

The indicative payment for CA Compensation will occur no later than February subject to confirmation of inventory data. The final payment will be made in May 2021 when the final Fruit Value for that Season has been published. Subject to confirmation of inventory data prior to February, ZGL will use best endeavours to make an earlier indicative payment.

APPENDIX 6 TASTE ZESPRI (clause A2.8(b))

Taste Zespri payments (**clause A2.8(b)**) will be calculated in accordance with the following formula:

$$\begin{aligned} \text{Taste Zespri payment/TE (for a particular maturity area)} &= \text{Zespri's August forecast Fruit Return (with no deduction for Taste Zespri payments)/TE} \\ &\times \text{Maximum Taste Payment \%} \\ &\times \text{TZG Value} \end{aligned}$$

$$\begin{aligned} \text{Where Maximum Taste Payment \% (MTP)} &= 60\% \text{ for Zespri Green} \\ &60\% \text{ for Zespri Green Organic} \\ &60\% \text{ for Zespri Sweet Green} \\ &70\% \text{ for Zespri SunGold and Zespri SunGold Organic} \end{aligned}$$

$$\begin{aligned} \text{Lower Taste Limit} &= 15.5\% \text{ dry matter for Zespri Green and Zespri Green Organic} \\ &17.0\% \text{ dry matter for Zespri Sweet Green} \end{aligned}$$

$$16.5\% \text{ dry matter for Zespri SunGold and Zespri SunGold Organic}$$

TZG Dry Matter % value is calculated by Zespri in accordance with the sampling and statistical methodology described in the Growers Payment Manual.

(1) Where there is more than one sample taken from a Maturity area the highest TZG value will be used to determine the amount of Taste Zespri payments.

Calculation Examples:

Calculation of Maximum Tastes Payment (MTP)

	GREEN	ORGANIC GREEN	GREENI4	GOLD3	ORGANIC GOLD3
	\$ per TE	\$ per TE	\$ per TE	\$ per TE	\$ per TE
Total Fruit Payment	\$4.03	\$5.47	\$6.53	\$5.90	\$6.37
+	+	+	+	+	+
Average Taste Payment	\$3.49	\$4.52	\$3.24	\$7.60	\$9.52
=	=	=	=	=	=
Total Fruit Payment including Taste	\$7.52	\$9.99	\$9.77	\$13.51	\$15.89
x	x	x	x	x	x
Maximum Taste Payment Percentage	60%	60%	60%	70%	70%
= Maximum Taste Payment (MTP)	\$4.51	\$5.99	\$5.86	\$9.46	\$11.13

Once the Maximum Taste payment has been calculated the below tables outline how to calculate the taste payment for an individual Grower

INSERT YOUR FIGURES HERE					
	GREEN	ORGANIC GREEN	GREENI4	GOLD3	ORGANIC GOLD3
Your TZG (from your 90-fruit orchard sample)					
x	x	x	x		
Maximum Taste Payment (MTP)	\$4.51	\$5.99	\$5.86	See by size table	See by size table
= Your Taste Payment per tray					
x	x	x	x		
Your FOBS trays					
= Your total Taste Payment					

For example if a Green conventional grower with a TZG of 0.60, Taste Zespri Payment would be $0.60 \times \$3.74 = \2.24 per tray.

GOLD3 Key: TP = Taste Payment									
Size	16	18	22	25	27	30	33	36	39
Your TZG *	-	0.95	0.90	0.80	0.72	0.68	0.65	0.60	0.55
Multiplied	x	x	x	x	x	x	x	x	x
MTP	\$9.46	\$9.46	\$9.46	\$9.46	\$9.46	\$9.46	\$9.46	\$9.46	\$9.46
= Your TP by Size	\$-	\$8.99	\$8.51	\$7.57	\$6.81	\$6.43	\$6.15	\$5.68	\$5.20
Your FOBS trays by size	-	600	1,500	2,050	3,550	3,700	1,550	1,050	1,000
Your TP by Size	\$-	\$5,392	\$12,771	\$15,514	\$24,180	\$23,801	\$9,531	\$5,960	\$5,203

To calculate your average Taste payment per tray:

1. Multiply your Taste payment for each size by the tray volumes for each size;
2. Add these figures together to get the total Taste payment;
3. Divide the total Taste payment by the total tray volumes (i.e. for all sizes).

Note: The example above is based on 150 fruit sample. Taste payments are calculated on FOBS tray volumes – not submit tray volumes.

APPENDIX 7 ZESPRI STANDARD COST MODEL COMPONENTS (clauses A2.8(b) and B1.1(a), B1.1(b), and B1.1(c)(i))

PACK MODEL

Base Packaging Components (clause B1.1(a))

Packaging Costs

Pack
Pallet
Pallet Cap
Pocket Pack
Dust Cover
Polyliner
Straps
Seals
Corner-boards
Glue and Assembly
EAN Label

Pre-FOBS Costs

Coolstorage (Base and Average Incremental)
Transport
Stevedore
Wharfage
Packing Cost (Labour)
Indirect Packhouse Costs

TIME MODEL

Base Time Rate Components (clause B1.1(b))

Fruit Loss compensation
Fruit Loss Risk Premium (storage incentive)
Weekly Incremental Coolstorage
Coolstorage for Fruit Loss
Condition Checking Payment
Repacking Payment
Taste Compensation for Fruit Loss
Taste Compensation for Fruit Loss Premium

Basis for updating Time Rates (clause B1.1(b))

Final Time Rates will be reissued by ZGL after 31st August will update the following inputs:

- Fruit Return with current year's August Forecast
- Payment ratios with current year's August Forecast
- Average Taste Payment with current year's August Forecast

PERIOD 1 MODEL

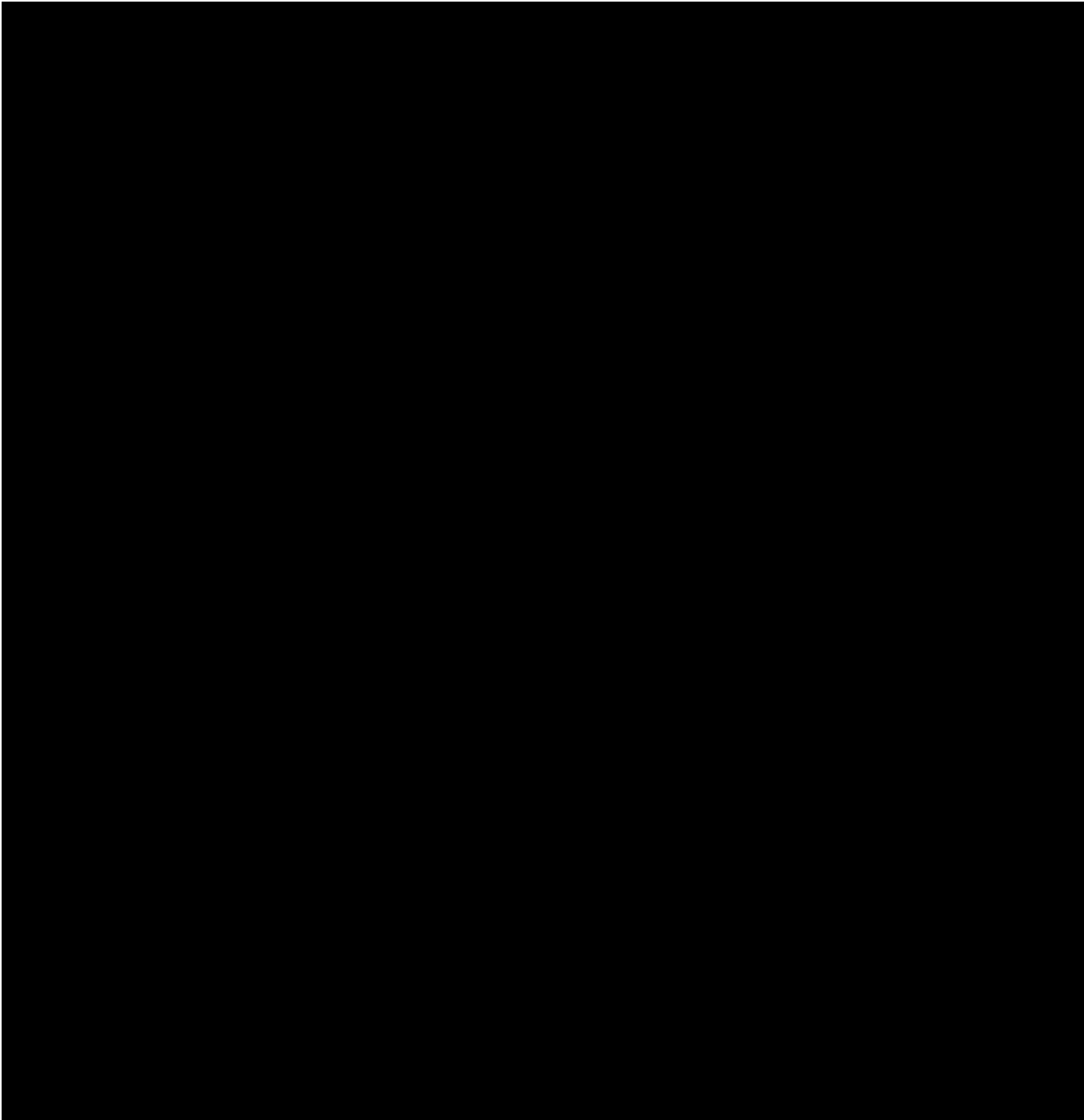
Base Period 1 Rate Components (clauses A2.8(a) and B1.1(c)(i))

Fruit Value compensation (size forgone)
Fruit Value Premium (risk premium for size forgone)
Taste Compensation for size forgone
Taste Compensation Premium for size forgone

Basis for updating Period 1 Rates (clauses A2.8(a) and B1.1(c)(i))

Final Period 1 Rates will be reissued by ZGL after 31st August will update the following inputs:

- Fruit Return with current year's August forecast
- Weight Bands with current year's final bands
- August forecast payment ratios
- Growth curve to include current year's fruit growth data
- TZG, Max Taste Payment (MTP) and Avg. Taste Payment (ATP) with current year's August forecast
- Full Bloom Dates with final dates for year if data sets are incomplete in the Indicative model.



APPENDIX 9 PAYMENT TYPES (clause C1.2)

The following table sets out the payment types for Kiwifruit and Services:

Fruit Payments	<p>Standard Advance less reversals of Standard Advance Payments for Fruit Loss</p> <p>Progress Payments less reversals of Progress Payments for Fruit Loss</p> <p>Final Payment</p>
Fruit Incentives	<p>Hayward Conventional Period 1 under Supply Cap</p> <p>Hayward Organic Period 1 under Supply Cap</p> <p>Gold Period 1 under Supply Cap</p> <p>Gold Organic Period 1 under Supply Cap</p> <p>Taste Zespri</p> <p>██</p> <p>██</p> <p>██</p> <p>██</p>
Assignable Service Costs	<p>Pack Differential</p> <p>Time Payment</p>
Other Service Costs paid directly to the Registered Supplier	<p>Grower Pooled Payments:</p> <ul style="list-style-type: none"> • Hayward Conventional & Organic and Gold Conventional & Organic Period 1 under contracted volume • Priority Supply Premiums <p>Services performed under a Generic Service Level Agreement</p>

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]