

SUPPLY AGREEMENT 2023



A g r e e m e n t

relating to

the supply of Kiwifruit and Services

between

Zespri Group Limited (ZGL)

and

(Registered Supplier)

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This Agreement is made

Between (1) Zespri Group Limited (“ZGL”)
And (2) (“Registered Supplier”)

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 Registered Supplier in the Season. ZGL may also acquire other Kiwifruit by agreement with the Registered Supplier.
- C. The Registered Supplier intends to
- (a) Supply Kiwifruit to ZGL from properties:
 - i. owned or controlled by the Registered Supplier; and/or
 - ii. owned or controlled by Growers who have entered into an agreement with the Registered Supplier for the supply of their Kiwifruit to ZGL; and
 - (b) Supply various logistics, delivery, planning and other services in respect of Kiwifruit supplied to ZGL by the Registered Supplier.
- D. The Registered Supplier 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. KNZ 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 Registered Supplier intends to cooperate with ZGL to implement these directions subject to the provisions of Schedule 6.

GENERIC PROVISIONS

A1 INTERPRETATION

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

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;

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;

Global Gap means the farm assurance programme of that name, translating consumer requirements into Good Agricultural Practice, and includes Global G.A.P. Risk Assessment on Social Practice.

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; and
- (b) provides Kiwifruit to the Registered Supplier for supply to ZGL on behalf of the Grower under this Agreement.

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**;

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

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 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;

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;

Personal Information means any information about an identifiable individual;

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 the Registered Supplier for Kiwifruit and Services under this Agreement;

PVR Kiwifruit means Kiwifruit of the GA, HE or RS 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 the entity that will provide Kiwifruit and Services to ZGL under this Agreement;

S&OP means sales and operations planning;

Season means the period of 12 months commencing on 1st April 2023 and ending on 31st March 2024;

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 Registered Supplier specified in **Schedule 2**;
- (c) the obligations of the Registered Supplier as specified in the **Pricing and Payment Manual**;
- (d) the obligations of the Registered Supplier under an **SLA**; and
- (e) any other obligations of the Registered Supplier 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® RubyRed means the Kiwifruit grown from the Kiwifruit cultivar known as ZES008 which is the subject of New Zealand Plant Variety Right No. KIW63, and which may also be referred to as **RS or Red19** within this Agreement;

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 Vita means HE, HW and GA Kiwifruit which meets the Class 2 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**;

ZGL means Zespri Group Limited;

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 Registered Supplier during the Season.

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 Registered Supplier.

A3.2 ZGL will provide the **Supply Specifications** to the Registered Supplier in written form.

A3.3 ZGL must supply to the Registered Supplier any information that is reasonably necessary to:

- (a) demonstrate adherence to contracted obligations under this Agreement; or
- (b) assist the Registered Supplier 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 Registered Suppliers 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

Registered Supplier or as directed by the Registered Supplier. 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 Registered Supplier 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 REGISTERED SUPPLIER OBLIGATIONS

- A4.1 The Registered Supplier 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**.
- A4.2 The Registered Supplier 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 Registered Supplier warrants that all Kiwifruit supplied by the Registered Supplier 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 Registered Supplier 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 Registered Supplier'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. The Registered Supplier agrees to provide assistance to ZGL with stacking, destacking, and other physical lifting as required, during any inspection activities.
- A4.4 If the Registered Supplier advises that ZGL or its agents are unable to inspect the Registered Supplier's or any Third Party's operations (including any Kiwifruit), premises or records pursuant to **clause A4.3(b)**

above due to extraordinary circumstances, the Registered Supplier may at its option and expense make the Kiwifruit and any relevant records to be audited available at a separate location to be agreed by ZGL and the Registered Supplier. If this clause applies and the Registered Supplier chooses not to make the Kiwifruit and/or records available at a separate location, ZGL shall have no obligation to accept such Kiwifruit.

A4.5 If ZGL advises that ZGL or its agents are unable to inspect the Registered Supplier's or any Third Party's operations (including any Kiwifruit), premises or records pursuant to **clause A4.3(b)** above due to extraordinary circumstances, ZGL may at its option and expense require the Registered Supplier to make the Kiwifruit and any relevant records to be audited available at a separate location to be agreed by Zespri and the Registered Supplier. If this clause applies and the Registered Supplier chooses not to make the Kiwifruit and/or records available at a separate location, ZGL shall have no obligation to accept such Kiwifruit.

A4.6 The Registered Supplier 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 Registered Supplier or any Third Party;

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

A4.7 If a third party service provider carries out any of the Registered Supplier's obligations under this Agreement, then the Registered Supplier:

- (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 Registered Supplier (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 Registered Supplier.
- (c) To the extent that the Registered Supplier acquires products or services for use in association with the Kiwifruit from a third party provider approved by ZGL from time to time, the Registered Supplier 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 be 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.

A4.8 Where ZGL seeks to enforce an obligation pursuant to Global Gap against a Grower, or Kiwifruit Titleholder, the Registered Supplier shall provide reasonable assistance to ZGL. Such assistance may include, without limitation, the provision to ZGL of relevant information in the Registered Supplier's possession or control which is not subject to a legal restriction on disclosure, and making reasonably available the Registered Supplier personnel for the purpose of evidentiary assistance, but does not include a contribution to ZGL legal costs.

A4.9 If ZGL receives a direction from Kiwifruit New Zealand in relation to a Collaborative Marketing Arrangement, the Registered Supplier (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 Registered Supplier as provided in **clauses B4.1 and C4.1**, as applicable. The Registered Supplier will make payments to ZGL as provided in **clauses B4.2 and C4.2**, as applicable.

A5.2 The Registered Supplier 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 Registered Supplier 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 Registered Supplier (including any amounts that the Registered Supplier has directed ZGL to pay to any third party), except that ZGL may set-off or deduct:

- (a) any liability of the Registered Supplier under **clause A5.2** against any payment due to the Registered Supplier under **PART B** for Kiwifruit in the same Pool to which the liability relates; provided that, where the payment has been directed to be paid to a third party or third parties nominated by the Registered Supplier under **clause B4.3**, 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
- (b) any liability of the Registered Supplier under **clause A5.2** in respect of payments made under **PART C**:
 - (i) against any payment due to the Registered Supplier under **PART C**; and
 - (ii) if the amount due to the Registered Supplier under **PART C** is less than the amount of the liability of the Registered Supplier, against any payment due under **PART B** to the Registered Supplier,

provided that where the Registered Supplier 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 which have been directed to a third party, ZGL will only set off or deduct against payments which have been directed to that third party; or

- (c) any liability for [REDACTED] Charges under **clause B12** or [REDACTED] Standard Costs under **clause C10** 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 Registered Supplier 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 of the Pricing and Payment Manual** 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 **Section D of Schedule 11**, ZGL may set off or deduct any liability for [REDACTED] Charges or [REDACTED] Standard Costs to which the dispute relates as soon as those Charges or Standard Costs became otherwise payable under **clause B12.4** or **C11.2 of Schedule 11**.

A5.5 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.

A5.6 Where:

- (a) ZGL exercises a right of set-off or deduction against payments owing to the Registered Supplier 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 Registered Supplier; and/or
- (b) Any debt owing from a Registered Supplier 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 Registered Supplier;

ZGL shall provide reasonable assistance to the Registered Supplier in recovering any such amounts from the responsible party. Such assistance may include, without limitation, the provision to the Registered Supplier 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 Registered Supplier 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** and **Section C** 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier as a consequence of the inclusion or omission of any particular term, condition or exclusion.

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

- (a) Kiwifruit damage as a direct result of Hail Strike (as defined in Pool Distribution Policy for Hail Damage as described 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 Insurance, 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**; and
- (c) risks relating to the contamination of Kiwifruit that results in bodily injury or property damage following use or consumption that would be covered by the Contaminated Products Insurance, to the amount of the deductibles in the commercial insurance policy or policies arranged by ZGL, as set out in **Section C** 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 **Contract and Commercial Law Act 2017**.

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 Registered Supplier 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 Registered Supplier 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 Registered Supplier and all improvements, amendments and modifications to that intellectual property is and will remain the property of the Registered Supplier both during and after the Season.
- A7.3 The Registered Supplier 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 ZGL Intellectual Property.
 - (b) In the case of trademarks, use a [™] 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 Registered Supplier 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 Registered Supplier must immediately stop using the ZGL Intellectual Property; and
 - (b) The Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier irrevocably agrees that payment obligations under this Agreement shall be deemed to be assigned by the Registered Supplier to the Growers listed in **Schedule 3**, such that any amounts owing in respect of Kiwifruit supplied to ZGL by the Registered Supplier shall be paid directly to the applicable Growers who provided such Kiwifruit to the Registered Supplier, with the exception of any payments which relate solely to Services provided by the Registered Supplier.

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);
 - (c) May include a request for copies of any relevant documents and/or data believed to be in the possession of the responding party; and
 - (d) 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 Resolution Institute 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 nominated by the Resolution Institute;

- (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 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 Registered Supplier 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 Registered Supplier and, if required by ZGL, the Registered Supplier 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 The provisions of **clause A10.1** will apply in addition to the provisions of any other confidentiality agreement entered into between the Registered Supplier and ZGL.

- A10.3 ZGL and the Registered Supplier agree that where any aspect of this Agreement requires the collection or processing of Personal Information, each party will collect and process such Personal Information in accordance with all applicable laws and privacy regulations, including without limitation applicable consent and privacy notice requirements. Each party agrees that it shall not transfer Personal Information to the other party unless required by law or where transfer of such Personal Information is required to fulfil obligations under this Agreement. To the extent that Personal Information is made available from the Registered Supplier to ZGL, or from ZGL to the Registered Supplier, for the purposes of fulfilling obligations under this Agreement, each party warrants that it has appropriate permission from the relevant individuals to transfer such Personal Information, and that it will treat any Personal Information received from the other party in accordance with all applicable laws.
- A10.4 In the event of any unauthorised, unlawful, and/or unintended processing, access, disclosure or loss of Personal Information (“Privacy Incident”) received from the other party, and without limiting the rights and remedies of the party that transferred the Personal Information, the party that suffered the Privacy Incident will, immediately upon becoming aware, notify the other party and cooperate with all reasonable requests to investigate and remediate such incident and provide an appropriate response and remedy.
- A10.5 Where any aspect of this Agreement requires the collection or processing of Personal Information by ZGL, the Personal Information will be collected and processed in compliance with the Zespri Global Privacy Statement located at: <https://www.zespri.com/en-NZ/privacypolicy>, and in compliance with the Privacy Act 2020. Where any aspect of this Agreement requires the collection or processing of Personal Information by the Registered Supplier, the Personal Information will be collected and processed in compliance with the Privacy Act 2020.

A11 ASSIGNMENT OF CONTRACT

- A11.1 Except as provided in this clause, the Registered Supplier 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 Registered Supplier 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 Registered Supplier under clause B4.3 or clause B4.5 is agreed not to be an assignment or transfer of the Registered Supplier’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 Kiwifruit Industry Restructuring 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:

- (g) strikes, lockouts or other industrial disputes where:
 - (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 Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier acknowledges that the provisions of Regulation 3 of the Regulations prevent the export of Kiwifruit to Australia otherwise than for consumption in Australia. The Registered Supplier will

take all reasonably necessary steps, including obtaining the written agreement from any purchaser of any Kiwifruit from the Registered Supplier, to ensure that any Kiwifruit provided by the Registered Supplier for consumption in Australia is not exported from Australia.

- A13.3 The Registered Supplier 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 Registered Supplier 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 Registered Supplier for variations to an **SLA** entered into with the Registered Supplier 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 parties entitled to vote are the Registered Suppliers under the **2023 Supply Agreement** including the Registered Supplier;
 - (ii) the number of votes able to be cast by each Registered Supplier will be determined by reference to the number of trays of Kiwifruit supplied under Grower Numbers that denote that Registered Supplier, calculated as follows:
 - a. for votes taken up to 30 June 2023, the number of votes to be cast by that Registered Supplier equals the number of tray equivalents of Kiwifruit supplied to ZGL at FOBS in the 2022 season from each Grower Number that denoted that Registered Supplier in the 2022 season; and
 - b. for votes taken from 1 July 2023, the number of votes to be cast by that Registered Supplier equals the Net Submit (as defined in **Schedule 2**) number of tray equivalents of Kiwifruit for the 2023 season from each Grower Number that denotes that Registered Supplier for the 2023 season;
 - (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 Registered Supplier casts 30.1% or more of the votes at the applicable meeting against the proposed change, and all other Registered Suppliers 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier is passed by the required majority at a properly convened meeting:
 - (i) the variation will be binding on the Registered Supplier and ZGL; and
 - (ii) if required by ZGL or the Registered Supplier (acting reasonably) an amendment to this Agreement is required, ZGL and the Registered Supplier 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 Registered Supplier, IAC or ISG.

A14.1 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. For the avoidance of doubt, the Registered Supplier acknowledges that this Agreement cannot be varied without the agreement of ZGL.

A15 SEVERABILITY

A15.2 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 Grower and ZGL under which the Grower is granted the right to grow (as applicable) GA, HE or RS 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 Registered Supplier (including where the Registered Supplier is a contracted party under a Licence Agreement):

- (a) Except as provided in **Schedule 9**, the Registered Supplier 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 Registered Supplier will not dispose of or destroy any of that PVR Kiwifruit in any manner other than as agreed by ZGL;

- (c) The Registered Supplier will account annually to ZGL on its compliance with this clause, providing such information as requested by ZGL.

A16.3 The Registered Supplier will ensure that any Grower 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 Registered Supplier 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 Registered Supplier 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 Fruit 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 Registered Supplier’s possession or control, the Registered Supplier 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 Fruit 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 Registered Supplier 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 Registered Supplier. 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.

■ [REDACTED]

[REDACTED]

(e) ZGL will also charge to the Registered Supplier 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 Registered Suppliers 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** 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 Registered Supplier, 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 Registered Supplier.

A17.8 Direct Costs to be charged to the Registered Supplier pursuant to **clause A17.3** will be invoiced to the Registered Supplier and such invoice shall be payable by the 20th of the following month.

A17.9 The Registered Supplier 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 Registered Supplier will provide evidence of this to ZGL in the form of a monthly written report.

A17.10 ZGL will co-operate with the Registered Supplier 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 Registered Supplier 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 Registered Supplier.

A17.12 Subject to **clause 17.13**, any Bad Debt that is not recovered will be shared equally between the Registered Supplier 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 Registered Supplier.

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 Registered Supplier to appoint one member and the third member shall be appointed by agreement between the ZGL appointed member and the Registered Supplier 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 Registered Supplier with its recommendation for any remedial action to be taken. Each of ZGL and the Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier, 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 Registered Supplier unless disclosure of all or part of the report is agreed to by both ZGL and the Registered Supplier.

A18 USE OF INFORMATION

- A18.1 Each Registered Supplier agrees that in the context of performing its obligations under this Agreement, ZGL will obtain information regarding the Registered Supplier and its Growers. Each Registered Supplier agrees that information held by ZGL relating to Kiwifruit and/or Services provided by the Registered Supplier 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 Registered Supplier for the purposes of providing Services under **Part C** of this Agreement.
- A18.2 In addition to the express permission noted above, each Registered Supplier acknowledges that information and communications to/from ZGL as part of the Registered Supplier'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 Registered Supplier provides any orchard health and safety-related information to any third party, the Registered Supplier gives no warranty about the accuracy or completeness of that information. The Registered Supplier 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 Registered Supplier 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>. The Registered Supplier agrees that it has and will follow a code of conduct substantially equivalent to the Zespri Global Code of Conduct.

A22 FRUIT FLY PROVISION

- A22.1 In the event that ZGL is notified of a fruit fly incursion, ZGL shall have the right to issue a stop movement order which shall operate to require the Registered Supplier to cease any fruit movement within a regional or sub-regional area. The Registered Supplier shall immediately upon receipt of such an order take all steps to ensure that no fruit movements occur within such areas and in particular that no fruit movement occurs in/out of Export Restriction Zones. Any such stop movement notice shall apply for a minimum of 48 hours from the time issued by ZGL. The ISG shall meet as soon as practicable (and not more than 48 hours) after the issuance of such notice by ZGL to consider and agree upon any variations required to Schedule 2 of this Agreement and treatment of any fruit that was in field bins at the time of the stop movement order. Once the

ISG has determined the appropriate treatment and/or variations, those matters shall be dealt with in accordance with, and subject to **clause A14**.

PART B SUPPLY OF KIWIFRUIT

B1 APPLICATION OF PART B

- B1.1 **PART B** applies to the supply of Kiwifruit to ZGL by the Registered Supplier
- B1.2 ZGL may, under an SLA with the Registered Supplier developed and disclosed in accordance with clause B1.3, 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 Registered Supplier. 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.
- B1.3 Any SLA for the supply of Kiwifruit by the Registered Supplier or any other Registered Supplier 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 Registered Supplier.
- B2.2 During the Season ZGL will acquire all Class 1 Kiwifruit from the Registered Supplier 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 Registered Supplier 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 Registered Supplier to ZGL prior to the commencement of the Season but after 31st January 2023, 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, and subject to the provisions of the Regulations, ZGL may:
- (a) elect to provide an opportunity to all Registered Suppliers 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 Registered Supplier'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 Registered Supplier has, through innovation in product, created an opportunity for mutual advantage to both the Registered Supplier and ZGL, and where, in ZGL's opinion, the innovation is of importance to the

overall kiwifruit industry's profitability, then ZGL and the Registered Supplier will cooperate to establish a commercial basis for the extension of such innovation across the industry.

B3 REGISTERED SUPPLIER OBLIGATIONS

- B3.1 In addition to the obligations in **PART A**, the Registered Supplier will comply with this **PART B** in respect of the Supply of Kiwifruit to ZGL by the Registered Supplier or on behalf of Growers.
- B3.2 The Registered Supplier 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**.

B4 PAYMENT

- B4.1 ZGL will make payments for the supply of Kiwifruit by the Registered Supplier 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 Registered Supplier will make payments to ZGL for [REDACTED] Charges in accordance with **clause B12** of **Schedule 11** and [REDACTED] Standard Costs in accordance with **clause C10** of **Schedule 11**,.
- B4.3 The Registered Supplier may irrevocably direct ZGL to make all of the payments referred to in **clause B4.1** which are to be made on account of Growers to a third party or third parties nominated by the Registered Supplier in accordance with the Pricing and Payment Manual. The direction must:
- (a) be in respect of all payments to the Registered Supplier under **clause B4.1** in respect of Growers throughout the season;
 - (b) be listed in **Schedule 7**; and
 - (c) be signed by the Registered Supplier.
- B4.4 ZGL will amend **Schedule 7** in accordance with any request from the Registered Supplier, following any amendment to **Schedule 3**.
- B4.5 Any payment made under **clause B4.3** will be deemed, for the purposes of **clause B4.1**, to have been made to the Registered Supplier 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 Registered Supplier 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 Registered Supplier will in all cases pass title to the Kiwifruit and Packaging to ZGL either:
- (a) as principal (where the Registered Supplier 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 Registered Supplier has authorisation to pass title as agent.

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

- (a) will remain personally liable to ZGL to perform all of the Registered Supplier'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 be consistent 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 Registered Supplier 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 Registered Supplier to access and share with ZGL any information of 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 Registered Supplier 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 Registered Supplier, or any third party service providers in the supply chain between a Kiwifruit Titleholder and the Registered Supplier, and with the supplier of the Packaging;

which the Registered Supplier 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 Registered Supplier shall reimburse ZGL on demand for those direct costs or direct losses.

For the avoidance of doubt, the Registered Supplier 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 Registered Supplier shall indemnify, and keep indemnified, ZGL on demand for all losses, liabilities, costs and expenses incurred by ZGL arising from any breach by the Registered Supplier of the Registered Supplier'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 Registered Supplier 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 Registered Supplier 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 Grower referred to in **clause B5.2** or any person receiving payment under **clause B4.3** or **clause B4.5**.
- B5.8 If the Registered Supplier is passing title to Kiwifruit or Packaging as principal (where the Registered Supplier has acquired title to the Kiwifruit or the Packaging prior to FOBS) the Registered Supplier will ensure that any agreements (including any agreements under which the Registered Supplier 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 Registered Supplier has entered into this Agreement or provides Kiwifruit to Zespri as an agent for any other person ("Principal") it warrants:
- (a) either it has the authority to act as the Principal's agent, including for the purposes of passing title; 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 its obligations under this Agreement.

PART C PROVISION OF SERVICES

C1 APPLICATION OF PART C

- C1.1 This **PART C** applies to the supply of Services to ZGL by the Registered Supplier in respect of Kiwifruit to be supplied from the Grower Numbers specified in **Schedule 3** and as provided in **clause C1.2**.
- C1.2 Where ZGL and the Registered Supplier enter into a **SLA** for the supply of services by the Registered Supplier, the Registered Supplier 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 Registered Supplier.
- C1.3 Any **SLA** for the supply of services by the Registered Supplier or any other Registered Supplier 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 Registered Supplier.
- C2.2 ZGL will acquire Services from the Registered Supplier 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 Registered Supplier'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 Registered Supplier has, through innovation in product or service, created an opportunity for mutual advantage to both the Registered Supplier and ZGL, and where, in ZGL's opinion, the innovation is of importance to the overall kiwifruit industry's profitability, then ZGL and the Registered Supplier will co-operate to establish a commercial basis for the extension of such innovation across the industry.

C3 REGISTERED SUPPLIER OBLIGATIONS

- C3.1 The Registered Supplier 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 as provided in **clause C1.2**.
- C3.2 The Registered Supplier must deliver Kiwifruit to ZGL at FOBS and in all other respects provide the Services in accordance with the provisions of this Agreement.

C3.3 The Registered Supplier 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 Registered Supplier 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 Registered Supplier.

C4.2 The Registered Supplier will make payments to ZGL for 5% Supplier Accountability Charges in accordance with **clause B12** and 15% Supplier Accountability Standard Costs in accordance with **clause C10 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 Registered Supplier provides Services under this Agreement, the Registered Supplier 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 Registered Supplier 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 Registered Supplier.

C5.2 Where the Registered Supplier nominates a third party to act as On Port Logistics Provider, the Registered Supplier 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 Registered Supplier 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 Registered Supplier about its dealings with the On Port Logistics Provider
- (b) ZGL shall promptly notify the Registered Supplier 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 Registered Supplier, or the Grower the Registered Supplier 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 Registered Supplier, or the Grower the Registered Supplier 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 Registered Supplier 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 Registered Supplier 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.

C5.7 ZGL shall promptly notify the Registered Supplier 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 Registered Supplier may apply to ZGL for the Registered Supplier, and for any post-harvest operators who authorise the Registered Supplier to apply on their behalf, to be appointed as Zespri Exclusive Suppliers.

C6.2 ZGL must appoint the Registered Supplier and the post-harvest operators as Zespri Exclusive Suppliers for the Season unless:

- (a) the Registered Supplier'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 Registered Supplier and the post-harvest operators as Zespri Exclusive Suppliers will take effect upon the execution of **Schedule 8** by the Registered Supplier, 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**.

ISG NOMINATION FORM

To: Zespri Group Limited (“Zespri”)

The (“**Registered Supplier**”), _____

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

To represent the Registered Supplier 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 Registered Supplier or the applicable Representative; and
3. The Registered Supplier 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 Registered Supplier’s views at all ISG meetings; and
5. The Registered Supplier represents and warrants that the Representatives or any proxy provided hold the authority to make decisions in the ISG committee on the Registered Supplier’s behalf; and
6. The Registered Supplier agrees to be bound by the decisions made by the Representatives or any proxy provided in the ISG committee; and
7. The Registered Supplier 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 2023 Season unless otherwise cancelled or amended by either party.

Signed on behalf of the **Registered Supplier** (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 the Registered Supplier	
Full Name	
Title	
Signature	
Date of Execution	

Signed on behalf of the Registered Supplier	
Full Name	
Title	
Signature	
Date of Execution	

Schedule 1: Special Terms

Term: The period commencing on 1st April 2023 and ending on 31st March 2024.

Registered Supplier:

Special Conditions

1. The parties acknowledge that:

Acknowledged by ZGL

Acknowledged by the Registered Supplier

Schedule 2
Entire Schedule Exempt

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

The Registered Supplier will supply to ZGL both Kiwifruit from the Grower Numbers listed below and Services in respect of that Kiwifruit.

ZGL and the Registered Supplier 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

NOT USED



2023 Supply Agreement

Schedule 5

Grower Legal name:

KPIN:

If the name above is incorrect, please visit The Canopy (<https://canopy.zespri.com/>) or call Zespri Grower Support Services on 0800 155 355 to obtain a blank form (preferred) or alternatively make the change above. **The change must be initialed and the Zespri Grower Support Services Team will be in contact to obtain further information on any changes to the Grower's Legal Name.**

Orchard Name:

Property Address:

Please sign and complete the execution section below.

I intend to supply kiwifruit from the KPINs listed above to Zespri in accordance with the 2023 Supply Agreement which will be entered into between my Registered Supplier(s) and Zespri Group Limited.

Name of Registered Supplier _____

Name of Facility (if different) _____

Signature of Registered Supplier _____

(your Registered Supplier signs here)

I/we agree with Zespri:

- Acknowledgement:** I have read and understood the terms and conditions below, and acknowledge that this Schedule 5 creates a binding contract between the Grower named above and Zespri Group Limited in relation to the production of kiwifruit from all KPINs identified above and which will be supplied to Zespri in 2023.
- Permission for use of Information:** I acknowledge that contact and orchard information collected from this Schedule 5 may be provided to relevant government authorities and third parties as required for investigation and satisfaction of legal requirements relating to the production and distribution of kiwifruit and/or the management of Psa. Personal data will be treated in accordance with Zespri's Privacy Statement located at <https://www.zespri.com/en-NZ/privacypolicy>.
- Permission to enter orchards:** I grant Zespri and/or its authorised representatives an irrevocable licence within reason to enter the orchard(s) associated with this KPIN for the purposes of assessing whether my fruit complies with the provisions of the 2023 Supply Agreement (including this Schedule) and any subsequent Supply Agreement, and any applicable compliance requirements, including those set out in paragraph 7 below. This permission includes permission to remove samples for the purposes of monitoring and/or testing factors such as maturity, residue or other fruit quality or market access issues.
- Assistance to Zespri:** I agree to assist Zespri to meet both its customers' contractual requirements and any applicable regulatory requirements by (1) providing all reasonable information requested by its customers and regulators about my orcharding operations and, (2) following the receipt of 24 hours' notice, I agree to escort Zespri representatives, its customers and/or regulators around my orchard(s), including without limitation, via video access in circumstances where physical access is not possible.
- Conditions of access:** I understand that Zespri or its authorised representatives will endeavour to contact my nominated contact person prior to entering the property. I agree that any Zespri representatives, customers or regulators will be provided with an accurate map of the orchard, a list of any known hazards which exist at the time the visit is scheduled and any applicable health and safety requirements. Orchard access shall be subject to Zespri and its authorised representatives complying with KVH's orchard hygiene practices, taking reasonable care and complying with all reasonable instructions regarding health and safety.
- I am aware of and understand Zespri's Global Supplier Code of Conduct and policies set out at <https://www.zespri.com/en-NZ/corporate-policies>.
- Confirmation:** I confirm that in producing Kiwifruit to be supplied to Zespri for the 2023 season, I have fully complied with, and will continue to comply with all applicable laws and regulations, the Zespri protocols and requirements listed below:
 - GlobalGAP found at <https://canopy.zespri.com/EN/grow/ZPR/Pages/default.aspx>;
 - GRASP found at <https://canopy.zespri.com/EN/grow/ZPR/Pages/default.aspx>;
 - Crop Protection found at https://canopy.zespri.com/EN/grow/vinehealth/crop_protection/Pages/default.aspx; and
 - The requirements of any applicable Phytosanitary Official Assurance Programme for the export of kiwifruit entered into by the New Zealand Ministry for Primary Industries and any other country from time to time.
 I acknowledge that failure to comply with any of the above may result in enforcement action, up to and include refusal by Zespri to accept Kiwifruit grown by me.

The 2023 Supply Agreement when finalised will be available on <https://zespri.com/> and available in hard copy from Zespri by calling Zespri Grower Support Services on Ph 0800 155 355 or email contactcanopy@zespri.com.

I acknowledge that the final version of the 2023 Supply Agreement may not be available at the time of my Kiwifruit being submitted. Notwithstanding this, I agree that the terms and conditions of the Supply Agreement will apply to me in relation to Kiwifruit supplied to Zespri on my behalf by the Registered Supplier.

Execution of Contract (signature required)

Grower Execution Section

I am authorised to sign this document on behalf of the legal entity named at the top of this form (only one signature is required).

Signature _____

Full Name _____ Date _____

FOR OFFICE USE ONLY

ZESPRI Group Ltd Execution Section

Signature _____

Full Name _____ Date _____



Schedule 6: Service Level Agreements

ZGL and the Registered Supplier agree that they may negotiate and enter into Service Level Agreements (SLA) during the Season which will become binding and part of the **2023 Supply Agreement** when executed by both parties in accordance with the following provisions.

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

- Generic;
- Registered Supplier initiated;
- ZGL initiated Expression of Interest (EOI)/Competitive; or
- ZGL initiated Registered Supplier specific.

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.

ZGL may enter into SLAs with the Registered Supplier and/or 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 Registered Supplier and/or 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 Registered Supplier 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 Registered Supplier who wishes to carry out commercial/ technical initiatives & trials that will benefit any or all of: themselves, all Registered Suppliers, or ZGL. Registered Supplier 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 Registered Suppliers;
 - SLAs initiated by ZGL for Pool benefit and made available to all Registered Suppliers 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 Registered Suppliers 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 date the agreement has been executed;
 - The purpose and background to the agreement;
 - Where applicable, operational factors such as the limited volume of the SLA, limited time in putting the commercial arrangements in place, Registered Supplier 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 Registered Supplier(s);
 - The specific terms of the agreement including the payment terms and duration;
 - Where applicable, the ownership of any Intellectual Property coming out of the SLA;
 - Where applicable, the terms under which any Intellectual Property, information, or know how coming out of the SLA will be made available to the broader industry.

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 Registered Supplier 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 Registered Supplier under **clause B4.3**.

ZGL and the Registered Supplier 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 Registered Supplier and the PHOs as Zespri exclusive suppliers:

- B1.1 The Registered Supplier and each of the PHOs are appointed by ZGL as exclusive suppliers to ZGL.
- B1.2 The Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier and/or any or all of the PHOs as Zespri exclusive suppliers if any of the Registered Suppliers, 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 Registered Supplier under **clause C1.1** unless:
- (a) the Registered Supplier 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 Registered Supplier 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 Registered Supplier did not, as soon as practicable, terminate its contract with the PHO.
- C1.3 Where the Registered Supplier 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 Registered Supplier and/or any or all of the PHOs concerned under **clause C1.1**.
- C1.4 However, ZGL may not cancel the appointment of the Registered Supplier, or of a PHO, under **clause C1.3**, if:
- (a) the Registered Supplier 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 Registered Supplier, where a PHO has not proved the matters specified in **clause C1.4(a)**, the Registered Supplier has, as soon as practicable, terminated its contract with the PHO.
- C1.5 ZGL will give notice in writing to the Registered Supplier 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 Registered Supplier's and the PHOs' appointment as Zespri exclusive suppliers.
- C1.6 If the Registered Supplier 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 Registered Supplier 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 Registered Supplier or PHO is cancelled, ZGL makes no warranty that the Registered Supplier 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 Registered Suppliers 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 Registered Supplier.

SECTION F AUTHORITY TO BIND PHOs

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

Registered Supplier Execution Section	Zespri Group Limited Execution Section
I am authorised to sign this Schedule 8 on behalf of the Registered Supplier 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:

- Apata Suppliers Limited
- Auckland Growers Supply Limited
- Cooper Coolpac Limited
- DMS Progrowers Supply Entity Limited
- G6 Kiwi Supply Limited
- Integrated Fruit Supply and Logistics Limited
- Kainui Pack and Cool Limited
- Mainland Kiwi Growers Entity Limited
- Mount Growers Supply Limited
- Riverlock Packhouse Limited
- Southlink Supply Limited
- Trevelyan Growers Limited
- Whitehall Supply Group

Schedule 9: Supply of Non-Standard Supply PVR Kiwifruit

1. The Registered Supplier may sell or otherwise supply Non-Standard Supply PVR Kiwifruit only:
 - (a) To a ZGL Licensed Processor;
 - (b) Pursuant to an **SLA** entered into pursuant to **Schedule 6**; or
 - (c) For disposal by dumping.
2. ZGL will publish the names of the ZGL Licensed Processors on the Zespri Canopy website, <https://canopy.zespri.com>.
3. The Registered Supplier is responsible for all costs relating to Non-Standard Supply PVR Kiwifruit, and for negotiating the commercial arrangement with the ZGL Licensed Processor and any commercial arrangement for remuneration to Growers. No remuneration will be payable to ZGL by the Registered Supplier in relation to sales of Non-Standard Supply PVR Kiwifruit to a ZGL Licensed Processor.
4. The Registered Supplier will provide ZGL with a summary of the total volume in kilograms of Non-Standard Supply PVR Kiwifruit sold or otherwise supplied to each ZGL 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 a Registered Supplier for the purpose of manufacturing processed products.
6. Other than as set out in this Schedule 9, the Registered Supplier acknowledges and agrees that Non-Standard Supply 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 Registered Supplier is found to breach this clause the opportunity to participate in any expression of interest to sell Non-Standard Supply 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 Kiwifruit including 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 2022-2023 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. This **Schedule 10** sets out indicative terms for such insurance based on the 2022-2023 policy, but the parties acknowledge that the final policy may result in amendments to this Schedule. ZGL will notify ISG in writing of any material changes to the deductibles and/or limits of the policy.
- 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**, Registered Suppliers are also covered directly against Kiwifruit damage as a direct result of Hail Strike 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**.
- A7** Amounts recovered from insurers or other third parties for losses in relation 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 ZGL 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 Insurers 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 Registered Suppliers 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 2023 to 4pm 1st March 2024.
- 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 at the time of loss, 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) (plus GST) 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) (plus GST) Pool Earthquake Contribution, then all Registered Supplier claims within that season will be subject to Earthquake Site Deductibles. In this situation, the Earthquake Site Deductible will be borne by each Registered Supplier and the Pool Earthquake Contribution will be prorated to Registered Suppliers 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 Registered Suppliers deductible as stated in **clause B7.1** per claim, per event, until the total deductibles for all claims

(excluding the Registered Suppliers 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 Registered Suppliers 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 Registered Suppliers suffer loss or damage arising out of the same event;
- (b) A single Registered Supplier provides Services to all of those Registered Suppliers under **Part C** of the **Supply Agreement**; and
- (c) Such Registered Suppliers have different deductibles in respect of the claim;

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

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

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

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

B3.12 The maximum payable by the Marine Insurers 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 Registered Suppliers reasonable opinion a higher site limit is required and the Registered Supplier 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 2023 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 Insurers in writing and the specified location is named in the Marine Cargo Policy prior to the commencement of the 2023 Season;

Then the maximum payable by the Marine Insurers 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 Marine Insurers' payout is limited to an annual aggregate

limit of one hundred and twenty 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 The annual aggregate limit ("AAL") for Cyber Security claims will be twenty million dollars (\$20,000,000) (plus GST where applicable).

B3.15 Where a Cyber Security claim is made within the period of insurance as described in clause B3.1 ZGL may at its sole discretion endeavour to purchase a reinstatement of the AAL from the Cyber Marine Insurer if a reinstatement is available from the Cyber Marine Insurer. Reinstatement premiums will be charged to the Pools in accordance with **clause A6**.

B3.16 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 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 Registered Supplier's 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 REGISTERED SUPPLIER CLAIMS

B5.1 The basis of settlement by ZGL to the Registered Supplier for loss occurring prior to FOBS under both the Marine Cargo Policy referred to in **clause A1** and the cover 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 Registered Supplier'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 Registered Supplier will cause each Bailee, including an on port logistics provider, contracted by the Registered Supplier 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 Registered Supplier 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 Registered Supplier of those unusual exclusions, using best endeavours to do so within ten working days of identifying the unusual exclusions.

- B6.4 If the Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier does not provide such a bank guarantee or deposit within ten working days of receiving ZGL's request, the cover referred to in **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 Registered Supplier. 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 Registered Supplier 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 Registered Supplier's deductible as per **clause B7.1** per claim, per event, these losses are the responsibility of the Registered Supplier;

- (b) The Registered Supplier'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 Registered Supplier 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 REGISTERED SUPPLIER'S DEDUCTIBLE

B7.1 The Registered Supplier'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 Registered Supplier's facilities as identified to ZGL by the Registered Supplier and accredited under the Quality Systems Standard section of the ZIL Quality Manual (each a "Facility"). The Registered Supplier's deductible applies to any claim lodged in the 2023 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 Registered Supplier's deductible of two hundred and fifty thousand dollars (\$250,000) (including GST) applies to:
 - (A) The first Claim by the Registered Supplier in the 2023 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 Registered Supplier's deductible of three hundred and fifty thousand dollars (\$350,000) (including GST) applies to:
 - (A) The second Claim lodged by the Registered Supplier in the 2023 or any subsequent season, or in any two consecutive seasons; or

- (B) Any Claim lodged in any season after the 2023 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 Registered Supplier's deductible of four hundred and fifty thousand dollars (\$450,000) (including GST) applies to:
 - (A) The third Claim lodged by the Registered Supplier in the 2023 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 2023 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 Registered Supplier's deductible of seven hundred thousand dollars (\$700,000) (including GST) applies to the fourth or any further Claim(s) lodged in the 2023 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 Registered Supplier 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 Registered Suppliers 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) including GST, 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 Registered Supplier 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 REGISTERED SUPPLIER

- B9.1 It is the responsibility of the Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier will co-operate fully with any insurance assessor appointed by ZGL or 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 Registered Supplier 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 Registered Supplier to ZGL in writing within 28 days of the Registered Supplier'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 Registered Supplier 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 Registered Supplier 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 Marine Insurers 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 Registered Supplier'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 Registered Supplier to ZGL and may be deducted in accordance with the provisions of the **Pricing and Payment Manual**.

B14.4 The Registered Supplier 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 AND RS

B15.1 The terms of cover for HE and RS 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 Registered Supplier's deductible and/or a policy deductible will apply. Where the policy deductible exceeds the Registered Supplier's deductible, any deductible remaining will be covered by the appropriate HE or RS Pool. The deductibles for HE or RS will be:

- (a) For all losses arising from earthquake, volcanic eruption, tsunami, hydrothermal activity and/or resulting fire, a Registered Supplier's deductible of 5% of the value of the HE or RS 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 Registered Supplier'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 Registered Supplier's deductible shall be 10% of the gross amount of the claim, per event with a minimum Registered Supplier's deductible of two thousand dollars (\$2,000) (including GST) and a maximum Registered Supplier'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 Registered Supplier's deductible. Cover for losses above the Registered Supplier's deductible and below the policy deductible will be provided by the appropriate HE or RS pool.

B15.3 ZGL also arranges Marine Cargo Insurance for HE and RS 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 2023 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 2023 to 1st March 2024.

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 Registered Supplier (the "Registered Supplier'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 Registered Supplier; 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 Registered Supplier will be required to meet the entire sum of seventy-five thousand dollar (\$75,000) plus GST to each and every insured event.

C3.6 Where a claim has been made and payable by either the ZGL 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 Registered Supplier 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 Registered Supplier and/or the post-harvest service provider under any such agreement. The Registered Supplier 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 product suppliers, and as required by **clause A4.7(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 Registered Supplier 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 ZGL 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 insured against Registered Supplier and/or Post Harvest service provider and any recovery proceeds so received will be offset against the Registered Supplier and/or Post Harvest service providers liability cap of \$1m (excluding GST) per event
- (e) In the event the Registered Supplier and/or the Post Harvest service provider is unable to make any recovery from its product or service supplier then its liability to the ZGL 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/Registered Supplier 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 Registered Supplier 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) plus GST.

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 A2** of the **Pricing and Payment Manual**.

- 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 Registered Supplier's product is involved in an insurable contamination event ZGL will promptly notify the Registered Supplier once ZGL becomes aware of the event and can confirm the Registered Supplier(s) Kiwifruit is involved. ZGL will keep the Registered Supplier 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 product shall be at ZGL's sole discretion.

C4 SETTLEMENT OF REGISTERED SUPPLIER CLAIMS

- C4.1 The basis of settlement by ZGL to the Registered Supplier 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 Registered Supplier;
- (b) The Registered Supplier'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 Registered Supplier;
- (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 Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier'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 Registered Supplier to ZGL and may be deducted or setoff in accordance with the provisions of the **Pricing and Payment Manual**.
- C8.4 The Registered Supplier 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 STRIKE

D1 HAIL STRIKE COVER

D1.1 The maximum aggregate hail indemnity limit and agreed value for basis of settlement in respect of Hail Strike is outlined below:

Variety	Maximum Indemnity Limit	Funded by	Agreed Value Per TE by Variety
Zespri Green Conventional	\$6,200,000	Pool funded	\$5.42 per TE
Zespri Green Organic	\$430,000	Pool funded	\$8.627 per TE
Zespri Sungold	\$21,200,000	Pool funded	\$4.85 per TE
Zespri Sungold Organic	\$750,000	Pool funded	\$5.88 per TE
Zespri Sweet Green	\$35,000	Pool funded	\$9.55 per TE
Zespri RubyRed	\$210,000	Pool funded	\$7.20 per TE

D1.2 For full policy details and definitions used (but not otherwise defined) in this **Section D**, please refer to the 2023 Pool Distribution Policy for Hail Damage | August 2022 attached as **Appendix 2** (the “Pool Distribution Policy for Hail Damage”). In the event of any inconsistency between the terms in this **Section D** and the Pool Distribution Policy for Hail Damage, the Pool Distribution Policy for Hail Damage will prevail. The main policy terms and conditions of the Pool Distribution Policy for Hail Damage are:

- (a) The policy period is from the 1st August 2022 to 31st July 2023 (“2023 Season”);
- (b) If Hail Strike causes damage to the 2023 Season’s export quality kiwifruit whilst on the vine anywhere in New Zealand during the 2023 Season, the Variety pool will pay Affected Growers whose Kiwifruit are exported by ZGL, for the resulting loss of Class 1 Yield of Kiwifruit arising directly from Hail Strike, to the limits and agreed values set out in the Pool Distribution Policy for Hail Damage. The maximum total liability of each Variety pool in the 2023 Season will not exceed the amounts for each Variety outlined in the table found in **D1**. The amount of all Distributions paid from the Pool Distribution Policy for Hail Damage will be charged to the relevant Variety pools;
- (c) All ZGL costs, including without limitation, ZGL Policy/Distribution administration, related independent loss assessors’ costs, external assessors’ fees, consultancy or any taxes are not included in the maximum aggregate and these will be charged to the relevant Variety pool; and
- (d) Within the affected Orchard, the deduction percentages which will apply for each eligible Distribution made during the season are:

- (i) 10% (ten percent) of the value of the Potential Yield of each Variety for the first Distribution for that Orchard;
 - (ii) Deductions will further increase in increments of 5% for Distributions in consecutive seasons;
 - (iii) Any orchard which has two consecutive seasons without any Distributions will revert to the 10% deduction percentage.
- (e) Kiwifruit Grower's blocks with solid cover or hail netting will be eligible for a Covered Canopy Reduction based on 80% of the total cost of the hail scheme for the 2023 Season for the covered blocks production providing those Kiwifruit Growers have:
- (i) A covered canopy erected by 1 October 2022.
 - (ii) A minimum of 0.20 hectares covered or an entire Variety on orchard covered.
 - (iii) Volume submitted into ZGL inventory that is from the area covered with hail netting or solid cover (unless that area is assessed as a constructive total loss ("CTL")).
 - (iv) Indicated on their spray diary prior to 31st March 2023, blocks that have hail netting or solid cover.

D2 HAIL STRIKE NOTIFICATION PROCEDURE

- D2.1 In the event of Hail Strike, the Registered Supplier 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 Registered Supplier 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 Hail Strike notification will be lodged in the ZGL Loss Register; and
 - (b) ZGL may assign an approved independent loss assessor to assess the damage, depending on the extent of damage.
- D2.2 For details of the assessment process refer to **Appendix 2** and **Appendix 3**.
- D2.3 Policy/Distribution Clarification or Response: ZGL Insurance Manager, Telephone Number: 0800 155 355 or Email: insurance@zespri.com.

SECTION E VESSEL LOADING

E1 INSURANCE REQUIREMENTS FOR ON PORT LOGISTICS PROVIDER

- E1.1 The Registered Supplier 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) plus GST 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) plus GST 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 Registered Suppliers supplying

fruit to ZGL under the Supply Agreement. A Registered Supplier 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 Registered Supplier 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 Registered Supplier.

E2 REQUIREMENTS FOR ROAD TRANSPORT PROVIDERS

E2.1 The Registered Supplier 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 (company number 3195589) or such other insurer(s) that ZGL may appoint from time to time.

Cost and Freight the common shipping term referring to the situation whereby the Registered Supplier must pay the costs and freight necessary to bring the Kiwifruit to the named port of destination.

Cyber Marine Insurer means Axis (Lloyd's Syndicate AXS 1686) or such other insurer(s) that ZGL may appoint from time to time.

Fruit Incentives as described in **clause A2.8** of the **Pricing and Payments Manual**.

Fruit Loss as defined in the **EDI Manual**.

Fruit Return as defined in **clause A2.2** of the **Pricing and Payments Manual**.

Marine Cargo Insurance Insurance that covers the risk of loss or damage to Kiwifruit as described in **clause B1**.

Marine Insurers For the primary layer means Vero Marine Insurance a division of Vero Insurance New Zealand Limited (company number 1331) and NZI Marine a

division of IAG New Zealand Limited (company number 441010) or such other insurer(s) that ZGL may appoint from time to time.

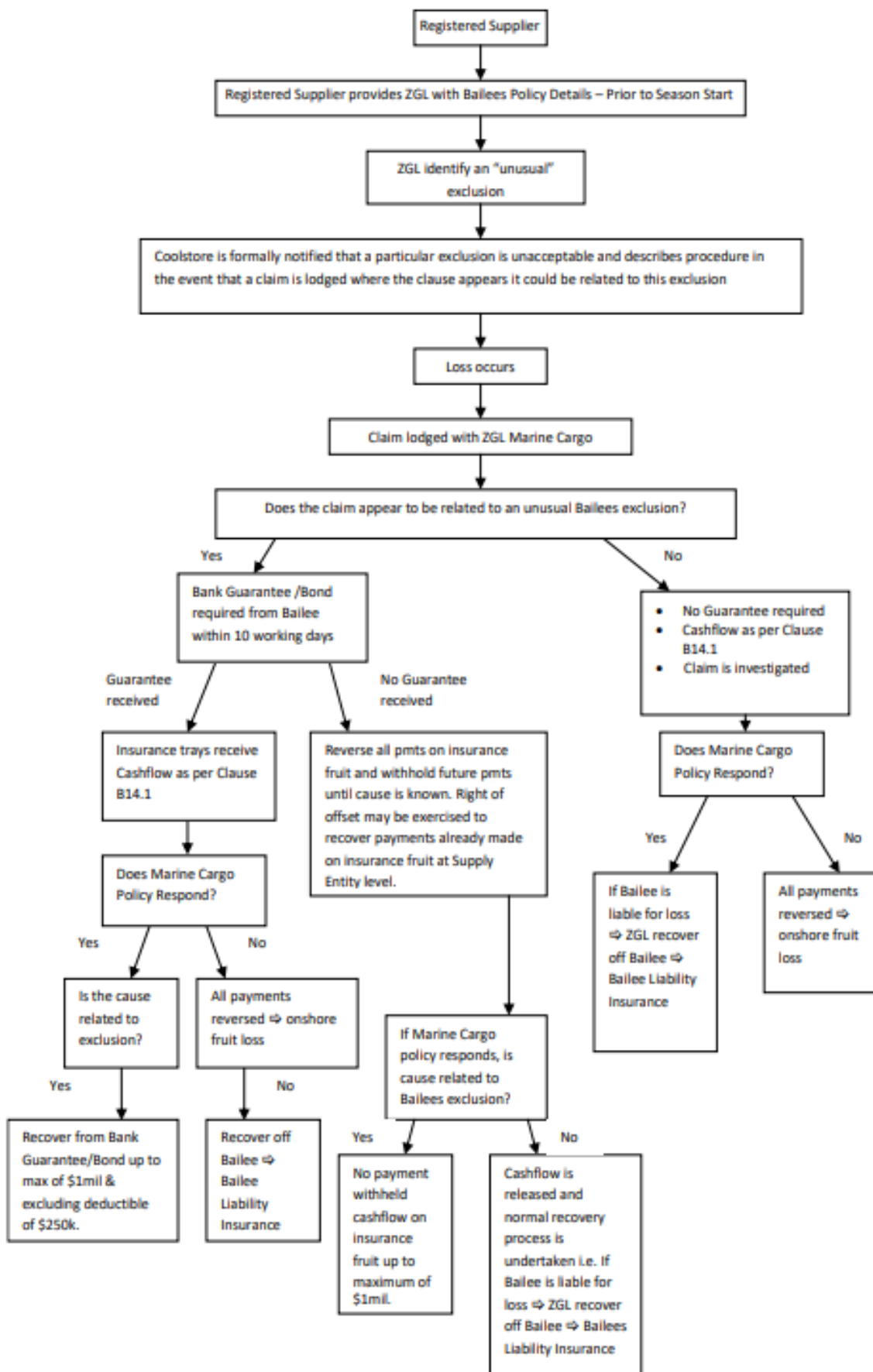
Service Costs

as described in **clause B1** of the **Pricing and Payments Manual**.

ZGL Inventory System

as defined in Schedule 2.

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





These terms set out the process for calculating the distributions that will be allocated to growers who suffer kiwifruit damage as a direct result of Hail Strike as part of their assessed Fruit Return (**Distributions**) for the upcoming season, from 1 August 2022 to 31 July 2023 (**2023 Season**). These terms also set out the mechanism for funding the Distributions, and the effect that this funding mechanism will have on the Fruit Returns of all growers within the relevant Variety pool. The Distributions are designed to mitigate the impacts of the damage to individual Zespri™ Class 1 kiwifruit which are directly struck by hail, on the vine, and are unable to then meet Zespri export standards as a result of that damage.

Commercial insurance cover for hail damage is not available for the 2023 Season.

Growers with Orchards that have blocks with solid cover or hail netting erected before 1 October 2022 may be entitled to receive a partial reduction in the amount that is deducted from their Fruit Return in order to fund the Distributions (see section titled "Distribution Deduction and covered canopy reduction").

Zespri strongly recommends that all growers closely examine the terms of this Distributions policy. This Distributions policy provides partial compensation for yield loss due to Hail Strike. This policy does not provide full compensation for damage to fruit due to Hail Strike, and those growers who seek full or additional compensation should consider purchasing private hail insurance or discuss with their grower entities. Hail insurance schemes may be available for entities through commercial insurers.

For the avoidance of doubt, the calculation of Distributions only takes into account individual kiwifruit pieces that are directly struck by hail and would otherwise be Class 1 export grade kiwifruit. Distributions will not be calculated with regard to consequential damage such as water stain or softening. Growers need to be aware there may be additional cost or losses associated with Hail Strikes that do not affect a grower's Distribution entitlement. The Zespri Board and Industry Advisory Council approved this Pool Distribution Policy for Hail Damage.

ENTITLEMENT TO DISTRIBUTIONS

If Hail Strike causes damage to the 2023 Season's export quality kiwifruit while on the vine anywhere in New Zealand during the 2023 Season, Affected Growers will be eligible to apply to Zespri for a Distribution under this policy in respect of the resulting loss of Class 1 yield of kiwifruit to the limits and agreed values set out in these terms. The Maximum Aggregate Distributions available to Affected Growers in each Variety pool in the 2023 Season will not exceed the amounts identified for each Variety in these terms.

To avoid doubt, assessment of Distributions will not take into account the following damage or loss:

- Consequential losses which may include but are not limited to any loss that arises after harvesting or from the Affected Grower not being able to meet any contractual obligations and also includes loss of profits of any kind whatsoever incurred by the Affected Grower in respect of any Distribution Application.
- Subsequent loss of yield due to any bacterial infection such as PSA.
- Mismanagement or failure to apply acceptable horticultural practices.
- Water stain.
- Loss of leaves.
- Loss of size profile.
- Loss of Dry matter.
- Varieties that have not been commercialised by Zespri and are grown under pre-commercial trial agreements.
- Loss of yield directly caused by the collapse of a covered canopy (solid cover or hail netting) onto a kiwifruit vine.

WHO CAN APPLY FOR DISTRIBUTIONS

Zespri kiwifruit growers in New Zealand whose kiwifruit on the vine is destined for Zespri's export markets, and who suffer damage to individual kiwifruit on the vine as the direct result of Hail Strike (**Affected Growers**).

2023 SEASON

1 August 2022 to 31 July 2023.

AGREED VALUE BASIS OF CALCULATING DISTRIBUTION

1. For each eligible Affected Grower, the applicable Distribution shall be assessed on the basis of the quantity of export grade kiwifruit which is unable to meet Zespri's Class 1 export standards as a direct result of those kiwifruit being struck by hail on the vine and the Agreed Values per Tray Equivalent (TE) as set out in the table in point 2 below. To avoid doubt, the assessment of eligible Distributions will also be subject to:
 - a. any adjustment required to ensure that the Maximum Aggregate Distributions per variety amount is not exceeded;
 - b. any applicable deductions set out in these terms; and
 - c. the application of the Constructive Total Loss (CTL) regime (if elected by the Affected Grower).

1. The agreed values below are subject to the application of the deduction percentage as described below:

Agreed Values		
Variety	*Maximum Aggregate Distributions	**Agreed Value per TE
Zespri Green	\$6.2 million	\$5.42
Zespri SunGold	\$21.2 million	\$4.85
Zespri Green Organic	\$430,000	\$8.62
Zespri SunGold Organic	\$750,000	\$5.88
Zespri Sweet Green	\$35,000	\$9.55
Zespri RubyRed	\$210,000	\$7.20

* **Maximum Aggregate Distributions** based on 1.5% of total OGR for the respective Variety pools.
 ** **Agreed Value per TE** is based on average on-orchard cost per hectare plus a 50% uplift of on-orchard cost. A maximum cap on the agreed value per tray to be paid out for each pool will be equal to the August Forecast OGR for that pool for the relevant season.

2. Unless otherwise stated, the Distribution allocated shall be calculated net of salvage and other recoveries.
 3. The Maximum Aggregate Distributions and Agreed Values per Tray above are exclusive of GST.

MAXIMUM AGGREGATE DISTRIBUTIONS PER VARIETY

The Maximum Aggregate Distributions amount for each Variety is set out in the table in point 2 of the Agreed Value Basis section above. In the event that the aggregate amount of eligible Distributions for a Variety calculated according to the Agreed Value basis set out above (**Pre-adjustment Amount**) exceeds the Maximum Aggregate Distributions amount for that Variety in the 2023 Season, then the value of the aggregate Distributions for that Variety will be calculated on a pro rata basis by dividing the Pre-adjustment Amount into the Maximum Aggregate Distributions amount for that Variety, and the Distributions allocated to each Affected Grower will be adjusted accordingly.

DEDUCTIONS

For each eligible Distribution, a percentage shall be deducted, which will be the sum of the Base Deduction percentage and, if applicable, the Seasonal Increment percentage as set out below. Within the affected Orchard, the deductions which will apply for the 2023 Season are:

Base Deduction

1. The base deduction is equal to 10 percent of the Potential Yield of each Variety for that Orchard.

Illustrated Example

Orchard A, a Green orchard, suffers a Hail Strike. Zespri is notified and an independent loss assessor visits the orchard to assess the damage. The grower has not received a Distribution in respect of Orchard A for the two previous consecutive seasons. The value of the grower's tray loss in respect of Orchard A is calculated on the basis of:

Variety	Potential Yield	Export Tray Loss From Hail Strike	Trays Subject To Deduction*	Net Tray Loss	Agreed Value (per Tray)	Value of Tray Loss
Zespri Green	20,000	8,000	2,000	6,000	\$5.42	\$32,520

* *Trays subject to deduction = 10 percent of potential yield of each Variety (rising by 5 percent with Distributions in consecutive seasons on the same variety). "Potential Yield" is the quantity of Class 1 export grade kiwifruit remaining unharvested at the time of the Hail Strike.*

Seasonal Increment

2. In certain circumstances, a Seasonal Increment percentage will be applied in addition to the Base Deduction. The Seasonal Increment deduction applied to an Affected Grower's Distribution for a particular Orchard for a

particular portion of an Orchard that is segregated in accordance with points 4 and 5 below) will increase in increments of 5 percent each time the Affected Grower has received a Distribution for that Orchard in that Variety pool in consecutive seasons. Any Orchard for which there has been **two consecutive seasons** without a Distribution will revert to just the Base Deduction percentage.

Illustrated Example

- (a) Orchard B (which has not previously received a Distribution for Hail Strike) makes a Distribution Application for the 2015 season – the deduction applied will be 10 percent.
- (b) Orchard B has previously received a Distribution for Hail Strike in the 2015, 2016, 2017 and 2018 seasons for Green. The deduction applied will increase by 5% for every consecutive season with a Distribution for the same Variety of fruit. There was no Distribution for Green in the 2019 season but there was a Distribution the following season in 2020 so the deduction applied stays the same as the 2018 season deduction. Orchard B then receives no Distribution for Green fruit in the 2022 and 2023 seasons. The deduction percentage falls back to 10 percent for the 2024 season as there are two consecutive seasons without receiving any Distribution for Green

Season	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Distribution	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes
Deduction	10%	15%	20%	25%		25%	30%			10%

Orchards partially harvested at the time of a Hail Strike

1. For an Orchard that has been partially harvested at the time of the Hail Strike, the deduction will be applied as a percentage of the Potential Yield that remained unharvested immediately before the Hail Strike. In respect of the Orchard deduction, one deduction (per Variety) will apply for the aggregate of all losses arising from hail in respect of an individual KPIN in the 2023 Season unless otherwise stated in these terms.

Segregation

2. Where a KPIN is 14 hectares or larger it may be segregated into areas of 7 hectares minimum respectively for Distribution applications of the deduction and/or the determine 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 Strike, 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 Distribution Application. Once the segregation is agreed, that area will be treated as a single Orchard for the purpose of making a Distribution Application, subject to these terms.
3. There will be automatic segregation of covered and uncovered canopies on the same KPIN with no minimum size hectare requirement i.e.: a 5 hectare SunGold orchard with 2 hectares of covered canopy will be segregated into two areas.

CONSTRUCTIVE TOTAL LOSS (CTL)

The CTL Limit is the level of assessed damage to fruit due to Hail Strike at which the Distribution Application will be constructively assessed as though the entire unharvested Potential Yield of the affected Orchard (at the time of the Hail Strike) has been lost. An independent loss assessor 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 met or exceeded. For an Orchard that has been partially harvested at the time of the Hail Strike, the CTL limit will be applicable to the yield that remains unharvested immediately before the Hail Strike.

CTL LIMITS FOR ZESPRI GREEN AND GREEN ORGANIC VARIETIES:

CTL Limit for Hail Strikes on or before 31 December 2022

The CTL limit for all Hail Strikes occurring on or before 31 December 2022 is 70% damage.

CTL Limit for Hail Strikes on or after 1 January 2023 but before 1 March 2023

The CTL limit for all Hail Strikes occurring on or after 1 January 2023 but before 1 March 2023 is 60% damage.

CTL Limit for Hail Strikes on or after 1 March 2023

The CTL limit for all Hail Strikes occurring on or after 1 March 2023 is 40% damage.

CTL LIMITS FOR ZESPRI SUNGOLD AND SUNGOLD ORGANIC VARIETIES:

CTL Limit for Hail Strikes on or before 31 December 2022

The CTL limit for all Hail Strikes occurring on or before 31 December 2022 is 70% damage.

CTL Limit for Hail Strikes on or after 1 January 2023 but before 14 February 2023

The CTL limit for all Hail Strikes occurring on or after 1 January 2023 but before 14 February 2023 is 60% damage.

CTL Limit for Hail Strikes on or after 14 February 2023

The CTL limit for all Hail Strikes occurring on or after 14 February 2023 is 40% damage.

CTL LIMITS FOR ZESPRI SWEET GREEN VARIETY:

CTL Limit for Hail Strikes on or before 31 December 2022

The CTL limit for all Hail Strikes occurring on or before 31 December 2022 is 70% damage.

CTL Limit for Hail Strikes on or after 1 January 2023 but before 1 February 2023

The CTL limit for all Hail Strikes occurring on or after 1 January 2023 but before 1 February 2023 is 60% damage.

CTL Limit for Hail Strikes on or after 1 February 2023

The CTL limit for all Hail Strikes occurring on or after 1 February 2023 is 40% damage.

CTL LIMITS FOR ZESPRI RUBYRED VARIETY:

CTL Limit for Hail Strikes on or before 31 December 2022

The CTL limit for all Hail Strikes occurring on or before 31 December 2022 is 70% damage.

CTL Limit for Hail Strikes on or after 1 January 2023 but before 1 February 2023

The CTL limit for all Hail Strikes occurring on or after 1 January 2023 but before 1 February 2023 is 60% damage.

CTL Limit for Hail Strikes on or after 1 February 2023

The CTL limit for all Hail Strikes occurring on or after 1 February 2023 is 40% damage.

Basis of Valuation for CTL's

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

Declaration of CTL

In the event of a CTL being declared by the independent loss assessor, a grower may choose to accept the CTL. The applicable Distribution is then assessed as per the Agreed Value Basis for the Class 1 Potential Yield that remained unharvested immediately before the Hail Strike, subject to applicable deductions in accordance with these terms. This assessment will then become the final assessment and the grower will be required to remove the damaged kiwifruit off the vines in the relevant Orchard and dispose of it and not receive any compensation revenue from the disposed kiwifruit. The timeframe for accepting a CTL and disposing of fruit will be prior to the beginning of harvest in the applicable region.

In the event of a CTL being declared by the independent loss assessor, a grower may opt to forego the CTL and continue with harvest. In such cases, the Distribution will be assessed on the Agreed Value Basis less applicable deductions under these terms. For the avoidance of doubt where a grower forgoes the CTL for an Orchard, the loss assessor may reassess the volume loss following harvest and packing. The basis of valuation will be as per the Agreed Value Basis. The Affected Grower will retain its entitlement to any of the Class 1 earnings received that pertain to the relevant affected Orchard as part of the Fruit Return.

Example

- (a) Orchard C has an assessment of 62 percent hail loss after 1 January. Orchard C **accepts the CTL** and receives a Distribution calculated on the basis of 90 percent (100 percent less the 10 percent deduction) of their Class 1 Potential Yield. Orchard C cannot harvest.
- (b) Orchard D has an assessment of 62 percent hail loss after 1 January. Orchard D **opts to forego the CTL**. Orchard D harvests their crop and the Distribution Application is reassessed following packing as a 61 percent loss. Orchard B receives a Distribution on the basis of 51 percent (actual trays lost due to Hail Strike less the deduction). Any Class 1 return payable as part of the Fruit Return is in addition to and is not deducted from the Distribution.

GRADING/COOL STORAGE PROCEDURES FOR HAIL-DAMAGED KIWIFRUIT

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

- For Hail Strikes before 15 February: within eight weeks of picking
- For Hail Strikes 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 Affected Grower (or the Affected Grower's nominated representative) before that kiwifruit is placed in cool storage.

That kiwifruit must have a 5 percent sample assessment completed within the timeframes specified above. This 5 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 5 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 Distribution Application 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.

DISTRIBUTION DEDUCTION AND COVERED CANOPY REDUCTION

Distribution Deduction

Every Affected Grower is eligible to apply for a Distribution under this Distribution policy. To the extent that any Distributions are allocated for a particular Variety for the 2023 Season, the Distributions will be funded by corresponding deductions made from the Fruit Returns of all growers in New Zealand that grow that Variety (including the Fruit Returns of the Affected Growers). The amount deducted from the per Tray Equivalent (TE) Fruit Return for each grower (**Distribution Deduction**) will be calculated according to the following formula:

$$\text{Total Distributions for Variety (\$/)} = \text{Total production of Variety for 2023 Season (TE)} \times \text{Distribution Deduction (per TE)}$$

The Fruit Return for each grower of the Variety then has the Distribution Deduction debited for each TE of the Variety that the grower supplied to Zespri in the 2023 Season.

Covered canopy reduction

Hail risk to crops under covered canopies is significantly reduced, so the Distribution Deduction for any TEs produced under covered canopies (solid cover or hail netting) will be significantly reduced as an incentive for growers to use covered canopies. Spray Diary allows growers to indicate if a block has solid cover or hail netting. The Distribution Deduction for all TEs produced in covered blocks will be just 20% of the Distribution Deduction applied to TEs produced in uncovered blocks.

In order to be eligible for the reduced Distribution Deduction, growers with covered canopies must:

- Have covered canopy erected by 1 October 2022
- 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 2023, blocks that have hail netting or solid cover.
- Produce a sufficient number of TE from their covered blocks so that the aggregate amount of the reduction they would be due to receive is no less than \$100 for the 2023 Season. Where the amount of the reductions would be \$99 or less, the reduction will not be processed and the full Distribution Deduction would be payable by the Affected Grower.

Zespri must confirm and agree the total production (in TE) of the covered blocks, and will verify or audit this during the course of the season. The Distribution Deductions will only be determined after August 2023 once all Distribution Applications are assessed.

EXAMPLE: Covered Canopy rebate mechanism (example: SunGold variety pool)

x Cost of scheme (2023 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

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. In the event of a Hail Strike, you must use all reasonable and usual care and take all practical measures to mitigate loss or damage that may otherwise result from the Hail Strike. Any failure to do so may result in the grower becoming ineligible to receive, in whole or in part, a Distribution under these terms.

INDEPENDENT LOSS ASSESSOR

An independent loss assessor to assess the loss will be appointed by Zespri for all hail damage which exceeds the orchard deduction. Assessor costs associated with Distribution Applications will be deducted from the relevant Variety pool (by Zespri).

HAIL STRIKE NOTIFICATION

In the event of a Hail Strike the grower, or the grower's appointed representative, must call the Zespri Contact Centre on 0800 155 355 within 72 hours to notify Zespri of the Hail Strike. 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 Strike, Zespri reserves the right to decline a Distribution Application if the delay in notification results in any difficulty or compromise to the accuracy of the assessment and quantification process by the independent loss assessor.

DEFINITIONS

2023 Season: 1 August 2022 to 31 July 2023.

Affected Grower: Zespri kiwifruit growers in New Zealand whose kiwifruit on the vine is destined for Zespri's export markets, and who suffer damage to individual kiwifruit on the vine as the direct result of Hail Strike.

Distribution: distributions that will be allocated to growers who suffer kiwifruit damage as a direct result of Hail Strike as a component part of their assessed Fruit Return.

Distribution Application means an application made by an Affected Grower to Zespri in the format prescribed by Zespri from time to time declaring the nature and extent of hail damage incurred and requesting the allocation of a Distribution in accordance with these terms.

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

Fruit Return has the meaning given to that term in the Pricing and Payment Manual.

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

Maximum Aggregate Distributions: the amounts set out as the maximum aggregate distributions for each Variety in point 2 of the Agreed Value Basis section.

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

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

Variety:

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

Zespri: Zespri Group Limited.

FURTHER INFORMATION

<https://canopy.zespri.com>

GROWER QUERY

Please contact Zespri Grower Support Services:

Sue Groenewald:	Grower Engagement Manager	Phone 027 493 1987
Sylvia Warren:	Grower Liaison Manager	Phone 022 101 8550
Brad Rinivui:	Grower Liaison Manager	Phone 021 757 843
Richard Jones:	Grower Liaison Manager	Phone 027 255 6497
Malkit Singh:	Grower Liaison Manager	Phone 027 665 0121
Teresa Whitehead:	Organic Supply Specialist	Phone 027 257 7135

POLICY/DISTRIBUTION CLARIFICATION OR RESPONSE

Please contact:

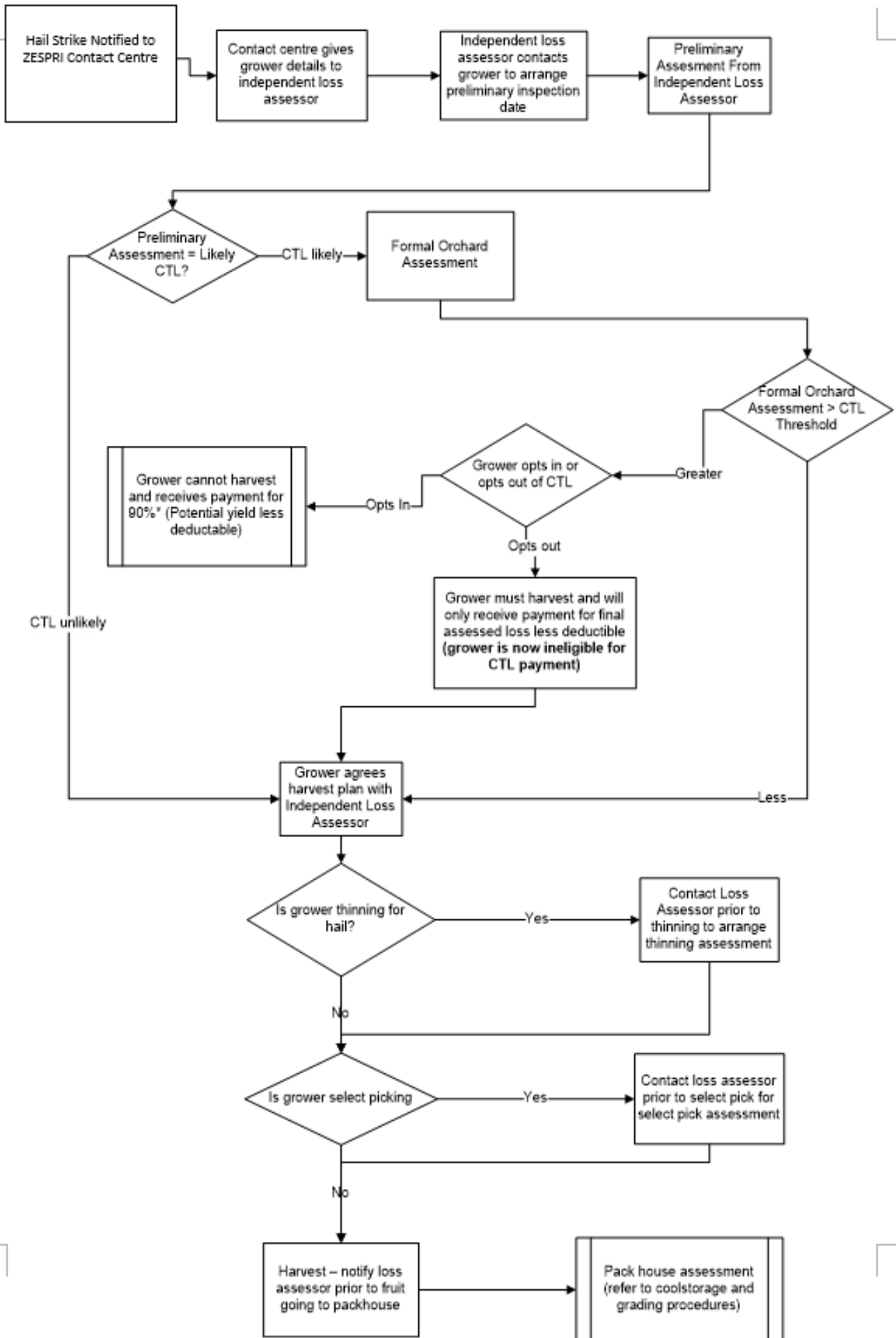
Zespri Insurance Team, Zespri Group Limited
Phone 07 572 7600 or email insurance@zespri.com

APPENDIX 3 APPENDIX 3 HAIL ASSESSMENT PROCESS

This assessment process is for the purpose of providing a simplified illustration of a common assessment process. 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.
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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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]

B1 INTRODUCTION

■ [REDACTED]

B2 APPLICABLE PALLETS

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

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B6 INSPECTION PROCESS

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

B7 ACCOUNTABILITY PERIOD

B7.1 The Accountability Period is the shorter of:

(a) [REDACTED]

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

B8 DEFECT CATEGORIES

B8.1 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]

B9.1 The Market Regions and Market Categories are specified in **Appendix 1**.

B10 INFORMATION FLOW

[REDACTED]

[REDACTED]

B10.3 The Registered Supplier agrees that it will forward any information transmitted by ZGL to the Pay to Party associated with the applicable pallets.

B11 EXCLUSIONS

[REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

B13 INVOICES AND PAYMENTS

B13.1 Where a Registered Supplier has directed under **clause B4.3** of **Part B** of the **Supply Agreement** that

[REDACTED]

[REDACTED]

B13.3 Any payment due from a Registered Supplier or Registered Supplier that is not received by ZGL by the due date as specified in **clause B12.4**, together with any interest payable under **clause B13.4** will be set-off under **clause A5** of **Part A** of the **Supply Agreement**.

[REDACTED]

[REDACTED]

B14 REPORTING

- B14.1 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] results on a vessel at an Industry level; and
 - (d) Periodic updates on carriage conditions and vessel temperature management.
- B14.2 The ISG may request further information on vessel conditions as required.
- B14.3 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.
- B14.4 A recommendation by the ISG does not preclude a Registered Supplier raising a dispute under **Section D**.
- B14.5 The ISG has no role in disputes, which are confidential between Registered Suppliers 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]

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

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

C7 IN-MARKET ASSESSMENT PROCESS

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

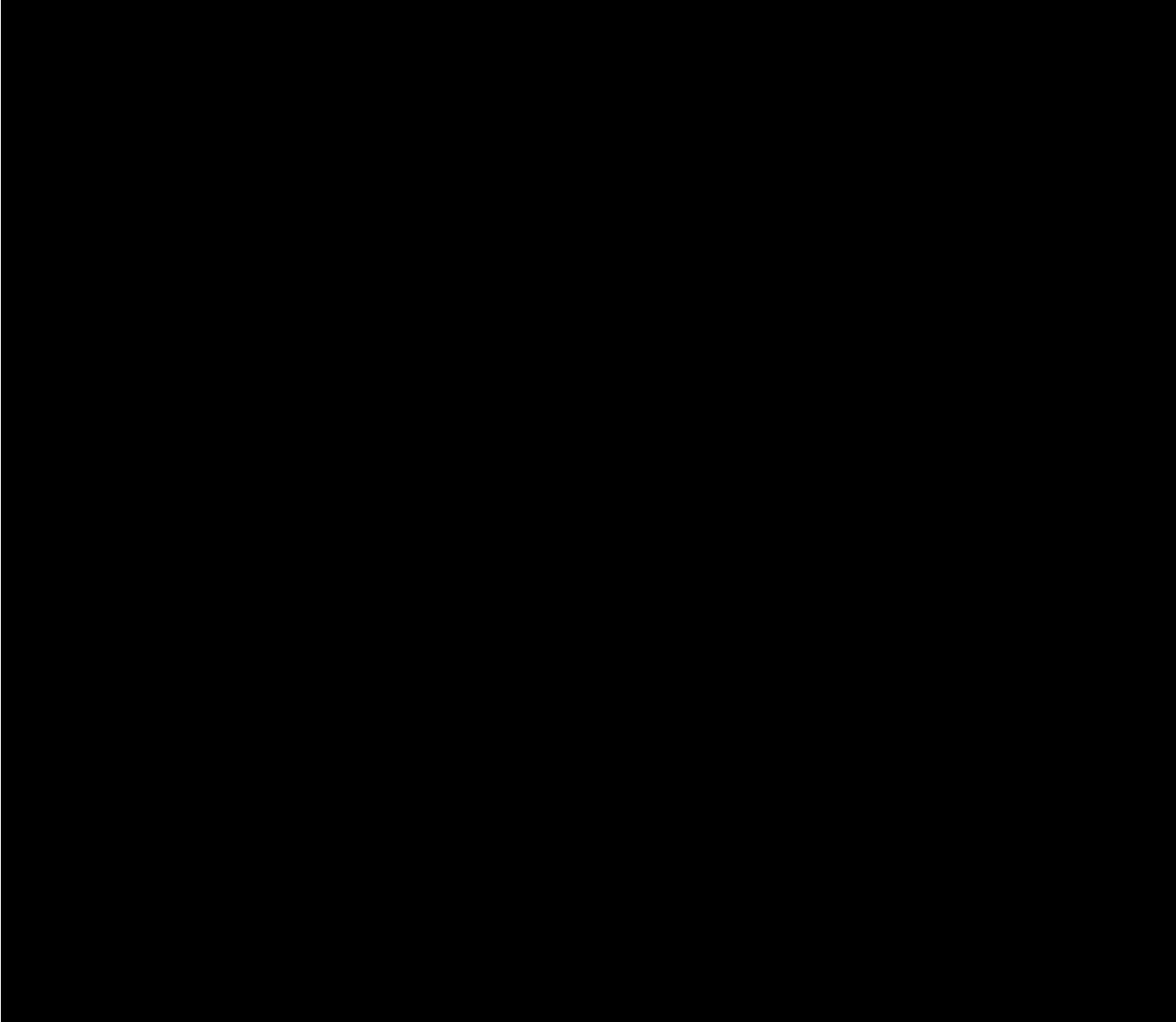
■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]



C11 INVOICES AND PAYMENTS

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



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 Registered Supplier raising a dispute under **Section D**.

C12.5 The ISG has no role in disputes, which are confidential between Registered Suppliers 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier. This fee is refunded if the dispute is successful for the Registered Supplier. Any related charges in accordance with **clause B12** and **C10** will remain payable and eligible for set-off under **clause B13.3** 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 B13.4** 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 Registered Supplier or Registered Supplier did not lodge a dispute in relation to that Kiwifruit; and
- (b) The Registered Supplier when lodging the dispute undertakes to pay the [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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

D1.6 ZGL shall notify the disputing Registered Supplier within 14 days from receipt of confirming their intention of a dispute by the Registered Supplier, in accordance with **Section D1.2**, of the availability of any information/data requested by the disputing Registered Supplier 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 Registered Supplier, 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]

[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 Registered Supplier 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 Registered Suppliers 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 Resolution Institute 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 Resolution Institute;
- (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 B13.4** 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 Registered Supplier.

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] In such an event, interest calculated in accordance with **clauses B13.4** 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 Registered Supplier.

D1.12 If any of the timeframes set out in this **Section D** are not met by the disputing Registered Supplier, 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 B13.4** 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 Registered Supplier has not agreed in writing to an extension, the dispute is deemed to have been accepted by ZGL and:

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

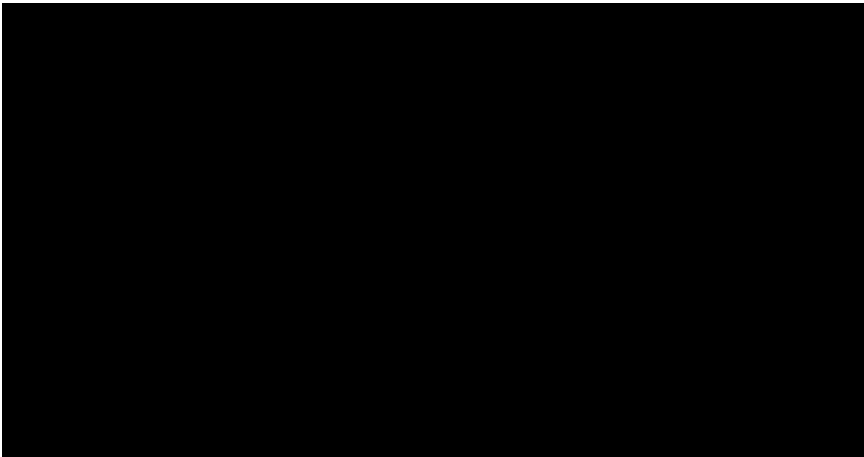
■ [REDACTED]
[REDACTED]
[REDACTED]

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

SECTION E DEFINITIONS

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED]	[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 Registered Suppliers 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.
ZIE	Zespri International Europe, a subsidiary of Zespri Group Limited.
ZIJ	Zespri International Japan, a subsidiary of Zespri Group Limited.
ZIK	Zespri International Korea, a subsidiary of Zespri Group Limited.
ZIT	Zespri International Taiwan, a subsidiary of Zespri Group Limited.

Market Categories



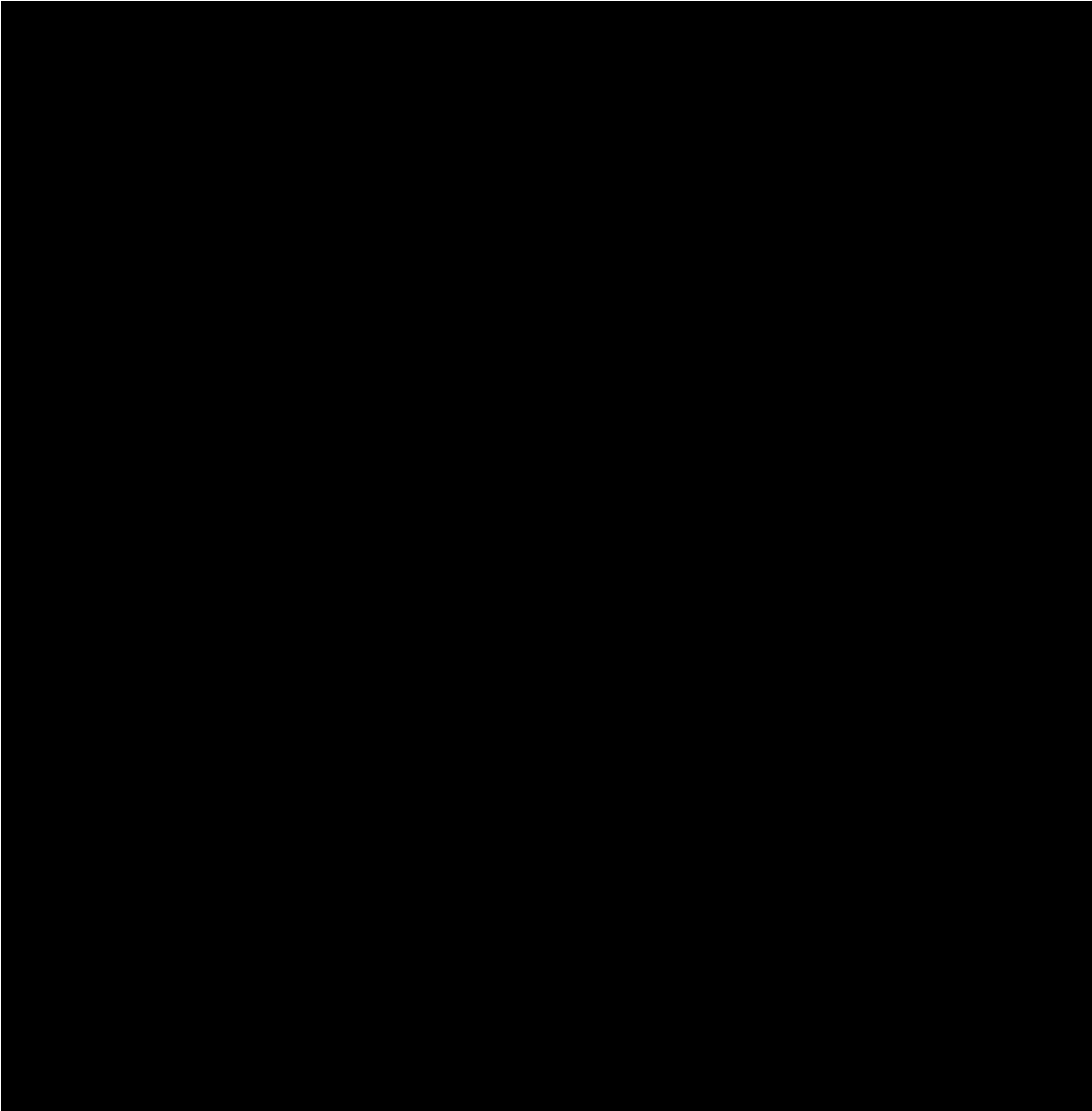
Stages

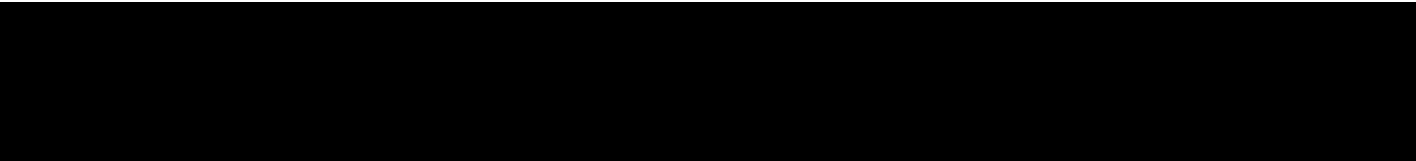
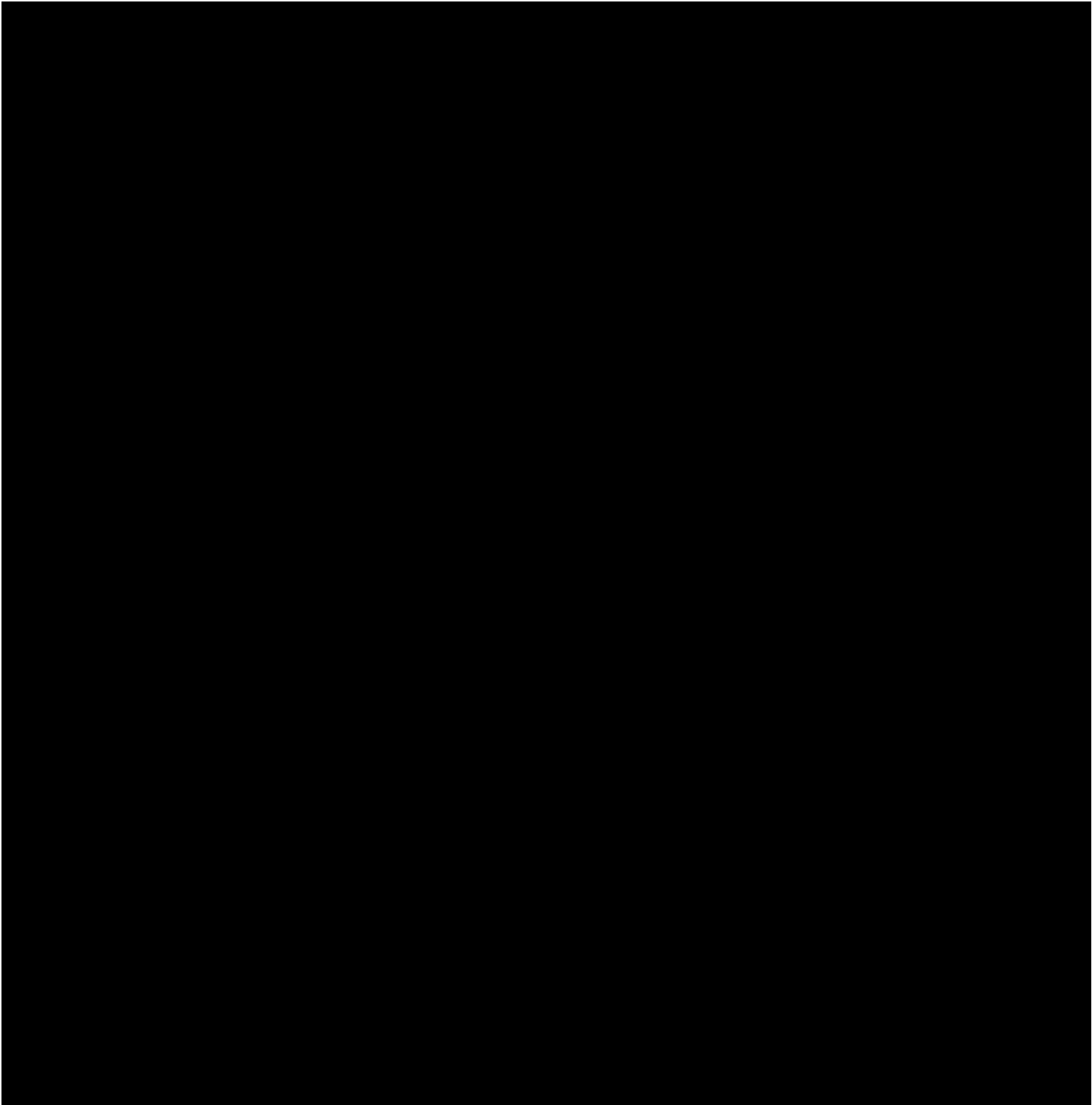
Stages	HW	GA	HE
Stage 1	<i>To end of Load Vessel week 21</i>	<i>To end of Load Vessel week 21</i>	<i>To end of Load Vessel week 21</i>
Stage 2	<i>Load Vessel week 22 to end of Load Vessel week 31</i>	<i>Load Vessel week 22 to end of Load Vessel week 27</i>	<i>Load Vessel week 22 to end of season</i>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

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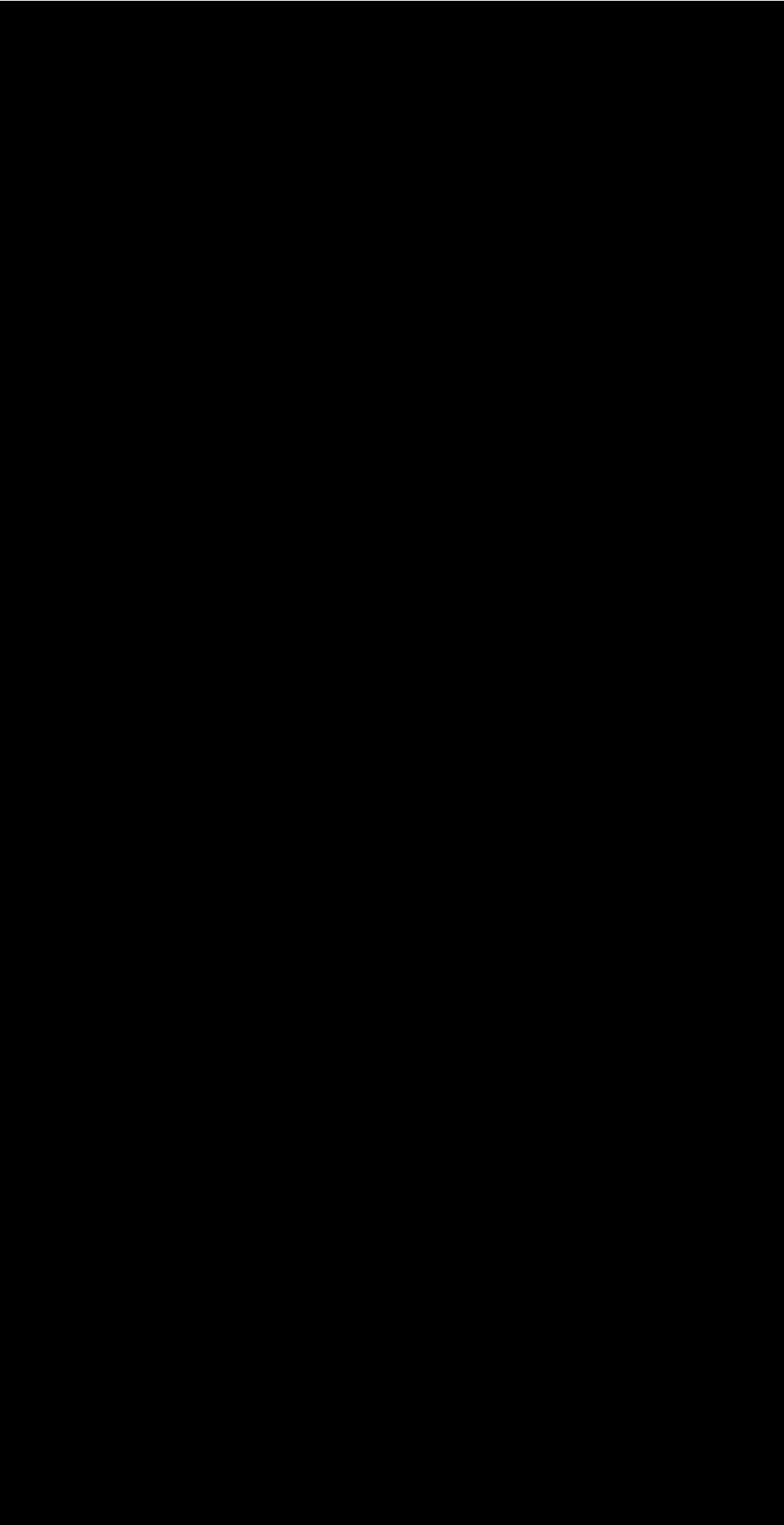
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ZESPRI INTERNATIONAL LIMITED

SUPPLIER ACCOUNTABILITY DISPUTE PRO-FORMA 2023

To :	COMMERCIAL MANAGER SUPPLY CHAIN	Date :	
Registered Supplier 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 Registered Supplier 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 Registered Supplier has lodged a dispute under **Section D of Schedule 11**, the Registered Supplier may elect to deposit an amount of money equivalent to the amount of the charges applied in accordance with **clause B12 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 Registered Supplier shall instruct the Escrow Agent to hold the Disputed Amount in escrow in the joint names of the Registered Supplier 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 Registered Supplier;
 - b. The Registered Supplier 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 Registered Supplier 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 Registered Supplier of the instructions issued under **clause 4(d)(i)**.
 - e. Five working days after:
 - i. The Registered Supplier giving written instructions to the Escrow Agent to pay all of the Disputed Amount to the Registered Supplier on account of the dispute being deemed to be accepted by ZGL under **clause D1.13 of Schedule 11**; and
 - ii. The Registered Supplier 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 Registered Supplier.
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 Registered Supplier 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 Registered Supplier 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 Registered Supplier.
- 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 Registered Supplier acknowledge that the Escrow Agent shall have no other liability or responsibility to them otherwise than as expressly set out in this **Appendix 6**.

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Schedule 12: Invoices, Payment Documentation & Reporting

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SECTION B	PAYMENT DOCUMENTATION.....	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 Registered Supplier, in the name of the Registered Supplier, or, where an assignment is in place, in the name of the assignee, providing the Registered Supplier or assignee is GST registered;
 - (b) Where the Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier for any Kiwifruit or Services other than as set out under **clauses C2 to C6** of the **Pricing and Payment Manual** unless the Registered Supplier provides to ZGL a copy of the Service Level Agreement signed between ZGL and the Registered Supplier for the Kiwifruit or Services invoiced.

SECTION B PAYMENT DOCUMENTATION

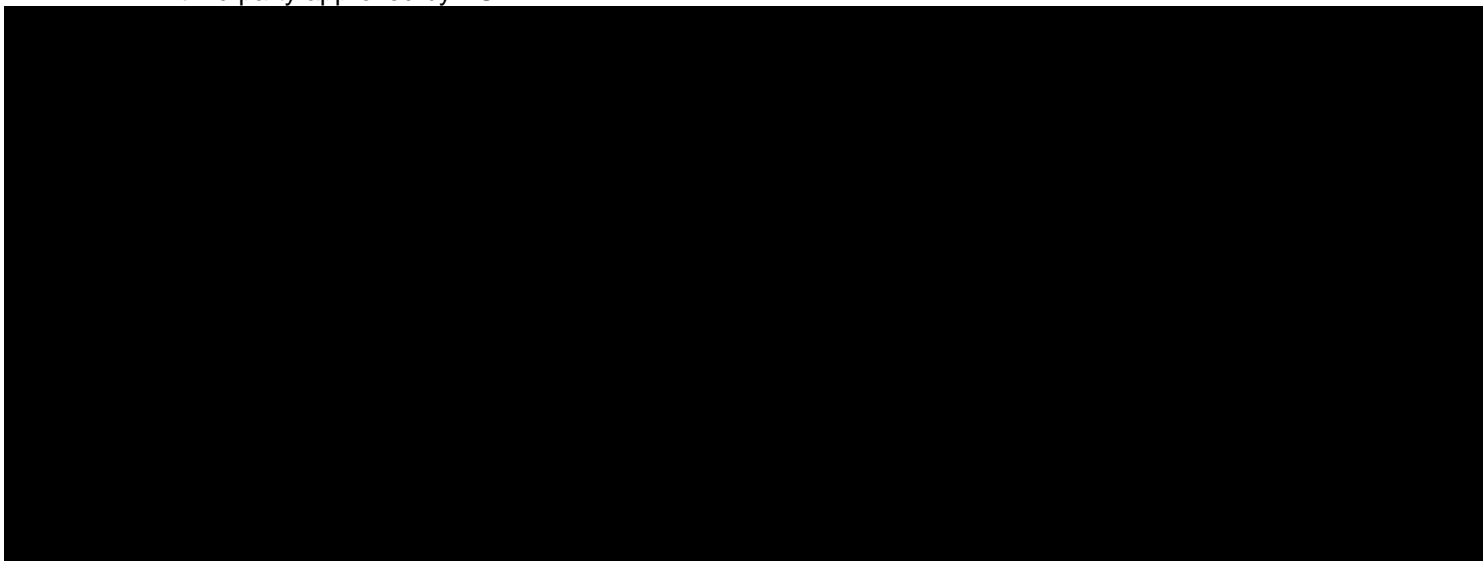
- B1.1 ZGL will provide, for amounts payable by ZGL:
- (a) Hard copy printed or electronic invoices recording the payment type, quantity of Kiwifruit to which the payment relates and amount of the payment to the Registered Supplier or where there is an assignment in place, to the assignee;
 - (b) Full 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 Registered Supplier from time to time.

SECTION C DISCLOSURE REQUIREMENTS

- C1.1 ZGL will provide each Grower, with payment and inventory information relating to Kiwifruit supplied from each Grower Number in respect of that Grower, 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 the Registered Supplier 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 Registered Supplier's performance of the Services in relation to Kiwifruit supplied from all Grower Numbers listed in relation to the Registered Supplier.

C1.3 In the event that the Registered Supplier 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 Registered Supplier is providing Services on behalf of the Grower requesting the information. ZGL will notify the Registered Supplier of all information provided to a Grower under this **clause C1.3**.

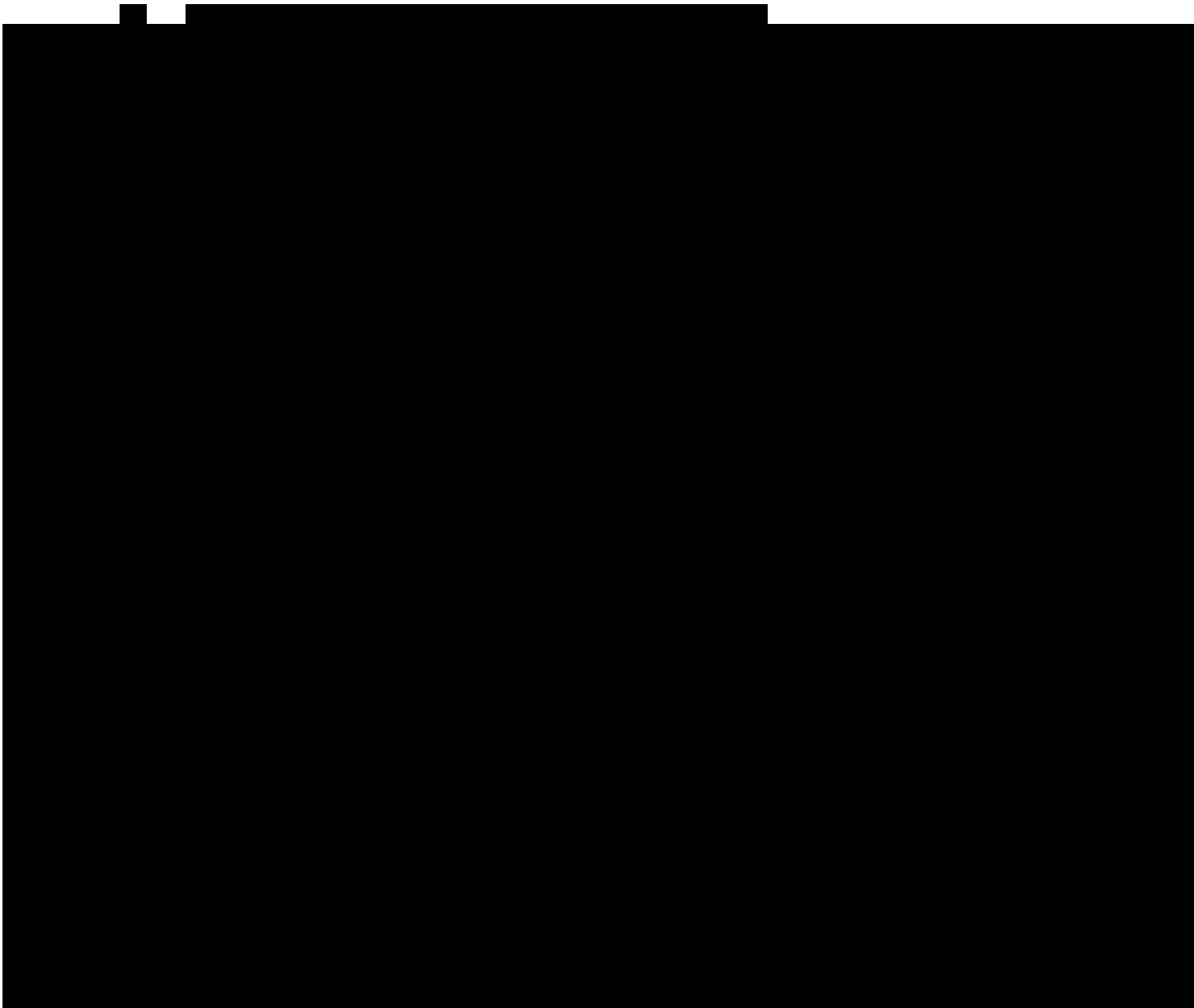
C1.4 The Registered Supplier will provide the following reports to ZGL either directly or via an independent third party approved by ZGL:

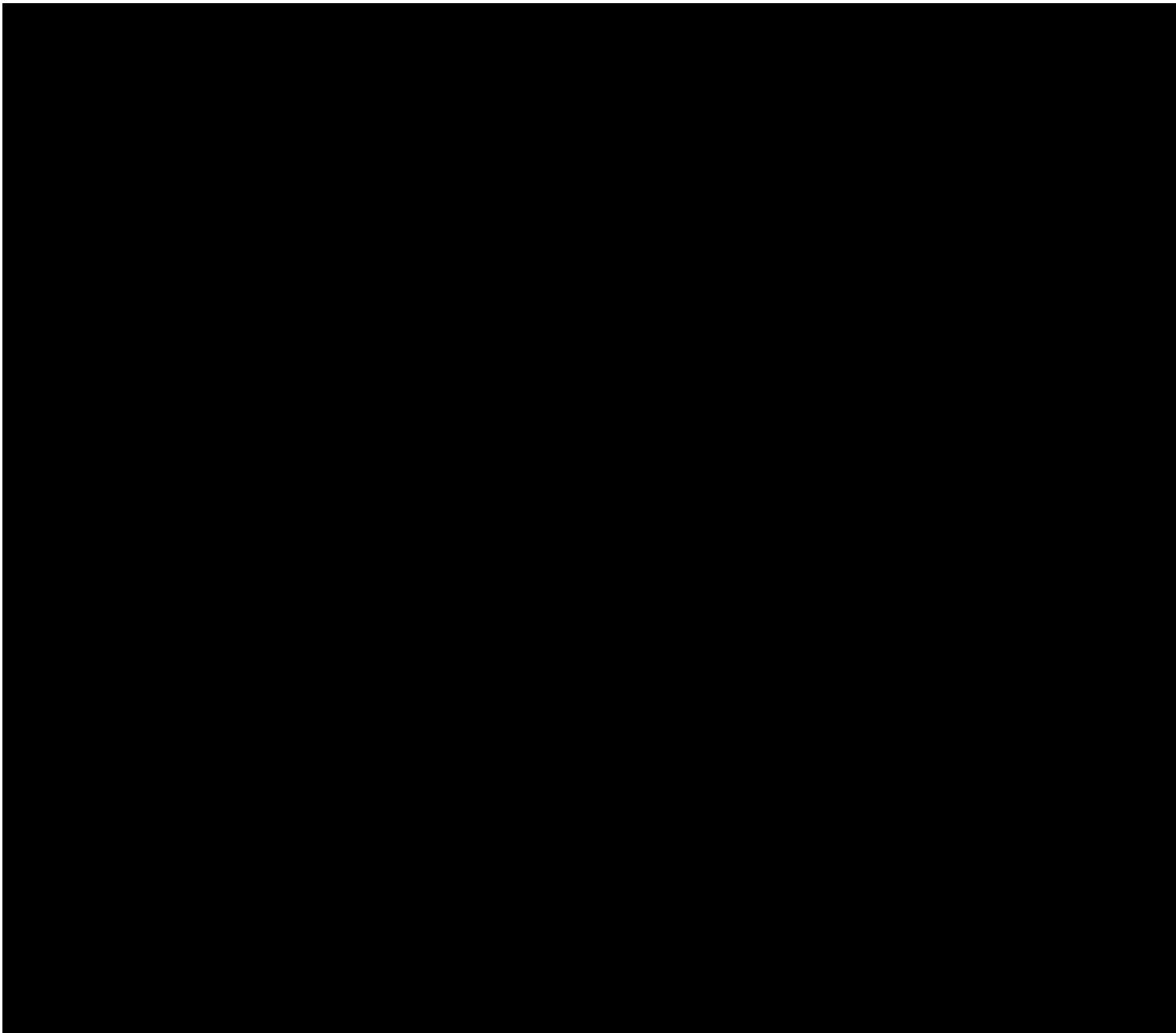


C1.5 ZGL will provide reports to the following parties:

(a) Reports for Registered Suppliers:

Report	Format	Detail	Frequency / Timing
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
██████████	██████████ ██████████	██████████	██████████
██████████ ██████████	██████████ ██████████	██████████	██████████ ██████████





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

2023 Kiwifruit Season

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

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INVOICE SUMMARY

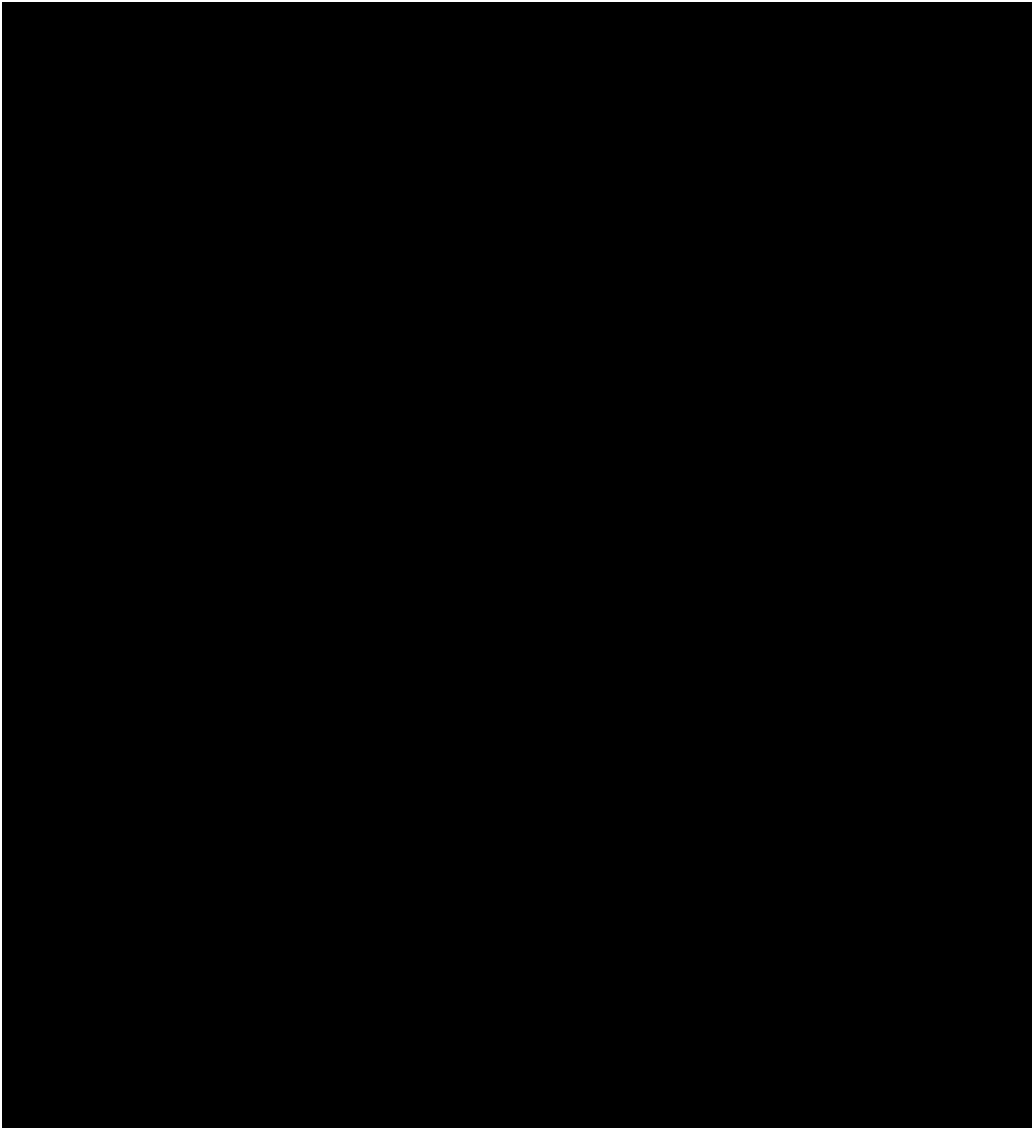
Description	Quantity	Rate \$	Amount \$
GST Standard Rate Transactions			
Progress			
	TE		
	TE		
	TE		
	TE		
	TE		
	TE		
	TE		
Fruit Loss Reversals			
Total GST Standard Rate Transactions			
Total before GST			
GST on Invoice			
Total Including GST			
Total Invoice - Owing to Supplier			

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 Registered Supplier must provide Post Harvest Costs to ZGL either directly or via an independent third party approved by ZGL in the following format:



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

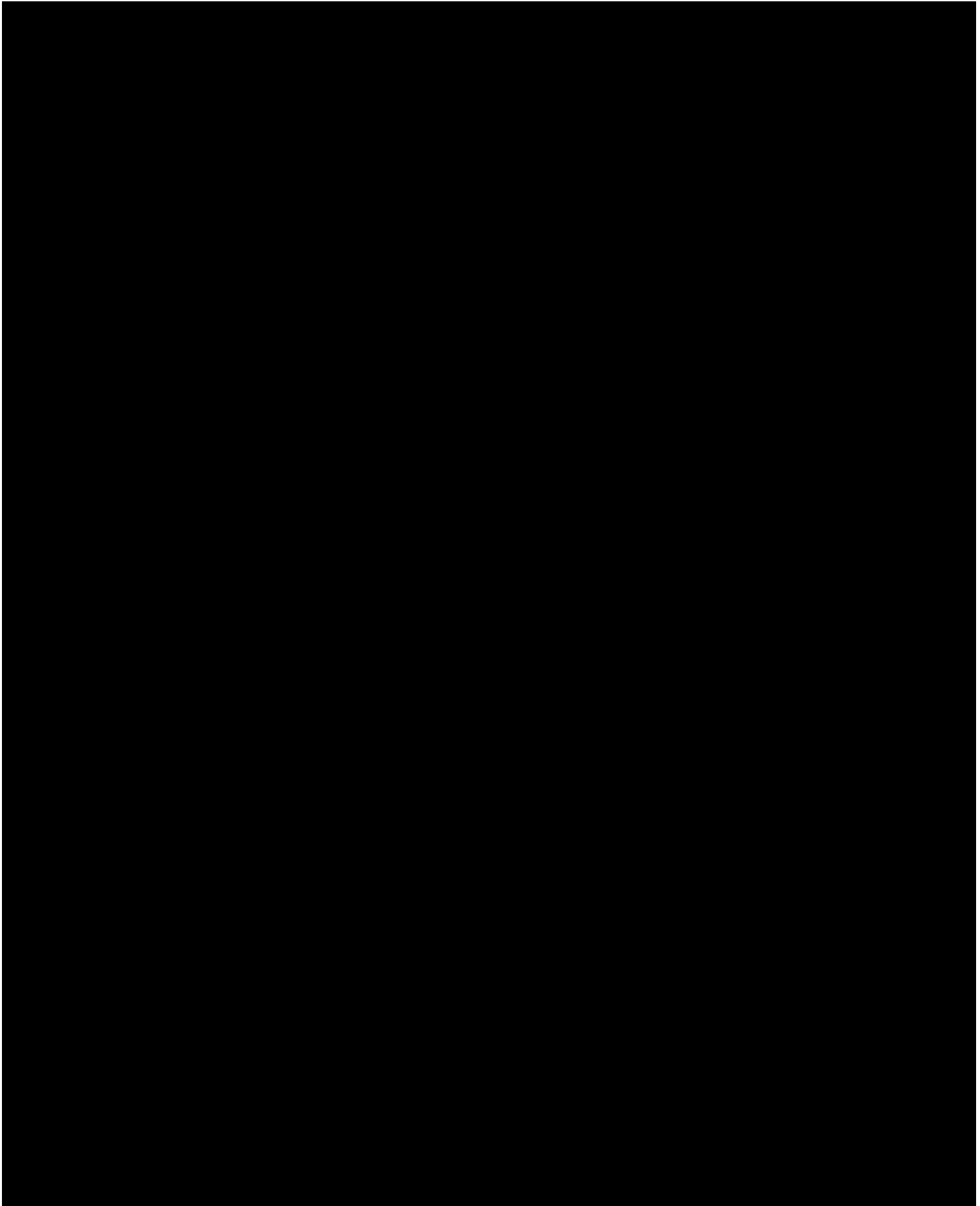
Schedule 13: Infringement Charges

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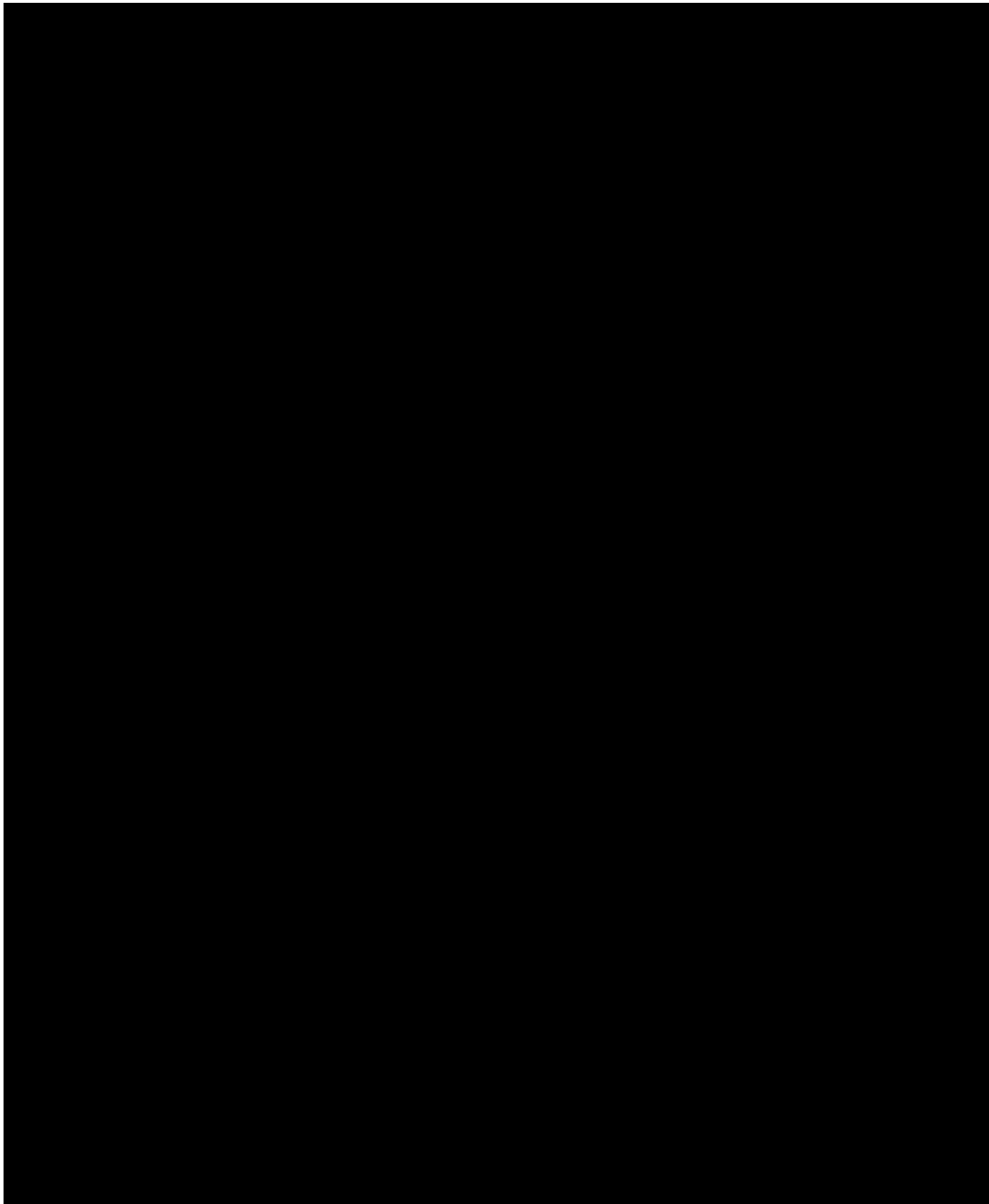
SECTION A	INFRINGEMENT CHARGES	2
SECTION B	DISPUTES	7

SECTION A INFRINGEMENT CHARGES

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







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

A1.3 The Registered Supplier will supply to ZGL an invoice for the Amount Due payable by ZGL. ZGL will pay the Amount Due to the Registered Supplier 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.

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 Registered Supplier 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 Registered Supplier 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 the end of the first full week in June 2024, 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 Registered Suppliers 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 SunGold Kiwifruit	GA	Class 1	Conventional, conversion and transition
Zespri SunGold Organic Kiwifruit	GA	Class 1	Organic: Biogro certified

Zespri RubyRed Kiwifruit	RS	Class 1	Conventional, conversion and transition
Green Kiwifruit	HW	Class 2	Conventional, conversion and transition
Green Organic Kiwifruit	HW	Class 2	Organic: Biogro certified
Zespri SunGold Kiwifruit	GA	Class 2	Conventional, conversion and transition
Zespri SunGold Organic Kiwifruit	GA	Class 2	Organic: Biogro certified, procured as Zespri SunGold Kiwifruit Class 2 (GA2CK)

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) 95% of Marine Cargo (Cyber) Insurance premiums;
 - (iii) 100% of Charterer’s Liability Insurance premiums;
 - (iv) 100% of Pool Hail Policy Insurance premiums (if applicable);
 - (v) 50% of Product/Public Liability Insurance premiums; and
 - (vi) 75% of Contaminated Products Insurance premiums;
 - (vii) 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 Registered Supplier (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**);
 - (iv) Non-fruit loss costs which relate to the Marine Cargo Insurance policy such as, but not limited to, detention and demurrage, customs fees, import fees and disposal fees;
 - (v) Costs of any experts such as surveyors, loss assessors and legal advisors.
 - (d) 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.

- (e) Costs incurred in attempting to make recoveries on losses, whether the recovery is successful or not;
- (f) 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;
- (g) Losses and costs related to arranging cover in respect of Kiwifruit damage as a direct result of Hail Strike (as defined in Pool Distribution Policy for Hail Policy as described in Section **D** of **Schedule 10**) under **clause A6.3(a)** of the **Supply Agreement**;
- (h) 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)**);
- (i) 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 Registered Supplier 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)**);
 - (xii) India Horticultural Assistance Package for the India tariff relief programme.
- (j) Kiwifruit New Zealand costs of funding and compliance costs under the Regulations;
 - (k) Costs as referred to in **clause A13.3 of the Supply Agreement**;
 - (l) 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;
 - (m) 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**.

- (n) 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(m)** and Registered Supplier costs incurred in minimising the risk and exposure for contractors of such duties, charges, taxes and penalties;
- (o) 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;
- (p) 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;
- (q) 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 or any such amendment or replacement legislation or order;
- (r) Kiwifruit Vine Health (KVH) will agree a per tray rate at the KVH annual general meeting pursuant to the National Pathway 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 all commercial variety’s. 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 all commercial variety’s. 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(h)(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(g)** and GLOBALG.A.P/Food Act/BRC (refer **clause A2.5(i)(vi)**);

- (e) Taxation on profits generated for the benefit of ZGL other than those costs referred to in **clause A2.5(l)** and **A2.5(m)**; 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 Registered Suppliers as set out in **clause B1**.

A2.8 “Fruit Incentives” means payments made by ZGL to Registered Suppliers 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 November forecast Fruit Return and Maximum Taste Payments for Zespri Green Organic Kiwifruit, Zespri SunGold Kiwifruit, Zespri SunGold 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 the current year’s August forecast has been ZGL Board approved. ZGL will advise the final Period 1 rates and reissue **APPENDIX 3** to the Registered Supplier after the current year’s August forecast has been approved by the ZGL Board;
- (b) Taste Zespri calculated in accordance with **APPENDIX 6** for Kiwifruit meeting the criteria set by ZGL. For the purposes of determining the maximum Taste Zespri payment, the current year’s August forecast Fruit Return will be used as calculated in accordance with **clause A2.2**. If Taste Zespri payments are made prior to the current year’s August forecast Fruit Return being published, the preceding year’s November forecast Fruit Return for Zespri Green Organic Kiwifruit, Zespri SunGold Kiwifruit, Zespri SunGold Organic Kiwifruit, Zespri Sweet Green Kiwifruit and Zespri Green Kiwifruit will be used in the calculation set out in **APPENDIX 6** for the purposes of determining the Maximum Taste Zespri payment. An adjustment will then be made to all payments to account for the difference between the payment calculated in accordance with the preceding year’s November forecast and the payment calculated in accordance with the current year’s August forecast Fruit Return. ZGL will make the adjustment prior to 30th November. No Taste Zespri payment will be made on Zespri RubyRed Kiwifruit in 2023; and
- (c) [REDACTED]
[REDACTED]
[REDACTED] by the Registered Supplier as set out in **clauses B12** and **C10 of Schedule 11**.

A2.9 In calculating the Fruit Returns for the Season ZGL will apply and comply with Generally Accepted Accounting Practice as that term is defined in the Financial Markets Conduct Act 2013 and Financial Reporting Act 2013 except to the extent **clauses A2.14** and **A2.11** apply.

- A2.10** Where the revenues and or costs referred to in **clauses A2.2(a) to A2.2(c)** and **A2.2(e) to A2.2(f)** are incurred or received in relation to more than one Pool, ZGL will apply the allocation methodology as set out in more detail in the Pool Policy Manual.
- A2.11** Where the revenues and or costs referred to in **clauses A2.2(a) to A2.2(c)** and **A2.2(e) to A2.2(f)** are incurred or received, or will be or have been incurred or received in relation to more than one season, ZGL will take into account for the purpose of calculating the Fruit Return the revenues and costs which relate to the supply or intended supply of Kiwifruit in the Season, and will allocate revenues and costs which relate to the supply or intended supply of Kiwifruit in a future season to that season (Where GAAP Accounting Standards allows this).
- A2.12** Where costs and or revenues have been incurred and or received, in relation to a prior season, of a kind that would come within the meaning of **clauses A2.2(a) to A2.2(c)** and **A2.2(e) to A2.2(f)** if they had been incurred in the Season and those costs or those revenues or reductions have not been recognised wholly in any prior season, ZGL may recognise those costs or revenues or reductions, in whole or in part, in the Season.

As far as reasonably practicable, ZGL will allocate such costs and revenues it has recognised as between ZGL and the Pools in the same way as they would be allocated if they had been incurred in the Season.

Despite the provisions of this **clause A2.12**, if any individual item of cost exceeds two million dollars (\$2,000,000) in value, and ZGL proposes to allocate some or all of the cost to the Pool, ZGL will consult with the IAC regarding the recognition and allocation of that item in the Season.

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 Registered Supplier 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 The ZGL 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 as if **clauses A2.3(b)** and **A2.3(c)** were deleted; plus
- (b) the Fruit Return Margin Percentage of:
 - (i) Net Sales as defined in **clause A2.3**, for the Pool, but as if **clause A2.3(b)** were deleted, less the items in clauses: **A2.2(b)**; **A2.2(c)**; **A3.1(a)**; **B1.1(a)**, except to the extent it relates to Collaborative Marketing Arrangements; and **B1.1(b)**, except to the extent it relates to Collaborative Marketing Arrangements.

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 Registered Supplier:

- (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 November forecast Fruit Return for Zespri Green Organic Kiwifruit, Zespri SunGold Kiwifruit, Zespri SunGold 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 2.5** 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 November forecast Fruit Return for Zespri Green Organic Kiwifruit, Zespri SunGold Kiwifruit, Zespri SunGold 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 the current year's August forecast has been approved by the ZGL Board. ZGL will advise the final Period 1 rates and reissue **APPENDIX 3** to the Registered Supplier after the current year's August forecast has been approved by the ZGL Board.

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 2024	On or before the end of the first full week in June 2024

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 Registered Supplier in accordance with this **clause C2.1** (a “Standard Advance Payment”) for all Class 1 Kiwifruit to be supplied by the Registered Supplier 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 Registered Supplier.

C2.2 Standard Advance Payments will be made by direct credit to an account notified by the Registered Supplier 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 forty-five cents (\$2.45) per Tray Equivalent for HW (sizes 18 – 39) and HW Organic (all sizes), two dollars twenty-five cents

(\$2.25) per Tray Equivalent for HW (size 42), three dollars thirty cents (\$3.30) per Tray Equivalent for GA, two dollars eighty cents (\$2.80) per Tray Equivalent for HE, and three dollars thirty cents (\$3.30) per Tray Equivalent for RS.

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 Registered Supplier 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 Registered Supplier amounts equivalent to either the Standard Advance Payment made to the Registered Supplier 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 B13, B14, 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 Pool Policy Manual. 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 B12** and **C10** of **Schedule 11**.

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

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 Registered Supplier, amounts equivalent to the Fruit Incentive payment made to the Registered Supplier, for that Kiwifruit.

C4 PROGRESS PAYMENTS

C4.4 ZGL may on the 15th day of any month during the Season make a payment to the Registered Supplier (a “Progress Payment”) by direct credit to the account notified by the Registered Supplier 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.

C4.5 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.

C4.6 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 Registered Supplier 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 Registered Supplier an amount equivalent to all Progress Payments made to the Registered Supplier for that Kiwifruit, or the Surplus, whichever is greater.

C5 FINAL PAYMENT

C5.1 ZGL will on or before the end of the first full week in June 2024 make a payment to the Registered Supplier (the “Final Payment”) for all Kiwifruit supplied to ZGL by the Registered Supplier 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 Registered Supplier will be:

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

C6.3 ZGL will make the following payments under **clause C4.4** 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 Registered Supplier amounts equivalent to the Service Payment made to the Registered Supplier for the Kiwifruit.
- C6.6** An adjustment Pack Differential payment or receipt will be raised in the months of July, September and December for the scenarios in **clause C6.6(a), (b), (c) and (d)** where a Pack Differential rate has been paid for a fruit group-pack category combination that has an actual ship method that differs from the assumed ship method in the Pack Differential standard cost model. The adjustment payment will reflect the difference between the Pack Differential rates in **Appendix 2** and the adjusted rates calculated for the scenarios in **clause C6.6(a), (b), (c) and (d)**.
 - (a) Charter-based pack-types shipped in container vessels
 - (b) Container-based pack-types shipped in charter vessels
 - (c) Charter-based pack-types shipped in containers on charter deck
 - (d) Container-based pack-types shipped in containers on charter deck

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 B12 and C10 of Schedule 11**.

C8 OTHER PAYMENTS

C8.1 Any payment due to a Registered Supplier not paid directly under **clauses C2 to C5.2(b)** will be paid by ZGL to the Registered Supplier on the 20th of the month following the month in which the Registered Supplier'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 Registered Supplier are excessive as a result of any of the following occurrences (each an "Overpayment"):

- (a) Any payment to a Registered Supplier that has been wrongly calculated by ZGL and exceeds the correct amount due to the Registered Supplier; or
- (b) Standard Advance Payments have been made to the Registered Supplier 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 Registered Supplier 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 C4.6** applies and repayment is required;
- (d) The aggregate of the payments made to the Registered Supplier 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 Registered Supplier 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 Registered Supplier to ZGL.

If ZGL has made an Overpayment ZGL may, when it makes any subsequent payment due to the Registered Supplier 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 Registered Supplier will pay the amount of the excess to ZGL within 14 days of notice being given by ZGL to the Registered Supplier 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 Registered Supplier, 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 REGISTERED SUPPLIER RESPONSIBILITIES

- E1.1** The Registered Supplier 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** Error! Reference source not found. above; and
 - (c) Pay a 2% wastage charge for Green and 8% wastage charge for SunGold calculated by ZGL under **clause E3** at the end of the Season.

E2 APPROVED PACKAGING SUPPLIERS

- E2.1** Zespri will set a specification for all packaging components and provided it informs the Registered Supplier of that specification it shall be the Registered Supplier's responsibility to check that the packaging complies with such specification.

E3 LABEL WASTAGE CALCULATION

- E3.1** 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 and RS 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.

E4 PALLET/PALLET VISUAL LABELS

- E4.1** The Registered Supplier 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 Registered Supplier 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 Registered Supplier 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 Registered Supplier the costs of the maturity clearance services provided to Grower numbers under Schedule 3 and 4.

H2 REGISTERED SUPPLIER RESPONSIBILITIES

H2.1 The Registered Supplier will:

- (a) Pay ZGL the charges for the maturity clearance services provided to the Grower Numbers under Schedule 3 and 4 if that Grower Number is associated with the Registered Supplier at the time the maturity clearance services are requested.

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

(a) Standard Supply

The table below sets out Standard Supply for the 2023 Season and fruit size groupings for payment purposes:

Class 1 – Standard Supply					
Conventional					
Size					
Zespri® SunGold Kiwifruit	16/22	25/27	30/33	36	n.a.
Zespri® Sweet Green Kiwifruit	18/22	25/27	30/33	36/39	42
Zespri® Green Kiwifruit	18/22	25/27	30/33	36/39	42
Zespri® RubyRed Kiwifruit	18/22	25/27	30/33	36/39	42
Organic					
Zespri® SunGold Organic Kiwifruit	16/22	25/27	30/33	36	n.a.
Zespri® Green Organic Kiwifruit	18/22	25/27	30/33	36/39	42

(b) Non-Standard Supply

The tables below set out the Class 1 and Class 2 Non-Standard Supply for the 2023 Season that may be procured for supply under a Service Level Agreement:

Class 1 Non-Standard Supply (NSS)				
Conventional				
	Size 39	Size 42	Size 46	Size 49
Zespri® SunGold Kiwifruit	Contracted Volume only Taste Band Y/T/R	Not Procuring	Not Procuring	n.a.
Zespri® Sweet Green Kiwifruit	Standard Supply	Standard Supply	Not Procuring	n.a.
Zespri® Green Kiwifruit	Standard Supply	Standard Supply	Not Procuring	n.a.
Zespri® RubyRed Kiwifruit	Standard Supply	Standard Supply	Procuring limited supply under Special Programmes	Procuring limited supply under Special Programmes
Organic				
Zespri® SunGold Organic Kiwifruit	Contracted Volume only Taste Band Y/T/R	Not Procuring	Not Procuring	n.a.
Zespri® Green Organic Kiwifruit	Standard Supply	Standard Supply	Not Procuring	n.a.

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 - 42	Contracted Volume
Organic		
Zespri® SunGold Organic Kiwifruit	18 - 39	Procurement/submitted as GA2CK. All sizes contracted Volume. Size 39 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".

2023 Base Pack Definitions

HW Base Pack = HW ENMB-2023 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*

HW Organic Base Pack = HWOB ENMB-2023 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 Organic Green Graphic*

GA Base Pack = GA ENML - 2023 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*

GA Organic Base Pack = GAOB ENML – 2023 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 Organic SunGold Graphic*

HE Base Pack = HE ENML - 2023 ZGL Pack Specification and Pallet Presentation

- *Euro Base, Normal Height, Modular loose fill pack incorporating corrugated cardboard body with an integral display lid*
- *Zespri Kraft pack, 1 colour Post print Zespri Kraft Graphics*

RS Base Pack = RS ENML - 2023 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 RubyRed™ 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	2023 Pack Differential (Base Pack By Variety)	2022 Pack Differential (Base Pack By Variety)	\$ Change (2022 vs 2023)	% Change (2022 vs 2023)
16	GA1CK	ENML	GA1CKENML	\$0.0000	\$0.0000	\$0.0000	
16	GA1CK	E3IJ	GA1CKE3IJ	\$2.5509	\$2.2161	\$0.3348	15.11%
16	GA1CK	ENIJ	GA1CKENIJ	\$2.5950	\$2.2314	\$0.3636	16.29%
16	GA1CK	E3IT	GA1CKE3IT	\$1.9940	\$1.7002	\$0.2938	17.28%
16	GA1CK	ENIT	GA1CKENIT	\$2.0267	\$1.7083	\$0.3185	18.64%
16	GA1CK	ENM2	GA1CKENM2	\$1.5085	\$1.2042	\$0.3042	25.26%
16	GA1CK	E2M2	GA1CKE2M2	\$1.4868	\$1.1989	\$0.2879	24.02%
16	GA1CK	E2ML	GA1CKE2ML	-\$0.0352	-\$0.0129	-\$0.0223	173.04%
16	GA1CK	ESML	GA1CKESML	\$0.4429	\$0.4141	\$0.0288	6.96%
16	GA1CK	E1MX	GA1CKE1MX	-\$0.0854	-\$0.0405	-\$0.0448	110.56%
16	GA1CK	ENMX	GA1CKENMX	-\$0.1609	-\$0.1316	-\$0.0293	22.23%
16	GA1CK	ENLM	GA1CKENLM	\$0.0000	\$0.0000	\$0.0000	0.00%
16	GA1CK	EN2L	GA1CKEN2L	\$0.0000	\$0.0000	\$0.0000	0.00%
16	GA1CK	E2LM	GA1CKE2LM	-\$0.0352	-\$0.0129	-\$0.0223	173.04%
16	GA1CK	E22L	GA1CKE22L	-\$0.0352	-\$0.0129	-\$0.0223	173.04%
12	GA1OB	E2ML	GA1OBE2ML	-\$0.0353	-\$0.0129	-\$0.0224	174.12%
12	GA1OB	E3IT	GA1OBE3IT	\$2.0133	\$1.7347	\$0.2786	16.06%
12	GA1OB	ENIT	GA1OBEENIT	\$2.0460	\$1.7428	\$0.3032	17.40%
12	GA1OB	ENIJ	GA1OBEENIJ	\$2.3524	\$2.0247	\$0.3277	16.19%
12	GA1OB	ENM2	GA1OBEENM2	\$1.5069	\$1.2132	\$0.2937	24.21%
12	GA1OB	ENML	GA1OBEENML	\$0.0000	\$0.0000	\$0.0000	
12	GA1OB	E3IJ	GA1OBE3IJ	\$2.3508	\$2.0647	\$0.2862	13.86%
92	GA2CK	ENML	GA2CKENML	-\$0.0954	-\$0.0713	-\$0.0241	33.73%
92	GA2CK	E2ML	GA2CKE2ML	-\$0.0352	-\$0.0129	-\$0.0223	173.04%
38	GA2OB	ENML	GA2OBEENML	-\$0.0956	-\$0.0712	-\$0.0244	34.26%
38	GA2OB	E2ML	GA2OBE2ML	-\$0.0353	-\$0.0129	-\$0.0224	174.12%
18	HE1CK	ENML	HE1CKENML	\$0.0000	\$0.0000	\$0.0000	
18	HE1CK	E3IT	HE1CKE3IT	\$1.9020	\$1.6363	\$0.2657	16.24%
18	HE1CK	ENIT	HE1CKENIT	\$1.9347	\$1.6443	\$0.2904	17.66%
18	HE1CK	E2ML	HE1CKE2ML	-\$0.0361	-\$0.0131	-\$0.0230	176.21%
01	HW1CK	ENMB	HW1CKENMB	\$0.0000	\$0.0000	\$0.0000	
01	HW1CK	IT (Jumbo)	HW1CKE3IT (Jumbo)	\$2.7779	\$2.4060	\$0.3719	15.46%
01	HW1CK	IT (Jumbo)	HW1CKH3IT (Jumbo)	\$2.9191	\$2.5456	\$0.3735	14.67%
01	HW1CK	IT (Jumbo)	HW1CKENIT (Jumbo)	\$2.8107	\$2.4141	\$0.3966	16.43%
01	HW1CK	IT (Jumbo)	HW1CKHNIT (Jumbo)	\$2.8590	\$2.4881	\$0.3709	14.91%
01	HW1CK	E3IT	HW1CKE3IT	\$2.6425	\$2.2909	\$0.3516	15.35%
01	HW1CK	ENIT	HW1CKENIT	\$2.6752	\$2.2989	\$0.3763	16.37%
01	HW1CK	E2LM	HW1CKE2LM	\$0.7388	\$0.6456	\$0.0932	14.44%
01	HW1CK	ENLM	HW1CKENLM	\$0.7733	\$0.6581	\$0.1152	17.50%
01	HW1CK	E2M2	HW1CKE2M2	\$2.0996	\$1.7637	\$0.3359	19.04%
01	HW1CK	ENM2	HW1CKENM2	\$2.1351	\$1.7767	\$0.3584	20.17%
01	HW1CK	E1MB	HW1CKE1MB	-\$0.0255	-\$0.0059	-\$0.0196	330.92%
02	HW2CK	E1MB	HW2CKE1MB	-\$0.0190	-\$0.0007	-\$0.0183	2802.70%
02	HW2CK	ENMB	HW2CKENMB	\$0.0066	\$0.0053	\$0.0013	24.46%
01	HW1CK	E2ML	HW1CKE2ML	\$0.7388	\$0.6456	\$0.0932	14.44%
01	HW1CK	ENML	HW1CKENML	\$0.7733	\$0.6581	\$0.1152	17.50%
01	HW1CK	E1BM	HW1CKE1BM	-\$0.0255	-\$0.0059	-\$0.0196	330.92%
04	HW1OB	E3IT	HW1OBE3IT	\$2.6617	\$2.2916	\$0.3700	16.15%
04	HW1OB	ENIT	HW1OBEENIT	\$2.5870	\$2.2197	\$0.3673	16.55%
04	HW1OB	E1MB	HW1OBE1MB	-\$0.0255	-\$0.0059	-\$0.0196	331.16%
04	HW1OB	ENMB	HW1OBEENMB	\$0.0000	\$0.0000	\$0.0000	
05	HW2OB	ENMB	HW2OBEENMB	\$0.0000	\$0.0000	\$0.0000	0.00%
05	HW2OB	E1MB	HW2OBE1MB	-\$0.0474	-\$0.0310	-\$0.0164	53.11%
78	RS1CK	ENML	RS1CKENML	\$0.0000	-\$0.0313	\$0.0313	-100.00%
78	RS1CK	E2ML	RS1CKE2ML	\$0.1905	\$0.1077	\$0.0829	76.95%

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 the current year's August forecast has been approved by the ZGL Board in accordance with **clauses A2.8(a) and B1.1(C)(I)**.

ZESPRI® SUNGOLD Kiwifruit

ISO Week	Calendar Dates	16/22	25/27	30/33	36	Total Average
Week 10/11	to 14 Mar	\$3.10	\$3.00	\$2.91	\$3.00	\$3.00
Week 11/12	15 Mar - 21 Mar	\$2.54	\$2.50	\$2.46	\$2.50	\$2.50
Week 12/13	22 Mar - 28 Mar	\$1.89	\$2.05	\$2.18	\$2.05	\$2.05
Week 13/14	29 Mar - 4 Apr	\$1.37	\$1.65	\$1.87	\$1.65	\$1.65
Week 14/15	5 Apr - 13 Apr	\$0.94	\$1.25	\$1.50	\$1.25	\$1.25
Week 15/16	14 Apr - 18 Apr	\$0.50	\$0.75	\$0.94	\$0.75	\$0.75

The week 15/16 rate may or may not be used depending on seasonal circumstances

ZESPRI® SUNGOLD Organic Kiwifruit

ISO Week	Calendar Dates	16/22	25/27	30/33	36	Total Average
Week 10/11	to 14 Mar	\$3.51	\$3.30	\$3.14	\$3.30	\$3.30
Week 11/12	15 Mar - 21 Mar	\$2.88	\$2.80	\$2.74	\$2.80	\$2.80
Week 12/13	22 Mar - 28 Mar	\$2.14	\$2.35	\$2.51	\$2.35	\$2.35
Week 13/14	29 Mar - 4 Apr	\$1.50	\$1.85	\$2.12	\$1.85	\$1.85
Week 14/15	5 Apr - 11 Apr	\$1.03	\$1.35	\$1.61	\$1.35	\$1.35

ZESPRI® GREEN Kiwifruit

ISO Week	Calendar Dates	16/18/22	25/27	30/33	36	39	Total Average
Week 11/12	18 Mar - 24 Mar	\$3.10	\$3.09	\$3.08	\$3.10	\$2.33	\$3.10
Week 12/13	25 Mar - 31 Mar	\$2.60	\$2.77	\$2.92	\$2.65	\$1.82	\$2.65
Week 13/14	1 Apr - 8 Apr	\$2.27	\$2.58	\$2.86	\$2.36	\$1.46	\$2.35
Week 14/15	9 Apr - 16 Apr	\$1.86	\$2.22	\$2.52	\$1.96	\$1.12	\$1.95
Week 15/16	17 Apr - 21 Apr	\$1.55	\$1.96	\$2.32	\$1.67	\$0.84	\$1.65
Week 16/17	22 Apr - 28 Apr	\$1.15	\$1.54	\$1.88	\$1.26	\$0.56	\$1.25
Week 17/18	29 Apr - 5 May	\$0.90	\$1.30	\$1.64	\$1.02	\$0.36	\$1.00
Week 19	6 May - 14 May	\$0.59	\$0.83	\$1.05	\$0.66	\$0.25	\$0.65
Week 20	15 May - 19 May	\$0.36	\$0.51	\$0.64	\$0.41	\$0.15	\$0.40

The week 19 & week 20 rates may or may not be used depending on seasonal circumstances

ZESPRI® GREEN Organic Kiwifruit

ISO Week	Calendar Dates	16/18/22	25/27	30/33	36	39	42	Total Average
Week 12/13	25 Mar - 31 Mar	\$3.96	\$3.75	\$3.56	\$3.70	\$3.74	\$3.95	\$3.70
Week 13/14	1 Apr - 8 Apr	\$3.19	\$3.20	\$3.21	\$3.20	\$3.20	\$3.19	\$3.20
Week 14/15	9 Apr - 14 Apr	\$2.51	\$2.67	\$2.81	\$2.71	\$2.68	\$2.52	\$2.70
Week 15/16	15 Apr - 21 Apr	\$1.98	\$2.24	\$2.47	\$2.30	\$2.25	\$1.99	\$2.30
Week 16/17	22 Apr - 28 Apr	\$1.46	\$1.78	\$2.06	\$1.86	\$1.80	\$1.47	\$1.85
Week 17/18	29 Apr - 5 May	\$0.96	\$1.28	\$1.56	\$1.36	\$1.29	\$0.97	\$1.35
Week 18/19	6-May - 12 May	\$0.71	\$0.94	\$1.16	\$1.00	\$0.96	\$0.72	\$1.00

The week 18/19 rate may or may not be used depending on seasonal circumstances

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 the current year's August forecast has been approved by the ZGL Board in accordance with **clause B1.1(b)**.

ZESPRI INTERNATIONAL LIMITED Indicative Rates For 2023 Season Class 1 HW1CK \$ 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	\$ 0.1887	\$ 0.1887	\$ 0.1884	\$ 0.1881	\$ 0.1865
26	\$ 0.2973	\$ 0.2973	\$ 0.2966	\$ 0.2960	\$ 0.2926
27	\$ 0.4401	\$ 0.4401	\$ 0.4387	\$ 0.4375	\$ 0.4308
28	\$ 0.6140	\$ 0.6140	\$ 0.6117	\$ 0.6098	\$ 0.5986
29	\$ 0.7888	\$ 0.7888	\$ 0.7856	\$ 0.7829	\$ 0.7672
30	\$ 0.9373	\$ 0.9373	\$ 0.9334	\$ 0.9301	\$ 0.9110
31	\$ 1.0613	\$ 1.0613	\$ 1.0568	\$ 1.0531	\$ 1.0314
32	\$ 1.1770	\$ 1.1770	\$ 1.1720	\$ 1.1678	\$ 1.1437
33	\$ 1.3256	\$ 1.3256	\$ 1.3195	\$ 1.3143	\$ 1.2845
34	\$ 1.5126	\$ 1.5126	\$ 1.5047	\$ 1.4981	\$ 1.4597
35	\$ 1.7514	\$ 1.7514	\$ 1.7409	\$ 1.7322	\$ 1.6816
36	\$ 2.0698	\$ 2.0697	\$ 2.0556	\$ 2.0438	\$ 1.9753
37	\$ 2.5049	\$ 2.5048	\$ 2.4852	\$ 2.4690	\$ 2.3742
38	\$ 3.1025	\$ 3.1024	\$ 3.0749	\$ 3.0521	\$ 2.9189
39	\$ 3.9126	\$ 3.9125	\$ 3.8736	\$ 3.8412	\$ 3.6527
40	\$ 5.1666	\$ 5.1664	\$ 5.1116	\$ 5.0659	\$ 4.8000
41	\$ 6.5599	\$ 6.5596	\$ 6.4834	\$ 6.4198	\$ 6.0501
42	\$ 8.2422	\$ 8.2417	\$ 8.1383	\$ 8.0521	\$ 7.5503
43	\$ 10.1710	\$ 10.1704	\$ 10.0345	\$ 9.9212	\$ 9.2617
44	\$ 12.4142	\$ 12.4135	\$ 12.2414	\$ 12.0979	\$ 11.2627
45	\$ 14.4917	\$ 14.4908	\$ 14.2809	\$ 14.1060	\$ 13.0878
46	\$ 16.5223	\$ 16.5213	\$ 16.2745	\$ 16.0688	\$ 14.8712
47	\$ 18.4178	\$ 18.4166	\$ 18.1352	\$ 17.9008	\$ 16.5356
48	\$ 20.1344	\$ 20.1330	\$ 19.8204	\$ 19.5598	\$ 18.0429
49	\$ 21.6671	\$ 21.6656	\$ 21.3251	\$ 21.0413	\$ 19.3889
50	\$ 23.0346	\$ 23.0330	\$ 22.6677	\$ 22.3632	\$ 20.5902
51	\$ 24.2661	\$ 24.2645	\$ 23.8768	\$ 23.5536	\$ 21.6723
52	\$ 25.3915	\$ 25.3897	\$ 24.9817	\$ 24.6416	\$ 22.6614

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

ZESPRI INTERNATIONAL LIMITED Indicative Rates For 2023 Season Class 1 HW1OB 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	\$ 0.2912	\$ 0.2936	\$ 0.2879	\$ 0.2824	\$ 0.2787
26	\$ 0.3993	\$ 0.4023	\$ 0.3953	\$ 0.3883	\$ 0.3837
27	\$ 0.5240	\$ 0.5277	\$ 0.5190	\$ 0.5104	\$ 0.5047
28	\$ 0.6727	\$ 0.6773	\$ 0.6664	\$ 0.6558	\$ 0.6487
29	\$ 0.8474	\$ 0.8531	\$ 0.8396	\$ 0.8264	\$ 0.8177
30	\$ 1.0405	\$ 1.0475	\$ 1.0308	\$ 1.0144	\$ 1.0036
31	\$ 1.2450	\$ 1.2538	\$ 1.2331	\$ 1.2128	\$ 1.1993
32	\$ 1.4678	\$ 1.4786	\$ 1.4530	\$ 1.4279	\$ 1.4113
33	\$ 1.7858	\$ 1.8004	\$ 1.7658	\$ 1.7319	\$ 1.7094
34	\$ 2.2074	\$ 2.2274	\$ 2.1799	\$ 2.1333	\$ 2.1024
35	\$ 2.7441	\$ 2.7713	\$ 2.7068	\$ 2.6435	\$ 2.6016
36	\$ 3.4255	\$ 3.4621	\$ 3.3755	\$ 3.2905	\$ 3.2341
37	\$ 4.2791	\$ 4.3278	\$ 4.2126	\$ 4.0996	\$ 4.0247
38	\$ 5.3284	\$ 5.3924	\$ 5.2408	\$ 5.0919	\$ 4.9933
39	\$ 6.5941	\$ 6.6777	\$ 6.4798	\$ 6.2856	\$ 6.1570
40	\$ 8.3551	\$ 8.4632	\$ 8.2074	\$ 7.9564	\$ 7.7900
41	\$ 10.1686	\$ 10.3070	\$ 9.9794	\$ 9.6580	\$ 9.4451
42	\$ 12.2401	\$ 12.4155	\$ 12.0002	\$ 11.5929	\$ 11.3229
43	\$ 14.6695	\$ 14.8895	\$ 14.3687	\$ 13.8577	\$ 13.5191
44	\$ 17.6915	\$ 17.9644	\$ 17.3185	\$ 16.6848	\$ 16.2648
45	\$ 21.0151	\$ 21.3495	\$ 20.5579	\$ 19.7813	\$ 19.2666
46	\$ 24.7969	\$ 25.2015	\$ 24.2436	\$ 23.3037	\$ 22.6809
47	\$ 29.0172	\$ 29.5005	\$ 28.3563	\$ 27.2338	\$ 26.4898
48	\$ 33.6321	\$ 34.2016	\$ 32.8533	\$ 31.5303	\$ 30.6536
49	\$ 38.5754	\$ 39.2376	\$ 37.6700	\$ 36.1320	\$ 35.1127
50	\$ 43.7639	\$ 44.5234	\$ 42.7253	\$ 40.9611	\$ 39.7920

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

ZESPRI INTERNATIONAL LIMITED				
Indicative Rates For 2023 Season				
Class 1 GA1CK				
\$ per TE				
Week	Size Group 16/18/22	Size Group 25/27	Size Group 30/33	Size Group 36
Pre 22	\$ -	\$ -	\$ -	\$ -
22	\$ 0.2845	\$ 0.2812	\$ 0.2948	\$ 0.2576
23	\$ 0.4011	\$ 0.3945	\$ 0.4216	\$ 0.3477
24	\$ 0.6024	\$ 0.5900	\$ 0.6412	\$ 0.5015
25	\$ 0.9058	\$ 0.8843	\$ 0.9734	\$ 0.7300
26	\$ 1.3551	\$ 1.3217	\$ 1.4597	\$ 1.0828
27	\$ 1.7956	\$ 1.7504	\$ 1.9376	\$ 1.4264
28	\$ 2.1562	\$ 2.1016	\$ 2.3277	\$ 1.7101
29	\$ 2.4247	\$ 2.3637	\$ 2.6163	\$ 1.9264
30	\$ 2.6307	\$ 2.5654	\$ 2.8356	\$ 2.0974
31	\$ 2.9454	\$ 2.8703	\$ 3.1813	\$ 2.3317
32	\$ 3.3311	\$ 3.2429	\$ 3.6078	\$ 2.6110
33	\$ 3.7850	\$ 3.6813	\$ 4.1104	\$ 2.9384
34	\$ 4.3558	\$ 4.2324	\$ 4.7433	\$ 3.3478
35	\$ 5.0975	\$ 4.9479	\$ 5.5672	\$ 3.8755
36	\$ 6.0547	\$ 5.8703	\$ 6.6339	\$ 4.5481
37	\$ 7.4449	\$ 7.2158	\$ 8.1646	\$ 5.5726
38	\$ 8.8361	\$ 8.5531	\$ 9.7249	\$ 6.5239
39	\$ 10.3169	\$ 9.9742	\$ 11.3928	\$ 7.5179
40	\$ 11.7784	\$ 11.3752	\$ 13.0442	\$ 8.4851
41	\$ 13.2317	\$ 12.7713	\$ 14.6773	\$ 9.4707
42	\$ 14.4187	\$ 13.9065	\$ 16.0268	\$ 10.2350
43	\$ 15.4769	\$ 14.9188	\$ 17.2292	\$ 10.9182
44	\$ 16.4241	\$ 15.8252	\$ 18.3047	\$ 11.5315
45	\$ 17.2861	\$ 16.6502	\$ 19.2828	\$ 12.0914

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

ZESPRI INTERNATIONAL LIMITED				
Indicative Rates For 2023 Season				
Class 1 GA1OB Organic				
\$ per TE				
Week	Size Group 16/18/22	Size Group 25/27	Size Group 30/33	Size Group 36
Pre 22	\$ -	\$ -	\$ -	\$ -
22	\$ 0.2405	\$ 0.2425	\$ 0.2437	\$ 0.2420
23	\$ 0.3024	\$ 0.3060	\$ 0.3080	\$ 0.3050
24	\$ 0.4071	\$ 0.4134	\$ 0.4170	\$ 0.4117
25	\$ 0.5759	\$ 0.5867	\$ 0.5929	\$ 0.5839
26	\$ 0.9021	\$ 0.9199	\$ 0.9302	\$ 0.9152
27	\$ 1.3179	\$ 1.3459	\$ 1.3621	\$ 1.3386
28	\$ 1.7988	\$ 1.8397	\$ 1.8633	\$ 1.8290
29	\$ 2.2911	\$ 2.3459	\$ 2.3776	\$ 2.3316
30	\$ 2.7371	\$ 2.8047	\$ 2.8437	\$ 2.7870
31	\$ 3.2616	\$ 3.3465	\$ 3.3956	\$ 3.3244
32	\$ 3.7988	\$ 3.9023	\$ 3.9621	\$ 3.8753
33	\$ 4.3106	\$ 4.4317	\$ 4.5016	\$ 4.4001
34	\$ 4.8181	\$ 4.9563	\$ 5.0361	\$ 4.9203
35	\$ 5.3467	\$ 5.5024	\$ 5.5923	\$ 5.4618
36	\$ 5.9210	\$ 6.0956	\$ 6.1964	\$ 6.0501
37	\$ 6.7504	\$ 6.9465	\$ 7.0597	\$ 6.8953
38	\$ 7.4943	\$ 7.7158	\$ 7.8438	\$ 7.6581
39	\$ 8.3443	\$ 8.5965	\$ 8.7421	\$ 8.5308
40	\$ 9.3169	\$ 9.6061	\$ 9.7730	\$ 9.5307
41	\$ 10.5382	\$ 10.8709	\$ 11.0631	\$ 10.7841
42	\$ 11.7576	\$ 12.1398	\$ 12.3605	\$ 12.0401
43	\$ 13.0511	\$ 13.4868	\$ 13.7383	\$ 13.3732
44	\$ 14.3636	\$ 14.8540	\$ 15.1372	\$ 14.7261
45	\$ 15.6408	\$ 16.1848	\$ 16.4989	\$ 16.0429

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

Controlled Atmosphere/Bulk Storage Weight Loss Compensation (CA Compensation) is paid on Zespri Green, Zespri Green Organic, Zespri SunGold and Zespri SunGold Organic 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 up to 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:

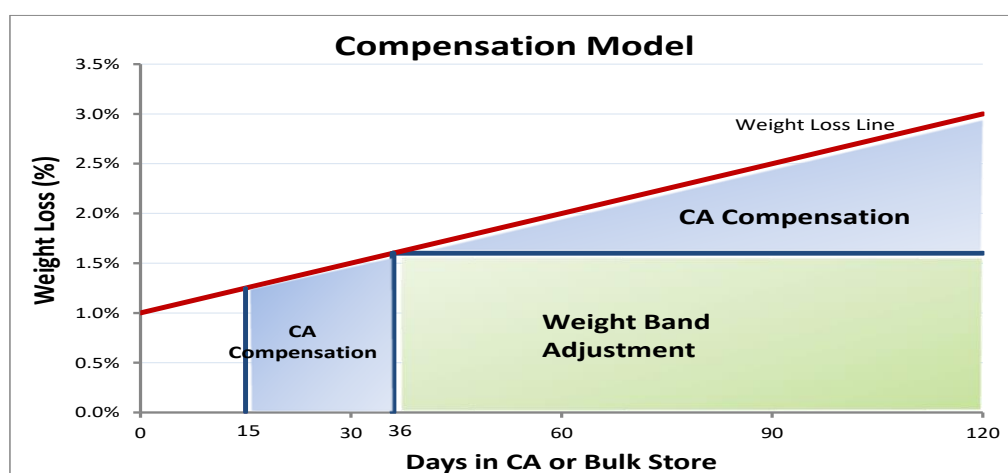
- The mean and standard deviation of the size of the Kiwifruit from each Grower and maturity area is determined based on the quantities that have been in storage.
- The percentage weight loss is calculated based on a linear function of 0.4% at 60 days and 1.4% at 120 days.

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 June 2024 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:

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

Where Maximum Taste Payment % (MTP) = 60% for Zespri Green
60% for Zespri Green Organic
60% for Zespri Sweet Green
60% for Zespri SunGold and Zespri SunGold Organic

No Taste payment will be made on Zespri RubyRed Kiwifruit in the 2023 season.

To be eligible for a Taste Zespri payment Kiwifruit must meet the Minimum Taste Standard as outlined in the ZIL Quality Manual.

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 for Zespri Green, Zespri Green Organic and Zespri Sweet Green the highest TZG value will be used to determine the amount of Taste Zespri payments. Where there is more than one sample taken from a Maturity area for Zespri SunGold and Zespri SunGold Organic the TZG by size from the sample with the highest gross submit weighted average TZG will be used to determine the amount of the Taste Zespri payments.

Calculation Examples:

Calculation of Maximum Tastes Payment (MTP)

How Zespri calculates the Maximum Taste Payment (MTP)	GREEN	ORGANIC GREEN	GREEN14	GOLD3	ORGANIC GOLD3
	\$ per TE	\$ per TE	\$ per TE	\$ per TE	\$ per TE
Total Fruit Payment	\$4.43	\$6.31	\$7.16	\$7.36	\$7.72
+	+	+	+	+	+
Average Taste Payment	\$3.04	\$4.20	\$2.51	\$5.06	\$5.95
=	=	=	=	=	=
Total Fruit Payment including Taste	\$7.47	\$10.51	\$9.67	\$12.42	\$13.67
x	x	x	x	x	x
Maximum Taste Payment Percentage	60%	60%	60%	60%	60%
= Maximum Taste Payment (MTP)	\$4.48	\$6.30	\$5.80	\$7.45	\$8.20

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				
How to calculate your Taste Payment	GREEN	ORGANIC GREEN	GREEN14	GOLD3	ORGANIC GOLD3
Your TZG (from your 90-fruit orchard sample)				See by size table	See by size table
x	x	x	x		
Maximum Taste Payment (MTP)	\$4.48	\$6.30	\$5.80		
= Your Taste Payment per tray					
x	x	x	x		
Your FOBS trays					
= Your total Taste Payment					

Example: If you are a Green grower with a TZG of 0.70, your Taste Zespri Payment would be $0.70 \times \$4.48 = \3.14 per tray.

GOLD3								
Key: TP = Taste Payment								
Size	16	18	22	25	27	30	33	36
Your TZG *	-	0.82	0.78	0.72	0.68	0.64	0.59	0.52
Multiplied	x	x	x	x	x	x	x	x
MTP	\$7.45	\$7.45	\$7.45	\$7.45	\$7.45	\$7.45	\$7.45	\$7.45
= Your TP by Size	\$-	\$6.11	\$5.81	\$5.36	\$5.07	\$4.77	\$4.40	\$3.87
Your FOBS trays by size	-	600	1,500	2,050	3,550	3,700	1,550	1,050
Your TP by Size	\$-	\$3,665	\$8,717	\$10,996	\$17,984	\$17,642	\$6,813	\$4,068

* From your highest gross submit weighted average fruit sample

ORGANIC GOLD3								
Key: TP = Taste Payment								
Size	16	18	22	25	27	30	33	36
Your TZG *	-	0.85	0.80	0.75	0.73	0.70	0.67	0.63
Multiplied	x	x	x	x	x	x	x	x
MTP	\$8.20	\$8.20	\$8.20	\$8.20	\$8.20	\$8.20	\$8.20	\$8.20
= Your TP by Size	\$-	\$6.97	\$6.56	\$6.15	\$5.99	\$5.74	\$5.49	\$5.17
Your FOBS trays by size	-	450	800	900	1,050	1,500	800	750
Your TP by Size	\$-	\$3,137	\$5,248	\$5,535	\$6,285	\$8,610	\$4,395	\$3,875

* From your highest gross submit weighted average fruit sample

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
Cardboard Caps
Pocket Pack
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 the current year's August forecast has been approved by the ZGL Board. The following inputs will be updated:

- 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

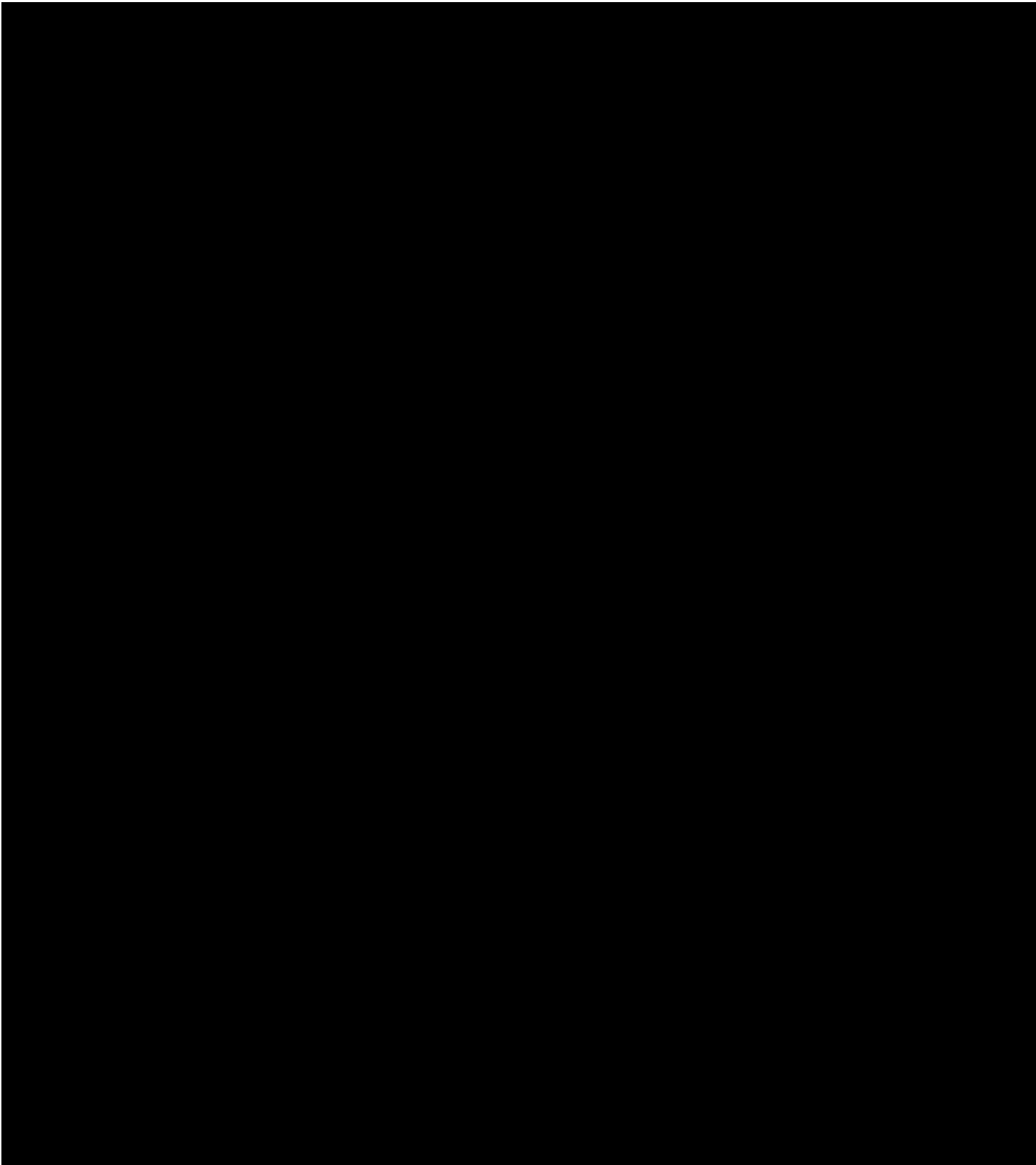
Base Period 1 Rate Components (clauses A2.8(a) and B1.1(c)(i))

Fruit Value compensation (size forgone)
Taste Compensation for size forgone
Commercial uplift (based on analysis and consideration of the variety, week and season)

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 the current year's August forecast has been approved by the ZGL Board. The following inputs will be updated:

- Fruit Return with current year's August forecast
- August forecast payment ratios
- Maximum Taste Payment (MTP) based on current year's August forecast



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>SunGold Period 1 under Supply Cap</p> <p>SunGold 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 SunGold Conventional & Organic Period 1 under contracted volume • Priority Supply Premiums • Services performed under a Generic Service Level Agreement

