



Zespri® Kiwifruit
Variety Licence

VARIETY
LICENCE



SAMPLE LICENCE

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PO Box 4043, Mount Maunganui 3149

1. ZESPRI GROUP LIMITED ("ZGL")

2. _____ ("Grower")

BACKGROUND:

- A. ZGL owns the kiwifruit variety named in Appendix 4, together with all associated proprietary and plant variety rights to such variety.
- B. ZGL has agreed to grant the Grower limited rights to grow this Plant Material within the Licensed Area and to sell the Fruit resulting from it strictly in accordance with this Agreement.

AGREEMENT:

ZGL grants to the Grower, and the Grower accepts, a licence to grow Plant Material within the Licensed Area and to sell the Fruit resulting from it strictly in accordance with the terms and conditions set out in this Agreement.

EXECUTION:

Signed for and on behalf of
ZESPRI GROUP LIMITED by

Signed for and on behalf of
the GROWER by

Signature of Authorised Signatory

Signature of Authorised Signatory

Name _____

Name _____

Position _____

Position _____

Date _____

Date _____

1 Definitions

1.1

In this Agreement, unless the context otherwise requires:

“Agreement” means this licence agreement (including all Appendices) as amended from time to time.

“Amendment Notice” has the meaning given in clause 17.8.

“Appendix” or “Appendices” means the appendices and any attachments as annexed to this Agreement, as replaced or superseded from time to time with the written consent of both parties.

“Brand” means any trade mark, trade name, logo or other identifier of the Variety or Fruit which ZGL may select or approve from time to time.

“Fruit” means all fruit grown from Plant Material in the Grower’s possession or control.

“Grower” means the Grower described on page 1 of this Agreement and includes its personal representatives, permitted assigns and successors in title.

“Lessee” means that person in possession or control of the kiwifruit orchard on the Property (not being the Owner) by virtue of any lease, management contract or other arrangement and/or who has responsibility for growing the Plant Material and Fruit within the Licensed Area.

“Licensed Area” means the area stated in Appendix 4, being that part of the Property within which Plant Material and Fruit may be grown, the boundaries and measured area of such land being shown on the GPS Survey Map attached to and forming part of Appendix 4. For the avoidance of doubt, all canopy growth from Plant Material must be contained within the Licensed Area.

“Owner” means the person(s) whose name appears on the certificate(s) of title for the Property.

“Plant Material” means all plants and plant material of the Variety which are able to be propagated (but does not include the Fruit of the Variety).

“Property” means the land described and identified in Appendix 4.

“PVR” means the plant variety rights applied for and/or owned by ZGL, or any person to whom those rights are transferred, under the Plant Variety Rights Act 1987 in respect of the Variety.

“Variety” means the variety and any male pollinisers described and identified in Appendix 4.

“you” or “your” is a reference to the Grower.

“ZGL” means Zespri Group Limited as established pursuant to the Kiwifruit Industry Restructuring Act 1999 and includes its successors and assigns.

2 What the Grower Can Do

2.1

ZGL gives you the non-exclusive right during the term of this Agreement to acquire Plant Material solely for the purposes of growing that Plant Material within the Licensed Area and nowhere else, to use such Plant Material to produce Fruit, and, subject to ZGL’s prior written consent, to sell or transfer Plant Material to other licensed growers of the Variety. These rights are granted to you strictly subject to the terms set out in this Agreement.

3 The Term of this Agreement

3.1

The rights given to you begin on the date of execution of this Agreement by both parties and continue until the earliest of the following dates:

- (a) the last day of the term of the PVR;
- (b) the date that ZGL enters into a new Zespri Kiwifruit Variety Licence with a new owner of the Property under clause 12, or with another grower as a result of sale or transfer of all licence rights under clause 13; or
- (c) the date this Agreement is terminated under clauses 4.1, 14, 16 or 17.8(d).

4 “Use it or Lose it”

4.1

Notwithstanding any other provision of this Agreement, but subject to clause 4.2, this Agreement will terminate automatically on the “Plant/Graft By Date” specified in Appendix 4 unless planting and/or grafting of Plant Material on all or substantially all of the Licensed Area has been completed to ZGL’s satisfaction prior to that date.

4.2

If, due to extraordinary circumstances, you have been unable to complete planting and/or grafting of Plant Material to ZGL’s satisfaction by the deadline specified in clause 4.1, you may apply to ZGL for an extension of time, provided that such application is submitted to ZGL in writing prior to that deadline. ZGL may grant an extension of the deadline at its sole and absolute discretion, and ZGL may attach additional terms and conditions to the grant as it sees fit. You agree to be bound by any such decision by ZGL.

4.3

In addition to the limitation in clause 4.1, ZGL will not approve the sale or transfer of any portion of the licence to third parties under clause 13 unless and until:

- (a) planting and/or grafting of Plant Material on all or substantially all of the Licensed Area has been completed to ZGL’s satisfaction; and
- (b) all money owing to ZGL in respect of the original allocation of this licence has been paid in full.

5 What the Grower is Required to Do

5.1

Subject to clause 5.2, you must purchase all your Plant Material from ZGL or one of its licensed suppliers.

5.2

Notwithstanding clause 5.1, you may also obtain Plant Material from another licensed grower of the Variety, provided that you and that grower have obtained ZGL’s prior written consent.

5.3

ZGL will endeavour to supply you with your requirements for Plant Material but is only obliged to do so if you are complying with all the terms of this Agreement and if there is sufficient suitable Plant Material available.

5.4

You must supply all Fruit to ZGL, except for any Fruit which is rendered unsaleable and/or destroyed on the Property or which is expressly authorised by ZGL for supply or sale to a third party in a written agreement between you and ZGL.

5.5

The terms of sale for all Fruit (including non-export quality Fruit) will be as provided in an agreement for the supply of kiwifruit entered into between you and ZGL in respect of your Fruit from time to time.

5.6

You must co-operate with any entity or person(s) appointed by ZGL to monitor its licensing of the Variety and Plant Material and the sale and distribution of Fruit. You must:

- (a) comply with all reasonable requirements of this entity or person(s) which are consistent with the terms of this Agreement, including any requirement to provide information relating to Plant Material and the sale and distribution of Fruit; and
- (b) keep up-to-date, accurate and complete records and books of account containing all information relating to the sale or distribution of Fruit reasonably required to calculate and verify any royalty payable to ZGL or to any third party.

5.7

You must promptly supply to ZGL all information that ZGL reasonably requires to establish and maintain a grower database and to assist ZGL to forecast short and medium term production of Fruit, including, without limitation, plant numbers, block structures and orchard practice.

5.8

If you are the Lessee of the Property then prior to signing this Agreement (and as a condition precedent to ZGL granting you your rights under this Agreement), you must ensure that the Owner is aware of the terms of this Agreement and accepts such terms by delivering to ZGL the attached “Acknowledgement of Owner Form for Leased Property” in Appendix 3 executed by the Owner. In the event that the Owner does not sign such Form, you will be liable for any act or omission of the Owner that would have constituted a breach of the obligations the Owner would have assumed had such Form been signed.

6 Payment of Royalty

6.1

During the term of this Agreement, ZGL may charge a royalty at a rate no higher than that set out in Appendix 4. Any such royalty shall otherwise be determined under, and calculated and paid in accordance with, the agreement for supply of kiwifruit entered into between you and ZGL for the relevant season.

7 Limits on what the Grower can do under this Agreement

7.1

In order to protect the interest of ZGL in the Variety and the PVR, you must comply with the following requirements:

- (a) You must not grow any Plant Material on or above any land other than the Licensed Area. ZGL or its nominated agent shall be entitled to enter the Property or any other land under your control on which Plant Material is located and remove any Plant Material that is not growing within the Licensed Area.
- (b) You must not allow anyone (including yourself, your employees and contractors) to propagate any Plant Material or attempt in any way to multiply the Variety except with the prior written consent of ZGL, other than for the purposes of cultivating Plant Material within the Licensed Area, or for the purposes of selling or transferring Plant Material to another licensed grower of the Variety as permitted under clause 2.1.
- (c) You must not obtain any Plant Material from anyone other than ZGL, its licensed suppliers, or other licensed growers of the Variety in accordance with the procedure set out in clause 5.2. You must not source any Plant Material from outside New Zealand without ZGL’s prior written consent.
- (d) You must not sell, dispose of, export or otherwise provide any Plant Material or Fruit whatsoever to any person other than ZGL or a person who has prior written approval from ZGL.
- (e) You must not do anything at all in respect of the Variety and the PVR except as expressly permitted by this Agreement.
- (f) You must not allow anyone related to or controlled by you (including yourself, your employees and contractors) to contest or challenge in any way the ownership of rights in the Variety and the PVR by ZGL.
- (g) You must not allow anyone related to or controlled by you (including yourself, your employees and contractors) to carry out any research or seek to obtain any rights of ownership in respect of any plant variety which is the same as or similar to or derived from the Variety.
- (h) You must not do anything which might prejudice the rights of ZGL in respect of the Variety and the PVR.
- (i) You must use reasonable endeavours to ensure that each employee and service provider (eg. sprayers, pruners, pickers and coolstore operators) who comes into contact with Plant Material and Fruit, does not do anything which might endanger the rights of ZGL in respect of the Variety and the PVR.
- (j) You must ensure that any person who deals with the Fruit or who takes possession or control of the Fruit is subject to similar obligations to those that apply to you, including under, but not limited to, clauses 5.4, 5.5, 5.6 and this clause 7.1 of this Agreement.

8 Ownership of Brand

8.1

You acknowledge that ZGL is the exclusive owner of all rights relating to the Brand and that this Agreement does not confer on you any licence to use the Brand.

9 Ownership of the Variety and PVR

9.1

You acknowledge that ZGL is the owner of all rights in respect of the Variety and the PVR.

9.2

If you create or discover any improvement or development to the Variety (including any sport or mutation), you must immediately disclose this to ZGL. You acknowledge that all rights in any such improvements or developments will be owned by ZGL. You must sign all documents and do all things reasonably required by ZGL in order to ensure that it can establish and maintain these ownership rights.

10 Infringement by other Parties

10.1

You must contact ZGL as soon as you become aware that any other person is infringing any rights in the Variety and/or the PVR (for example, by propagating Plant Material or selling Fruit to third parties without the permission of ZGL).

10.2

ZGL will be solely responsible for dealing with all infringement issues but you agree to give ZGL reasonable assistance in order to protect the interests of ZGL and ZGL’s licensed growers.

11 Access to Licensed Area

11.1

You must allow representatives of ZGL to enter onto the Property and any other land under your control for the purposes of access to the Licensed Area and any other place or premises where you carry out any business relating to the Variety so that ZGL can assess whether you are complying with the terms of this Agreement, for auditing all Plant Material and Fruit on the Property and, if applicable, to enforce its rights under this Agreement or at law.

11.2

In addition, if you are carrying out or discover any improvements or developments to the Variety then ZGL or its representatives may, at any reasonable time, enter upon the Property and the Licensed Area or any other land under your control in order to take such samples of the improved or developed Plant Material and Fruit as they consider necessary. If the taking of such samples results in a demonstrable loss of production of Fruit, ZGL will first agree and provide fair compensation to you.

11.3

You agree to grant to ZGL, upon request by ZGL, a licence (which, where your interest in the Property is registered at Land Information New Zealand, shall be by way of an easement) in such a form as ZGL may reasonably require, permitting ZGL and its representatives to enter the Property for the purposes of this clause 11 and clause 16.2. Where you are obliged by this clause to grant an easement, you agree to take all steps necessary to facilitate the registration by ZGL of such easement against the title to the Property. You agree that ZGL may lodge a caveat against the Property in order to protect the rights granted to it under this clause 11 and/or clause 16.2.

12 Change of Ownership of the Property

12.1

If you are the Owner of the Property and it is sold or transferred to any other person while it contains Plant Material and/or Fruit, you agree to notify ZGL immediately upon concluding an agreement for sale and purchase of the Property, and to include as a condition to completion of such transaction, delivery to ZGL of a Transfer Application Form – Sale or Transfer of Property executed by you and the new owner. ZGL agrees that all your rights and obligations under this Agreement shall temporarily pass to the new owner for a period of 30 days after the transfer (or such longer period as may be agreed by ZGL in writing) pending approval by ZGL and completion of a new Zespri Kiwifruit Variety Licence agreement between ZGL and the new owner. If you permit ownership of the Property to be transferred or sold without complying with this clause, then you will remain liable to ZGL under this Agreement, including liability for any act or omission of a new owner that would, if done by you, constitute a breach or non-observance of the obligations under this Agreement.

12.2

You must give ZGL at least 10 working days prior written notice of any sale or transfer of the Property to a new owner. You must also let ZGL know as soon as practicable if there have been any other changes to the Property (for example, where there has been a subdivision, a disposition of existing rights or the creation of new rights in respect of the Property) which may affect the interests of ZGL under this Agreement.

12.3

Notwithstanding any other provision of this Agreement, ZGL may refuse to enter into a new Zespri Kiwifruit Variety Licence agreement with any new owner in the event that any money remains owing by the Grower to ZGL in relation to this Agreement.

12.4

This Agreement will terminate upon the completion of a new Zespri Kiwifruit Variety Licence agreement between ZGL and the new owner.

12.5

For the purpose of this Clause 12, a change in control or beneficial ownership of the Owner shall constitute a transfer of the property.

13 Sale or Transfer of Licence Rights

13.1

If you agree to sell or transfer some or all of your rights to grow Plant Material and to produce Fruit to any other person ("the Transferee"), you must obtain ZGL's approval and ensure that such transfer is in accordance with the terms of the Transfer Application Form – Sale or Transfer of Licence Rights (as set out in Appendix 2), and that completion and delivery to ZGL of such form by the Transferee is a condition of the transfer agreement. ZGL agrees to issue a temporary licence to the Transferee, for a period of 30 days or such longer period (as may be agreed by ZGL in writing) pending completion of a new Zespri Kiwifruit Variety Licence agreement between ZGL and the Transferee. If you do not comply with this clause then you will remain liable to ZGL under this Agreement, including liability for any act or omission of the Transferee that would, if done by you, have constituted a breach or non-observance of the obligations under this Agreement. For the avoidance of any doubt, ZGL will not approve any transfer of rights under this clause 13 for so long as:

- (a) any money remains owing by the Grower to ZGL in relation to this Agreement; or
- (b) all or substantially all of the Licensed Area has not been planted and/or grafted with Plant Material to ZGL's satisfaction by the original licensee.

ZGL will however consider approving written applications for transfers of small unused licence parcels provided that:

- (c) the parcel does not exceed 10 percent of the total Licensed Area or 0.5 hectares, whichever is the lesser; and
- (d) the transfer price is no more than the price paid by the original licensee under the licence application process on a per hectare basis.

13.2

If you are transferring all of your rights under this licence to the Transferee, this Agreement will terminate on the completion of a new Zespri Kiwifruit Variety Licence agreement between ZGL and the Transferee. If you are transferring your rights under this licence in respect of only part of the Licensed Area to the Transferee, the Licensed Area will be reduced accordingly on the completion of a new Zespri Kiwifruit Variety Licence agreement between ZGL and the Transferee, and you must remove sufficient Plant Material to meet the requirements of clause 7.1(a) in respect of the reduced Licensed Area, and commission an updated GPS survey map showing the reduced Licensed Area for inclusion in Appendix 4 which shall be duly amended to reflect such reduction in Licensed Area.

13.3

The Grower and ZGL agree that the provisions of this clause 13 are to enable bona fide transfers of licence rights to growers who wish to produce Fruit, and are not intended to allow speculative trading in licence rights. Accordingly, notwithstanding anything else in this Agreement, ZGL may, at its sole discretion refuse to issue any new licences under clause 13.1 in the event that either you or the Transferee (or any person determined by ZGL in its sole discretion to be associated with you or the Transferee) have been, or would be as a result of any transfer under this clause 13, both a transferor and a transferee of licence rights in the Variety.

13.4

For the purpose of this Clause 13, a change in control or beneficial ownership of the Grower shall constitute a transfer of the Grower's rights to grow Plant Material and to produce fruit.

14 De-commercialisation of the Variety

14.1

Notwithstanding any other provision of this Agreement, ZGL may at any time elect to withdraw the Variety from commercial production for any reason. Withdrawal of the Variety from commercial production includes cessation of granting new licences for production of the Variety; cessation of marketing and promotion of the Variety; and removal or destruction of all licensed Plant Material. Any election by ZGL to withdraw the Variety from commercial production under this clause 14.1 will not constitute a breach of this Agreement, but will be a terminating event in accordance with clause 14.2.

14.2

In the event that ZGL decides to withdraw the Variety under clause 14.1:

- (a) this Agreement will terminate with effect from the 30th of June following the date on which ZGL gives notice to the Grower of its decision in accordance with clause 17.10, and clause 16 will apply (including ZGL’s rights to remove Plant Material under clause 16.2);
- (b) upon termination of this Agreement pursuant to clause 14.2(a), ZGL will pay the Grower as follows:
 - (i) an amount calculated at the rate of \$5,000 (inclusive of GST) per hectare of Licensed Area, provided that no more than four whole years have elapsed between the date of the original allocation of this licence by ZGL and the effective date of termination of this Agreement; and
 - (ii) an additional amount (if any), being a percentage of the price paid by the Grower to ZGL upon the original allocation of this licence by ZGL, calculated by reference to the table below:

Number of whole years elapsed between the date of original allocation of licence by ZGL and the effective date of termination of this Agreement	Percentage of price originally paid by the Grower that ZGL will pay to the Grower under this clause 14.2(b)(ii)
0	100%
1	80%
2	60%
3	40%
4	20%
5 or more	0%

For the avoidance of any doubt, no payments will be due to the Grower under clauses 14.2(b)(i) or (ii) if five or more whole years have elapsed between the effective date of original allocation of this licence by ZGL and the effective date of termination of this Agreement.

- (c) ZGL’s liability to the Grower as a result of its decision to withdraw the Variety shall be limited to the amounts specified in this clause 14.2, which the parties agree is a genuine pre-contractual estimate of the loss and damages the Grower will suffer as a result of ZGL’s decision under clause 14.1, and the Grower agrees that it shall have no other claim against ZGL, whether arising in any way out of this Agreement, or out of any pre-contractual statements made prior to this Agreement, or in tort, or otherwise at law, arising in any way out of such decision.

14.3

In the event that a decision is made by the relevant New Zealand authorities not to grant the PVR to ZGL, then this Agreement shall terminate with effect from the 30th of June following the date of publication of such decision by the New Zealand authorities. Such event shall not constitute a breach of this Agreement by ZGL.

14.4

In the event that this Agreement is terminated under clause 14.3:

- (a) clause 16.2 will apply;
- (b) upon termination of this Agreement, ZGL will pay the Grower:
 - (i) if and only if ZGL exercises its rights to remove Plant Material under clause 16.2, an amount calculated at the rate of \$5,000 (inclusive of GST) per hectare of Licensed Area; and
 - (ii) in any case, the price paid to ZGL upon the original allocation of this licence by ZGL; and
- (c) ZGL’s liability to the Grower as a result of termination of this Agreement under clause 14.3 shall be limited to the amounts specified in this clause, which the parties agree is a genuine pre-contractual estimate of the loss and damages the Grower would suffer as a result of such termination, and the Grower agrees that it shall have no other claim against ZGL in respect of or resulting from such termination or the cultivation of the Variety by the Grower.

14.5

ZGL may set off any amounts owing by it to the Grower under clauses 14.2 or 14.4 against any amounts owing by the Grower to ZGL in relation to this Agreement.

14.6

In the event that this Agreement is terminated under clauses 14.2(a) or 14.3, the parties agree to meet and discuss in good faith whether, in respect of the Licensed Area, any opportunity exists for the Grower to enter into a new licence agreement with ZGL for another kiwifruit variety. For the avoidance of any doubt, this clause 14.6 does not create any legal obligation on ZGL to grant further licences to the Grower.

15 Changes to ZGL and Assignment to ZGL Subsidiaries

15.1

If at any time the PVR or the business undertaken by ZGL is transferred (by whatever means) to another entity, then all the rights and obligations of ZGL under this Agreement shall pass automatically to that entity.

15.2

Without limiting clause 15.1, ZGL may assign all the rights and obligations under this Agreement to any wholly owned subsidiary of ZGL, and there will be no need for you to enter into any other agreement or do anything to ensure that this is the case (including giving your consent). ZGL will give you at least 10 working days advance notice of any such assignment.

16 Termination

16.1

Without limiting any other rights that either party has at law, this Agreement:

- (a) may be terminated by either party by written notice to the other party if the other party breaches any of the terms of this Agreement and, if capable of remedy, fails to remedy the situation within 30 days of receiving written notice requiring it to do so;
- (b) may be terminated immediately by ZGL if you go out of business, become bankrupt, become unable to pay your debts, or (if you are a company) you go into receivership or liquidation, or if you try to assign your rights under this Agreement without complying with clause 17.6;
- (c) may be terminated by ZGL by written notice to you in the event that any money remains owing by you to ZGL in relation to this Agreement after the relevant due date for payment of such money; or
- (d) may be terminated in accordance with clauses 4.1, 12, 13, 14 or 17.8(d).

Notwithstanding any termination of this Agreement, your obligations (and, as the case may be, those of the Owner) pursuant to clauses 5.4, 6.1, 7.1, 11 and 16.2 shall not merge or cease on such termination, and such clauses and any obligations accrued under them prior to or after termination shall continue in full force and effect.

16.2

If this Agreement is terminated for any reason then, if requested by ZGL in writing, you must immediately destroy or return to ZGL or its nominee all Plant Material and Fruit on the Property or which is within your possession or control. If you fail to comply with this clause within seven days from being requested to do so, then ZGL or its representatives shall be entitled to enter the Property and any other land under your control on which Plant Material is located in order to remove or destroy such Plant Material and Fruit without further notice to you, without consent being required from any other person and without liability for any compensation or damages being payable to you or to any other person.

17 General Legal Requirements

17.1

With the exception of any relevant application documentation which shall continue to bind ZGL and the person to whom this licence was originally allocated, this Agreement represents the entire agreement of the parties in respect of the licensing of the Variety and the use of Plant Material and Fruit in respect of the Licensed Area. Without limiting this, this Agreement supersedes all previous trial agreements and other licence agreements (in writing or otherwise) between the parties relating to the Variety on the Property.

17.2

Each party to this Agreement must keep confidential all information which it receives about the other party except where this information is known publicly other than as a result of the other party breaching its obligations of confidentiality. You must keep confidential all information you receive from ZGL about or which relates in any way to the Variety, the PVR, the Plant Material and/or the Fruit, except where such information has been published by ZGL.

17.3

Production of kiwifruit, and in particular commercialisation of a new variety of kiwifruit, is inherently risky and subject to the vagaries of climate, soil and as yet undiscovered or unknown attributes of the Variety and its performance on orchard, through the supply chain and in the market. ZGL makes no warranties, express or implied, to you, and you agree that in entering into this Agreement you are not relying on any statement or representation made by ZGL or its staff or agents, concerning the vigour of the Plant Material, production of Fruit, disease freedom or susceptibility, commercial viability of the Variety, the likely returns to the Grower from the production of Fruit, or the future value of the rights granted under this Agreement. You agree that all implied warranties of merchantability or fitness for a particular purpose are hereby excluded.

ZGL shall not be responsible for any loss of profits, economic or other consequential loss you or any other party may incur as a result of the operation of this Agreement, cultivation by you of the Variety, or your exercise of any of the other rights granted to you under this Agreement.

17.4

Any payments made by a party will, unless otherwise agreed and specified by the parties, be exclusive of goods and services tax and any other applicable taxes. These taxes will be paid by the party making the payment at the rate which is applicable at the time.

17.5

The parties will attempt to resolve any dispute between them in a co-operative and amicable manner prior to recourse to any other form of dispute resolution including litigation. If the parties cannot agree on any matter arising from this Agreement or its interpretation, then either party by notice in writing to the other can submit the dispute to mediation by a single mediator. If the parties cannot agree on a mediator within five working days of this written notice then either party can request the chairperson of the New Zealand division of LEADR (LEADR NZ) to appoint a mediator. The parties shall set the guidelines for the mediation, but if they cannot agree within a reasonable time then the mediator will set them. Nothing in this clause shall prevent a party from seeking urgent interlocutory relief in any Court.

17.6

You must not assign or transfer any or all of your interests under this Agreement to any other party without the prior written consent of ZGL and only as set out in clause 12 or clause 13. ZGL's rights to assign its interests under this Agreement are set out in clause 15.

17.7

This Agreement is to be governed by New Zealand law.

17.8

ZGL shall have the right to make amendments to this Agreement using the process described in this clause 17.8, but only where such amendments are intended by ZGL to apply to all licence agreements for the Variety in New Zealand that are substantially the same as this Agreement (“Variety Licences”):

- (a) ZGL must give you and all other holders of Variety Licences written notice of any proposed amendment (“Amendment Notice”). Upon receipt of an Amendment Notice, you and all other holders of Variety Licences shall have 3 months during which you must notify ZGL in writing whether or not you approve of the amendment.
- (b) If ZGL does not receive written approvals from the holders of Variety Licences who together hold Licensed Area that exceeds 70 percent of the total Licensed Area held by all holders of Variety Licences within such 3 month time period, then the amendment proposed in the Amendment Notice shall be defeated and shall have no further legal effect.
- (c) At the end of the 3 month period, if the 70 percent threshold in clause 17.8(b) has been reached, then the proposed amendment shall be deemed to be approved, and (subject to clause 17.8(d)) all Variety Licences including this Agreement shall be amended by the relevant Amendment Notice, such amendment taking effect 3 months after the date it was deemed to be approved, or at such later time as may be specified in the Amendment Notice.
- (d) If an amendment is deemed to be approved under clause 17.8(c), you may, no later than 3 months after that event, notify ZGL in writing that you do not accept the amendment (“Non-Acceptance Notice”). If you give a Non-Acceptance Notice to ZGL, then this Agreement shall be terminated with immediate effect, and clause 16.2 shall apply.
- (e) For the avoidance of doubt, the amendment processes under this clause 17.8 do not prevent you from selling or transferring your licence rights or the Property at any time in accordance with clauses 12 or 13.

17.9

If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity of all other provisions of this Agreement and all other applications of any such provision shall not be affected thereby.

17.10

Any notice required to be given by ZGL to you under this Agreement shall be deemed to have been given upon the expiry of two business days after posting a copy of the notice to the last postal address for you that is known to ZGL at the time of sending.

Appendix 1: Transfer Application Form – Sale or Transfer of Property

(Refer to clause 12.1 in the Zespri Kiwifruit Variety Licence)

PROPERTY DETAILS:

KPIN NUMBER

VALUATION NZ NUMBER

PROPERTY ADDRESS

POST CODE

TO: ZESPRI GROUP LIMITED ("ZGL")

FROM

AND FROM

NEW OWNER'S CONTACT ADDRESS

POST CODE

CONTACT PERSON

TELEPHONE NUMBER

EMAIL ADDRESS

THE NEW OWNER CONFIRMS THE TRANSFER WILL BE EFFECTIVE AS OF

(insert date)

In consideration of ZGL allowing the existing Zespri Kiwifruit Variety Licence between ZGL and the Existing Owner ("the Existing Agreement") to continue on a temporary basis with the New Owner:

- (a) The New Owner:
- (i) confirms its understanding of the terms of the Existing Agreement and any Amendment Notices issued within the last six months of the date of signature of this Form (if any) and acknowledges receipt of copies of each;

(ii) agrees to comply with, and shall be liable under, the terms and conditions of the Existing Agreement as the "Grower" as if it were an original party thereto;

(iii) agrees, as soon as is practicable, and at the request of ZGL, to enter into a new Zespri Kiwifruit Variety Licence (such agreement to be in its then current form and as amended by any relevant Amendment Notice) in respect of the Property; and

(iv) agrees that should it not enter into a new Zespri Kiwifruit Variety Licence with ZGL within 30 days or such longer period as may be agreed by ZGL in writing, for any reason, then (notwithstanding clauses 5.4, 6.1, 7.1, 11.1 and 16.2 of the Existing Agreement which shall remain binding on the New Owner) any temporary rights granted to the New Owner hereunder shall cease; and
- (b) The Existing Owner:
- (i) warrants to ZGL and to the New Owner that, as at the date of execution of this document, the part of the Property on which Plant Material and Fruit is growing does not exceed the boundaries or the total area specified as the Licensed Area in the Existing Agreement;

(ii) warrants to the New Owner that as at the date of execution of this document no money remains owing by the Existing Owner to ZGL in relation to the Existing Agreement.

Authorised Signatory for Existing Grower

Authorised Signatory for New Grower

DATE

DATE

.....

THIS IS AN INTENTIONALLY BLANK PAGE.

SAMPLE

Appendix 2: Transfer Application Form

– Sale or Transfer of Licence Rights – (No Sale of Land)

(Refer to clause 13 in the Zespri Kiwifruit Variety Licence)

EXISTING GROWER/PROPERTY DETAILS:

KPIN NUMBER

VALUATION NZ NUMBER

PROPERTY ADDRESS
("Existing Property")

POST CODE

TRANSFER FROM
("Existing Grower")

VARIETY

NEW GROWER/PROPERTY DETAILS:

TRANSFER TO

("New Grower")

KPIN NUMBER

VALUATION NZ NUMBER

PROPERTY ADDRESS
("New Property")

POST CODE

NEW GROWER CONTACT
ADDRESS

POST CODE

CONTACT PERSON

TELEPHONE NUMBER

EMAIL ADDRESS

APPLICATION DETAIL:

APPLICATION TYPE

(delete one)

FULL TRANSFER / PARTIAL TRANSFER

TOTAL EXISTING
LICENSED AREA

LICENSED AREA
TRANSFERRED

LICENSED AREA REMAINING ON EXISTING PROPERTY AFTER TRANSFER

EFFECTIVE DATE
OF TRANSFER

("Completion Date")

TERMS AND CONDITIONS: (overleaf)

Appendix 2: Transfer Application Form

– Sale or Transfer of Licence Rights – (No Sale of Land) (continued)

(Refer to clause 13 in the Zespri Kiwifruit Variety Licence)

TERMS AND CONDITIONS:

1. The Existing Grower confirms it will transfer its rights under the existing Zespri Kiwifruit Variety Licence (“the Existing Agreement”) in full/part (delete one) in respect of the Existing Property with effect from the Completion Date subject to:
- (a) Zespri Group Limited (“ZGL”) agreeing to the transfer of the Existing Grower’s rights to the New Grower;

(b) ZGL agreeing to issue a temporary licence to the New Grower for the Variety in respect of the New Property for LICENSED AREA TRANSFERRED as described above. This licence will be subject to the terms and conditions of the Existing Agreement, including the terms set out below, and will terminate on the New Grower entering into a new Zespri Kiwifruit Variety Licence with ZGL in respect of the LICENSED AREA TRANSFERRED on the New Property or as determined by ZGL;

(c) the New Grower, at the request of ZGL, obtaining a GPS map of the area where Plant Material will be planted and/or grafted on the New Property (which must not exceed the LICENSED AREA TRANSFERRED as described above), and entering a new Zespri Kiwifruit Variety Licence (such agreement to be in its then current form) in respect of the New Property; and

(d) the termination or amendment of the Existing Agreement, as applicable.
2. Both the Existing Grower and the New Grower agree:
- (a) the New Grower confirms its understanding of the terms of the Existing Agreement and any Amendment Notices issued within the last six months of the date of signature of this Form (if any) and acknowledges receipt of copies of each;

(b) the New Grower agrees to comply with, and shall be liable under, the temporary licence issued by ZGL, including the terms and conditions of the Existing Agreement as the “Grower” as if it were an original party thereto, pending the entering into of a new Zespri Kiwifruit Variety Licence with ZGL or the termination of the temporary licence by ZGL;

(c) both parties confirm their understanding of the Licence Rights Transfer Process and the Licence Transfer Terms and Conditions specified by ZGL from time to time, relating to the transfer of Kiwifruit Variety Licence Rights;

(d) the Existing Grower will remove the relevant Plant Material by the Completion Date or 31 August of the next year after the date of approval of the application and advise ZGL of completion;

(e) the New Grower will plant Plant Material only within the LICENSED AREA TRANSFERRED described above, and shall do so no earlier than after the Existing Grower has removed all Plant Material, and no later than 31 August of the next year after the date of approval of the application and issue of the Temporary Licence and shall advise ZGL of completion;

(f) the New Grower agrees, as soon as is practicable, and at the request of ZGL, to enter into a new Zespri Kiwifruit Variety Licence (such agreement to be in its then current form) in respect of the New Property; and

(g) the New Grower agrees that should it not enter into a new Zespri Kiwifruit Variety Licence with ZGL when required by ZGL for any reason or if ZGL does not agree to the transfer of the Existing Grower’s rights under the Existing Agreement to the New Grower, then the temporary licence shall cease and the New Grower will immediately remove any Plant Material it has planted on the New Property.
3. The Existing Grower warrants to the New Grower that, as at the date of execution of this document, no money remains owing by the Existing Grower to ZGL in relation to the Existing Agreement.

Authorised Signatory for Existing Grower

NAME

DATE

Authorised Signatory for New Grower

NAME

DATE

TEMPORARY LICENCE ISSUED BY ZESPRI GROUP LIMITED ON THE TERMS SET OUT ABOVE:

ZESPRI GROUP LIMITED

Authorised Representative Signature

NAME

DATE

Appendix 3: Acknowledgement of Owner Form for Leased Property

(Refer to clause 5.8 in the Zespri Kiwifruit Variety Licence)

PROPERTY DETAILS:

KPIN NUMBER

VALUATION NZ NUMBER

PROPERTY ADDRESS

POST CODE

TO: ZESPRI GROUP LIMITED ("ZGL")

FROM ("Grower")

AND FROM ("Owner")

OWNER'S CONTACT ADDRESS

POST CODE

CONTACT PERSON

TELEPHONE NUMBER

MOBILE NUMBER

LEASE DETAILS:

COMMENCEMENT

EXPIRY DATE OF CURRENT TERM

RENEWAL TERM(S) AND RENEWAL DUTIES (IF ANY)

In consideration of ZGL entering into or (as the case may be) allowing the continuance of a Zespri Kiwifruit Variety Licence with the Grower ("the Licence"), the Owner:

(a) confirms its understanding and acceptance of the terms of the Licence (as amended from time to time) and acknowledges receipt of a copy;

(b) agrees that the rights granted to the Grower under the Licence are vested exclusively in the Grower, and that accordingly the Grower may elect to remove the Plant Material from the Property and, with ZGL's consent, transfer the Licence to another property or to another grower for use on another property;

(c) agrees to comply with, and shall be liable under, all of the terms of the Licence as the "Grower" as if it were an original party thereto where the Grower has ceased to perform its obligations under the Licence, where the Licence has been terminated for any reason by ZGL or where any lease or management contract of the Property with the Grower or any other right of use or occupation of the Property has been terminated by the Owner or not renewed and Plant Material and/or Fruit remains on the Property or within the Owner's possession or control;

(d) agrees to notify ZGL in writing as soon as practicable after any event mentioned in the previous clause has occurred;

(e) agrees if requested by ZGL to provide ZGL with a copy of any lease or management contract between the Owner and the Grower in respect of the Property; (continued overleaf)

Appendix 3: Acknowledgement of Owner Form for Leased Property (continued)

(Refer to clause 5.8 in the Zespri Kiwifruit Variety Licence)

- (f) in the event that the Owner intends to sell or otherwise transfer the Property:
- (i) agrees to ensure that it is a condition of any sale and purchase or transfer agreement in respect of the Property that the new owner or transferee signs an Acknowledgement of Owner Form substantially the same as this one; and
 - (ii) agrees to remain liable to ZGL under the Licence in the event that a new owner or transferee does not sign such Form, including liability for any act or omission of such new owner or transferee that would, if done by the Owner, have constituted a breach or non-observance of the obligations under this Agreement;
- (g) grants its permission (such grant being irrevocable) at all times during the term of the Licence to enable the representatives of ZGL to enter the Property and any other land under its control on which Plant Material is located for the purposes of clauses 11 and 16.2 of the Licence; and
- (h) confirms that no compensation or damages shall be payable to the Owner by virtue of ZGL lawfully enforcing its rights under clauses 11 and/or 16.2 of the Licence.

Authorised Signatory for Owner

NAME

DATE

Authorised Signatory for Grower

NAME

DATE

Appendix 4: Grower, Variety and Licence Details

KIWIFRUIT VARIETY DETAILS:

NAME OF VARIETY	<input type="text"/>	NEW ZEALAND PLANT VARIETY RIGHT NO	<input type="text"/>
ROYALTY RATE	<input type="text"/>		
MALE POLLINISER NAME(S) (if any)	<input type="text"/>		
MALE POLLINISER NEW ZEALAND PLANT VARIETY RIGHT NO(S) (if any)	<input type="text"/>		
KPIN NUMBER	<input type="text"/>		
EFFECTIVE DATE OF THIS APPENDIX 4	<input type="text"/>		
NAME OF GROWER	<input type="text"/>		
DETAILS OF CONTACT PERSON	<input type="text"/>		
STATUS OF GROWER IN RESPECT OF THE PROPERTY	<div>OWNER / LESSEE</div>		

Note: If you are a Lessee then you and the Property Owner must complete and sign an acknowledgement of owner form (see Appendix 3).

As at the effective date of this Appendix 4, the Licensed Area within which such Plant Material must be grown, under the Zespri Kiwifruit Variety Licence between ZGL and the Grower (the "Agreement"), is set out below. This Appendix 4 shall supersede any existing Appendix 4 and shall be deemed to form part of the Agreement from the Effective Date set out above. All terms defined in the Agreement and used in this Appendix 4 shall have the same meanings as set out in the Agreement.

PLANTING/GRAFTING BY DATE:

Under clause 4.1 of the Agreement, the Agreement shall terminate unless planting and/or grafting of Plant Material on all or substantially all of the Licensed Area has been completed to ZGL's satisfaction by:

PROPERTY AND LICENSED AREA IDENTIFICATION DETAILS:

ADDRESS OF PROPERTY	<input type="text"/>		
VALUATION NZ NUMBER	<input type="text"/>		
Boundaries of Licensed Area and position of licensed plants: See attached GPS Survey Map.			
LICENSED AREA	<input type="text"/>	DATE OF GPS SURVEY MAP	<input type="text"/>
LAST AUDIT DATE	<input type="text"/>		

<div><input type="text"/></div> <div>Signed for and on behalf of ZESPRI GROUP LIMITED by:</div>	<div><input type="text"/></div> <div>Signed for and on behalf of the GROWER by:</div>
NAME <input type="text"/>	NAME <input type="text"/>
POSITION <input type="text"/>	POSITION <input type="text"/>
DATE <input type="text"/>	DATE <input type="text"/>

Note: A GPS Survey Map of the Licensed Area forms an essential part of this Appendix 4 and must be attached prior to execution. The Licensed Area shall be the amount stated as the Licensed Area above, to be planted/grafted within the area shown on the attached map. An updated GPS map may be provided by ZGL during its audit following planting/grafting.

SAMPLE

Zespri Grower Contact Centre
Freephone: 0800 155 355
Email: new.cultivars@zespri.com
PO Box 4043, Mount Maunganui 3149

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www.zespri.com

