**FIXED TERM INDIVIDUAL EMPLOYMENT AGREEMENT**

**AGREEMENT** made this **\_\_\_\_\_\_** day of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** 20**\_\_\_\_\_\_\_\_\_\_\_**

**PARTIES**

# **­­­­­­­­­­­**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“**Employer/ we/ us/ our**”)

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (“**Employee/ you/ your**”)

**TERMS OF EMPLOYMENT**

The terms of employment are as follows:

# **Commencement and fixed term**

## For the reasons set out below, the position commences on \_\_\_\_\_\_\_\_\_\_\_\_ (“**Start Date**”) and expires when the Employer has no further kiwifruit picking, packing, harvesting or other work available for the Employee in the current season. The Employee acknowledges that the Employer cannot predict the exact end date of the season, but will give the Employee at least 2 days’ written notice of the end of the season, and this employment agreement will end at the end of that notice period (“**Expiry Date**”).

## The position is a fixed term position running from the Start Date to the Expiry Date, but is subject to the termination and review provisions, as well as any trial provision, set out in this agreement.

## Employment will end at the end of the Expiry Date (unless terminated earlier by the Employer or Employee) and nothing in this agreement shall expressly or by implication be interpreted as providing:

### an entitlement or expectation of further employment beyond the Expiry Date; or

### an entitlement or guarantee to the Employee of employment until the Expiry Date.

# **Reasons for fixed term agreement**

## The Employee acknowledges that he/she has been advised that the employment shall be for a fixed term for the period set out above, due to the seasonal nature of the kiwifruit industry. The Employee expressly agrees that his/her employment will expire and terminate when the Employer has no further work available for the Employee in the current season.

# **Trial period [can only be used for employers with less than 20 employees]**

## The Employee is to serve a trial period for 90 days from the beginning of the Employee’s employment (starting on the first day of work). During that trial period the Employer may dismiss the Employee and, if the Employer does so, the Employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.

## The notice period for termination under this clause is one weeks’ notice in writing.

# **Remuneration**

## **(DELETE one of the following options)**

## The Employee shall be paid a wage of $\_\_\_\_\_\_\_\_\_\_ (gross) per hour worked (“**Usual Hourly Rate**”). The Employee’s Usual Hourly Rate shall be at least equal to the current minimum wage rate at all times.

## (a) The Employee shall be paid at the rate of $\_\_\_\_\_\_\_\_\_\_ per \_\_\_\_\_\_ (**“piece rate”**) provided that the Employee’s hourly payment rate shall be at least equal to the current minimum wage rate at all times.

## The Employee will only be paid for hours worked or for approved paid leave hours. The Employee will need prior approval to work hours in excess of usual work hours.

## The Employee shall be paid for any hours worked \_\_\_\_\_\_\_\_\_\_\_ (pay period) in arrears. Payment shall be made by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (pay method).

# **Work Hours**

## Subject to weather and availability of fruit for harvesting, the Employer will endeavour to provide up to \_\_\_\_\_\_\_\_\_\_ hours of work each week during the term of the agreement.

## Where possible the hours of work will be restricted to 5 days per week but weekend work will be required during busy periods. Generally the hours of work will be between \_\_\_ am and \_\_\_ pm on days when work is available. On occasions the Employee may be requested to work more than \_\_\_ hours in any week. All hours shall be paid at the usual rate.

## The Employee acknowledges that any work offered is subject to favourable weather and is subject to the Employer’s picking and packing requirements, which may change at any time.

## The Employee will be notified of their work hours from time to time by issue of aroster,text message, call or othercontact from the Employer at least 24 hours prior to the start of the work day unless otherwise agreed with the Employee.

# **Shift cancellation**

## Due to nature of the Employer’s business, including the impact of the weather on the Employer’s operations, the Employer may have to cancel a shift.

## The Employee acknowledges and agrees that the Employer may cancel a shift and not require the Employee to attend work by giving the Employee the shift cancellation notice of two hours. If the Employee’s shift is cancelled, and the shift cancellation notice is given, the Employee will not be paid for the shift and will not receive any other compensation.

## If the Employee is required to work a shift, and the Employer cancels the shift before the Employee commences work but without giving the Employee the shift cancellation notice, the Employee will not be paid for the shift, but the Employer will pay the Employee the shift cancellation compensation of two hours’ pay.

## If the Employee is required to work a shift, and the Employer cancels the shift after the Employee has commenced work, the Employee will be paid for the hours actually worked or two hours’ pay, whichever is greater.

## If the Employer and Employee agree that the Employee is not required to work a shift, or part of a shift, the Employee will not be paid for the hours unworked and will not receive any shift cancellation compensation.

# **Rest / Meal breaks**

## The Employee shall be entitled to the following rest breaks and meal breaks:

### One paid 10 minute rest break where the Employee works between two and four hours;

### One paid 10 minute rest break and one unpaid 30 minute meal break where Employee works between four and six hours; or

### Two paid 10 minute rest breaks and one unpaid 30 minute meal break where the Employee works between six and eight hours.

## Where the Employee works more than eight hours, the calculation of break entitlements shall begin again at the beginning of each eight hour period of continuous work.

## The Employee acknowledges that flexibility is required in relation to the taking of lunch and other breaks in order to meet the requirements of the Employer’s business.

# **Place of work**: The Employee shall work at the Employer’s premises at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_or at such place or places within the greater Bay of Plenty region as directed to meet the requirements of the Employer’s business. The Employee shall be required to provide his/her own transport to and from work. Other locations may be agreed between the Employer and Employee at the time work is offered.

# **Essential requirements for the role:**

## The following are essential qualifications/requirements for the position:

### Legally entitled to work in New Zealand; and

### (Insert any licences or other qualifications required)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

## By signing this agreement, the Employee confirms he/she has these qualifications/meets these requirements and agrees to provide proof of the above on request. The Employee will inform the Employer immediately of any change in or potential risk to the above qualifications/requirements. If the Employee does not meet these essential requirements or ceases to do so during his/her employment, the Employer may terminate employment.

# **Termination:** Either party may terminate this agreement by giving 1 week’s notice in writing. The Employer may pay the employee in lieu of all or part of the notice period.

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# **Suspension:** The Employer may suspend the Employee from the workplace or from all or part of their usual duties and responsibilities to enable the Employer to investigate any workplace matter or for health and safety reasons. Before any suspension is implemented, the Employer will give the Employee a reasonable opportunity to comment on the proposed suspension. Suspension will not prevent the Employee’s employment from expiring at the end of the agreed period of work.

# **Summary dismissal:** The Employer may dismiss the Employee without notice for serious misconduct which includes but is not limited to: dishonesty; any serious or significant breach of the Employee’s implied duty of fidelity or the Employer’s policies, including health and safety policies; any act that may bring the Employer into disrepute; unauthorised disclose of the Employer’s confidential information; bullying and/or harassment; a serious breach of this agreement.

# **Time records**: If required, the Employee shall keep an accurate time sheet and submit this to the Employer in a form, and at the times, required by the Employer.

# **Job description**: The Employee is employed as a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Employee shall be required to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(insert duties) as well as any other duties reasonably required by the Employer. Other duties may be agreed between the Employer and Employee at the time work is offered.

# **Holidays Act and Leave:** The Employee shall be entitled to leave in accordance with the minimum requirements under the Holidays Act 2003. The following provisions summarise those minimum entitlements and are not additional to them.

# **Public Holidays**

## The Employee agrees to work on public holidays if required by the Employer. If the Employee is required to work on a public holiday, the Employee will be paid at the rate of time and one half of the Employee’s relevant daily pay or average daily pay in relation to the time actually worked.

## The Employee shall also be entitled to an alternative paid holiday if Employee is required to work on a public holiday that would otherwise be a working day for the Employee.

## If a public holiday falls on a day that would otherwise be a working day for the Employee and the Employee does not work that day, the Employee shall be entitled to be paid their relevant daily pay or average daily pay for that day. If a public holiday falls on a day that would not otherwise be a working day for the Employee and the Employee does not work that day, the Employee is not entitled to be paid.

# **Annual Holidays:** Because the Employee is working under a fixed term agreement of less than 12 months, the Employee will not become entitled to annual holidays, but instead shall be paid holiday pay at the rate of 8 percent of the Employee’s gross earnings. This holiday pay shall be with and on top of the Employee’s regular pay and shall be identified separately on the Employee’s payslip.

# **Sick Leave and Bereavement Leave:** Because the Employee will be employed for a fixed term of less than 6 months, the Employee will not become entitled to paid sick or bereavement leave during the period of employment.

# **Family Violence Leave:** Because the Employee will be employed for a fixed term of less than 6 months, the Employee will not become entitled to paid family violence leave.

# **Health and Safety**

## The Employee agrees to comply with their duties under the Health and Safety at Work Act 2015 at all times during their employment under this Agreement. The Employee shall:

### Take reasonable care of his or her own health and safety and ensure that his or her acts or omissions do not adversely affect the health and safety of other persons in the workplace; and

### Follow any reasonable instructions given by or on behalf of the Employer with respect to health and safety; and

### Comply with all of the Employer’s health and safety policies or procedures as advised to the Employee from time to time.

## The Employee shall report all work related accidents and/or injuries to the Employer as soon as practicable on the day of any accident or injury occurring. The Employee shall notify the Employer within one working day of filing any work related claim with the Accident Compensation Corporation.

## The Employee will be required to work outdoors, carry out physical work and work in close proximity to machinery as part of his/her duties. The Employee confirms that, other than as disclosed in writing before signing this agreement, the Employee has no mental or physical illness/disability/injury that would mean that:

### in carrying out his/her duties in the role there may be a risk of harm to him/herself or others (including that the duties might aggravate the illness/ disability/injury); or

### to carry out the duties satisfactorily he/she might require special support or facilities.

## The Employee shall notify the Employer of any injury or illness that the Employee may have (whether work related or not) that could affect the health & safety of the Employee at work or any other persons in the workplace. The Employee agrees to provide sufficient information to allow the Employer to undertake a risk assessment on the health and safety implications of any such injury or illness in relation to performance of the Employee’s role and to attend any meetings relating to the Employee’s health that may be requested by the Employer.

## The Employee must not bring any illegal or prescription drugs or any alcohol into the workplace and must not consume or be under the influence of any drugs or alcohol while on duty at work or during work hours, unless they are drugs lawfully prescribed to the Employee by a registered medical practitioner and the Employee has been advised by such practitioner that it is safe for the Employee to take the drugs and perform his or her work duties.

## Smoking is not permitted in the workplace, including (but not limited to) any common internal area, any work vehicle and any outdoor area where others are working or taking a break.

Compliance with this clause and with the Employer’s health and safety policies and procedures is a key responsibility of every employee. Failure to do so may be deemed serious misconduct and may result in summary dismissal.

# **Personal protective equipment**

## The work being done by the Employee may involve risks to their health and safety from time to time for which personal protective equipment (“**PPE**”) must be used or worn.

## The Employer will provide suitable PPE, as well as training and information about how it must be used or worn, where it is stored, and how it is maintained.

## The Employee must take all steps reasonably practicable to ensure their own safety at all times which includes the use of and wearing of PPE provided by the Employer. The Employee must follow the Employer’s health and safety policies and practices relating to the wearing and usage of PPE at all times.

## Failure to use or wear PPE as instructed may be considered serious misconduct and may result in instant dismissal.

# **COVID requirements**

(a) The Employee shall follow any physical distancing rules, hand washing and/or sanitising procedures, wear all PPE provided, and follow all other procedures as required by the Employer and/or government guidelines.

(b)   If the Employee is required to undertake a COVID test and to self-isolate while awaiting test results; or if they are required to self-isolate due to contact with a COVID case as per the Ministry of Health’s guidance, the business will pass on any relevant subsidies where applicable, but the Employee will otherwise be on unpaid leave.

 (c) The Employee agrees to undergo any COVID testing and/or attend any testing clinic as directed by the employer.

# **Tools and Equipment**

## The Employer may provide the Employee with tools and equipment necessary for the Employee to perform his/her duties.

## Any tools and/or equipment supplied by the Employer must remain at all times on the Employer’s premises and are not to be removed without prior permission of the Employer.

## The Employee must use and treat any tools and/or equipment supplied by the Employer with care and respect and keep them in good working order, including performing any regular maintenance required for the tools as instructed by the Employer.

## Any tools and/or equipment supplied by the Employer remain at all times the property of the Employer and must be returned in good working condition prior to termination of employment. If the Employee fails to return any tools and/or equipment the Employer may deduct the replacement cost of such from the Employee’s final pay, including holiday pay.

## If the Employee provides his/her own tools and/or equipment for carrying out his/her duties, the Employee is responsible for those tools and/or equipment and no other employee may use the tools and/or equipment without prior consent of the Employee.

# **Damage / misuse of Employer’s property or equipment**

## The Employee acknowledges that they have a duty to exercise reasonable care when working and must seek to protect the Employer’s property, equipment and business to avoid any harm or damage.

## If the Employer becomes aware of any damage or misuse of its property or equipment, it may elect to conduct a full and fair investigation in accordance with this agreement to establish the cause of any damage or misuse.

## If the Employee is found to have caused any damage or misused the Employer’s property or equipment either negligently or on purpose, the Employer may seek to recover damages from the Employee. This may include the cost of fixing or replacing the property or equipment and/or any lost income as a result of the property or equipment being out of service.

# **Policies/house rules**: The Employee shall know and comply with any house rules or policies introduced by the Employer from time to time. The Employer shall notify the Employee of any changes to house rules or policies. Failure to comply with these may result in disciplinary action up to and including summary dismissal.

# **Confidentiality**:The Employee shall treat as confidential, and must not disclose, any confidential information (eg information of a confidential nature relating to the Employer, its business or customers of the business) that the Employee becomes aware of in the course of employment. This clause applies both during and after the Employee’s employment and the Employee agrees to be bound by it.

# **Employee Protection Provision**

## In the event of a restructuring, as defined in Part 6A, subpart 3 of the Employment Relations Act 2000 (being the sale, transfer, or contracting out of all or part of our business), where the Employee is an “affected employee”, the Employer will:

### As soon as is reasonably practicable, taking into account the commercial requirements of the business, negotiate with the potential new employer the impact of the restructuring on the affected employees’ positions.

### Negotiate with the potential new employer regarding:

#### Whether or not the new employer proposes to offer affected employees the opportunity to transfer on the same terms and conditions;

#### If some or all affected employees will not transfer on the same terms and conditions, whether there will be any other potential opportunities for employment for them with the new employer; and

#### The proposed date for commencement of employment with the potential new employer (if applicable).

## The Employee agrees to the Employer disclosing to the new employer on a confidential basis, as part of those negotiations, relevant information such as details of the Employee’s terms and conditions of employment, job description, skill-set, experience and qualifications.

## If the Employee is not employed by the potential new employer, for whatever reason then:

### the Employer will consult with the Employee and consider whether there are any opportunities for redeployment within the Employer’s business, if any part of it is being retained by the Employer; and

### the Employer will provide any entitlements specified in the redundancy provision of this agreement and will consult with the Employee about any further entitlements that may be made available.

## Where the Employee’s position is terminated in a restructuring and the potential new employer offers employment to the Employee on terms which are the same or substantially similar, there shall be no entitlement to redundancy compensation.

# **Redundancy**

## Upon the Employee’s position becoming redundant during the term of this agreement the Employee shall be entitled to receive 1 week’s written notice of termination of employment or payment in lieu of all or part of such notice. This notice is inclusive of, and not in addition to, the required notice in the termination clause above. There is no entitlement to redundancy compensation. For the avoidance of doubt, the Employer may terminate for redundancy despite the fixed term nature of employment.

# **Abandonment**

#  Where the Employee is absent from work for a continuous period exceeding three days without notification or consent from the Employer, the Employee may be deemed to have abandoned their employment and the Employer may be entitled to terminate the employment of the Employee.

# **Deductions**

## The Employee agrees the Employer may deduct from any wages (including any holiday pay) due to the Employee any moneys owed to the Employer.

## Agreed deductions shall include, but not be limited to, loss incurred by the Employer due to damage to its property by the Employee, any loans made to the Employee, any amounts owing for personal expenses incurred by the Employee and the replacement cost of any of the Employer’s property damaged, taken or not returned by the Employee before finishing work.

## By signing this agreement, the Employee consents to the above deductions under the Wages Protection Act 1983.

# **Company property**: Except where the prior consent of the Employer has been obtained the Employee shall not:

## Use any of the Employer’s property for personal use or any use other than in the performance of the Employee’s duties under this agreement; and

## Shall not remove any of the Employer’s property from the Employer’s premises.

# **Resolution of employment problems/personal grievances**:

## If any employment issues arise, those should be raised with the Employer as soon as possible so that they can be resolved. If the matter is not resolved either party can seek assistance from the Ministry of Business Innovation and Employment's mediation service. If the issues are not resolved at mediation, they may be referred to the Employment Relations Authority.

## If the issue is a personal grievance, the Employee must raise that grievance within 90 days of the event giving rise to the grievance by providing the Employer with a written explanation of the personal grievance and the remedies the Employee is seeking, or after further time if allowed by the Employer or where the Employment Relations Authority grants an extension of time.

## Due to the transient nature of the workforce, the Employee representative can be nominated by the Employer. The Employee has the right to self-represent in all employment-related disputes.

# **Privacy Act 2020**

## The Employee has provided personal information to the Employer during the application process and will continue to do so during employment. The Employer collects personal information about the Employee as is lawful and necessary for the purposes of managing and monitoring employment and stores it at it premises in accordance with the Privacy Act 2020.

## The Employee acknowledges that the Employer may be required to disclose personal information about the Employee to a third-party agency to facilitate due diligence checks, audits, inspections, investigations or otherwise as permitted under the Act, and the Employee authorises such disclosures.

## Under the Privacy Act 2020 (“the Act”), you are entitled to request access to and correction of your personal information held by the Firm. Further information about your rights under the Act is available from the Privacy Commissioner or at www.privacy.org.nz.

# **Entire agreement:** Unless otherwise provided, this agreement sets out the full terms and conditions of the employment relationship between the parties and replaces any previous agreements or understandings. The agreement may be reviewed by the Employer at its discretion. No variations to this agreement shall be enforceable unless recorded in writing and signed by both parties.

# **Severability**

#  If any provision of this agreement is found to be invalid or unenforceable by any Court of competent jurisdiction, then such invalidity or unenforceability shall not affect the remaining provisions of the agreement.

# **Minimum Conditions**

#  If at any time any of the terms of this agreement fall below the minimum conditions of employment specified by any Acts or Regulations applicable to this agreement then the agreement shall be deemed to be altered to include such relevant minimum conditions.

# **Waivers**

#  The failure of either party to this agreement at any time to require performance by the other of any of its provisions shall not affect the full right of that party to require such performance at any later time; nor shall the waiver constitute a waiver of any succeeding breach of the same or any other provision or constitute a waiver of the provision itself.

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# **Warranty**: The Employee warrants that:

## The Employee has not been convicted of any offences by a court and does not have any pending criminal or other charges other than as disclosed to the Employer in writing prior to entering into this agreement;

## The Employee is legally entitled to work in New Zealand and has the other essential requirements/qualifications set out above; and

## All information provided in support of the application for employment was true and correct.

## The Employee acknowledges that any misrepresentation in the application for employment, including any failure to disclose information requested, will amount to serious misconduct and may result in summary dismissal. Nothing in this agreement requires the Employee to inform the Employer of any criminal conviction which the Employee is legally entitled to conceal under the Criminal Records (Clean Slate) Act 2004.

**SIGNED BY THE EMPLOYER AND EMPLOYEE:**

**Acknowledgement by Employee:**

## The Employee acknowledges that before entering into this agreement, the Employee was:

# Provided with a copy of this agreement by the Employer and made aware employment is on a fixed term basis and the reasons for that fixed term; and

# Advised by the Employer that he/she is entitled to seek independent advice about the intended agreement; and

# Given a reasonable opportunity to seek independent advice about the agreement before signing it; and

# Advised by the Employer of his/her entitlements under the Holidays Act 2003 and that the Employee can obtain further information about his/her entitlements from their union (if applicable) or from the Ministry of Business Innovation and Employment.

**SIGNED** by the Employee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Employee’s full name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SIGNED** for and on behalf of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Employer)** by its duly authorised signatory:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Position