



ORCHARD SERVICES AGREEMENT

The Orchardist	Company Name:	
	Address:	
	Contact Person/s:	
	Contact Number:	
	Email	
	Global GAP Number	

The Contractor	Company Name:	Mubwons Ltd
	Address:	
	Contact Person/s:	Scott Ellison
	Contact Number:	274234873
	Email	mubwons@gmail.com
	GAP / CAV / PMO Number	PMO140-C00910
	CAV Expiry Date	Jan 2024

The Orchard	Orchard Name	
	Address:	
	KPIN:	
	Variety:	
	Canopy Area	

Agreement	1. The Contractor is responsible for providing the Services to the Orchardist in accordance with the terms and conditions set out in this Agreement.
Length of Agreement	This Agreement, unless cancelled earlier, is for the period: 2023 season

Services to be Provided.	<i>Winter Pruning</i>	<i>Male Pruning</i>	<i>Summer Pruning</i>	<i>Girdling</i>
“Services”	<i>Thinning</i>	<i>Harvest - Picking</i>	<i>Mowing and Mulching</i>	<i>Weed Spraying</i>
1. <i>Cross out any services that do not apply</i>	<i>Spray Application</i>	<i>Fertiliser Application</i>	<i>Pollination</i>	<i>Shelter Maintenance</i>
2. <i>Insert due date for date-specific services</i>	<i>Pest monitoring</i>	<i>Repair & Maintenance of Orchard Structures</i>	<i>Repair & Maintenance of Kiwifruit Vines</i>	<i>Supervision of Orchard Services</i>
<i>Other: Harvest and / or Grafting</i>				
Special Directions for Performing Services	Refer to Appendix 1 for details of the required timeframes, performance, and quality standards for the Services.			
Payment	Applicable rates for the Services are listed in Appendix 2.			

Contractor's Obligations	<ol style="list-style-type: none"> 1. The Contractor represents and warrants to the Orchardist that it is fully experienced and properly qualified, licensed, equipped, organised and financed to perform and complete the Services and will at all times ensure that the Services are carried out in accordance with kiwifruit industry best practices. Where applicable, the Contractor will perform the Services to the level and specifications set out in Appendix 1. 2. The Contractor will use its best endeavours to complete the Services within the time frames specified by the Orchardist, following all reasonable directions and instructions given by the Orchardist. 3. The Contractor will comply with the GLOBAL G.A.P. and GRASP quality assurance systems at all times during the term of this Agreement and provide the Orchardist with a valid Compliance Assessment Verification (CAV) before providing Services for which a CAV is required by Zespri. The Contractor shall ensure that all Services are provided in accordance with Zespri requirements, including the GLOBAL G.A.P., GRASP systems and the Zespri Best Practice guidelines. 4. The Contractor warrants that it holds, and for the term of this Agreement will continue to hold, all licences and qualifications which may be necessary in order to perform the Services. 5. The Contractor will comply with all relevant laws and regulations that apply to the Contractor and to the provision of the Services. 6. The Contractor agrees that workers employed by the Contractor are not employees of the Orchardist and that the Orchardist has no legal or other responsibility for the Contractor's workers. 7. The Contractor will ensure all workers have written employment agreements, are paid in accordance with New Zealand law, are paid all wages due and are legally entitled to work in New Zealand. 8. The Contractor shall immediately on request give the Orchardist the full name and date of birth of the worker and provide a photocopy of the worker's work permit or proof of NZ citizenship or residency. 9. The Contractor acknowledges it is responsible and liable for payment of all taxes, assessments and levies (including Accident Compensation levies), in respect of amounts paid to the Contractor under this Agreement. 10. The Contractor indemnifies the Orchardist in respect of liabilities, costs and expenses (including full costs between solicitor and client), claims or demands incurred by the Orchardist, arising out of or in conjunction with the Services of this Agreement.
Audit	<ol style="list-style-type: none"> 1. The Orchardist can request at any time to view documentation that provides evidence that the Contractor is adhering to the GLOBAL G.A.P., GRASP systems and the Zespri Best Practice Guidelines. This can be in the way of viewing payslips, timesheets, employment agreements and employment eligibility verification. The Orchardist will not retain any documentation presented. 2. This audit process will be done in accordance with the Privacy Act 2020.

Health and Safety

1. Prior to commencing the Services, the Contractor will complete and provide to the Orchardist a copy of its Health and Safety Plan for approval. As the technical expert in the work activity, the contractor is best placed to ensure the management of the Health & Safety risks is adequate and the orchardist will monitor this against the agreed Health & Safety plan.
2. The Contractor warrants that all Services supplied pursuant to this Agreement will comply with the requirements set out in Appendix 1 and the Health and Safety at Work Act 2015. The Contractor will not make any changes to any Service and, in particular, the method of providing the Services, without the Orchardist's prior written consent.
1. The Contractor will:
 - a) Implement and comply with the approved Health and Safety Plan;
 - b) Ensure that all plant and machinery brought onto the orchard is well maintained, in safe condition and where relevant inspected and certified safe for use. (I.e. vehicles with current WOF, electrical gear tested and tagged);
 - c) Take so far as is reasonably practicable steps to ensure the safety of all persons under the Contractor's control and third parties in connection with the performance of the Services;
 - d) Ensure that it and all of its workers (including any subcontractors) comply with the Health and Safety at Work Act 2015, and all other applicable legislation and regulations;
 - e) Provide sufficient skilled and suitably qualified personnel to perform the Services; and
 - f) Promptly notify the Orchardist of any accident or injury which occurs in relation to the provision of the Services.
2. When performing the Services the Contractor shall ensure that there is always one person currently trained in First Aid on the Orchard and that best practice hygiene standards are maintained.
3. The Contractor shall perform the Services in accordance with its own methods and best trade practices subject always to compliance with this Agreement and the Health and Safety at Work Act 2015.
4. Failure by the Contractor to comply with its health and safety obligations may result in this Agreement being terminated immediately.
5. To the extent permitted by law, the Contractor indemnifies and shall keep indemnified the Orchardist against all costs, damages, loss and expenses incurred or suffered by the Orchardist arising out of any breach by the Contractor of the health and safety requirements of this Agreement.

Biosecurity	<ol style="list-style-type: none"> 1. The following biosecurity practices are to be followed on the Orchard. <ol style="list-style-type: none"> a) All staff vehicles to be parked off the Orchard or in designated parking area. b) All staff to be advised of the hygiene practices that have been agreed upon by the orchardist. c) All work to stop in wet weather unless agreed prior. 2. No plant material to be bought onto the orchard without prior consent of the orchardist. 3. Unusual symptoms or suspected biosecurity threats to be reported.
Orchardist's Obligations	<ol style="list-style-type: none"> 1. The Orchardist agrees to provide the Contractor with access to the Orchard property to carry out the Services. 2. The Orchardist agrees to meet their obligations under the Health and Safety at Work Act 2015 including but not limited to providing the Contractor with all Health & Safety information pertaining to the orchard including permanent and temporary hazards that may impact on the Contractor. 3. The Orchardist will provide clear instructions for the Services. The Orchardist will endeavour to be available to answer questions and clarify issues notified by the Contractor. 4. The Orchardist agrees to pay the Contractor in accordance with Appendix 2.
Insurance	<p>Optional - tick if required:</p> <p>The Contractor will take out and maintain during the term of this Agreement a policy for public liability insurance of an amount determined by the contractor (acting reasonably) from time to time. The amount of public liability insurance required at the commencement of this Agreement is \$2,000,000. If requested by the Orchardist, the Contractor will provide a certificate of currency of insurance and verification that the premiums for the public liability insurance cover has been paid.</p> <p>In addition to holding public liability insurance, the Contractor will take out and maintain during the term of this Agreement insurance covering such other risks (and for such level of cover) as any reasonable and prudent person that is providing Services that are the same as the Services would insure against. If requested by the Orchardist, the Contractor will provide the Orchardist with verification that the Contractor holds such insurance cover.</p>

Dispute Resolution	<ol style="list-style-type: none"> 1. The parties agree to use their best efforts to resolve any dispute that may arise under the Agreement through good faith negotiations. 2. Either party, upon failure of good faith negotiations, may elect to resolve the dispute by mediation. If a request for mediation is made, then the parties shall agree upon a recognised kiwifruit-industry mediator. If the parties are unable to agree to the appointment of a mediator, the parties agree to the Chief Executive Officer of NZKGI appointing a mediator. 3. Should resolution of the dispute not be agreed in mediation, then, this Agreement may be terminated at the discretion of either party. 4. The parties shall continue to perform their obligations under the Agreement as far as possible as if no dispute has arisen pending the final resolution of any dispute except that the Orchardist may at its sole discretion choose to appoint another contractor or complete required orchard services themselves.
Termination	<ol style="list-style-type: none"> 1. Unless terminated under this clause, the Agreement starts and ends on the dates set out in the Length of Agreement. 2. Either party may terminate the Agreement on no less than one month prior notice to the other party. 3. On termination of the Agreement the Orchardist will only be liable to pay the Contractor for Services performed by the Contractor to kiwifruit industry best practices. 4. Other Termination Rights: Either party may, by notice to the other party, immediately terminate the Agreement if the other party: <ol style="list-style-type: none"> a) breaches any material provision of the Agreement and the breach is not: <ol style="list-style-type: none"> i. remedied within 30 days of the receipt of the notice from the first party requiring it to remedy the breach; or ii. capable of being remedied; b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of external administration, or ceases to continue business for any reason; or c) is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure.
Force Majeure	<ol style="list-style-type: none"> 1. Neither party will be liable to the other for any failure to perform the party's obligations under this agreement by reason of circumstances beyond the party's reasonable control, including (but not limited to): <ol style="list-style-type: none"> a) natural disaster i.e. flooding, earthquake, tsunami b) health epidemic or pandemic, c) governmental actions or war ("force majeure event"). 2. The party affected must: <ol style="list-style-type: none"> a) immediately notify the other party and provide full information about the Force Majeure; b) use their best endeavours to overcome the Force Majeure; and c) continue to perform their obligations as far as practicable.

Relationship	1. The parties acknowledge and agree that the Contractor has been engaged as an independent contractor. Nothing in this Agreement creates or evidences any employer/employee, partnership, joint venture or agency relationship between the parties.
Amendment to Agreement	1. This Agreement may not be amended, modified, or changed (in whole or in part), except by a formal, definitive written agreement expressly referring to this Agreement, which agreement is executed by both of the parties hereto.
Acknowledgements	By signing this agreement, you acknowledge and confirm that: <ul style="list-style-type: none"> a) you have read, understood and agreed to its terms; b) you have been advised of your entitlement to take independent advice about this agreement and have been given a reasonable opportunity to do so before signing; c) the information you have provided to us in connection with your appointment is accurate and not misleading; and d) you are fit to carry out all of the duties and responsibilities of the position and, to the best of your knowledge, you have not had and do not have any undisclosed medical condition that may impact on your ability to carry out those duties and responsibilities.
Signed by the Orchardist	
Signed by the Contractor	<i>Scott Ellison</i>
Date of Agreement	2023 season

NZKGI has taken care and prepared this Agreement in good faith. NZKGI makes no warranty or representation as to the accuracy or the completeness of this Agreement. NZKGI does not accept responsibility or liability should any grower or other party incur any loss, injury or damages arising from that person's reliance on this Agreement. NZKGI recommends parties seek legal advice before signing this Agreement to ensure the wording fits the particular circumstances of the parties.

APPENDIX 1: Time, Quality and Performance Requirements	
Service	Requirements
Harvest	During the harvest season March - June
Grafting	During the Grafting season June - August. May return in Spring for redraft as required
Spring work	Bud thinning, girdling

APPENDIX 2: Payment Schedule

Payment Terms	<ol style="list-style-type: none"> 1. Below are the agreed rates and any change to these rates will require the agreement of the Orchardist in writing in advance of any rate change. 2. Unless agreed otherwise, the Contractor will invoice the Orchardist for the Services provided each month. 3. Subject to the delivery of the Services being satisfactory to the Orchardist, the Orchardist will pay each valid tax invoice from the Contractor within seven days of receiving the invoice. 4. The Contractor warrants that it is registered for GST pursuant to the Goods and Services Tax Act 1985. Provided that the Contractor is GST registered, the Orchardist will pay the Contractor GST in addition to the rates set out below. 5. Withholding Tax will be deducted by the Orchardist unless a valid exemption certificate is provided. 6. Where the services delivered do not meet the requirements specified in Appendix 1 the Orchardist may deduct penalties from invoice payments. 7. If there is any dispute between the parties regarding an amount invoiced by the Contractor, the Orchardist may withhold payment of the disputed amount until the dispute has been resolved by the parties 8. The Contractor will maintain records which clearly identify time and expenses incurred in the provision of the Services.
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Hourly Rates		Rate per hour charged to Orchardist (plus GST)	Rate paid to employees
		Between \$28 and \$40 per hour depending on job and employee undertaking the job	Minumum hourly rate paid to employees is \$22.70 (+ 8% holiday pay if casual)

Contract Rates		Contract rate charged to Orchardist	Rate paid to employees
[The contractor must provide evidence that at least minimum wage has been paid to employees]	Vine Maintenance		
	Winter Pruning	NA	
	Stringing	Hourly	Hourly as above
	Male Pruning	NA	

	Girdling	Hourly	
	Repair & maintenance of vines	NA	
	Thinning		
	Summer Pruning	NA	
	Harvest		
	Fruit Picking	Bin Rate	
	Spray		
	Spray application	NA	
	Weed spraying	NA	
	Fertiliser		
	Fertiliser application	NA	
	Other		
	Mowing and mulching	NA	
	Pollination	NA	
	Shelter maintenance	NA	
	Supervision of orchard services	NA	
	Repair & Maintenance of orchard structures	NA	
	Pest Monitoring	NA	