

THIS AGREEMENT is made the

day of

2023

BETWEEN: **ZEST BIOTECH LIMITED** (hereafter called “Zest Biotech”) of the one part

AND: *[insert Consumer’s details]* (hereafter called “the Consumer”) of the other part

BACKGROUND

- A. Zest Biotech produces innovative products for optimal plant health and livestock performance which have been used by growers and farmers across New Zealand for over 15 years.
- B. Zest Biotech’s products are scientifically proven to increase crop and livestock performance.
- C. Among Zest Biotech’s products include Agrizest which is an elicitor of the phenylpropanoid pathway for plant health and orchard gate returns (“OGR”).
- D. Zest Biotech has agreed to sell, and the Consumer has agreed to purchase Agrizest on the terms set forth in this agreement.
- E. Pursuant to the operative provisions hereto, Zest Biotech guarantees to the Consumer a higher OGR in an Agrizest-treated block, in comparison to a control block.
- F. Should the Consumer not yield Zest Biotech’s guaranteed results under clause E hereto, Zest Biotech shall refund the Consumer in full all costs for the purchase of the Agrizest.

OPERATIVE PROVISIONS

1. APPLICATION

The Consumer must apply Agrizest to a block that is 1-hectare or more, and shall have a comparable block as a control. The Consumer may choose not to apply copper or foliar nutrients on the Agrizest-treated block.

2. TREATMENT

- a. The treatment for the Agrizest-treated block and control block must be identical or reasonably similar through the season, with exception to the application of Agrizest to the treated block.
- b. Neither the Agrizest-treated block nor the control block can have been previously treated with either Agrizest or Primazest prior to this season.

3. DISCLOSURE

- a. The Consumer must supply Zest Biotech with exact canopy area and pre-harvest data from both the Agrizest-treated block and control block at the time of the claim in accordance with clause 4 hereto.
- b. The Consumer must provide Zest Biotech with harvest, grading and packout data as soon as reasonably practicable once received from the packhouse.
- c. In demonstration of a fair comparison under clause 2(b) hereto, the Consumer must supply Zest Biotech with harvest data from the previous 2 years, prior to the comparison.

4. CLAIM

- a. The Consumer must lodge a claim, without delay, as soon as the Consumer obtains reasonable evidence, based on Zest Biotech's sole discretion, that a higher OGR will not eventuate from the Agrizest-treated block.
- b. Notwithstanding clause 4(a) hereto, claims by the Consumer must be lodged prior to harvest, including but not limited to, the preharvest crop estimate test and control blocks by an independent orchard/vineyard consultant.
- c. Any claim under this clause 4 that is over the value of \$5,000.00 must be made by the Consumer through their legal representative.
- d. Any unreasonable claim made by the Consumer such as one being based on a comparison between one control block and an entire orchard will not be deemed as reasonable evidence under clause 4(a) hereto.
- e. Notwithstanding any other terms of this agreement, should Zest Biotech reasonably believe on its sole and absolute discretion that a claim made by the Consumer is one of malice, Zest Biotech may decline a such claim entirely.

5. MONEY-BACK

- a. Any successful claims made under clause 4 shall have the Consumer refunded in full by Zest Biotech for all costs incurred in the Consumer's purchase of Agrizest.
- b. The Consumer acknowledges and agrees that refunds strictly only apply to the Agrizest used (in accordance with the recommended rate and programme of 4x1L per hectare applied at appropriate times as specified in the trial protocol under the Schedule) on a treated block as per clause 1 hereto.

6. WARRANTY

- a. The Consumer warrants that they will at all times undertake and follow the trial protocol under the Schedule and programme set out in this agreement as well as all other regulatory guidelines and standards, and shall only use Agrizest for its intended purpose.
- b. In reliance on the Consumer’s warranties under this agreement, the parties agree that the Consumer is a “consumer” within the definition of the Consumer Guarantees Act 1993.
- c. Notwithstanding clause 6 or any other provisions under the Consumer Guarantees Act 1993, any offer of refund or claims shall not be available to companies or individuals selling, developing or promoting agricultural products (or associates).

7. GOVERNING LAW

The law of New Zealand must apply to this agreement except to the extent that expressly varied by this agreement.

SIGNED by ZEST BIOTECH LIMITED
by its Director(s):

) _____

) _____

SIGNED by *[insert Consumer’s details]*
as the Consumer

) _____

SIGNED by *[insert Consumer’s details]*
as the Consumer

) _____

THE SCHEDULE

Agrizest Treatment Protocol: Kiwifruit

(for other tree and vine crops please contact us for the protocol and advice)

Treatment programme:

- 2 sprays of Agrizest at 1L/ha per spray, 3-7 days apart beginning 2-3 weeks pre blossom
- 2 sprays of Agrizest at 1L/ha per spray, 7 days apart immediately post blossom

Block Selection

- Select two identical blocks – same contour, age, pruning and training system, use the same pruning team, with almost similar yield/ha performance.
- The exact canopy area must be known.
- In the Agrizest treated block at post-blossom thinning, you will be able to thin less. Treated vines/trees can carry a heavier yield.
- If any nutrient deficiencies have been diagnosed, apply the specific element to correct the deficiency only. Keep records of this.

Application and Monitoring

- Agrizest is to be applied by farmers or their contractors.
- Keep records of spray dates.
- The pre harvest testing for harvest clearance is to be carried out by independent laboratories approved by the industry.
- Any crop, pest and disease monitoring during the production season should be carried out by independent contractors.

DATED

2023

BETWEEN ZEST BIOTECH LIMITED
("Zest Biotech")

AND *[INSERT CONSUMER'S DETAILS]*
("the Consumer")

AGRIZEST MONEY-BACK GUARANTEE AGREEMENT
