

## Enforceable Undertaking under Part 4, Health and Safety at Work Act 2015 (“Act”)

The commitments in this Enforceable Undertaking (**Undertaking**) are given to WorkSafe New Zealand by NZ Hot House Limited (**NZHH**) and KPH Produce Limited (**KPH**) (each a **Person**).

This Undertaking is given on the date that it is accepted and signed by WorkSafe. It operates as a legally binding commitment on the part of each Person from that date.

WorkSafe respects personal privacy and is committed to protecting personal information. The information provided in this document is for the purpose of an undertaking given to WorkSafe under Part 4 of the *Health and Safety at Work Act 2015*. This information will be managed within the requirements of both the *Privacy Act 1993* and the *Official Information Act 1982*.

There is an expectation that WorkSafe will publish this Undertaking in full on its website.

Terms and definitions:

**Contravention** means an action which offends against the *Health and Safety at Work Act 2015* and/or any Regulations made under it. It includes both health and safety contraventions. A contravention also includes an alleged contravention.

**HSMS** means a Health and Safety Management System.

**Person** means an individual who or a legal entity which has a duty under the Health and Safety at Work Act 2015 and can give a written undertaking. In the context of this Undertaking, **Person** refers to NZHH and KPH, jointly and severally.

**Health and Safety legislation** means *Health and Safety at Work Act 2015* and associated regulations.

**Enforceable undertaking** means an enforcement pathway that allows a duty holder to voluntarily enter into a binding agreement with WorkSafe. The agreement outlines actions the duty holder will undertake to address the contravention. It is expected to deliver activities which benefit workers, the wider industry or sector and/or the community as well as acceptable amends to any victim(s).

Terms or phrases which are defined in the Act have the same meaning where used in this Undertaking.

## 1. GENERAL INFORMATION

### 1.1 Details of the person/persons/entity giving the undertaking

*Persons Giving Undertaking:* NZ Hot House Limited and KPH Produce Limited

*Nominated person:* (point of contact for WorkSafe communications)

Simon Watson, Company Director

*Street address:* 328 State Highway 22, Karaka Rd, Drury, Auckland 2578.

*Mailing address:* PO Box 150, Drury, Auckland 2247.

*Work phone:* (09) 295 9020

*Mobile phone:* [REDACTED]

*Email:* swatson@nzhothouse.co.nz

*Type of legal entity:* Limited company

*Industry:* Horticulture

*Workers: KPH Produce: Full time:* 43

*Part time:*

*Casual/ Contractors:* 5

*Workers: NZ Hot House: Full time:* 32

*Part time:*

*Casual/ Contractors:*

*Products and services:* Packing, processing, prepacking, warehousing and despatching of fresh produce.

### Background

NZHH and KPH are part of the NZ Hot house Group (**NZHH Group**), a 100% New Zealand owned, vertically integrated business founded by Brett Wharfe in 1984. Today the Group employs in excess of 400 full time staff across the following operating divisions:

- Underglass NZ Ltd (Commercial growing)
- KPH Produce Ltd (Pack house)
- NZ Hot House Ltd (Marketing)
- KPH Transport Ltd (Logistics)
- South Seas Exports Ltd (Exporter)

NZHH Group or companies in the NZHH Group:

- Are members of Business Leaders Health and Safety Forum.
- Are and have been members of the EMA for more than a decade and our staff and Directors regularly attend their presentations on H&S and other matters.
- Active members of the Pukekohe Vegetable growers Association (**PVGA**) which represents produce growers from Wellsford in the North to Te Awamutu in the South (as a result of mergers of Auckland, Franklin/Pukekohe and Waikato). The PVGA is the largest and most

active growers' association in New Zealand and is regularly consulted by Government, local authorities and Iwi on industry matters.

- Longstanding members of United Fresh Inc. This pan industry organisation is best known for the 5+ADAY and Fruit in Schools program.
- Heavily involved with Horticulture New Zealand (HNZ) , which is the national industry body that oversees the district Association. HNZ annually host the Young Grower of the Year competition and we are current sponsors. NZHH Group Directors, Simon Watson and Lex Dillon are both Directors of Tomatoes New Zealand Inc. which is the sector governing body. Tomatoes NZ have been a contributor to the instructional booklet "Keep Safe, Keep Growing" on how to be healthy and safe in horticulture. This has been produced in conjunction with WorkSafe and ACC. The booklet is due for release later this year.
- Regularly donate produce to primary schools in our district for the purposes of fundraising and have sponsored many local and national sports players and initiatives over the years as part of our focus on wellbeing for the communities where our workers live.

## 1.2 Detail the contraventions

The alleged contraventions are, that being a person conducting a business or an undertaking (PCBU):

- a) NZHH failed to ensure, so far as was reasonably practicable, the health and safety of workers whose activities in carrying out work were influenced or directed by NZHH, while carrying out work, namely maintenance inside a chiller that involved the operation of an LPG fuelled forklift, and that failure exposed the workers to a risk of death or serious injury, arising from exposure to carbon monoxide.
- b) KPH failed to ensure, so far as was reasonably practicable, the health and safety of workers who worked for the PCBU, while the workers were at work in the business or undertaking, namely carrying out maintenance inside a chiller that involved the operation of an LPG fuelled forklift, and that failure exposed the workers to a risk of death or serious injury, arising from exposure to carbon monoxide.
- c) KPH failed to ensure, so far as was reasonably practicable, the health and safety of workers whose activities in carrying out work, were influenced or directed by KPH, while carrying out work, namely maintenance inside a chiller that involved the operation of an LPG fuelled forklift, and that failure exposed the workers to a risk of death or serious injury, arising from exposure to carbon monoxide.

In particular it is was reasonably practicable for KPH to have:

- a) Developed and implemented an adequate safe system of work for the general use of LPG fuelled forklifts on site;
- b) Ensured that contractors on the site undertook a risk assessment and developed a safe work method for the work to be done;
- c) Provided, or required other PCBUs to provide, safe plant to carry out work.

In particular it is was reasonably practicable for NZHH to have:

- a) Developed and authorised, for KPH, an adequate safe system of work for the general use of LPG fuelled forklifts on site;
- b) Developed and authorised, for KPH, an adequate contractor management system.

### 1.3 Detail the events surrounding the contravention

On July 5<sup>th</sup> 2016 KPH had AIRTECH Ltd on site carrying out routine maintenance in our largest chiller. Our relationship with Airtech Ltd goes back more than a decade and they have a contract to service all of our air-conditioning and chiller equipment. Airtech employees are well known to us and they are regular visitors to our site. On this occasion they requested a forklift driver, a forklift and a high work cage.

We provided one of our employees (Victim A) who was a licenced forklift driver and who also had the current and appropriate "man up" training to operate the safety cage.

On the day in question, our H&S officer, Engineer and Packhouse Manager were both on site and undertook the initial consultation with the contractors regarding the task to service one of the two condensers inside the very large chiller. This duration of this task was estimated to have taken about an hour and a half.

The H&S officer and our Engineer then left the site to supervise another job, leaving the Packhouse manager to co-ordinate the contracting activity in their absence.

There are two condensers in this very large chiller and the technician asked the Packhouse manager who was present in the packhouse at the time, if he could service the second chiller suggesting that since he was there anyway that it would be time well spent, to which the Packhouse manager agreed. This required a further hour and a half.

During the course of the maintenance on the second condenser, it appears that the LPG forklift was left running causing the two contractors (Victim B and C) and the driver (Victim A) to become nauseous. All three workers exited the chiller. We evacuated the building and called the emergency services.

The Fire Service determined that there was a build-up of carbon monoxide (CO) in the chiller which they vented by opening the door and tying back the plastic flaps, the building was declared safe to re-enter by the Fire Service within 5 minutes of venting.

The two contractors and our forklift driver were taken to Middlemore hospital, treated and at various stages discharged having been deemed fit to return to work. Our Employee and one of the Airtech Technicians were transferred to the Auckland Naval Base to undergo decompression treatment. The two Airtech employees went back to work within several days of the incident. Our employee went on the ACC system for 90 days before leaving for Australia to live.

On the day of the incident, once the building was handed back to us by the emergency services, we secured the scene and contacted WorkSafe to report the incident.

1.4 Detail any enforcement notices issued that relate to the contravention

<i>Date:</i>	6/9/2016
<i>Notice Type:</i>	Prohibition Notice
<i>Notice Number:</i>	WSNZ
<i>Contravention or prohibited activity:</i>	Workers are at risk of carbon monoxide poisoning when using LPG powered forklift trucks in poorly ventilated chiller storage rooms.
<i>Action taken in response to notice:</i>	Replacement of LPG fuelled forklifts with electric powered forklifts. Installation of carbon monoxide detection system in cool store.

<i>Date:</i>	8/9/2016
<i>Notice Type:</i>	Improvement Notice
<i>Notice Number:</i>	WSNZ
<i>Contravention or prohibited activity:</i>	Workers are not effectively locking out equipment when performing maintenance cleaning operations requiring the equipment to be in a stopped (de-energised) position.
<i>Action taken in response to notice:</i>	Implemented a lock out and tag out process and trained workers in the use of the system.

## 1.5 Detail the rectifications to the workplace or work practices made as a result of the contravention (1.2), events (1.3) and the enforcement notices issued (1.4)

Following the incident and in response to the two enforcement notices, improvements were made in the following areas:

- Replace four LPG fuelled forklifts with electric forklifts
- Improve cool store signage for LPG forklifts prohibited
- Additional health and safety training for workers covering:
  - Hazard ID NZQA US 17602 (60 People)
  - Job Safety Analysis NZQA US 19522 (60 People)
  - Health and Safety Representative NZQA US 29315 (4 People)
  - Confined space and lock out tag out (12 People)
  - Working at heights training (5 People)
- Develop and print safety awareness posters
- Develop an interactive health and safety information station to encourage worker participation at all levels, with information on:
  - Safety champion of the week
  - Recognition of safety successes
  - Highlight needs for 5x5 risk awareness, signing in and correct PPE to be worn
- Implement a lock out and tag out system
- Install a carbon monoxide detection system in the cool store and monthly monitoring
- Updated forklift SOP's
- Improved the JSA (Job Safety Analysis) system and form for consulting, communicating and co-ordinating with contractors
- Implemented a permit to work system
- Improve contractor induction process and implement online system and a cloud based storage system
- Installed CO detectors where we feel there may be a potential hazard
- Surveyed KPH plant to ensure all safety guarding, kill switches and warning devices are operational as supplied by the manufacturer. Also as part of this survey an assessment of all existing machinery in the packhouse (by our engineers) to establish if any other guarding or safety systems may be required.
- Produced The NZ Hothouse Group Emergency Procedures and First Aid Plan. The launch of this was in the form of a training session for all key supervisory staff and team leaders to learn the system.
- Commenced weekly "Safety Walkabouts" seeking risks that require immediate action.
- Renamed our daily planning /start up meetings to include the term "tool box". These daily meetings now have a significant safety component. These meetings have minutes taken, participants recorded and workers are actively encouraged to participate/contribute.
- Audited all of our training providers to ensure they are NZQA registered.



1.6 Total amount of money spent on rectifications

RECTIFICATION	AMOUNT
PURCHASE COST OF 4 TOYOTA MODEL 8FBN18 ELECTRIC FORKLIFTS	\$205,919.00
COOL STORE SIGNAGE "LPG FORKLIFT PROHIBITED"	\$1,996.40
HEALTH AND SAFETY TRAINING	\$30,186.25
SAFETY POSTERS	\$124.20
HEALTH AND SAFETY INFORMATION STATION	\$2,574.85
CONTRACTOR INDUCTIONS ONLINE SYSTEM AND A CLOUD BASED STORAGE SYSTEM	\$11,656.00
COOL STORE CARBON MONOXIDE DETECTION SYSTEM	\$5,731.60
<b>TOTAL</b>	<b>\$258,188.30</b>
	<b>(Including GST)</b>

Internal costs incurred for rectifications have not been costed.



**1.7 Detail the injury sustained or illness suffered by victim(s) or other(s) as a consequence of the contravention, the potential for fatal injury of future fatal illness**

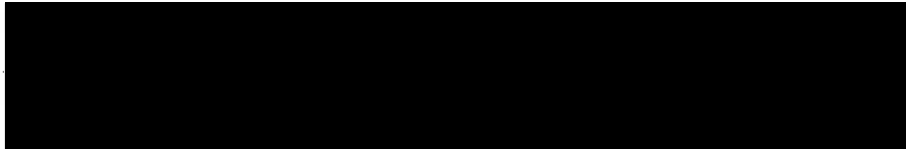
The victims suffered temporary ill health as a result of short term exposure to carbon monoxide. NZHH and KPH acknowledges the potential for a more serious event to have occurred.

**1.8 Detail any offer of amends or payments made to the victim(s) who sustained injury or suffered illness (Including in 3.12.3)**

Victim A was an employee of KPH at the time of the incident.. Additional support (as detailed in 1.11) was offered to him to assist his return to work but was not taken up. We sought advice from his ACC Case Manager and Occupational Therapist on ways to support him to return to work. Further consultation and additional offers of support were not taken up and approximately 3 months after the incident the employee resigned his position. Subsequently we were contacted by an Australian recruitment company based in Sydney seeking work references and we established that he and his family had moved to Australia, we understand for reasons not connected with the incident.

It is unfortunate that our employee (Victim A) choose not to return to work after an extended period of time away, resigned his position and migrated with his family to Australia. We had expected him to return. As part of this Undertaking we offer amends to him in the sum of \$13,940 which includes amounts for the:

- a)
- b)
- c)



We do not have any current contact details for Victim A. We will make reasonable efforts to locate him within 90 days of acceptance of this Undertaking to pay the amends. If we cannot locate him within 90 days we will pay amends of \$12,500 to St John Ambulance service, a registered charity in New Zealand (Charities Commission Registration number CC35255) within 30 days.

Victims B & C were employees of Airtech Limited and undertook regular contracted services for KPH. They returned to work within several days of the incident and have returned to our site, where they have been welcomed by the NZHH and KPH family. .As part of this Undertaking we offer amends to each of them in the sum of \$7,500 each for the temporary ill health and suffering. These amends will be paid within 30 days of acceptance of this Undertaking.

DESCRIPTION OF PAYMENT FOR AMENDS

GROSS  
AMOUNT

VICTIM A: FIRST WEEK INJURY PAY WITH A GROSS PAY OF

PROPOSED PAYMENT TO VICTIM A: TOPPING UP OF ACC PAYMENTS TO 100% OF AVERAGE PAY FOR THE PERIOD ENDING 17/9/17 (END OF EMPLOYMENT) WITH A GROSS PAYMENT TO THE VALUE OF

PROPOSED PAYMENT TO VICTIM A FOR AMENDS OF SUFFERING TEMPORARY ILL HEALTH AND CONTRIBUTION OF COSTS ASSOCIATED WITH MIGRATING TO AUSTRALIA

PROPOSED PAYMENT TO VICTIM B FOR AMENDS OF SUFFERING TEMPORARY ILL HEALTH

PROPOSED PAYMENT TO VICTIM C FOR AMENDS OF SUFFERING TEMPORARY ILL HEALTH

TOTAL PAYMENTS \$29,690

**1.9 Detail any consultation with the victim(s) as to their views on whether an enforceable undertaking would be an acceptable alternative to prosecution**

As described above, Victim A has migrated to Australia with his family and to date NZHH and KPH have not been able to speak to him to obtain his view.

As also noted above, the employees of Airtech Limited, Victims B and C, have returned to work and have been welcomed back to provider services at our sites. Our relationship with them is professional and amicable so we expect they will be accepting of this Undertaking.

**1.10 Detail any consultation with unions/sector/industry on whether an enforceable undertaking would be an acceptable alternative to prosecution**

We attach as Annexure A, a letter from Horticulture New Zealand in support.

**1.11 Detail the support provided by the person to the victim(s), other(s)**

<i>Date</i>	<i>Description of support</i>	<i>Comments</i>
	Three NZHH and KPH company representatives provided personal and emotional support to Victim A and his family.	
	Provided opportunity for ongoing external counselling and support for Victim A.	
	Provided opportunity and support to ensure that Victim A continued to feel part of and be associated with his fellow workers.	
	Offered with support from ACC case worker and a Occupational Therapist a flexible return to work program and job role for Victim A to adjust and assimilate.	
	Communication with Airtech Limited on the health and welfare of Victim B and C and confirmation of return to work within several days of the incident with no further ill health.	
	Meeting with Victim C on return to NZHH and KPH site to express support and welcomed return.	

### 1.12 Detail any current HSMS implemented and maintained by the person

NZHH and KPH as members of the NZHH Group have maintained a documented Health and Safety Management System, (HSMS) based on the critical elements of AS/NZS 4801 and good practice guidelines of AS/NZS4804.

The Health and Safety system is visible in each of the NZHH Group businesses with business unit managers maintaining the system requirements.

Workers are encouraged to participate in improving the health and safety by:

- a) reporting incidents and hazards
- b) engaging and participating in daily tool box talks
- c) engaging and participating in monthly H&S safety
- d) engaging with management during regular site tours
- e) participating in planned safety days and other events
- f) representation as health and safety representatives and health and safety committee members

Families of the workers engage and participate in the annual safety poster competition and receive recognition with prizes and displays of their health and safety messages.

NZHH and KPH recognise that a large percentage of their workforce has English as a second language and we continue to improve the safety information to make it more understandable and useable for the diverse workforce. Our industry proposals are designed to see if we can address this further.

### 1.13 Detail the level of auditing undertaken on the HSMS, including compliance audits and audit frequency

At the time of the incident NZ Hot House Group Limited held tertiary audit status in the ACC WSMP (Workplace Safety Management Programme). This programme was audited post the incident and the audit certificate remains valid until 31 January 2019.

The NZHH Group operations have also been audited against the following good practice standards:

- a) Quality Assurance Standard (WQA) by Woolworths audited by SGS
- b) NZ GAP (Good Agricultural Practice) Quality assurance and risk programme from crop to customer.
- c) HACCP – International code of practice for managing risks of produce handling - SGS

### 1.14 Detail the consultation undertaken or proposed to be undertaken, in relation to this undertaking

There was wide consultation undertaken within the various stakeholder groups (workers, management, contractors, suppliers and officers) during the post incident review and rectifications that were undertaken in Section 1.5.

## 2: GENERAL TERMS

NZHH and KPH acknowledge and commit to the general terms set forth below.

### 2.1 Acknowledgement that the regulator alleges a contravention occurred as detailed in term 1.2

NZHH and KPH acknowledge that WorkSafe alleges a contravention occurred.

### 2.2 Statement of regret that the contravention occurred

NZHH and KPH deeply regret the harm to the victims as a result of the incident and acknowledge the affect this incident has had on the victims. Whilst the incident had the potential for a more serious event we are thankful that the victims only suffered temporary ill health.

We regret that our employee (Victim A) choose not to return to work after an extended period of time away and resigned his position and immigrated with his family to Australia. The workers of Airtech Limited (Victim B and C) returned to work within several days of the incident and have returned to our site and have been welcomed by the NZHH and KPH family.

NZHH and KPH are committed to our obligations under the Health & Safety at Work Act 2015.

We acknowledge that compliance is not sufficient to justify WorkSafe accepting this Undertaking in lieu of proceeding with the prosecution of the charge that has been laid against both companies.

We offer this Undertaking as an opportunity to demonstrate leadership in Health & Safety where the horticultural industry plays an important role in growing and providing produce for families and in supporting their communities.

## 2.3 Statement of the reasons why, on balance, the person considers this undertaking is the most appropriate response to the contravention

NZHH and KPH understand that the stated purpose of an enforceable undertaking in WorkSafe's policy is to benefit the workers or the workplace, the wider industry or sector and/or the community while also taking into account the nature of the misconduct, submissions from any interested party (including any victims), past history of compliance and current commitment to remedy the misconduct.

By reference to those purposes / criteria, in summary NZHH and KPH together:

- a) Are part of the NZ Hot House Group, a successful, 100% New Zealand owned and run business which has been growing and distributing produce since 1984. We support both local and migrant communities by employing 400 FTEs.
- b) Have no record of previous convictions.
- c) Have cooperated fully with WorkSafe in its investigation of this incident. That included its detailed responses to enquiries as to the due diligence on the part of its officers. No charge has been laid alleging breach of duty of any officer.
- d) The two enforcement notices were lifted.
- e) Have undertaken rectifications to the value of \$258,188 to date.
- f) Will make an additional combined payment of \$28,940 to the victims.
- g) Will benefit workers, workplace and industry to the value of \$116,000 by implementing the following:
  - a. Paid safety training days for permanent workers
  - b. Trial of literacy and numeracy training for 10 permanent workers
  - c. Report on the benefits that improving literacy and numeracy of workers can have on effective engagement and participation in workplace health and safety.
  - d. Commission an article for publication in the Commercial Grower magazine and Orchardist magazine identifying that this Enforceable Undertaking has been given and in promotion of the horticulture industry initiative proposed.
  - e. Present to 300-400 delegates at the next annual New Zealand Horticulture Conference, the incident, the industry benefits of the Undertaking and the findings from the horticulture workplace safety literacy and numeracy case study.
  - f. Undertake an assessment and audit of the Health and Safety Management System by the independent auditor Telarc against the international standard OSHAS18001 or ISO 45001 (if released).
- h) Will benefit and support the local Franklin community by creating an horticulture safety intern programme. A Franklin school leaver will be offered a six month internship to be trained, mentored and supported in learning health and safety in the horticulture industry to the value of \$30,000.



As to the nature of the misconduct, the risk from the use of LPG fuelled forklifts has been eliminated with the procurement of electrically operated forklifts and the installation of carbon monoxide detectors in the cool store.

This joint proposal above is not of a kind that can be achieved by prosecution and achieves tangible benefit to workers which could not be addressed elsewhere and at zero cost to other industry workers.

The steps NZHH and KPH propose are considered proportionate in this particular case.

#### **2.4 Statement of commitment that the behaviour, activities and other factors which caused or led to the contravention has ceased and will not reoccur**

NZHH and KPH confirm that the behaviour, activities and other factors which caused or led to the contravention have ceased and should not reoccur.

#### **2.5 Acknowledgment of the policy published by the regulator for the acceptance of an undertaking**

NZHH and KPH have read and understood the Enforceable Undertaking Operational Policy July 2017.

#### **2.6 Acknowledgement that this undertaking will be published and publicised in full**

NZHH and KPH acknowledge that this Undertaking will, if accepted, be published on WorkSafe's website in full and may be referenced in WorkSafe material.

#### **2.7 Statement of the person's ability to comply with the terms of this undertaking and meet the projected costs of the activities**

NZHH and KPH have the financial ability to comply with the terms of this undertaking and have provided evidence by way of financial accounts for KPH from BVO Chartered Accounts for the period ending 31st March 2017 with this undertaking to support this declaration. These accounts are confidential and will not be released publicly by WorkSafe.

In the event of impending receivership, liquidation or sale of either of them, NZHH and KPH will advise WorkSafe of the relevant circumstances and their capacity to comply with the outstanding terms of this Undertaking.

#### **2.8 Statement outlining any relationship between the person and any corporations, officers, employees, contractors, proposed beneficiaries of donations or scholarship or other recipient of financial benefit contained in this undertaking**

None save that Victim A was an employee of KPH.



## 2.9 Statement regarding Intellectual Property

NZHH and KPH each grant WorkSafe a perpetual, non-exclusive, worldwide and royalty-free licence to use, for any purpose, all Intellectual Property Rights in relation to any material developed as a result of this Undertaking.

This licence includes the right to use, copy, modify and distribute the materials.

## 2.10 Acknowledgement that the person may be required to provide a statutory declaration

NZHH and KPH acknowledge that one of their directors may be required to provide a statutory declaration on their behalf outlining details of any prior convictions (safety related) outside of New Zealand and that they will procure that such declaration is provided if required by WorkSafe.

## 2.11 Statement of commitment from the person to participate constructively in all compliance monitoring activities for this undertaking

1. It is acknowledged that responsibility for demonstrating compliance with this undertaking rests with NZHH and KPH, jointly and severally.
2. Evidence to demonstrate compliance with the terms will be provided to WorkSafe by the due date for each term.
3. The evidence provided to demonstrate compliance with this undertaking will be retained by NZHH and KPH until advised by WorkSafe that this undertaking has been completely discharged.
4. It is acknowledged that any failure to meet the due date for an enforceable term will result in the matter being escalated and may lead to enforcement action.
5. It is acknowledged that WorkSafe may undertake other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to WorkSafe.
6. It is acknowledged that WorkSafe may initiate additional compliance monitoring activities, such as inspections, as considered necessary at WorkSafe's expense.
7. It is acknowledged that details of all seminars, workshops and training conducted by a non-registered training provider must be notified to WorkSafe, by email, at least one week prior. Notification should include time, date, location and the trainer/facilitator.

### **3.0 ENFORCEABLE TERMS**

NZHH and KPH acknowledge all activities set forth in the enforceable terms below must be auditable and include a date for completion and an estimated cost for each activity.

They each commit to performing the activities below diligently, competently and by the respective completion date.

#### **3.1 A commitment by the person to perform activities that will ensure the ongoing effective management of risks to health and safety in the future conduct of its business or undertaking**

NZHH and KPH are each committed to the performance of the activities as detailed above in this application and specifically commit to perform the activities details in section 3.3 below, which will ensure the ongoing effective management of risks to health and safety in the future conduct of the business.

#### **3.2 A commitment by the person to disseminate information about this undertaking to workers, and other relevant parties**

If this Undertaking is accepted, it will be disseminated to workers through the following means:

- a) Undertaking progress and outcomes will be discussed at Health and Safety Committee meetings
- b) Undertaking progress and outcomes will be discussed at NZHH and KPH board and management meetings
- c) NZHH and KPH will report and communicate quarterly with workers on the progress and outcomes of the Undertaking.

Dissemination will occur within 3 months of acceptance of this Undertaking.

### 3.3 Activities to be undertaken to promote the objects of the safety legislation that will deliver benefits for workers and/or work and/or the workplace

<i>Activity</i>	<i>Cost \$(Incl GST)</i>	<i>Timeframe</i>
<i>The permanent factory staff of KPH will be offered one paid safety day for the purpose of attending a course, conference or safety event.</i>	\$15,000	Within 12 months of EU Acceptance
<i>KPH will conduct an in house safety day for all staff. This would commence with a lunch, followed by a series of invited speakers including a WorkSafe inspector, a Forklift supplier and health and safety practitioner.</i>	\$5,000	Within 6 months of EU Acceptance
<i>½ Day mock incidents drill at KPH to train our staff, involving the Fire Service and Ambulance service. These training exercises test our systems and assist the emergency services to test theirs in a live environment. Cost includes afternoon's wages for the entire staff plus an afternoon tea and gifts for the emergency service providers.</i>	\$3,000	Within 3 months of EU Acceptance
<i>Undertake an initial audit assessment of OHSAS 18001 or ISO 450001 (International Health and Safety System Management Standards) by the independent auditing organisation Telarc.</i>	\$3,000	Within 6 months of EU Acceptance.
<i>Undertake the full audit of OHSAS 18001 or ISO 450001 (International Health and Safety System Management Standards) by the independent auditing organisation Telarc.</i>	\$5,000	Within 6 months of the initial audit assessment.
<i>Total estimated cost of benefits for workers and/or work and/or workplace</i>	\$31,000	

3.4 Activities to be undertaken to promote the objects of the safety legislation that will deliver benefits for the wider industry or sector

Activity	Cost \$(Incl GST)	Timeframe
<p>a) <i>Commission a report on the benefits to worker safety in the horticulture sector by implementing literacy and numeracy initiatives.</i></p> <p><i>The objective of commissioning a report on the benefits to worker safety in the horticulture sector by implementing literacy and numeracy training initiatives is as follows.</i></p> <p><i>To identify the gap between workers’ current literacy and numeracy skills and the literacy and numeracy demands required of workers to meaningfully engage with key health and safety concepts. As part of this undertaking, the report will identify strategies that are required to close this gap. This will be delivered in the following 4 phases:</i></p> <p><b><i>Phase 1: Creating a literacy and numeracy needs analysis tool</i></b></p> <p><i>Develop a literacy and numeracy tool to identify the competencies required for workers to engage and participate with workplace health and safety concepts, including how workers:</i></p> <ol style="list-style-type: none"> <li><i>1 Identify hazards and risks in their jobs or tasks.</i></li> <li><i>2 Communicate informally or formally when conditions change.</i></li> <li><i>3 Use appropriate language to express their thoughts and views on health and safety matters.</i></li> <li><i>4 Use active listening skills to listen and consider the views of other workers, representatives and management.</i></li> <li><i>5 Understand the risk management strategies of the PCBU.</i></li> <li><i>6 Participate in health and safety systems by</i></li> </ol>	<p>\$75,000</p>	<p>Within 18 months of EU Acceptance</p>



*reporting near misses, incidents and accidents.*

*Develop a pre- and post-evaluation tool for NZHH/KPH management to canvas management's perceptions on worker engagement and participation in health and safety.*

***Phase 2: Applying the tool in the sample groups and NZHH/KPH people by:***

- 1 Randomly select a group of workers (between four and six) from ten Grower Association members located in provincial centres across New Zealand (North and South Island).*
- 2 Apply the tool by undertaking workplace face-to-face interviews with the selected workers and the ten workers from NZHH/KPH, followed by all the workers completing a short-written assessment.*
- 3 Interview NZHH/KPH management about their perceptions about worker engagement and participation in workplace health and safety matters.*
- 4 Analyse and summarise the results of the gap between the workers' current literacy and numeracy skills compared to the demands needed.*
- 5 Develop the learning outcomes required to address the identified literacy and numeracy gaps.*

***Phase 3: Literacy and Numeracy Training***

- 1 Tertiary Education Commission (TEC) Workplace Literacy provider, Edvance<sup>1</sup>, will develop and deliver 40 hours of bespoke literacy and numeracy training for the ten NZHH/KPH workers.*
- 2 This training will use workplace health and safety materials and concepts to support*

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<sup>1</sup> <http://www.skillshighway.govt.nz/resources/building-capacity/workplace-literacy-and-numeracy-providers/edvance-workplace-education>

*the completion of NZQA Unit Standard 497<sup>2</sup> Demonstrate knowledge of workplace health and safety requirements.*

- 3 This training will be delivered in small groups of 5 workers for 2 hour sessions per week for 20 weeks.*
- 4 Upon completion the workers will be reassessed using the original needs analysis tool, referred to above.*
- 5 Evaluations from the participants, their supervisors and managers will be undertaken to capture their views on what gains have been made in relation to worker engagement and participation in workplace health and safety.*

#### ***Phase 4: Completion of the report and the ongoing opportunities***

*All the information gathered will be reported and will articulate:*

- 1 What the approach was;*
- 2 What the literacy and numeracy gap was for the sample groups;*
- 3 What gains were made;*
- 4 What interventions yielded the most benefit to the worker and the PCBU;*
- 5 Recommendations, strategies and learnings that other PCBUs' could apply.*

#### ***Phase 5: Promotion of findings to wider industry***

*Findings from the process and report will be made available to the wider horticultural industry,<sup>3</sup> by reference to this Enforceable Undertaking, by publication in the Commercial Grower magazine and in a presentation made to the annual Horticulture NZ conference as soon as possible after the completion of phase 4 above.*

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<sup>2</sup> <http://www.nzqa.govt.nz/nqfdocs/units/pdf/497.pdf>

<sup>3</sup> Privacy and commercial clearances will be sought from participants in the sample groups referred to at phase 2 above, at the time they participate, thereby enabling wider publication of results.

*The tools and the final report will be developed by Glynis McCarthy<sup>4</sup>, Principal, Safety Associates in conjunction with NZHH/KPH. Glynis has over 15 years' experience in organisational needs analysis and skills assessments, observing work practices and assessing literacy skills and knowledge. Glynis has developed competency frameworks in diverse industries and has strengths in interviewing and engaging with employees. Glynis was previously with Workbase (New Zealand's National Centre for Workforce Literacy) for 12 years, developing and delivering training for the Tertiary Education Commission (Workplace Literacy), supporting ITOs to embed literacy and numeracy into their offerings, and with WorkSafe NZ on two guidance projects.*

*Commission an article for publication in the Commercial Grower magazine and Orchardist magazine identifying that this Undertaking has been given and in promotion of the horticulture industry initiative above.*

*Present to 300-400 delegates at the annual New Zealand Horticulture Conference, the incident, the industry benefits of this Undertaking and the findings from the report.*

*Total estimated cost of benefits for wider industry or sector*

\$7,000 Within 3 months of EU Acceptance

\$3,000 Within 18 months of EU Acceptance

\$85,000

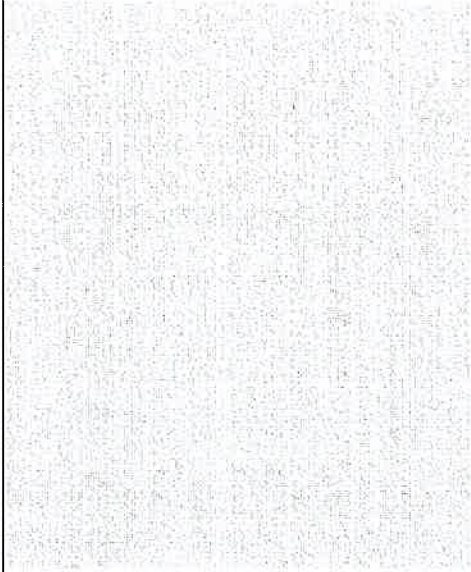
### 3.5 Activities to be undertaken to promote the objects of the safety legislation that will deliver benefits for community

<i>Activity</i>	<i>Cost \$(Incl GST)</i>	<i>Timeframe</i>
<i>Create an horticulture safety intern programme in support of the Franklin community. A Franklin school leaver will be offered a six month</i>	\$30,000	Within 18 months of EU Acceptance

<sup>4</sup> Qualifications: National Certificate in Adult Literacy Education (Educator) , New Zealand Diploma in Workplace Health and Safety Management (Level 6) – In progress.



*internship to be trained, mentored and supported in learning health and safety in the horticulture industry. This would be a gateway for a young person into health and safety and would favour a person who has a view to make this a career. The intern would be paid a wage and would attend training in Fork lift Licence, First aid certificate and a National Certificate In Occupational Health & Safety (Level 3) from the Employers and Manufacturers Association.*



*Total estimated cost of benefits for community* \$30,000

### **3.6 Agreement to pay WorkSafe's recoverable costs**

NZHH and KPH agree to pay WorkSafe's recoverable costs associated with this undertaking, being \$10,300 plus GST, within 30 days of receipt of WorkSafe's invoice.

### **3.7 Acknowledgement regarding any promotion of the person in relation to this undertaking**

NZHH and KPH agree that they will not do anything in connection with the activities of benefits set out in this Undertaking that may promote or benefit either of them, without explicitly linking that activity / benefit to this Undertaking.

### **3.8 Where WorkSafe considers appropriate in the circumstances, developing a commitment to (establish and maintain OR maintain) an HSMS**

3.8.1 NZHH and KPH confirm they have a formal documented HSMS acceptable to WorkSafe that satisfies the principles of AS/NZS 4804:2001 Occupational health and safety management systems – General guidelines on principles, systems and supporting techniques.

3.8.2 NZHH and KPH confirm that the HSMS will be maintained in accordance with AS/NZS 4804:2001 Occupational health and safety management systems – General guidelines on principles, systems and supporting techniques.

### **3.9 If a HSMS is required, a commitment to ensure that the HSMS is audited by third party auditors**

See Section 3.3 for commitment to undertake an audit to OHSAS 18001 or ISO 45001 (if available) by independent auditors Telarc.

### 3.12 Minimum spend

3.12.1 NZHH and KPH together commit to a minimum spend of \$185,240 plus GST if any (in addition to rectifications) for this Undertaking.

3.12.2 NZHH and KPH agree to spend any residual amount arising from an original term not being completed or being less costly than estimated in this Undertaking. Agreement on how to spend this residual will be sought from WorkSafe.

3.12.3 NZHH and KPH acknowledge the minimum spend comprises:

#### TOTAL COST



#### MINIMUM SPEND

FINANCIAL AMENDS PAID TO VICTIMS	\$28,940
BENEFITS TO WORKERS/WORKPLACE	\$31,000
BENEFITS TO INDUSTRY	\$85,000
BENEFITS TO COMMUNITY	\$30,000
WORKSAFE'S RECOVERABLE COSTS	\$10,300
ESTIMATED COST OF THE UNDERTAKING	\$185,240
	Plus GST (if any)

#### 4.0 Execution

This Undertaking is given by NZ Hot House Limited and KPH Produce Limited, jointly and severally.

On 14 May 2018

<b>SIGNED</b> for an on behalf of NZ Hot House Limited and KPH Produce Limited by <b>SIMON WILLIAM NEVILLE WATSON</b> , director:	
Signature: 	
SWN Watson - Director	
whose signature was witnessed by:	
Signature: 	Name: <b>R.J.S. SHERA</b>
	<b>SOLICITOR</b>
	<b>AUCKLAND</b>
Occupation: _____	Address: _____



#### 5: Acceptance

This undertaking is accepted by WorkSafe.

On *14 May*

2018

Signature of the person accepting the undertaking:

Signature: 	Name: <i>Simon Humphries</i>
whose signature was witnessed by:	
Signature: 	Name: <i>Cordell Weir</i>
Occupation: <i>Senior Advisor</i>	Address: <i>86 Custom House Quay</i>
<i>WorkSafe NZ</i>	<i>WOTD.</i>

**Annexure A – Letter of support from Horticulture New Zealand (section 1.10)**



23 November 2017

WorkSafe NZ  
PO Box 165  
**WELLINGTON 6140**

PO Box 10232, The Terrace,  
Wellington, 6143  
Level 4, Co-operative Bank House  
20 Ballance Street, Wellington, 6011  
Phone: +64 4 472 3795  
Fax: +64 4 471 2861  
Web: [www.hortnz.co.nz](http://www.hortnz.co.nz)  
Email: [info@hortnz.co.nz](mailto:info@hortnz.co.nz)

To whom it may concern

I am writing this letter in support of NZ Hothouse's proposed corrective actions and programme under the Enforceable Undertaking (EU) with WorkSafe NZ.

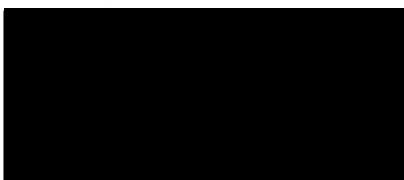
HortNZ believes that the NZ Hothouse programme will provide an opportunity to engage with the New Zealand horticulture industry to create a better understanding of health and safety and improve outcomes which will ultimately improve accident statistics.

HortNZ fully supports NZ Hothouse's initiatives to:

- Provide literacy and numeracy training for ten of its workers.
- Fund a case study on the benefits that improving literacy and numeracy of workers could have on health and safety.
- Commission articles in both the NZGrower and the Orchardist magazines (reaching 5,500 growers) detailing the EU and promoting the horticulture industry initiative above.
- Present to the next Horticulture Industry Forum and Conference, reporting on the incident, the industry benefits of the EU and the findings of the horticulture workplace safety literacy and numeracy case study.

I am very happy to provide more information if required.

Yours sincerely



**Mike Chapman**  
*Chief Executive*

