
THE INCORPORATED SOCIETIES ACT 1908

Rules of

New Zealand Kiwifruit Growers Incorporated

1. **NAME**

The name of the Society shall be the "New Zealand Kiwifruit Growers Incorporated."

2. **AIM**

To develop, support and maintain a secure and stable kiwifruit industry for the benefit of New Zealand kiwifruit growers.

3. **REGISTERED OFFICE**

The registered office of NZKGI shall be at 25 Miro Street, Mt Maunganui or such other place as the Executive Committee shall from time to time determine. Notice of every change of the place of the registered office shall be given to the Registrar of Incorporated Societies.

4. **INTERPRETATION**

In the interpretation of these Rules (unless the context requires a different interpretation):

"Affiliated Group" means an organised and cohesive group of New Zealand kiwifruit growers, whether incorporated or not, recognised by the Forum pursuant to Rule 9.6(a).

"AGM" means the Annual General Meeting of the Members of NZKGI.

"Chairperson" means the Forum chairperson for the time being elected pursuant to Rule 10.2.

"Collaborative Marketing" means an arrangement approved by KNZ under Regulation 28 of the Kiwifruit Export Regulations 1999. Collaborative Marketer has a corresponding meaning.

"Executive Committee" means the Executive Committee for the time being of NZKGI constituted under Rule 10 of these Rules.

"Export" means carriage in any craft to a point outside New Zealand.

"Exporter" means a person who Exports kiwifruit for sale.

Approved July 24 2019

“Forum Member” means a natural person elected or appointed to the New Zealand Kiwifruit Growers Forum pursuant to Rule 8.

“Fruit Votes” means the votes determined pursuant to Rule 7.4(b).

“Grower” means a natural person or persons, company, partnership, trust or other trading entity that is:

- (a) the registered owner as shown on the Certificate of Title of land on which kiwifruit is grown and from which kiwifruit is submitted to an Exporter for Export; or
- (b) the registered owner as shown on the Certificate of Title of land on which kiwifruit has been grown in a prior season and from which kiwifruit would have been submitted to an Exporter for Export, except for the existence of vine disease or the grafting of a new variety onto existing rootstock, or the incidence of an adverse weather event or other act of God; or
- (c) the registered owner as shown on the Certificate of Title of land on which kiwifruit is grown and from which kiwifruit would have been submitted to an Exporter for Export but for the fact that the kiwifruit vines grown on the land have not yet produced their first crop; or
- (d) a person that derives business income from producing kiwifruit for Export and holds title to kiwifruit that is submitted to an Exporter for Export.

“Kiwifruit” means the fruit of a plant of the genus actinidia.

“KNZ” means Kiwifruit New Zealand.

“Landowner Votes” means the votes determined pursuant to Rule 7.4(a).

“Levy” means any amount paid or to be paid to NZKGI under the under the Commodity Levies (Kiwifruit) Order 2012 (as amended, supplemented or replaced from time to time).

“Maori Growers Forum” means the forum, council or grouping formally or informally established by Maori Growers to represent Maori Growers commercial and political interests and to appoint the Maori Representative on the NZ Kiwifruit Growers Forum.

“Member” means a Grower who has become a member pursuant to Rule 7.

“NZKGI” means New Zealand Kiwifruit Growers Incorporated

“Post Harvest Operator” means a business that provides services to the kiwifruit industry in relation to the harvesting, sorting, packing and cool storage of kiwifruit prior to its distribution to market.

“Region” shall mean the kiwifruit growing regions referred to in Rule 8.5(d) and (e) and “Regional” shall have the corresponding meaning.

“Supply Agreement” means the supply agreement from time to time between Zespri Group Limited and the suppliers of kiwifruit relating to the supply of kiwifruit and services to Zespri.

“Supply Entity” means a formalised group of growers, linked to a specific Post Harvest Operator, and responsible for managing that group of growers’ affairs with that Post Harvest Operator and equity between those growers.

“Tray” means a standard single layer tray of kiwifruit packed for export to industry specifications as that is understood in the New Zealand kiwifruit industry and which is submitted to an Exporter for Export. Unless otherwise stated the word “Tray” when it appears in these Rules includes the words “Tray equivalent”.

“Tray equivalent” is the answer obtained when a volume of fruit packed or stored in non- standard size containers is recalculated to convert that volume to the number of Trays that the same volume of fruit would have occupied if packed in standard containers.

“Zespri” means Zespri Group Ltd and Zespri International Ltd.

Words importing the singular number only shall include the plural number and vice versa.

Words importing the masculine only shall include the feminine and vice versa.

5. OBJECTS OF NZKGI

5.1 The Objects of NZKGI shall be as follows:

- (a) To be a competent, representative body for Growers, independent of Zespri, providing robust and accurate industry analysis to Growers on:
 - (i) The performance of Zespri (as a primary function) and all other industry organisations (as a secondary function);
 - (ii) The process for management of Grower payments, Grower funds and Grower levies;
 - (iii) The development and performance of the Supply Agreement and supply chain issues.
- (b) To provide Growers with responsible and informed views on:
 - (i) The performance of Zespri (as a primary function) and all other industry organisations (as a secondary function);
 - (ii) The process for management of Grower payments, Grower funds and Grower levies;
 - (iii) The development and performance of the Supply Agreement and supply chain issues; and
 - (iv) Grower equity and kiwifruit industry strategic issues.

- (c) To use its best endeavours to improve the net return to Growers for the kiwifruit that they produce.
- (d) To encourage the involvement of all Growers in NZKGI so that they can be consulted and so that their views can be fairly represented.
- (e) To represent the views of Growers to any person or organisation, including national and local/regional government, to which those views should be represented in order to further the aims of NZKGI.
- (f) To consider and make recommendations to Growers and other interested parties with respect to the future of the New Zealand kiwifruit industry.
- (g) To work with other fruit grower organisations both in New Zealand and overseas where that will assist in furthering the aim of NZKGI.
- (h) Generally to do anything that NZKGI considers to be in furtherance of these objects.

6. NZKGI STRUCTURE

6.1 NZKGI shall consist of:

- (a) Members;
- (b) Forum Members elected as provided in Rule 8; and
- (c) Co-opted Forum members as provided in Rule 8.10, and
- (d) The Executive Committee elected by Forum Members as provided in Rule 10.2.

7. MEMBERSHIP

7.1 Eligibility:

All Growers shall be eligible to become members of NZKGI.

7.2 Membership:

A Grower shall become a member by either:

- (a) Paying a Levy; or
- (b) Completing a membership application form, approved by the Executive Committee, and paying such membership fee as the Executive Committee may set from time to time.

7.3 Cessation of Membership

- (a) Any Member may resign by giving written notice to the Executive Committee.
- (b) The Executive Committee may declare that a Member is no longer a Member (from the date of that declaration or such date as may be specified) if that Member ceases to be qualified to be a Member, or is

convicted of any indictable offence or offence for which a convicted person may be imprisoned, is adjudged bankrupt, makes a composition with creditors, or (if a body corporate) is wound up or placed in receivership or liquidation.

7.4 Members' Voting Entitlement:

- (a) **Landowner Votes:** Every Member who is registered with an Exporter shall have one vote for every Tray Equivalent (rounded to the nearest Tray) of kiwifruit grown on land owned by that Member and accepted for Export by the Exporter to markets other than Australia in the most recently completed season.
- (b) **Fruit Votes:** In addition to any votes it may have pursuant to Rule 7.4(a), every Member who is registered with an Exporter shall have one vote for every Tray Equivalent (rounded to the nearest Tray) of kiwifruit owned by the Member when it was accepted for Export by the Exporter to markets other than Australia in the most recently completed season.
- (c) **Voting Entitlement:** A Member's voting entitlement shall be determined by taking the average of the highest number of Tray Equivalents produced by the Member in any two of the five financial years immediately preceding the financial year in which the vote occurs.
- (d) **Adjusted Voting Entitlement:** Where a Member has top grafted to a new variety, or has lost production to vine disease, adverse weather event or other act of God, or any other event, then the Executive Committee shall determine the number of votes held by the Member. The determination of the Executive Committee of the number of votes held by any Member shall be final.

8. NEW ZEALAND KIWIFRUIT GROWER FORUM MEMBERSHIP

8.1 Members of the Forum:

The NZKGI Forum shall comprise not more than 27 Forum Members elected and appointed in accordance with this Rule.

- (a) 17 Forum Members shall be Regional representatives elected in accordance with Rule 8.5.
- (b) up to nine Forum Members shall be appointed by Supply Entities in accordance with Rule 8.6.
- (c) one Forum Member shall be appointed by the Maori Growers Forum in accordance with Rule 8.7.
- (d) A Forum Member must be a natural person who is either:
 - (i) a Member; or
 - (ii) nominated by a Member pursuant to Rule 8.1(e).
- (e) Where a Member is not a natural person but a partnership, company, trust or other trading entity, then that Member may nominate, or as the case may be, appoint a natural person with a financial interest in

that entity to stand for membership of the NZKGI Forum. For the purpose of this clause, a person shall have a financial interest in a trading entity if they are a shareholder, partner or trustee and beneficiary of the trading entity or hold some other claim on the equity and/or income of the trading entity. A Member's nominated or, as the case may be, appointed representative shall be treated as a Member for the purposes of Rule 8.2, 8.6 and 8.7. In the event of a dispute, the determination of the Executive Committee whether a natural person has a financial interest in a trading entity shall be final.

8.2 Nomination and Election of Regional Forum Members:

- (a) Approximately every three years at a time determined by the Executive Committee, the Executive Committee shall conduct a postal ballot of Members to elect Regional Forum Members. The Executive Committee shall determine nomination and voting procedures consistent with these Rules.
- (b) Before nominations are called for, the Executive Committee shall appoint a returning officer to run and administer the elections and shall appoint an independent scrutineer to oversee the election.
- (c) Nominations shall be opened eight weeks prior to the vote commencing and close four weeks before voting commences.
- (d) Candidates for election as Regional Representatives shall be Members within the relevant Region, and shall be nominated and seconded by other Members from that Region.
- (e) A Member may seek election to only one position (and must not already be a Forum Member under Rule 8.1(b) or (c)).

8.3 Electoral Roll:

- (a) Six weeks before each election is conducted, the Executive Committee shall produce the electoral roll based on NZKGI's register of Members.
- (b) The electoral roll shall specify Members entitled to vote and the votes they are entitled to in each Region according to Rule 8.4.
- (c) The Members appearing on that roll shall be deemed to be the persons entitled to exercise the number of votes in the Region appearing alongside their names on that roll.
- (d) The electoral roll shall be open to inspection to all Members.
- (e) Any dispute as to eligibility to vote, or the number of votes allocated to a Member, will be determined by the scrutineer appointed under Rule 8.2(b) whose decision shall be final.

8.4 Votes at Elections of Forum Members:

- (a) Every Member shall be entitled to cast his/her/its votes for one candidate standing for election as a Regional Representative in each Region where he or she has an orchard or derives business income from kiwifruit production.

- (b) In electing Regional representatives, a Member's total number of votes will be apportioned in proportion to the Member's production in each Region and the Member will be entitled to the resultant number of votes in each Region.

8.5 Regional Representation:

- (a) For all Regions except Katikati, Tauranga and Te Puke, one representative shall be elected from each Region and the candidate with the highest number of votes in each Region, after Landowner Votes and Fruit Votes have been added together, shall be elected as the Regional Representative Forum Members for the relevant Region.
- (b) For the Katikati and Tauranga Regions, two representatives shall be elected from each Region and the two candidates with the highest number of votes in each of these Regions, after Landowner Votes and Fruit Votes have been added together, shall be elected as the Regional Representative Forum Members for Katikati and Tauranga.
- (c) For Te Puke Region, four representatives shall be elected from Te Puke Region and the four candidates with the highest number of votes, after Landowner Votes and Fruit Votes have been added together, shall be elected as the Regional Representative Forum Members for Te Puke.
- (d) The Regions and the rationale for the division of Regional Forum representation is as follows:

Region	% Total Crop	No. of Regional Forum Members
Northland	4%	1
Auckland	4%	1
Waikato	4%	1
Coromandel & Waihi	2%	1
Katikati	13%	2
Tauranga	15%	2
Te Puke	37%	4
Whakatane	5%	1
Opotiki	7%	1
Poverty Bay	2%	1
Hawkes Bay	2%	1
Lower North Island*	1%	(Combined with Hawkes Bay)
South Island	4%	1

*This Region includes Taranaki, Wanganui, Horowhenua, Manawatu, Wairarapa and Wellington and shall be combined with Hawkes Bay for the purpose of electing a Regional Forum Member.

- (e) The Regional boundaries shall be those fixed by the Executive Committee.
- 8.6 **[Supply Entity Representation:** Each Supply Entity that supplies 4% or more of the total kiwifruit supplied to Zespri in each year for Export shall be entitled to appoint one Forum Member representative. Supply Entities supplying less than 4% of the total kiwifruit supplied to Zespri may together appoint one Forum Member representative. Each appointment shall be made by written notice to the Executive Committee. A Supply Entity (or Supply Entities) with the power to appoint a Forum Member representative under this Rule may also remove and replace that Forum Member representative by written notice to the Chairperson at any time. Each Forum Representative appointed pursuant to this clause must also be a Grower. *Clause to be reviewed once the new KISP supply agreement and KISP Industry Supply Group have been formed to determine whether further changes are necessary or appropriate.*]
- 8.7 **Iwi Representation:** The Maori Grower Forum shall be entitled to appoint one Forum Member representative by written notice to the Executive Committee and also to remove and replace that Forum Member representative by written notice to the Chairperson at any time.
- 8.8 **Term of Elected Forum Members:** The Regional representative Forum Members shall be elected for a term of approximately three years (as determined under Rule 8.12(a)). Members shall be entitled to offer themselves for re-election.
- 8.9 **Casual Vacancies:** The Forum, following the advice of the Executive Committee, may fill Forum Membership vacancies that occur prior to each election, either appointing the first unsuccessful candidate from the previous election, or by appointing a new Forum Member from the Region for which the vacancy has arisen.
- 8.10 **Co-opted Forum Members:** If the Forum Members consider that special interest groups within the New Zealand kiwifruit industry are not adequately represented on the Forum, Members may co-opt up to a total of four Forum members, in addition to those elected, to represent those groups for a term to expire at the next election of Forum Members. Co-opted Forum Members shall have the same rights and obligations as elected Forum Members.
- 8.11 **Compliance with Rules and ByLaws:** Every Forum Member shall be required to comply, at all times, with these Rules, including the Code of Conduct set out in Schedule 2, and any Bylaws made under them.
- 8.12 **Cessation of Forum Membership:** Forum Membership shall cease in the following circumstances:
- (a) On the election of a new representative for the Region which the Forum Member represents.
 - (b) By any Forum Member giving notice in writing of resignation to the Executive Committee.
 - (c) The Forum Member being expelled in accordance with Rule 8.13(b).

- (d) If a Forum Member fails to attend three consecutive meetings without good reason.

8.13 **Breach by Forum Member:** The Executive Committee shall have the power to investigate any alleged breach by a Forum Member of these Rules or any Bylaw. In the event that the Executive Committee is satisfied that a Forum Member has breached a provision of these Rules or any Bylaw, then:

- (a) If the Executive Committee considers the breach to be a non-material breach, then the Executive Committee may choose to meet with the relevant Forum Member to discuss the breach, waive the breach and/or issue a formal written censure to the Forum Member;
- (b) If the Executive Committee considers the breach to be a material breach, then the Executive Committee shall request the Forum Member to resign. If the Forum Member does not resign within 7 days of receiving the request from the Executive Committee, the Forum Member shall be given the opportunity of being heard at the next Forum Meeting, after which (and in the event that the Forum Member fails to attend the Forum Meeting), the Forum may expel the relevant Forum Member by resolution passed by a two-thirds majority of Forum Members present and entitled to vote (no proxy votes shall be counted for this resolution).

9. MEETINGS OF FORUM MEMBERS

9.1 **Forum Meetings:**

Forum Members shall meet on at least four occasions each year. The Forum meetings shall be at a time and place to be fixed by the Executive Committee and at other times when:

- (a) The Executive Committee calls a meeting; or
- (b) Not less than 30% of the Forum Members request in writing that the Executive Committee call a meeting.

9.2 **Notice of Forum Meetings:**

Every notice of Forum meeting shall be sent to the last known address of each Forum Member in writing and shall:

- (a) Set out in as much detail as practical the matters to be considered at the Forum meeting;
- (b) Give at least seven clear days notice of that Forum meeting;
- (c) A meeting of Forum Members shall notwithstanding it is called by shorter notice than specified in Rule 9.2(b), be deemed to have been duly called if it is so agreed by the Members attending that meeting.
- (d) The accidental omission to give notice of a Forum meeting to or the non-receipt of notice by a Forum Member entitled to receive notice shall not invalidate proceedings at that meeting.

9.3 **Forum Meeting Procedure:**

- (a) The quorum for meetings of Forum Members shall be not less than 60% of Forum Members. These Forum Members shall be present in person.
- (b) The Chairperson or his nominee shall be the chairperson of the meeting.
- (c) The meeting shall only consider matters contained in the notice of meeting unless 70% of those present at the meeting agree to consider other matters.
- (d) Each Forum Member shall have one vote.
- (e) The method of voting at all meetings of NZKGI shall be by poll unless the Chairperson is satisfied on voices or a show of hands that a resolution would be carried. Any 5 Forum Members can require the Chairperson to take a poll.
- (f) Any vote or poll shall be carried by a majority decision.
- (g) When a vote is required between meetings this may be sent by mail, fax, e-mail or any other electronic device.
- (h) Any Forum Member who is not able to attend a meeting of Forum Members may appoint a proxy to exercise that Forum Member's voting rights provided that:
 - (i) The Forum Member has not appointed a proxy for the previous two meetings of Forum Members;
 - (ii) The Chairperson has been given written notice of the proxy appointment at least one hour before the time the meeting is due to start. That notice must:
 - A Appoint another Forum Member as proxy for the absent Forum Member;
 - B State the name of the Forum Member appointed as proxy;
 - C State whether the proxy has the general authority to vote on behalf of the absent Forum Member or whether the proxy is directed to vote in a specified way on any resolution on the agenda for the meeting.
- (i) Any Forum Member who has to leave a meeting early for emergencies or to meet travel arrangements may, at the discretion of the Chairperson, verbally leave a proxy with another Forum Member with power and direction to vote on behalf of the departing Forum Member.
- (j) A declaration by the Chairperson of any meeting to the effect that any resolution submitted at such meeting has been carried or been carried by a particular majority, or lost, and an entry to that effect in the minute book of NZKGI shall be conclusive evidence of the fact without proof of the number of votes recorded in favour or against the resolution.

- (k) Any Forum Member who is not able to attend a meeting of Forum Members, may appoint a Member as an alternative to attend the Forum meeting in place of that Forum Member to exercise that Forum Member's speaking and voting rights at that Forum meeting only provided that:
 - (i) The Forum Member has not appointed an alternative for more than two meetings of Forum Members in any one calendar year except where there is good reason;
 - (ii) The Chairperson has been given written notice of the alternative appointment at least one hour before the time the meeting is due to start. That notice must, in the case of an elected Regional representative Forum Member:
 - A Appoint a Member from the Region which the Forum Member represents; and
 - B State the name of the Member appointed as alternative and certify that the alternative has an orchard in the Forum Member's Region.

9.4 Functions and Powers of the Forum: The functions and powers of the Forum are to:

- (a) Pursue and carry out the NZKGI objects set out in Rule 5.1;
- (b) Make recommendations to KNZ, Zespri, Collaborative Marketers and to the Industry Advisory Council and Industry Supply Group;
- (c) make or amend Bylaws not inconsistent with these Rules for the internal management of NZKGI and/or the Forum, or rescind Bylaws previously made;
- (d) Appoint sub-committees as required.

9.5 Consultation with Members:

- (a) If a majority of Forum Members voting at any Forum meeting are of the opinion in relation to any matter before it that:
 - (i) It is of special importance; and
 - (ii) Members have not been adequately consulted,

then no decision shall be taken on the matter until a process of consultation with Members (which process is to be specified by the meeting) has been completed and the results made available to a subsequent Forum meeting.

- (b) That consultation may take the form of a postal ballot of Members, in which case the meeting shall specify the terms of that ballot and whether or not the result of the postal ballot shall be binding on NZKGI.

9.6 Affiliated Groups:

- (a) The Forum may, by majority vote, agree to recognise a differentiated group of New Zealand kiwifruit growers that have organised themselves into a cohesive group.

- (b) Any Affiliated Group may, by written notice to the Chairperson, appoint a representative to attend a Forum meeting, provided that:
 - (i) the representative shall have speaking rights but no voting rights at the meeting;
 - (ii) at the discretion of the Chairperson, the representative may be permitted to remain when the Forum meeting has been called into committee; and
 - (iii) the representative must at all times comply with the Code of Conduct set out in Schedule 2.
- (c) An Affiliated Group appointing a representative pursuant to Rule 9.6(b) may from time to time remove and/or replace that representative by written notice to the Chairperson.
- (d) Each Affiliated Group representative for the time being appointed in accordance with this Rule shall have the right to:
 - (i) receive Forum meeting notices, agendas and communications;
 - (ii) submit items for a Forum meeting agenda, together with associated background papers;
 - (iii) be linked with a Forum Member for regular consultation;
 - (iv) be linked with an Executive Committee Member responsible for facilitating specific consultation when a Forum meeting or Executive Committee agenda item may directly affect the members of the relevant Affiliated Group, in order for the representative to represent the Affiliated Group's views at the relevant Forum meeting or Executive Committee meeting; and
 - (v) request attendance of a Forum Member, or NZKGI staff member, at a meeting of the Affiliated Group.

10. THE EXECUTIVE COMMITTEE

- 10.1 **Number on Executive Committee:** The Chairperson, Vice Chairperson, four other Forum Members elected pursuant to Rule 10.2, an independent person appointed pursuant to Rule 10.3 and the person for the time being discharging the duties of NZKGI's Chief Executive shall be NZKGI's Executive Committee.
- 10.2 **Election of the Chairperson and Executive Committee:**
 - (a) At the first Forum Meeting following elections held under Rules 8.2 to 8.5, the Forum Members shall conduct elections among themselves for the roles of Chairperson, Vice-Chairperson and four Executive Committee members. Not less than fourteen days prior to a Forum Meeting at which elections are to be held, Forum Members may nominate from amongst themselves as many as are willing to stand for the positions of Chairperson, Vice-Chairperson and members of the Executive Committee.
 - (b) Candidates must be nominated and seconded by a Forum Member and the nomination must be accompanied by the written consent of the nominee.
 - (c) Those nominations shall be circulated amongst all Forum Members at least seven days prior to the Forum Meeting at which elections are to be held.

- (d) If there are insufficient valid nominations received, but not otherwise, further nominations may be received from the floor at the Forum Meeting.
- (e) Forum Members shall vote at the Forum Meeting at which elections are to be held, first for the Chairperson, then for the Vice Chairperson and then for the members of the Executive Committee. Each Forum Member shall have one vote for each vacancy.
- (f) The candidates with the highest number of votes shall fill the vacancies available. In order to fill the last vacancy in the event of a tie for that vacancy, a further vote of Forum Members shall be taken between the tied candidates to decide who shall fill that last vacancy.

10.3 Appointment of independent:

- (a) From time to time, the Executive Committee may appoint an independent person who is not a Member of NZKGI or a Grower to join the Executive Committee, if the Executive Committee considers that the independent person has appropriate skills and experience to enhance the skill set of the Executive Committee. The appointment of the independent person shall be for such period as deemed appropriate by the Executive Committee.
- (b) Any independent member appointed to the Executive Committee shall be bound by these Rules, including the Code of Conduct set out in Schedule 2 and all Bylaws as if he or she were a Forum Member elected or appointed in accordance with these Rules.

10.4 Duration of Office:

- (a) The term of office for the Chairperson, Vice Chairperson and all members of the Executive Committee shall be two years although all shall be entitled to offer themselves for re-election.
- (b) The positions of Chairperson, Vice Chairperson and any member of the Executive Committee who ceases to qualify as a Forum Member in accordance with Rule 8.11 shall terminate immediately. This Rule does not apply to the person for the time being discharging the duties of NZKGI's Chief Executive.

10.5 Powers and Functions: The powers and functions of the Executive Committee shall be:

- (a) To manage the staff of NZKGI to carry out the day to day affairs of NZKGI in accordance with its aims and objectives;
- (b) To manage and operate NZKGI in the pursuit of its aims and objectives, subject to the oversight of the Forum;
- (c) To ensure that transparent, robust, useful, timely reporting to Growers is delivered in respect of the following (with the aim of increasing Grower trust and confidence in the industry and support for the Single Point of Entry model):

- (i) Relating to Zespri, benchmarking, performance against KPIs, oversight of pool operations and the annual grower report;
 - (ii) Relating to the Supply Entities, Post Harvest Operators and the supply chain, benchmarking, performance against KPIs and the annual grower report;
 - (iii) Relating to NZKGI, performance against KPIs and annual reporting to Growers;
- (d) To call meetings of the Forum Members and meetings of the Members in accordance with these Rules;
- (e) To address any breach of these Rules or ByLaws by a Forum Member in accordance with Rule 8.13; and
- (f) Prior to any meeting of the Industry Advisory Council, the Industry Supply Group or any other industry group or committee, the Executive Committee may in its discretion meet with NZKGI's representatives appointed to the relevant group or committee to ensure that the views and wishes of the Forum are represented at the meeting of that group or committee.
- 10.6 **Meetings:** The Executive Committee shall meet monthly or at such other times as the Chairperson shall require. The Executive Committee shall set its own procedures subject to directions given to it by resolution of the Forum.
- 10.7 **Quorum:** A quorum for meetings of the Executive Committee shall be not less than one more than half of the numbers of members of the Executive Committee for the time being.
- 10.8 **Voting:** Each member of the Executive Committee including the Vice Chairperson shall have one vote at committee meetings with the exception of:
- (a) The Chairperson who shall have a second or casting vote in addition to a deliberative vote in any case where the voting is otherwise equal; and
 - (b) NZKGI's Chief Executive who shall have no vote.
- 10.9 **Meeting Procedure:** Meetings of the Executive Committee need not be held by its members meeting personally. A meeting shall be deemed to be validly constituted and resolutions validly passed if a quorum of members of the Executive Committee are able to communicate with each other by an electronic or telecommunication system and if each sign separate but identical copies of any resolution passed as a result of that discussion, which copies are then forwarded to the Secretary by either post or facsimile.
- 10.10 **Termination of position on Executive Committee:**
- (a) Any member of the Executive Committee absent from three consecutive meetings without leave of absence shall, unless otherwise

resolved by the Executive Committee, cease to be a member of the Executive Committee.

- 10.11 **Vacancies on the Executive Committee:** Positions on the Executive Committee that become vacant prior to each election shall be filled by the Forum Members voting at a meeting for which notice of the election has been given, except in the case of the independent member, who shall be replaced in accordance with Rule 10.3 (but for such lesser term as determined by the Executive Committee).

11. FINANCIAL YEAR

The financial year of NZKGI shall be from the 1st day of January in one year to the following 31st day of December, or as may be determined by the Executive Committee from time to time.

12. ANNUAL GENERAL MEETING

- 12.1 **Annual General Meeting:** An Annual General Meeting shall be held once in each financial year at a time and place to be determined by the Executive Committee but not later than 31 December.
- 12.2 **Notice of AGM to Members:** All Members who appear on NZKGI's register of Members shall be sent a notice of the AGM and the agenda for that meeting.
- 12.3 **Speaking Rights at AGM:** Any Grower who is not a Member shall be entitled to attend the AGM and shall have speaking rights but no voting rights on the Levy rate and the spending of Levy funds.
- 12.4 **Business at Meeting:** The Annual General Meeting of NZKGI shall:
- (a) Receive and consider the annual report of NZKGI;
 - (b) Receive and consider the annual financial statements for the immediate past financial year end;
 - (c) Approve a budget for the financial year commencing in the year following the meeting and set the Levy rates for that year;
 - (d) Set remuneration of Representatives;
 - (e) Consider such other business as may have been notified to Members in the notice calling the meeting and no other business.
- 12.5 **General Meeting Procedure:**
- (a) The quorum for General Meetings of Members shall be not less than 30 Members present in person.
 - (b) The Chairperson or his nominee shall be the chairperson of the meeting.
 - (c) The meeting shall only consider matters contained in the notice of meeting and no other business.

- (d) The method of voting at all General Meetings of Members shall be by ballot paper cast by those attending at the meeting and by postal ballot. The Executive Committee shall establish the voting process and appoint Returning Officers to administer it. The Executive Committee shall allow sufficient time for members to receive the ballot form by mail and cast their votes prior to the General Meeting. The ballot paper posted to Members shall include sufficient information to enable Members to cast their votes. The results of the ballot vote shall be announced by the Executive Committee and shall be binding on all members.
- (e) The voting entitlements of each Member at General Meetings shall be determined in accordance with Rule 7.4.
- (f) Any vote shall be carried by a majority decision.

13. SPECIAL GENERAL MEETINGS

- 13.1 Special General Meetings may be called by the Executive Committee, or by written requisition to the Executive Committee signed by not less than 50 Members.
- 13.2 Any requisition shall specify the objects or purpose of the meeting and the Executive Committee shall, within one month after receipt, convene a Special General Meeting for a date not later than two months after the date on which the requisition was received.
- 13.3 At least 14 clear days before any Special General Meeting the Executive Committee shall post, fax or email to all Members written notice of the business to be conducted at the Special General Meeting and a copy of the written requisition (if applicable). The failure by any Member to receive such notice shall not invalidate the meeting or its proceedings.

14. FINANCIAL STATEMENT

Every year a financial statement shall be prepared showing all the income and expenditure of the NZKGI since the preceding statement and a general statement of the assets and liabilities of NZKGI. Every such statement shall be signed by the Chairperson and one other member of the Executive Committee and certified by an auditor and laid before the AGM.

15. NOTICE

Any notice in writing required to be given to Members or Forum Members by these rules or the Bylaws made pursuant to them shall be deemed to have been given on the posting of that notice by ordinary post to the last known address of the recipient or by email to the last known email address of the recipient or by facsimile (including by emailing a PDF copy) to a fax number nominated by the recipient.

16. COMMON SEAL

NZKGI shall provide a common seal which shall be in the custody of the Executive Committee. The seal shall not be affixed to any instrument except pursuant to a resolution of the Executive Committee and or the Forum and in the presence of any two members of the Executive Committee.

17. ALTERATIONS TO RULES

17.1 Any alteration, amendment or rescission of these Rules shall be made only by a resolution passed by a majority of the Members present and voting, or voting by postal ballot at the AGM or at a meeting called for that purpose (and voting entitlements of each Member shall be determined in accordance with Rule 7.4).

17.2 Notice of motion for alteration, amendment or rescission shall be given to the Executive Committee not less than one calendar month prior to the AGM or a Special General Meeting as the case may be. Any alteration amendment or rescission of these Rules shall forthwith be registered with the Registrar of Incorporated Societies.

18. STATUS OF SCHEDULES

18.1 The rules set out in the Schedules to these Rules shall form part of the Rules of NZKGI and be binding on the Members, Forum Members and Executive Committee accordingly.

19. DECLARATIONS OF INTEREST

19.1 Before any nomination for Forum Membership is accepted by the Executive Committee, the nominee shall provide a list of all interests in the kiwifruit industry, both in New Zealand and elsewhere on the form provided by the Executive Committee. This information shall be held by the Executive Committee and be available to Members on request.

19.2 Where any matter is being debated by Members at a meeting of Members, Forum Members at a Forum Meeting or by the Executive Committee each member shall, before taking part in that debate, have a duty to disclose to the meeting all other financial interests in the kiwifruit industry relating to the matter being debated, other than as a grower of kiwifruit. If the meeting finds that the extent of those interests are sufficient to cause the member to have a significant conflict of interest, then the meeting may request the member not to vote on the matter before it, but that member shall retain speaking rights.

20. TRADING ACTIVITIES

- 20.1 No amount received from any Levies shall be spent on any commercial or trading activity by NZKGI except in the manner permitted by Section 10(6) and (7) Commodities Levies Act 1990 or any enactment passed in their place.
- 20.2 Any trading activity of NZKGI that does not come within the provisions of Section 10(6) and (7) Commodities Levies Act 1990 shall either:
- (a) be conducted by a separate trading entity which shall maintain a separate set of accounts from NZKGI; or
 - (b) NZKGI shall operate a separate set of accounts for that trading activity in such a manner that it can be clearly demonstrated that no amount received by NZKGI from any Levy has been used in any manner in that trading activity.

21. DISPUTES

If a dispute arises at any time in respect of a matter which is not provided for in these Rules or the Bylaws made pursuant to them or any doubt exists as to the interpretation of these Rules or those Bylaws or any other matter shall arise pertaining to NZKGI, its property or interests, that dispute shall be determined by the Executive Committee whose decision shall be conclusive and binding on all Members unless revoked by the Members at the next following AGM or at a meeting called for the purpose and held prior to the next following AGM.

22. WINDING UP

NZKGI may be wound up in the manner prescribed by Section 24 of the Incorporated Societies Act 1908. 21 days notice of the required General Meeting shall be called by advertisement inserted once in one or more public newspapers and by notice to Members. Every Member represented at the meeting shall on a show of hands and on a poll have one vote. At such meeting, a quorum shall consist of at least 30 Members. If within half an hour from the time appointed for such meeting a quorum is not present the Members represented at the meeting may transact the business of that meeting as if they constituted a quorum.

23. DISPOSAL OF SURPLUS FUNDS

If on the winding up or dissolution of NZKGI there remains after satisfaction of all its liabilities any property the same shall be paid or distributed to persons or bodies who may use that property for the benefit of New Zealand kiwifruit Growers.

24. REPEAL OF PREVIOUS RULES

These Rules shall repeal and replace all previous rules of NZKGI.

Dated:

2019

SIGNED by three Members of NZKGI:

Name of Member (Printed)

Signature

Name of Member (Printed)

Signature

Name of Member (Printed)

Signature

Schedule 1
INDUSTRY ADVISORY COUNCIL

1. Introduction

The Industry Advisory Council comprises:

- five NZKGI representatives,
- five Zespri representatives, and
- five Supplier/Post-Harvest representatives.

2. Grower Members of the Industry Advisory Council

- (a) The Members of the Industry Advisory Council shall be:
- (i) The Chairperson of NZKGI, and
 - (ii) The Vice Chairperson of NZKGI
 - (iii) Three Grower representatives elected in accordance with Rule 3 of this Schedule 1.
- (b) The Chairperson of NZKGI is, by virtue of that office, the leader of NZKGI representatives on the Industry Advisory Council.
- (c) Grower Representative Members of the Industry Advisory Council shall not be ex officio members of the NZKGI Executive Committee but may raise any issue for inclusion on the Executive Committee's and the Forum's meeting agenda.

3. Election of Grower Representative Members

- (a) The Grower Representative Members shall be elected by the Members of the Forum at a Forum Meeting called for that purpose.
- (b) Written nominations for election as a Grower Representative Member position shall be received by NZKGI Office not less than 14 days before the date of the Forum Meeting at which the elections are to be held. Candidates must be nominated and seconded by a Forum Member and be accompanied by the written consent of the nominee. Candidates shall also supply full details of their involvement in the kiwifruit industry listing all directorships and shareholdings in kiwifruit industry companies, especially supplier and post-harvest companies, and positions of responsibility and part or full ownership in any kiwifruit industry structure including trusts, partnerships and any other entity.
- (c) Not less than seven days before the date of the meeting, the list of candidates for each position and such information (not exceeding one side of an A4 sheet of paper) as may be supplied to NZKGI's Office by each candidate in support of their nomination shall be posted, faxed or emailed to all Forum Members.
- (d) If there are insufficient valid nominations received under Rule 3(b) of this Schedule 1, but not otherwise, further nominations may be received from the floor at the Forum Meeting.
- (e) Voting shall be by ballot paper. Each Forum Member shall have one vote for each vacancy on the Industry Advisory Council, but may not exercise more than

one of those votes for any one candidate. The candidates with the highest number of votes shall fill the vacancies available. In order to fill the last vacancy in the event of a tie for that vacancy, a further vote of Forum Members shall be taken between the tied candidates to decide who shall fill that last vacancy.

- (f) Before notice of an election for a Grower Representative Member is given, the Executive Committee shall appoint a returning officer to run and administer the election.
- (g) Where any vacancy occurs in respect of a Grower Representative Member position, a bi-election shall be held, and the successful candidate shall hold office for the balance of the term of the previously elected Grower Representative. Rules 24(d) to (i) shall apply with necessary modifications to by-elections.

4. Term of Office

- (a) Grower Representative Members will hold office for a period of two years. Members retiring from office are eligible for re-election in accordance with Rule 3 of this Schedule 1.
- (b) Industry Advisory Council elections for those Grower Representative Members retiring at the end of their two year term in office will occur each year.
- (c) A Grower Representative Member shall cease to hold office if he or she ceases to be a Grower and does not recommence being a Grower within six months.
- (d) A Grower Representative Member shall cease to hold office if he or she is absent for three consecutive Industry Advisory Council Committee meetings without the prior approval of the Executive Committee.
- (e) On the conclusion of membership of the Industry Advisory Council the former Grower Representative Member shall cease to hold himself or herself out as a member of the Industry Advisory Council, and shall return to NZKGI all Industry Advisory Council material in his or her possession.

5. Consultation

- (a) The Chairperson, in addition to being the leader of the grower representatives on the Industry Advisory Council, shall be responsible for seeking the Forum's opinion on all matters put before the Industry Advisory Council where the financial implication for Growers is, or is likely to, involve an increase or reduction of 10 cents or more in grower return per Tray.
- (b) Following each election, the Executive Committee will appoint each Grower Representative Member to act as a liaison with particular interest groups within the industry, including Green, Gold, Organic, Arguta and Regional Growers.
- (c) The Chairperson or any Grower Representative Member of the Industry Advisory Council may seek the Forum's opinion on any Industry Advisory Council issue.

- (d) The opinion of the Forum will first be sought by email and fax. If the issue warrants more detailed consideration it is to be raised at either a scheduled or special Forum meeting. An issue shall be considered at a Forum meeting if either:
 - (i) the Executive Committee so resolves, or
 - (ii) no less than 30% of the Forum Members request in writing that the Executive Committee call a Forum meeting to consider the specific issue.
- (e) All Forum Members are to keep all Industry Advisory Council items of business and papers that are commercially sensitive or confidential protected from any disclosure not authorised by the Executive Committee or the Forum.

6. Code of Conduct and Removal from Office

- (a) The Grower Representative Members of the Industry Advisory Council (including the Chairperson) are to adhere to the following code of conduct in the discharge of their duties:
 - (i) All Members shall promote the interests of kiwifruit growers and shall do nothing to bring NZKGI or growers into disrepute.
 - (ii) All Members shall implement the policies and decisions of the Executive Committee and the Forum.
 - (iii) All Members are to prepare for and contribute at Industry Advisory Council meetings.
 - (iv) All Members are to keep all items of business and papers that are commercially sensitive or confidential protected from any disclosure not authorised by the Industry Advisory Council, Executive Committee or the Forum.
- (b) Any Grower Representative Member of the Industry Advisory Council may be called to account at the Annual General Meeting or a Forum meeting for an alleged breach of Rule 5(a) of this Schedule 1 or for any action or lack of action attributable to that member. After the member has been given the opportunity of being heard by the Meeting, the Meeting may remove that member from the Industry Advisory Council and declare the Member's position vacant by resolution passed by a two-thirds majority of Members present and entitled to vote - no proxy votes shall be counted.

Schedule 2

Code of Conduct

1. Policy Statement

This Code of Conduct is the framework of the standards by which Forum Members, Executive Committee Members, Affiliated Group Representatives and other persons who agree to be bound by this Code (for the purpose of this Code, all referred to as “Representatives”), are expected to perform their duties. The Code of Conduct provides the basis for best practice governance and decisions that are consistent with the industry’s principle referred to in paragraph 2 below, NZKGI values and legal obligations.

2. Industry’s Principle

The New Zealand kiwifruit industry must act responsibly and ethically on all economic, sustainability, environmental, social and regulatory issues for the benefit of New Zealand kiwifruit growers and the wider New Zealand community.

3. Values

Representatives will undertake their duties:

- In accordance with the above stated industry’s principle;
- Promoting and acting in the interests of New Zealand Growers;
- With care and diligence, including giving proper attention to the matters before them;
- By preparing for and contributing to meetings;
- By conducting themselves such that their integrity is beyond question;
- By not behaving in a manner that has the potential to bring the kiwifruit industry’s image, NZKGI’s image or the image of the New Zealand Kiwifruit Growers Forum into disrepute;
- By implementing the policies and decisions of the Forum and the Executive Committee; and
- To the best of their ability, by using reasonable endeavours to ensure that all Forum records and documents under their control, including financial reports, are true and correct.

4. Representation and Consultation

Representatives will:

- Make themselves available, at reasonable times, to Growers who wish to make representations to NZKGI through that Representative;
- Fully and fairly represent their constituent Growers or, as the case may be, appointors to the best of their abilities; and
- Consult their constituent growers or, as the case may be, appointors:
 - in order to become aware of the views of Growers on matters relating to the kiwifruit industry; and
 - on issues requiring a vote at the Forum before the vote is taken, except where an urgent decision is required.
- consider the views of the New Zealand kiwifruit industry ahead of the views of their appointor when casting his or her vote.

5. Confidentiality

Representatives will maintain and protect the confidentiality of all non-public information entrusted to them in their capacity as a Representative (“Confidential Information”). All papers and other written Confidential Information received by a

Representative should be kept safe and secure and when no longer required, should be returned to the Chairperson for secure destruction, or otherwise destroyed or disposed of in a secure manner by the Representative. A Representative must not disclose Confidential Information to any other person, including their appointor or constituent Growers, without the express prior consent of the Chairperson and then only on such conditions as may be imposed in respect of the disclosure. A Representative may only use Confidential Information for the purpose for which it was provided and not for any other purpose, unless expressly authorised by the Chairperson.

6. Proper Use of Assets

Representatives may only use NZKGI property and assets for carrying out their duties as a Representative and not for personal use. Representatives will not take any opportunity discovered through their position as a Representative for personal benefit or gain.

7. Conflicts of Interest

Each Representative will fully disclose all relationships they have with kiwifruit industry organisations, and relevant private or other business interests to the Chairperson upon their election or appointment as Representative. This information will be held by the Executive Committee, together with any disclosures made in accordance with Rule 19.1, and be available to Members on request. Each Representative must strictly adhere to the requirements of Rule 19.2 regarding declarations of interest.

8. Gifts

Representatives will not accept gifts or personal benefits of any value from external parties if it could be perceived this could compromise or influence any issue under consideration by them in their capacity as a Representative.

9. No unauthorised representation:

No Representative shall give, publish or release any view, interview, public statement, media release or other communication in which they refer to NZKGI or the New Zealand Kiwifruit Growers Forum, or their membership of it, or position as Representative, without:

- first having obtained the express consent of the Chairperson to do so; or
- expressly stating in the communication that the views are only the *personal* views of the Representative and do not in any way represent the views of NZKGI or the New Zealand Kiwifruit Growers Forum.

10. Compliance with Law and Policies

Representatives will abide by all applicable laws, rules and regulations and comply with all statutory and internal disclosure requirements on a timely basis.

11. Reporting Unethical Behaviour

Representatives will report any illegal or unethical behaviour, of which they become aware, to the Chairperson.

12. Waiver

Waivers from this Code of Conduct may only be granted by the Executive Committee.

13. Breach of Code

Any Representatives may be called to account at the Annual General Meeting, Special General Meeting or a Forum Meeting for an alleged breach of this Code of Conduct or

for any action or lack of action attributable to that Representative. The procedures for dealing with a breach of the Code of Conduct as set out in Rule 8.13 are to be followed when dealing with any alleged breach.

Schedule 3
Appointments
[Previously incorporated in the ByLaws]

1. Appointments to:
 - (a) The Industry Supply Group;
 - (b) The Board of Kiwifruit New Zealand; and
 - (c) HEA Product Group for Kiwifruit to Australia,are to be in accordance with the Rules set out in this Schedule 3.
2. The appointees to the Board and Committees identified in Rule 1 of this Schedule 3 are referred to in this Schedule as the “NZKGI Representative” or “NZKGI Representatives”.
3. Except for NZKGI’s appointment to KNZ’s Board, NZKGI’s Representatives shall be elected by the Forum Members at a Forum Meeting. Every three years the Forum is by resolution to appoint one of KNZ’s Board members in accordance with Regulation 36(b) of the Kiwifruit Export Regulations 1999.
4. Written nominations for election as a NZKGI Representative shall be received by NZKGI Office not less than 14 days before the date of Annual General Meeting, or Forum Meeting at which the elections are to be held. Candidates must be nominated and seconded by a Forum Member and be accompanied by the written consent of the nominee.
5. Not less than seven days before the date of the Meeting, the list of candidates for each NZKGI Representative position and such information (not exceeding one side of an A4 sheet of paper) as may be supplied to NZKGI’s Office by each candidate in support of their nomination shall be posted, faxed or emailed to all Forum Members.
6. If there are insufficient valid nominations received under Rule 4 of this Schedule 3, but not otherwise, further nominations may be received from the floor at the Forum Meeting.
7. Voting shall be by ballot paper. Each Member shall have one vote for each vacancy, but may not exercise more than one of those votes for any one candidate. The candidate or candidates who received the greatest number of votes shall be elected as the NZKGI Representative or NZKGI Representatives.
8. Before notice on an election for a NZKGI Representative is given, the Executive Committee shall appoint a returning officer to run and administer the election.
9. Where any vacancy occurs in respect of a NZKGI Representative, a by-election shall be held, and the successful candidate shall hold office for the balance of the term of the previously elected NZKGI Representative. Rules 4-8 of this Schedule 3 shall apply with necessary modifications to any by-elections.
10. Although it is desirable, the NZKGI Representatives are not required to be Members of the Forum or Growers. If the NZKGI Representative is a Forum Member and he

or she ceases to be a Member of NZKGI, then the Forum at its next meeting shall affirm or replace that NZKGI Representative.

11. NZKGI Representatives will hold office from the time of appointment until the Forum Meeting immediately following the NZKGI Forum elections - a term of approximately three years. All NZKGI Representatives term in office automatically expires at the Forum Meeting immediately following the NZKGI Forum elections. NZKGI Representatives retiring from office are eligible for re-election in accordance with this Schedule 3.
12. A NZKGI Representative shall cease to hold office if he or she is absent for three consecutive meetings of the Board or committee they are appointed to without prior approval of the Executive Committee.
13. On the conclusion of membership of the Board or Committee, the former NZKGI Representative shall cease to hold himself out as a member of the Board or Committee, and shall return to NZKGI all material of that Board or Committee in his or her possession.
14. The NZKGI Representative shall be responsible for first seeking the Executive Committee's opinion and then the Forum's endorsement on all matters put before the Board or Committee where the financial implication for Growers is, or is likely to, involve an increase or reduction of 10 cents or more in the grower return per Tray.
15. The NZKGI Representative may seek the Forum's opinion on any issue concerning the Board or Committee they are appointed to.
16. The NZKGI Representative shall report to the Forum as required on the activities of the Board or Committee they are appointed to.
17. All NZKGI Representatives are to adhere to the following code of conduct in the discharge of their duties:
 - (a) All NZKGI Representatives shall promote the interests of kiwifruit growers and shall do nothing to bring NZKGI or Growers into disrepute.
 - (b) All NZKGI Representatives shall implement the policies and decisions of the Executive Committee and the Forum within the constraints of legislative requirements.
 - (c) All NZKGI Representatives are to prepare for and contribute at their appointed Board's or Committee's meetings.
 - (d) All NZKGI Representatives are to keep all items of business and papers that are commercially sensitive or confidential protected from any disclosure not authorised by the Board or Committee they are appointed to, or as authorised by the Executive Committee or the Forum.
18. Any NZKGI Representative may be called to account at a Forum Meeting for an alleged breach of Rules 14 and 18 of this Schedule 3, or for any action or lack of action attributable to that NZKGI Representative. After the NZKGI Representative has been given the opportunity of being heard by the Forum Meeting, the Forum Meeting may remove that NZKGI Representative from the appointed Board or Committee and declare the NZKGI Representative's position vacant by resolution

passed by a two-thirds majority of Forum Members present and entitled to vote - no proxy votes shall be counted.

Other Appointments

19. Appointments to ad hoc and other industry committees are to be made by the Executive Committee. The Executive Committee is to table its appointments at the Forum meeting immediately following the appointment for ratification by the Forum.
20. If the Forum does not agree to an appointment, the Executive Committee's appointment is cancelled and the Forum is by simple majority to appoint a replacement.
21. The appointees will hold office from time of appointment until the Forum Meeting immediately following the NZKGI Forum elections. The appointee's term in office automatically expires at the Forum Meeting immediately following the NZKGI Forum elections. The appointees retiring from office are eligible for re-appointment in accordance with this Schedule 3.
22. At this or any other time any appointee can be replaced by majority vote.
23. Rules 10 to 18 of this Schedule 3 apply with necessary modification to these appointments.