

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 NZKGI 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.

"Chief Executive" means the Chief Executive of NZKGI.

"Director" means:

- (a) A director as defined in the Companies Act 1993; or
- (b) An officer of an incorporated society.

"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 from New Zealand.

"Forum Member" means a natural person elected or appointed to the NZKGI Forum under 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* excluding *Actinidia arguta*

“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 2017 (as amended, supplemented or replaced from time to time).

“Maori Growers Forum” means the forum formally established by Maori Growers to represent Maori Growers commercial and political interests and to appoint the Maori Representative on NZKGI Forum.

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

“NZKGI” means New Zealand Kiwifruit Growers Incorporated

“NZKGI Forum” means the body of Members forming the New Zealand Kiwifruit Growers Forum established under Rule 8.2.

“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.

“Quota” means the number of votes a candidate needs to get elected under clause 8.6(b) and shall be determined by the returning officer, each time the returning officer counts votes under that clause, applying the following formula:

Total number of votes cast for all candidates / number of vacancies unfilled for the Region + 1 (one) = Quota

“Region” shall mean the kiwifruit growing regions referred to in Rule 8.6 and “Regional” shall have the corresponding meaning.

“Regional Forum Member” means a Forum Member elected under Rule 8.6.

“Shareholder” means any person who has a relevant interest, as defined in the Financial Markets Conduct Act 2013, in an equity security, as defined in the Financial Markets Conduct Act 2013.

“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.

“Supply Entity Group” means any group of Supply Entities who individually supply less than 4% of the total kiwifruit supplied to Zespri in each year for Export but who have grouped together under a commercial arrangement (through an incorporated or unincorporated joint venture or otherwise) for the purpose of supply to Zespri and who in total supply 4% or more of the total Kiwifruit supplied to Zespri in each year for Export.

“Surplus Votes” means any surplus votes of a candidate elected under clause 8.6(b) exceeding the Quota.

“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 as that is understood in the New Zealand kiwifruit industry.

“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.

Any reference to a repealed enactment of Parliament is a reference to an enactment of Parliament that, with our without modification, replaces, or corresponds to, the enactment replaced.

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; and
 - (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's governance structure shall consist of:

- (a) The NZKGI Forum as provided in Rule 8; and

- (b) 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) A Grower shall become a Member by either:

(i) Paying a Levy; or

(ii) 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.

(b) Where a Member is not a natural person but a partnership, company, trust or other trading entity, then that Member may appoint, as a representative for the purpose of these Rules:

(i) a Director of the Member;

(ii) a Trustee of the Member;

(iii) a natural person with a financial interest in the Member.

(c) A Member may have more than one representative for the purposes of these Rules, provided that no more than one Representative of a Member may be a candidate for, or member of, the Forum, the Executive Committee, the Industry Advisory Council, or any other committee or body referred to in Schedule 1 at a time.

(d) A Representative may exercise all the powers of a Member under these Rules.

(e) For the purpose of paragraph (b)(iii), a person shall have a financial interest in a Member if they are:

(i) a Shareholder of the Member; or

(ii) If the Member is a trust, a beneficiary of the trust; or

(iii) holds some other beneficial interest in the income of the Member.

(f) In the event of a dispute, the determination of the Executive Committee whether a natural person has a financial interest in a Member shall be final.

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 (whether or not the Member owns the land on which the Kiwifruit is produced) 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 31 Forum Members elected and appointed in accordance with this Rule.

- (a) 17 Forum Members shall be Regional Forum Member elected in accordance with Rule 8.6.
- (b) Up to nine Forum Members shall be appointed by Supply Entities in accordance with Rule 8.7.
- (c) One Forum Member shall be appointed by the Maori Growers Forum in accordance with Rule 8.10.
- (d) Up to 4 Forum Members co-opted under Rule 8.13.

8.2 **General Rules applying to Forum Members**

- (a) A Forum Member, whether elected under clause 8.1(a) or appointed under 8.1(b) or 8.1(c), must be a natural person who is either:
 - (i) a Member; or
 - (ii) a representative of a Member pursuant to Rule 7.2(b).
- (b) In addition to the requirements of paragraph (a) and Rule 8.7, a Supply Entity may only appoint, as a representative under Rule 8.1(b):
 - (i) A Director of the Supply Entity.
 - (ii) A Trustee.
 - (iii) A natural person with a financial interest in the Supply Entity.
- (c) For the purpose of paragraph (b), a person shall have a financial interest in a Supply Entity if they are:
 - (i) a Shareholder of the Supply Entity; or
 - (ii) If the Supply Entity is a trust, a beneficiary of the trust; or
 - (iii) holds some other beneficial interest in the income of the Supply Entity.
- (d) In the event of a dispute, the determination of the Executive Committee whether a natural person has a financial interest in a Supply Entity shall be final.

8.3 **Nomination and Election of Regional Forum Members:**

- (a) Approximately every three years at a time determined by the Executive Committee, the Executive Committee shall oversee a postal or electronic ballot of Members to elect Regional Forum Members. The Executive Committee shall determine nomination and voting procedures consistent with these Rules. Any electronic process must comply with Rule 25.2.
- (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. Neither the returning officer nor the independent scrutineer may be a Grower or a representative of a Grower. The Chief Executive may be the returning officer.
- (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 Forum Members shall be Members within the relevant Region or representatives of a Member within the relevant Region. Each Candidate shall be nominated and seconded by other Members from that Region. If the Candidate is the representative of a Member, the Candidate must be nominated and seconded by two

Members separate from the Member that the Candidate is a representative of under Rule 7.2(b).

- (e) A person may seek election to only one Regional Forum Member position (and must not already be a Forum Member under Rule 8.1(b) or (c)).

8.4 Electoral Roll:

- (a) Six weeks before each election of Regional Forum Members is conducted, the Chief Executive 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 8.5.
- (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 independent scrutineer appointed under Rule 8.3(b) whose decision shall be final.

8.5 Votes at Elections of Forum Members:

- (a) Every Member shall be entitled to vote for the election of the Regional Forum Member or Regional Forum Members in each Region where he or she has an orchard or derives business income from Kiwifruit production.
- (b) If only one Forum Member is permitted for a Region under Rule 8.6 and:
 - (i) there are two or more candidates, the returning officer shall conduct an election in which each Member shall be entitled to cast his/her/its votes for only one candidate standing for election; or
 - (ii) there is only one candidate, the returning officer shall declare that Member elected.
- (c) If more than one Forum Member is permitted for a Region under Rule 8.6 and:
 - (i) There are more Candidates for that Region than the permitted number, the returning officer shall conduct an election in which voting for the Regional Forum Members shall be by preferential voting method (in which case each voting Member numbers candidates on the ballot paper in their order of preference up to the total number of candidates).
 - (ii) The number of Candidates is the same as or less than the permitted, the returning officer shall declare those Members elected.

- (d) 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.

8.6 Regional Representation:

- (a) For each Region for which only one Forum Member is permitted under Rule 8.6, the candidate with the highest number of votes in the Region, after Landowner Votes and Fruit Votes have been added together, shall be elected as the Regional Representative Forum Member for that Region.
- (b) For each Region for which more than one Forum Member is permitted under Rule 8.6:
 - (i) The returning officer shall count the number of first preference votes, , counting the Landowner Votes and/or Fruit Votes of a voter as all having been cast for the voter's first preference.
 - (ii) If the total votes for a candidate reach the Quota, the candidate is elected. More than one candidate may exceed the Quota.
 - (iii) The returning officer shall transfer the Surplus Votes for the elected candidate proportionately to the second preference of each voter who voted for the elected candidate.
 - (iv) The returning officer shall count the number of votes again for remaining candidates, adding any Surplus Votes for a candidate to the first preference votes for the candidate.
 - (v) If the total votes for a candidate reach the Quota, the candidate is elected.
 - (vi) The returning officer shall transfer the Surplus Votes for the elected candidate proportionately to the third preference of each voter whose votes are transferred (if more than two Regional Forum Members are permitted in a Region) and recount the votes.
 - (vii) If, at any stage, no candidates receive enough votes to reach the Quota, the returning officer shall:
 - A Eliminate the lowest polling candidate;
 - B Transfer all votes for that candidate to the next preference of the voters who voted for the eliminated candidate; and
 - C Recount the votes.
 - (viii) The returning officer shall repeat the process until the total permitted number of Regional Forum Members for the Region is met;

- (c) The Regions, the permitted number of Regional Forum Members for each Region, 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, Whanganui, Horowhenua, Manawatu, Wairarapa and Wellington and shall be combined with Hawkes Bay for the purpose of electing a Regional Forum Member.

- (d) The Regional boundaries shall be those fixed by the Executive Committee.

8.7 Supply Entity Representation: Subject to clause 8.2, Supply Entities are entitled to appoint representatives as follows:

- (a) 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.
- (b) Any Supply Entity Group shall be entitled to appoint one Forum Member.
- (c) Other Supply Entities supplying less than 4% of the total kiwifruit supplied to Zespri individually in each year for Export may together appoint one Forum Member representative between them.
- (d) If the appointment by Supply Entities and Supply Entity Groups in accordance with paragraphs (a) to (c) would result in the appointment of more than 9 representatives, the 4% threshold under each paragraph will be increased so that only a maximum of 9 representatives may be appointed under this clause.

8.8 Each appointment by Supply Entities of a Forum Representative 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.

- 8.9 Each Forum Representative appointed by Supply Entities must also be a Grower. In the event of a dispute, the determination of the Executive Committee whether a person is a Grower shall be final.
- 8.10 **Iwi Representation:** The Maori Growers 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.
- 8.11 **Term of Elected Forum Members:** The Regional Forum Members shall be elected for a term of approximately three years (as determined under Rule 8.15(a)). Members shall be entitled to offer themselves for re-election.
- 8.12 **Casual Vacancies:** Any vacancies of Regional Forum Members that occur more than 6 months prior to each election under rule 8.3 will be filled by holding a by-election following the process set out in rules 8.3 to 8.6. In such a situation, rules 8.3 to 8.6 will apply with all necessary amendments. If a vacancy occurs within 6 months of an election under rule 8.3, the vacancy will be filled by:
- (a) In the case of a vacancy of a Regional Forum Member elected under Rule 8.5(b), either appointing the unsuccessful candidate from the previous election with the highest number of votes or by appointing a new Regional Forum Member from the Region for which the vacancy has arisen.
 - (b) In the case of a vacancy of a Regional Forum Member elected under Rule 8.5(c), either appointing the unsuccessful candidate with the highest number of votes, determining that number by counting the number of first preference votes for that candidate and the number of votes transferred to the candidate under Rule 8.6(b), or by appointing a new Regional Forum Member from the Region for which the vacancy has arisen.
- 8.13 **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 under Rule 8.6 or appointed under Rules 8.7 or 8.10, to represent those groups for a term to expire at the next election of Regional Forum Members. Co-opted Forum Members shall have the same rights in respect of the Forum and obligations as Regional Forum Members.
- 8.14 **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. Co-opted Forum Members, Regional Forum Members who are representatives of a Member under Rule 8.2(a)(ii), and Forum Members appointed under Rules 8.7 and 8.10 but who are not themselves Members of NZKGI, shall be deemed to have agreed to be bound by all the requirements of these Rules that apply to Forum Members.
- 8.15 **Cessation of Forum Membership:** Forum Membership shall cease in the following circumstances:

- (a) On the election of a new Regional Forum Member for the Region which the Regional Forum Member represents.
- (b) By any Forum Member giving notice in writing of resignation to the Executive Committee, on the date given in the notice.
- (c) The Forum Member being expelled in accordance with Rule 8.16(b).
- (d) If a Forum Member fails to attend three consecutive meetings without good reason.

8.16 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 that the breach is non-material breach, 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 is 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:

The NZKGI Forum shall meet on at least four occasions each calendar year. NZKGI 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 Forum Members request in writing that the Executive Committee call a meeting.

9.2 Notice of NZKGI Forum meetings:

Every notice of a NZKGI 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 NZKGI Forum meeting;
- (b) Give at least seven clear days' notice of that NZKGI Forum meeting;

- (c) A meeting of Forum Members shall notwithstanding it is called by shorter notice than specified in paragraph (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 NZKGI 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 Executive Committee may provide for attendance at Forum Meetings by electronic means, provided the requirements of Rule 25.1 are met.
- (b) The quorum for meetings of the NZKGI Forum shall be not less than 60% of Forum Members. These Forum Members shall be present in person or by electronic means.
- (c) The Chairperson or his nominee shall be the chairperson of the meeting.
- (d) The meeting shall only consider matters contained in the notice of meeting unless 70% of Forum Members present at the meeting in person or by electronic means agree to consider other matters.
- (e) Each Forum Member shall have one vote.
- (f) The method of voting at all meetings of the NZKGI Forum shall be by poll unless the Chairperson is satisfied on voices or a show of hands that a resolution would be carried. Any five Forum Members can require the Chairperson to take a poll.
- (g) Any vote or poll of the NZKGI Forum shall be carried by a majority decision.
- (h) When a vote of the NZKGI Forum is required between meetings this may be sent by mail, e-mail or any other electronic means. Any vote by electronic means must comply with Rule 25.2.
- (i) Any Forum Member who is not able to attend a meeting of the NZKGI Forum 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 the NZKGI Forum;
 - (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.
- (j) 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.
- (k) 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.
- (l) Any Forum Member who is not able to attend a meeting of the NZKGI Forum Members, may appoint a Member as an alternative to attend the NZKGI Forum meeting in place of that Forum Member to exercise that Forum Member's speaking and voting rights at that NZKGI Forum meeting only provided that:
 - (i) The Forum Member has not appointed an alternative for more than two meetings of the NZKGI Forum 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 Forum Member:
 - A Appoint a Member from the Region which the Regional Forum Member represents; and
 - B State the name of the Member appointed as alternative and certify that the alternative owns an orchard in the Regional Forum Member's Region or otherwise derives income from kiwifruit on an orchard in the Regional Forum Member's Region.

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

- (a) Pursue and carry out the NZKGI objects set out in Rule 5.1;
- (b) Make recommendations to KNZ, Zespri and to the Executive Committee, 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 NZKGI Forum, or rescind Bylaws previously made;
- (d) Appoint sub-committees as required.

- (e) Make a decision on any matter referred to the NZKGI Forum by the Executive Committee under rule 10.5(g).

9.5 **Consultation with Members:**

- (a) If a majority of Forum Members voting at any NZKGI 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 NZKGI Forum meeting.

- (b) That consultation may take the form of a postal or electronic ballot of Members, in which case the meeting shall specify the terms of that ballot and whether or not the result of the ballot shall be binding on NZKGI. Any electronic ballot must meet the requirements for electronic voting set out in clause 25.2.

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 (an **Affiliated Group**).

- (b) Any Affiliated Group may, by written notice to the Chairperson, appoint a representative to attend a NZKGI 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 NZKGI 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 NZKGI 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 NZKGI 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, and 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, Vice Chairperson and Executive Committee:**

- (a) The elections for the roles of Chairperson, Vice-Chairperson of the Executive Committee and four Executive Committee members shall be held every 2 years. Not less than fourteen days prior to the NZKGI 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 consent of the nominee in writing or by electronic means that clearly confirms the candidates consent.
- (c) The 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. If no further nominations are received or insufficient nominations are received, the Executive Committee will declare all nominated candidates elected.
- (e) If sufficient nominations are received, Forum Members shall vote at the NZKGI 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 must agree to 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.
- (c) The Executive Committee (excluding the independent person) may determine at any time to dismiss and/or replace the independent person. If the independent person resigns, the Executive Committee may, in its discretion, resolve to replace the independent person.

10.4 Duration of Office:

- (a) The term of office for the Chairperson, Vice Chairperson and all elected 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 elected member of the Executive Committee who cease to qualify as a Forum Member in accordance with Rule 8.14 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 NZKGI 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 NZKGI Forum 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 8.16;
 - (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 NZKGI Forum are represented at the meeting of that group or committee; and
 - (g) To refer, as it sees fit, the decision on any matter coming within the above paragraphs, other than paragraph (d), to the NZKGI Forum for decision by the NZKGI Forum.
- 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 any directions given to it by resolution of the NZKGI Forum.
- 10.7 **Quorum:** A quorum for meetings of the Executive Committee shall be half of the numbers of members of the Executive Committee for the time being, plus one additional member.
- 10.8 **Voting:** Each member of the Executive Committee 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 which operates with integrity and a reasonable level of accuracy and:
- (a) Attendees have been provided with sufficient information on the resolution to make an informed decision;
 - (b) Attendees are provided with a reasonable opportunity to make their vote on the resolution; and
 - (c) Each attendee subsequently submits electronic written notification of their approval of any resolution passed as a result of that discussion to NZKGI's Chief Executive.
- 10.10 **Termination of position on Executive Committee:**
Any member of the Executive Committee absent from three consecutive meetings without leave of absence granted by the Chairperson shall, unless

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

- 10.11 **Vacancies on the Executive Committee:** Elected positions on the Executive Committee that become vacant prior to each election shall be filled by vote at an NZKGI Forum meeting for which notice of the election has been given.

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, the agenda for that meeting, and any notices of motion.

- 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 Executive Committee may provide for attendance at General Meetings by electronic means, provided the requirements of Rule 25.1 are met.
- (b) The quorum for General Meetings of Members shall be not less than 30 Members present in person or by electronic means.
- (c) The Chairperson or his or her nominee shall be the chairperson of the meeting.

- (d) The meeting shall only consider matters contained in the notice of meeting and no other business.
- (e) The method of voting at all General Meetings of Members shall be by ballot paper cast by those attending at the meeting and/or by electronic or postal ballot as determined by the Executive Committee. Any electronic voting process must operate with integrity and a reasonable level of accuracy. 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 or electronic means and cast their votes prior to the General Meeting. The ballot paper posted or provided electronically 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.
- (f) The voting entitlements of each Member at General Meetings shall be determined in accordance with Rule 7.4.
- (g) Any vote shall be carried by a majority decision, except where otherwise required by law.

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 or provide by electronic means 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

- 14.1 Every year a financial statement shall be prepared showing all the income and expenditure of NZKGI since the preceding statement, and a general statement of the assets and liabilities of NZKGI.
- 14.2 Every such statement shall be signed by the Chairperson and one other member of the Executive Committee, 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 providing by electronic means to the last known email address of the recipient (including by emailing a PDF copy).

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 NZKGI Forum and in the presence of any two members of the Executive Committee.

17. ALTERATIONS TO RULES

17.1 Any amendment to these Rules shall be made only by a resolution passed by a majority of the Members present and voting at the AGM or at a Special General Meeting called for that purpose or by voting by postal or electronic ballot (and voting entitlements of each Member shall be determined in accordance with Rule 7.4). Any electronic voting must comply with Rule 25.2.

17.2 Rule changes may be proposed by the NZKGI Forum, by members in accordance with Rule 17.3, or by the Executive Committee itself.

17.3 Any proposal from Members for amendment of these Rules must be signed by Members whose votes equal 5% of the total Landowner Votes and Fruit Votes.

17.4 Any Rule change proposals from the NZKGI Forum or from Members under Rule 17.3 shall be given to the Executive Committee not less than one calendar month prior to the AGM or any upcoming Special General Meeting, as the case may be. For any such rule change proposals, the Executive Committee shall prepare a notice of motion to Members setting out the proposed amendments to these Rules for voting at the upcoming AGM or Special General Meeting or, if it can be held earlier and is considered more appropriate, by postal or electronic means.

17.5 In all cases, the Executive Committee must provide a notice of motion to Members setting out the proposed amendments to these Rules:

(a) For voting at an AGM or Special General meeting, in accordance with Rules 12.2 or 13.3; or

(b) For voting by postal or electronic means, at least 14 days before voting is to close.

17.6 Any amendment of these Rules approved by Members 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 the Executive Committee accordingly.

19. DECLARATIONS OF INTEREST

- 19.1 Before any nomination to the NZKGI Forum 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, the NZKGI Forum or by the Executive Committee each member shall, before taking part in that debate, have a duty to disclose to the meeting all other 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 require 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 commercial or trading activity of NZKGI that does not come within the provisions of Section 10(6) and 10(7) of the 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) be operated with a separate set of accounts for that commercial or 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 commercial or 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 Meetings shall be called by advertisement inserted once in one or more public newspapers and by notice to Members. Every Member represented at the meetings shall on a show of hands and on a poll have one vote. At such meetings, 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 Growers.

24. REPEAL OF PREVIOUS RULES

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

25. MEETINGS AND VOTING BY ELECTRONIC MEANS

25.1 If these Rules permit attendance at meetings by electronic means:

- (a) The meeting must still be held at a primary location in person.
- (b) The electronic means must be reasonably accessible by Members.
- (c) The electronic means must permit Members attending electronically to participate in the meeting.

25.2 If these Rules permit voting by electronic means:

- (a) The electronic means must be reasonably accessible by all persons entitled to vote.
- (b) The electronic means must operate with integrity and a reasonable level of accuracy.
- (c) NZKGI must retain a record of the process followed for at least two years from the date of the meeting in order to verify compliance with this clause.

Dated:

2020

SIGNED by three Members of NZKGI:

Name of Member (Printed)

Signature

Name of Member (Printed)

Signature

Name of Member (Printed)

Signature

Schedule 1

APPOINTMENTS TO THE INDUSTRY ADVISORY COUNCIL AND OTHER COMMITTEES

1. Introduction

Appointments to the following positions or bodies are to be on the terms set out in this Schedule 1:

- (i) Industry Advisory Council
- (ii) Industry Supply Group
- (iii) New Zealand Kiwifruit Product Group to Australia
- (iv) Share Committee
- (v) Hail Committee
- (vi) Remuneration Review Committee
- (vii) Any other ad hoc committees

2. Definitions

For the purposes of this Schedule 1:

“Committee” means any of the bodies listed in Rule 1(i) to (vi) of this Schedule 1.

“IAC” means the Industry Advisory Council.

“IAC Representative Member” is defined in Rule 3(b) of this Schedule 1.

“ISG” means the Industry Supply Group.

“KPG” means the New Zealand Product Group to Australia.

“NZKGI Appointee” means:

- (a) an NZKGI Representative; and
- (b) The Chairperson or Vice Chairperson of NZKGI, when performing their roles as members of the IAC.

“NZKGI Representative” means NZKGI representatives on the IAC, ISG, KPG, Share Committee and Hail Committee who are elected to those Committees in accordance with Rule 3 of this Schedule.

3. NZKGI members of committees

- (a) The NZKGI members of the IAC shall be:
 - (i) The current Chairperson of NZKGI;

- (ii) The current Vice Chairperson of NZKGI;
 - (iii) Three Growers or Grower representatives (each an **IAC Representative Member**) elected in accordance with Rule 4 of this Schedule 1.
- (b) The Chairperson of NZKGI is the leader of NZKGI representatives on the IAC.
- (c) The number of NZKGI Representatives on the ISG, KPG, Share Committee and Hail Committee will be:
- (i) ISG: Two Members or representatives of Members pursuant to Rule 7.2(b) of the main part of these Rules; and
 - (ii) KPG, Share Committee, Hail Committee: Three Members or representatives of Members pursuant to Rule 7.2(b) of the main part of these Rules.
- (d) Grower Representative Members shall not be, by virtue of that position, members of the NZKGI Executive Committee, but may raise any issue for inclusion on the Executive Committee's and the NZKGI Forum's meeting agenda.
- (e) The NZKGI members of the other Committees shall be elected in accordance with Rule 4 of this Schedule 1.

4. Election of appointees to the Committees

- (a) The NZKGI Representatives shall be elected by the members of the NZKGI Forum on the following timeframes:
- (i) For IAC Representatives, an election for:
 - A two of those representatives will be held every two years or at the NZKGI Forum meeting that follows immediately after the expiry of the two year period since an election (other than a by-election) for IAC Representatives; and
 - B one of those representatives will be held in every alternate year to the election referred to in sub-paragraph A, being at the at NZKGI Forum meeting that follows immediately after the expiry of the two year period since an election (other than a by-election) for a single IAC Representative;
 - (ii) For representatives on the ISG, an election for one of those representatives will be held every 18 months or at the NZKGI Forum meeting that follows immediately after the expiry of the 18-month period since an election (other than a by-election) was last held for representatives on the ISG; and
 - (iii) For all other NZKGI Representatives, an election for one of those representatives will be held every 12 months or at the NZKGI Forum meeting that follows immediately after the expiry of the 12-month period since an election (other than a by-election) was last held for those NZKGI Representatives.

- (b) Despite paragraph (a):
 - (i) An election for two IAC Representatives will be held on or as soon after 1 July 2023 as possible. The timeframes set out in paragraph (a) will then apply.
 - (ii) A election for a single NZKGI Representative on each of the ISG, KPG, Share Committee and Hail Committee will be held on or as soon after 1 July 2023 as possible. The timeframes set out in paragraph (a) will then apply.
- (c) Written nominations for election as a NZKGI Representative shall be received by the Chief Executive of NZKGI not less than 14 days before the date of the NZKGI Forum meeting at which the elections are to be held. Candidates must be nominated and seconded by a Forum Member and the nomination must be accompanied by the written consent of the nominee.
- (d) Candidates shall also supply full details (but not exceeding one side of an A4 sheet of paper) 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.
- (e) Subject to Rule 5(e) of this Schedule 1, each IAC Representative Member must either be a Grower or a representative of a Grower appointed under clause 8.2 of the main part of these Rules.
- (f) Not less than seven days before the date of the meeting, the list of candidates for each NZKGI Representative position and such information as may be supplied to the Chief Executive by each candidate in support of their nomination shall be posted or emailed to all Forum Members.
- (g) If there are insufficient valid nominations received under Rule 4(c) of this Schedule 1 in order to fill the available vacancies, but not otherwise, further nominations may be received from the floor at the NZKGI Forum meeting.
- (h) Voting shall be by ballot paper. Each NZKGI Forum Member shall have one vote for each vacancy of an NZKGI Representative position on a Committee, 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.
- (i) Before notice of an election for a NZKGI Representative is given, the Executive Committee shall appoint a returning officer to run and administer the election.
- (j) Where any vacancy occurs in respect of a NZKGI Representative position, a by-election shall be held, and the successful candidate shall hold office for the balance of the term of the previously elected representative. Rules 4(a) to (i) of this Schedule 1 shall apply with necessary modifications to by-elections.

5. Term of Office

- (a) Except as provided in paragraph (b) below, each NZKGI Representative will hold office from their election for the following periods:
- (i) IAC Representatives: to the day prior to the NZKGI Forum meeting that occurs 2 years after the date of their election under Rule 3 of this Schedule or the nearest NZKGI Forum meeting after that date, except as provided in clause 4(j) of this Schedule 1.
 - (ii) All other members to the NZKGI Representatives: the day prior to the NZKGI Forum meeting that occurs 3 years after the date of their election under Rule 3 of this Schedule or the nearest NZKGI Forum meeting after that date, except as provided in clause 4(j) of this Schedule 1.
- (b) The term of office of the NZKGI Representatives holding office as at the day that this paragraph of this rule comes into force will continue until:
- (i) For the IAC Representatives, two representatives' term of office will expire on the day prior to the election carried out for in accordance with Rule 4(b) of this Schedule 1 and the third representative member's term will expire on the day prior to the next election (other than a by-election) for representatives on the ISG.
 - (ii) For the NZKGI Representatives on the ISG, one representative's term of office will expire on the day prior to the election carried out in accordance with Rule 4(b) of this Schedule 1 and the other representative member's term will expire on the day prior to the next election (other than a by-election) for representatives on the ISG.
 - (iii) For NZKGI Representatives on the KPG, Share Committee and Hail Committee:
 - A One representative's term of office will expire on the day prior to the election carried out in accordance with Rule 4(b) of this Schedule 1 for representatives on the relevant Committee.
 - B One representative's term of office will expire on the day prior to the next election after the election referred to in sub-paragraph A (other than a by-election) carried out for representatives on the relevant Committee.
 - C The third representative's term of office will expire on the day prior to the next election referred to in sub-paragraph B (other than a by-election) carried out for representatives on the relevant Committee.
- (c) The NZKGI Representatives on each Committee as at the date that paragraph (b) comes into force will agree among themselves on the date on which each representative's term of office will finish for the purpose of paragraph (b) and notify the Chief Executive by 1 December 2022. If the NZKGI Representatives do not provide such notice, the NZKGI Forum will determine the dates on which each representative's term of office will expire.
- (d) Members retiring from office are eligible for re-election in accordance with Rule 3 of this Schedule 1.

- (e) An IAC Representative Member shall cease to hold office if he or she:
 - (i) ceases to be a Grower and does not recommence being a Grower within six months; or
 - (ii) ceases to be a representative of a Grower appointed under clause 8.2 of the main part of these Rules.
- (f) The Chairperson and/or Vice Chairperson will cease to hold office as a member of IAC upon their ceasing to hold office as the Chairperson or Vice Chairperson.
- (g) If any NZKGI Representative on the ISG, KPG, Share Committee or Hail Committee ceases to be a Member or representative of a member of NZKGI, then the NZKGI Forum at its next meeting shall affirm or replace that NZKGI Representative. For the avoidance of doubt :
 - (i) NZKGI Representatives (other than IAC Representative Members) are not required to be Forum Members or Growers; and
 - (ii) IAC Representative Members are not required to be Forum Members.
- (h) A NZKGI Representative Member shall cease to hold office if he or she is absent for three consecutive Committee meetings without the prior written approval of the Executive Committee.
- (i) On the conclusion of membership of a Committee the former NZKGI Representative shall cease to hold himself or herself out as a member of the Committee, and shall return to NZKGI all Committee material in his or her possession.

6. Reporting and consultation

- (a) The Chairperson, in addition to being the leader of the IAC Representatives on the IAC, shall be responsible for keeping the NZKGI Forum informed and seeking the opinion of the NZKGI Forum on all matters put before the IAC 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) The Chairperson or any IAC Representative may seek the opinion of the NZKGI Forum on any IAC issue.
- (c) The opinion of the NZKGI Forum will first be sought by email or other electronic means. If the issue warrants more detailed consideration it is to be raised at either a scheduled or special NZKGI Forum meeting. An issue shall also be considered at a NZKGI Forum meeting if either:
 - (i) the Executive Committee so resolves, or
 - (ii) no less than 30% of Forum Members request in writing that the Executive Committee call a NZKGI Forum meeting to consider the specific issue.
- (d) The NZKGI Representative(s) on bodies other than the IAC shall be responsible for first seeking the Executive Committee's opinion and then the NZKGI Forum's endorsement on all matters put before the body 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.

- (e) The NZKGI Representative(s) on bodies other than the IAC may seek the NZKGI Forum's opinion on any issue concerning the body they are appointed to.
- (f) The NZKGI Representative(s) on bodies other than the IAC shall report to the NZKGI Forum as required on the activities of the Board or Committee they are elected to.

7. Code of Conduct

- (a) All NZKGI Representatives are to adhere to the code of conduct in Schedule 2 in the discharge of their duties.

8. Other Appointments

- (a) Appointments to the Remuneration Committee are to be made in accordance with the Terms of Reference for that Committee approved by the NZKGI Forum, and that Committee will run in accordance with the Terms of Reference.
- (b) Appointments to other ad hoc and other industry committees are to be made by the Executive Committee. The Executive Committee is to table its appointments at the NZKGI Forum meeting immediately following the appointment for ratification by the NZKGI Forum.
- (c) If the NZKGI Forum does not agree to an appointment, the Executive Committee's appointment is cancelled and the NZKGI Forum is by simple majority to appoint a replacement.
- (d) 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.
- (e) At this or any other time any appointee can be replaced by majority vote.
- (f) The rest of this Schedule 1 applies with necessary modification to these appointments.

Schedule 2
Code of Conduct

1. Policy Statement

This Code of Conduct sets out the standards expected of:

- Forum Members;
- Executive Committee Members;
- All NZKGI Appointees (as defined in Schedule 1);
- Affiliated Group Representatives; and
- other persons who agree or are deemed to agree to be bound by this Code (referred to as “Representatives” in this Code),

The Code of Conduct provides the basis for best practice governance and decisions that are consistent with the industry’s objective 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 principle;
- in a way that promotes, and is in the interests of, New Zealand Growers;
- with care and diligence, including giving proper attention to the matters before them;
- by preparing for, regularly attending, 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 or NZKGI’s image into disrepute;
- by implementing the policies and decisions of the NZKGI Forum and the Executive Committee; and
- to the best of their ability, by using reasonable endeavours to ensure that all NZKGI 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 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 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”). This means:

- all papers and other written Confidential Information received by a Representative should be kept safe and secure and when no longer required, should be 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 party to whom the information is commercially sensitive or who has required that they be kept confidential 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 party to whom the information is commercially sensitive or who has required that they be kept confidential.

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 their membership of it, or position as a 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 their position as a Representative.

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 any other Representative, of which they become aware, to the Chairperson.

12. Waiver

Waivers from this Code of Conduct may only be granted by the prior written approval of 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 8.16 are to be followed when dealing with any alleged breach.

