

Rules Constitution of

New Zealand Kiwifruit Growers Incorporated

1 NAME

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

1.1

2 COMMENCEMENT DATE

1.2 This Constitution will take effect as the rules of the Society from the first 1 April that occurs after the date on which it is registered by the Registrar of Incorporated Societies, unless the Constitution is registered on or after 1 April 2026, in which case it will take effect on the day it is registered.

1.3 AIM

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

1.5

1.6 REGISTERED OFFICE

1.7 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.

1.8

1.9 INTERPRETATION

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

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1.12 "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).

1.13

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

1.15

~~1.16 — “Chairperson” means the Forum chairperson for the time being elected pursuant to Rule 10.2.~~

~~1.17 —~~

~~1.18 — “Chief Executive” means the Chief Executive of NZKGI.~~

~~1.19 —~~

~~1.20 — “Director” means:~~

~~1.21 —~~

~~1.22 — A director as defined in the Companies Act 1993; or~~

~~1.23 — An officer of an incorporated Society.~~

~~1.24 —~~

~~1.25 —~~

~~1.26 — “Executive Committee” means the Executive Committee for the time being of NZKGI constituted under Rule 10 of these Rules.~~

~~1.27 —~~

~~1.28 — “Export” means carriage in any craft to a point outside New Zealand.~~

~~1.29 —~~

~~1.30 — “Exporter” means a person who Exports kiwifruit for sale from New Zealand.~~

~~1.31 —~~

~~1.32 — “Forum Member” means a natural person elected or appointed to the NZKGI Forum under Rule 8.~~

~~1.33 —~~

~~1.34 — “Fruit Votes” means the votes determined pursuant to Rule 7.4(b).~~

~~1.35 —~~

~~1.36 — “Grower” means a natural person or persons, company, partnership, trust or other trading entity that is:~~

~~1.37 —~~

~~1.38 — 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~~

~~1.39 —~~

~~1.40 — 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~~

~~1.41 —~~

~~1.42 — 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~~

~~1.43 —~~

~~1.44 — a person that derives business income from producing Kiwifruit for Export and holds title to Kiwifruit that is submitted to an Exporter for Export.~~

~~1.45 —~~

~~1.46 — "Kiwifruit" means the fruit of a plant of the genus actinidia excluding *Actinidia arguta*.~~

~~1.47 —~~

~~1.48 — "KNZ" means Kiwifruit New Zealand.~~

~~1.49 —~~

~~1.50 — "Landowner Votes" means the votes determined pursuant to Rule 7.4(a).~~

~~1.51 —~~

~~1.52 — "Levy" means any amount paid or to be paid to NZKGI under the Commodity Levies (Kiwifruit) Order 2017 (as amended, supplemented or replaced from time to time).~~

~~1.53 —~~

~~1.54 — "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.~~

~~1.55 —~~

~~1.56 — "Member" means a Grower who has become a member pursuant to Rule 7.~~

~~1.57 —~~

~~1.58 — "NZKGI" means New Zealand Kiwifruit Growers Incorporated~~

~~1.59 —~~

~~1.60~~2.1 "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 or without modification, replaces, or corresponds to, the enactment replaced.~~

23 **OBJECTS OF NZKGI**

2.13.1 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~~the performance of Zespri (as a primary function) and all other industry organisations (as a secondary function);
 - ii. ~~The~~the process for management of Grower payments, Grower funds and Grower levies;~~and~~
 - iii. ~~The~~the development and performance of the Supply Agreement and supply chain issues;~~and~~
 - iv. ~~Grower~~grower equity and ~~kiwifruit~~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~~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.

3.2 NZKGI shall not be carried on for the financial gain of any of its Members, provided that:

- (a) a Member may receive fees/honoraria in accordance with this Constitution;
- (b) a Member may receive reimbursement for reasonable expenses legitimately incurred on behalf of NZKGI while pursuing NZKGI's Objects;
- (c) a Member may receive incidental benefits (such as trophies, prizes, or discounts on products or services) in accordance with NZKGI's Objects; and
- (d) a Member may charge and receive all usual professional, trade, or other charges for work done by their business in connection with NZKGI, including acts which a Member could have done personally.

3.3 Financial gain does not include a Member receiving financial benefit through its participation in the Kiwifruit industry as a result of the actions of NZKGI in giving effect to its Objects, provided that any such financial benefit could also be obtained by any other Kiwifruit grower in a similar situation as the Member and is not financial gain as referred to in section 23(1) of the Act.

34 NZKGI STRUCTURE

3.14.1 NZKGI's governance structure shall consist of:

- (a) ~~The~~the NZKGI Forum as provided in Rule 6; and
- (b) ~~The~~the Executive Committee elected by Forum Members as provided in ~~Rule 10.28.2.~~

45 MEMBERSHIP

Eligibility:

4.15.1 All Growers shall be eligible to become Members of NZKGI.

4.25.2 **Membership:**

- (a) A Grower shall become a Member by either:
 - i. ~~Paying~~paying a Levy and consenting to becoming a Member; or
 - ii. ~~Completing~~completing a membership application for membership in accordance with criteria set by the Executive Committee, in a form, approved by the Executive Committee (which must include consenting to becoming a Member), being approved for membership by the Executive Committee, and paying such membership fee as the Executive Committee may set from time to time.
- (b) The Executive Committee may from time to time set the criteria and fees for membership under Rule 5.2(a)(ii).
- (c) The Executive Committee may refuse to admit to membership any Grower under this Constitution (including under Rule 5.2(a)(i)) whom the Executive Committee considers, in its sole discretion, may or will bring the Society into disrepute, or is otherwise in a position which, if the Grower were already a Member, would cause their Membership to cease pursuant to Rule 5.3(b).
- (d) Every Member's signed written consent to membership will be retained in NZKGI's membership records.
- (e) The Executive Committee shall have the discretion to determine the process for obtaining a person's consent to membership of NZKGI.
- ~~(b)~~(f) Where a Member is not a natural person but a partnership, company, trust or other trading entity, then that Member may appoint, as a representativeRepresentative of a Member for the purpose of ~~these Rules~~this Constitution:
 - i. a Director of the Member;

ii. a Trustee of the Member; or

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

~~(e)~~(g) A Member may have more than one ~~representative~~Representative of a Member for the purposes of ~~these Rules~~this Constitution, 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)~~(h) A Representative of a Member may exercise all the powers of a Member under ~~these Rules~~this Constitution.

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

i. are a Shareholder of the Member; ~~or~~

ii. ~~if~~ the Member is a trust, are a beneficiary of the trust; or

iii. ~~hold~~hold some other beneficial interest in the income of the Member.

~~(e)~~(j) 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.

(k) For the avoidance of doubt, Members of NZKGI as at the date of re-registration under the Act do not need to provide written consent to be or remain as Members.

4.35.3 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-:~~

i. ceases to be a Grower;

ii. being a Grower admitted to membership under Rule 5.2(a)(i), has not paid a Levy for fifteen (15) months;

iii. being a Grower admitted to membership under Rule 5.2(a)(ii), ceases to meet the criteria for membership set under Rule 5.2(b);

iv. is convicted of any indictable offence or offence for which a convicted person may be imprisoned;

v. is adjudged bankrupt;

vi. makes a composition with creditors;

vii. brings NZKGI into disrepute; or

viii. (if a body corporate) is wound up or placed in receivership or liquidation.

(c) A Grower who has ceased to be a Member pursuant to Rule 5.3(b)(ii) may become a Member again on payment of a subsequent Levy, provided that they consent to becoming a Member again.

4.45.4 **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), 5.4(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.~~

56 **NEW ZEALAND KIWIFRUIT GROWER FORUM MEMBERSHIP**

5.16.1 **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~~Members selected in accordance with Rule ~~8.6~~6.6.
- (b) Up to nine Forum Members shall be appointed by Supply Entities in accordance with Rule ~~8.7~~6.7.
- (c) One Forum Member shall be appointed by the ~~Maori~~Māori Growers Forum in accordance with Rule ~~8.10~~6.10.

- (d) Up to four Forum Members may be co-opted under Rule ~~8.13~~6.13.

5.26.2 **General Rules applying to Forum Members:**

- (a) A Forum Member, whether elected under ~~clause 8.1(a)~~Rule 6.1(a) or appointed under ~~8.1(b)~~6.1(b) or ~~8.1(c)~~6.1(c), must be a natural person who is either:
- i. a Member; or
 - ii. a representative~~Representative~~ of a Member pursuant to Rule 5.2(g)~~7.2(b)~~.
- (b) In addition to the requirements of paragraph ~~(a)~~(a) and Rule ~~8.7~~6.7, a Supply Entity may only appoint, as a representative~~Forum Representative~~ under Rule ~~8.1(b)~~6.1(b):
- i. ~~A Director~~a director of the Supply Entity;
 - ii. ~~A~~ Trustee; ~~or~~
 - 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. are a Shareholder of the Supply Entity; ~~or~~
 - ii. ~~if~~ the Supply Entity is a trust, are a beneficiary of the trust; or
 - iii. ~~hold~~hold 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.

5.36.3 **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~~this Constitution. ~~Any electronic process must comply with Rule 25.2-24.2.~~

- (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~~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~~Representative of a Member, the Candidate must be nominated and seconded by two Members separate from the Member of which that ~~the~~ Candidate is a ~~representative~~Representative of a Member under Rule ~~7.2(b)-5.2(g)~~.
- (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)~~-6.1(b) or 6.1(c)).

5.46.4 **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~~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 6.5~~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)~~6.3(b) whose decision ~~shall~~will be final.

5.56.5 **~~Votes at~~ Elections of Regional 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~~ the Member 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~~6.6 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~~ the Member's 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 ~~6.6-8-6~~ 6.6-8-6 and:
 - i. ~~There~~ there are more ~~Candidates~~ 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~~ shall number candidates on the ballot paper in their order of preference up to the total number of candidates ~~); or~~); or
 - ii. ~~The~~ the number of ~~Candidates~~ candidates is the same as or less than the permitted, the returning officer shall declare those Members elected.
- (d) In electing Regional ~~representatives~~ 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.

5-6.6.6 Votes in Elections of Regional Forum Members:

- (a) For each Region for which only one Forum Member is permitted under ~~Rule 8-6~~ this Rule 6.6, 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. If there is a tie, a further vote shall be taken between the tied candidates to decide who shall fill those vacancies.
- (b) For each Region for which more than one Forum Member is permitted under Rule ~~8-6~~6.6:
 - 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~~if more than one candidate ~~may exceed~~exceeds the Quota, those candidates are elected.

iii. The returning officer shall transfer the Surplus Votes for the elected candidate or candidates proportionately to the second preference of each voter who voted for the elected candidate ~~or 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. If more than one candidate exceeds the Quota, those candidates are elected unless the total number of Regional Representatives for a Region would exceed the number permitted under Rule 6.6, in which case the candidates with the highest number of total votes in that round are 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 in accordance with the above.

vii. If the total votes for two or more candidates are the same with the result that the permitted number of Regional Representatives for a Region would exceed the permitted number, the returning officer shall count the second and subsequent preference votes of each voting Member whose first or second preferential vote were not for one of those candidates by order of preference, until one of those candidates receives a higher number of votes.

~~vii-viii.~~ viii. If, at any stage, no candidates receive enough votes to reach the Quota, the returning officer shall:

~~Eliminate~~A. eliminate the lowest polling candidate;

~~Transfer~~B. transfer all votes for that candidate to the next preference of the voters who voted for the eliminated candidate; and

~~Recount~~C. recount the votes.

~~viii-ix.~~ ix. The returning officer shall repeat the process until the total permitted number of Regional Forum Members for the Region is met;

(c) If no candidates are nominated for a Region or less candidates are nominated for a Region than the permitted number of Regional Forum Members for the Region:

i. no candidates or a lesser number of candidates than the permitted number will be elected;

- ii. the vacancy does not affect the operation of the NZKGI Forum;
- iii. the NZKGI Forum may decide not to fill the resulting vacancy in its membership, hold a new election in accordance with this Constitution to fill the vacancy or may appoint a new Regional Forum Member from the Region for which the vacancy has occurred; and
- iv. if the NZKGI Forum decides not to fill the vacancy, it may subsequently decide:
 - A. at any time until the next election, to appoint a new Regional Forum Member from the Region for which the vacancy has occurred; or
 - B. at any time until 12 months prior to the next election, hold a new election in accordance with this Constitution to fill the vacancy.

~~(e)~~(d) The Regions, the permitted number of Regional Forum Members for each Region, and the ~~rationale for percentage of the total crop of Kiwifruit from each Region (on which~~ the division of Regional Forum representation ~~between Regions is based)~~ 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.

~~(e)~~(e) The Regional boundaries shall be those fixed by the Executive Committee.

5.76.7 Supply Entity Representation: Subject to ~~clauseRule~~ 6.28-2, Supply Entities are entitled to appoint ~~representatives~~Forum Representatives as follows:

- (a) Each Supply Entity that supplies 4% or more of the total ~~kiwifruit~~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.

~~(e)~~—Other Supply Entities supplying less than 4% of the total ~~kiwifruit~~Kiwifruit supplied to Zespri individually in each year for Export may together appoint one Forum ~~Member representative~~Representative between them.

~~(d)~~(c)

~~(e)~~(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 nine ~~representatives~~Forum Representatives, the 4% threshold under each paragraph will be increased so that only a maximum of nine ~~representatives~~Forum Representatives may be appointed under this ~~clause~~Rule.

5.86.8 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~~Representative under this Rule may also remove and replace that Forum ~~Member representative~~Representative by written notice to the Chairperson at any time. Every three years, to coincide with the election of Regional Representative Forum members, the Executive Committee will ask Supply Entities to confirm the appointment of their representatives under Rule 6.7.

5.96.9 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.

5.106.10 **Iwi Representation:** The ~~Maori~~Māori Growers Forum shall be entitled to appoint one Forum ~~Member representative~~Representative by written notice to the Executive Committee and also to remove and replace that Forum ~~Member representative~~Representative by written notice to the Chairperson at any time.

5.116.11 **Term of Elected Forum Members:** The Regional Forum Members shall be elected for a term ~~of approximately three years (as determined under that commences on the day of their election until the day specified in Rule 8.15(a))~~6.15(a). Members shall be entitled to offer themselves for re-election.

5.126.12 **Casual Vacancies:** Any vacancies of Regional Forum Members that occur more than ~~6~~six months prior to each election under rule 6.3 ~~5.3~~ will be filled by holding a by-election following the process set out in rules 6.3 ~~5.3~~ to 6.6 ~~5.6~~. In such a situation, rules 6.3 ~~5.3~~ to 6.6 ~~5.6~~ will apply with all necessary amendments. If a vacancy occurs within ~~6~~six months of an election under rule 6.3 ~~5.3~~, the vacancy will be filled by:

- (a) ~~i~~n the case of a vacancy of a Regional Forum Member elected under Rule ~~(b)~~6.5(b), either appointing the unsuccessful candidate from the ~~previous~~most recent election with the highest number of votes or by appointing a new Regional Forum Member from the Region for which the vacancy has arisen; ~~or~~
- (b) ~~i~~n the case of a vacancy of a Regional Forum Member elected under Rule ~~8.5(c)~~6.5(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)~~6.6(b), or by appointing a new Regional Forum Member from the Region for which the vacancy has arisen.

5.136.13 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~~Members, in addition to those elected under Rule ~~8.6~~6.6 or appointed under Rules ~~8.7~~6.7 or ~~8.10~~6.10, 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.~~

5.146.14 Compliance with ~~Rules~~Constitution and Bylaws: ~~Every Forum Member shall be required to comply, at all times, with these Rules~~this Constitution, 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~~Representatives of a Member under Rule 6.2(a)~~8.2(a)(ii)~~,ii and Forum ~~Members~~Representatives appointed under Rules ~~8.7~~6.7 and ~~8.10~~6.10 but who are not themselves Members of NZKGI, shall be deemed to have agreed to be bound by all the requirements of ~~these Rules~~this Constitution that apply to Forum Members.

5.156.15 Cessation of Forum Membership: Forum Membership shall cease in the following circumstances:

- (a) ~~On the day prior to the election of new Regional Forum Member for the Region which the Regional Forum Member represents.~~Members under Rule 6.3(a);
- (b) ~~By~~any Forum Member giving notice in writing of resignation to the Executive Committee, on the date given in the notice;
- (c) ~~The~~the Forum Member being expelled in accordance with Rule ~~8.16(b)~~6.16(b);
or
- (d) ~~If~~a Forum Member fails to attend three consecutive meetings without good reason.

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

- (a) If the Executive Committee considers that the breach is a 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 a material breach, then the Executive Committee shall request the Forum Member to resign. ~~If the Forum Member does not resign~~

~~5.176.17~~ The Executive Committee does not need to follow the dispute resolution process in Rule 18 of this Constitution before investigating an alleged breach of this Constitution or any Bylaw by a Forum Member under Rule 6.16, but if the Forum Member does not resign when requested under Rule 6.16(b) within ~~seven~~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).

67 MEETINGS OF FORUM MEMBERS

6.17.1 **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.

6.17.2 **Notice of NZKGI Forum meetings:**

- (a) Every notice of a NZKGI Forum meeting shall be sent to the last known address of each Forum Member in writing and shall:
 - i. ~~Set~~ out in as much detail as practical the matters to be considered at the NZKGI Forum meeting; ~~and~~
 - ii. ~~Give~~ at least seven clear days' notice of that NZKGI Forum meeting.
- (b) A meeting of Forum Members ~~shall notwithstanding it is~~ called by shorter notice than specified in -paragraph (b), (a) shall be deemed to have been duly called if it is so agreed by the Members attending that meeting.
- (c) 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.

6.37.3 Forum Meeting Procedure:

- (a) The Executive Committee may provide for attendance at Forum Meetings by electronic means, provided the requirements of Rule 24.1 ~~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 (if allowed) 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 (which can be conducted by electronic means, if attendance at a meeting by electronic means is allowed) unless the Chairperson is satisfied on voices or a show of hands (including at a meeting held by electronic means) 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 ~~as specified by the Executive Committee~~. Any vote by electronic means must comply with Rule ~~25.2~~ 24.2.
- (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:
 - iii. ~~The~~ Forum Member has not appointed a proxy for both the previous two meetings of the NZKGI Forum; and
 - iv. ~~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:

AppointA. appoint another Forum Member as proxy for the absent Forum Member;

StateB. state the name of the Forum Member appointed as proxy; and

StateC. 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~~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; and
 - ii. The~~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:

AppointA. appoint a Member from the Region which the Regional Forum Member represents; and

StateB. 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~~Kiwifruit~~ on an orchard in the Regional Forum Member's Region.

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

- (a) Pursue~~pursue~~ and carry out the NZKGI objects set out in Rule 5.13.1;

- (b) ~~Make~~ recommendations to KNZ, Zespri ~~and to~~, the Executive Committee, Industry Advisory Council ~~and~~, Industry Supply Group and any other Committee referred to in Schedule 1;
- (c) make or amend Bylaws not inconsistent with ~~these Rules~~ this Constitution for the internal management of NZKGI and/or the NZKGI Forum, or rescind Bylaws previously made;
- ~~(d) Appoint~~ appoint sub-committees as required; ~~and~~.
- ~~(e)~~ (d)
- ~~(f)~~ (e) ~~m~~Make a decision on any matter referred to the NZKGI Forum meeting by the Executive Committee under rule 8.6(h) ~~7.5(g)~~.

6.57.5 **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. ~~M~~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 clauseRule 24.225.2.

6.67.6 **Affiliated Groups:**

- (a) The Forum may, by majority vote, agree to recognise a differentiated group of New Zealand ~~kiwifruit~~ 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)~~ 7.6(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.

78 THE EXECUTIVE COMMITTEE

8.1 **Number on Executive Committee:** -The [Executive Committee shall comprise:](#)

- (a) [the](#) Chairperson, Vice Chairperson, and four other [general](#) Forum Members elected pursuant to Rule ~~10.2,~~ 8.2;
- (b) [an independent person appointed pursuant to Rule ~~10.3~~ 8.3 \(if so determined by the Executive Committee\);](#) and
- ~~(c)~~ (c) [the person for the time being discharging the duties of NZKGI's Chief Executive shall be NZKGI's Executive Committee.; and:](#)

(d) up to two co-opted members.

7.28.2 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 general Executive Committee ~~members~~Members shall be held every two 2-years. Not less than ~~fourteen-14~~ 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 general 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~~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 no valid nominations received for the Chairperson or Vice-Chairperson vacancies or insufficient valid nominations received for the four general Executive Committee Member vacancies, but not otherwise, nominations or further nominations (as the case may be) may be received from the floor at the Forum Meeting. ~~If no further nominations are received or insufficient nominations are received, the~~
- ~~(d)~~(e) The Executive Committee will declare all nominated candidates (whether under paragraph (b) or (d)) elected, if:
- i. If sufficient only one nomination is received for the Chairperson and Vice-Chairperson vacancies; or
 - ii. four or less nominations are received for the four general Executive Committee Member vacancies.
- ~~(e)~~(f) If more than one nomination is received for the Chairman or Vice-Chairperson roles or more than four nominations are received for the four general Executive Committee Members vacancies, 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)~~(g) The candidates with the highest number of votes for each position shall fill the vacancies available, with the candidates with the four highest number of votes for the four general positions on the Executive Committee being elected to those vacancies. In order to fill the Chairperson, Vice-Chairperson or the last vacancy of the four general Executive Committee Member vacancies in the event of a tie for ~~that vacancy~~those vacancies, a further vote of Forum Members shall be

taken between the tied candidates to decide who shall fill ~~that last vacancy~~those vacancies.

- (h) If there are no nominations for Chairperson or Vice-Chairperson, then the newly elected Executive Committee:
 - i. shall appoint members of the committee to those vacancies on a temporary basis; and
 - ii. must, as soon as possible, seek to fill those vacancies by vote at an NZKGI Forum meeting for which notice of the election has been given.
- (i) If there are less than four general Executive Committee members elected, the Executive Committee must, as soon as possible, seek to fill those vacancies by vote at an NZKGI Forum meeting for which notice of the election has been given.
- (j) A vacancy on the Executive Committee following an election does not affect the operation of the Executive Committee.

7.38.3 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~~this Constitution, including the Code of Conduct set out in Schedule 2 and all Bylaws as if ~~he or she~~they were a Forum Member elected or appointed in accordance with ~~these Rules~~this Constitution.
- (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.

8.4 Co-opted members:

- (a) The Executive Committee may co-opt up to two additional Executive Committee Members for one year or as is determined by the Executive Committee from time to time.
- (b) For the avoidance of doubt, co-opted Executive Committee Members have voting rights as members of the Executive Committee in accordance with Rule 8.10.
- (c) A Co-opted Executive Committee Member:
 - i. must be a Forum Member;

- ii. must not be disqualified from being an Officer by the Act;
- iii. must comply with this Constitution, the Act, and any other Executive Committee policies, procedures, or governance practices; and
- iv. cannot hold the positions of Chairperson or Vice-Chairperson.

(d) Any Co-opted Executive Committee Member co-opted to the Executive Committee under this Rule may:

- i. resign at any time by giving notice in writing to the Executive Committee; or
- ii. be removed at any time by the Executive Committee by giving no less than 14 days' notice in writing to the Co-opted Executive Committee Member.

7.48.5 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 from the date of their election until the day prior to the next election under Rule 8.2(a), 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~~ 6.14 shall terminate immediately. This Rule does not apply to the person for the time being discharging the duties of NZKGI's Chief Executive.

8.6 Powers and Functions:

The powers and functions of the Executive Committee shall be:

- ~~(e)(a)~~ Feto manage the staff of NZKGI to carry out the day to day affairs of NZKGI in accordance with its aims and objectives;
- ~~(e)(b)~~ Feto manage and operate NZKGI in the pursuit of its aims and objectives, subject to the oversight of the NZKGI Forum;
- ~~(e)(c)~~ Feto 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~~relating to Zespri, benchmarking, performance against KPIs, oversight of pool operations and the annual grower report;
 - ii. ~~Relating~~relating to the Supply Entities, Post Harvest Operators and the supply chain, benchmarking, performance against KPIs and the annual grower report; and

iii. ~~Relating~~relating to NZKGI, performance against KPIs and annual reporting to Growers;

~~(f)~~(d) ~~To~~to call meetings of the NZKGI Forum and meetings of the Members in accordance with ~~these Rules~~this Constitution;

~~(g)~~(e) ~~To~~to address any breach of ~~these Rules~~this Constitution or Bylaws by a Forum Member in accordance with Rule ~~8.16~~6.16;

~~(h)~~(f) ~~Prior to, 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~~meet at 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;

~~(i)~~ to make and amend bylaws and policies for the conduct and control of NZKGI activities, and codes of conduct applicable to Members, including the Conflict of Interest Policy, provided that no such bylaws, policies, or codes of conduct applicable to Members shall be inconsistent with this Constitution, the Act, regulations made under the Act or any other legislation; and

~~(j)~~(g)

~~(h)~~ 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.

7.58.7 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.~~

8.8 Minutes: The Office Manager must ensure that minutes are kept of all Executive Committee meetings that record:

(a) the names of the Executive Committee Members present;

(b) the resolutions discussed;

(c) the proceedings of each meeting; and

(d) that the meeting addressed the Executive Committee meeting agenda.

7.68.9 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.

7.78.10 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.

7.88.11 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~~ attendees have been provided with sufficient information on the resolution to make an informed decision;
- (b) ~~Attendees~~ 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.

Termination of position on Executive Committee:

7.98.12 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.

7.108.13 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. A vacancy on the Executive Committee that arises during the term of an Executive Committee Member does not affect the operation of the Executive Committee.

89 FINANCIAL YEAR

8.19.1 The financial year of NZKGI shall be from the 1st day of ~~January~~ April in one year to the following 31st day of ~~December,~~ March (the latter being NZKGI's Balance Date), or as may be determined by the Executive Committee from time to time. NZKGI must file financial returns statement with the Registrar within six months of the Balance Date.

9.2 NZKGI shall move to the 1 April to 31 March financial year from the first 1 April that occurs on or after this Constitution comes into effect. To facilitate that transition, NZKGI shall prepare such financial statements as are required for the remainder of the then current financial year.

910 ANNUAL GENERAL MEETING

9.410.1 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~~six months after the Balance Date.

9.210.2 Notice of AGM to Members: All Members who appear on NZKGI's ~~register~~Register of Members shall be sent a notice of the AGM, the agenda for that meeting, and any notices of motion.

9.310.3 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.

9.410.4 Business at Meeting: The Annual General Meeting of NZKGI shall:

- (a) ~~Receive~~receive and consider the annual report of NZKGI;
- (b) ~~Receive~~receive and consider the annual financial statements for the immediate past financial year end;
- (c) ~~Approve~~approve a budget for the financial year commencing in the year following the meeting and set the Levy rates for that year;
- (d) ~~Set~~set remuneration of NZKGI Representatives;
- (e) ~~Consider~~consider such other business as may have been notified to Members in the notice calling the meeting and no other business.

9.510.5 General Meeting Procedure:

- (a) The Executive Committee may provide for attendance at General Meetings by electronic means, provided the requirements of Rule 24.125.1 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~~their 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.

~~(f)~~ The Executive Committee shall establish the voting process (but that process must comply with the requirements of this Constitution) and appoint Returning Officers to administer it.

~~(g)~~ The Executive Committee shall allow sufficient time for ~~members~~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.

~~(e)~~~~(h)~~ The results of the ballot vote shall be announced by the Executive Committee and shall be binding on all ~~members~~Members.

~~(f)~~~~(i)~~ The voting entitlements of each Member at General Meetings shall be determined in accordance with Rule 5.47.4.

~~(j)~~ Any vote shall be carried by a majority decision, except where otherwise required by law.

~~(k)~~ Minutes of all General Meetings shall be kept. Minutes of the most recent General Meeting may be made available to Members upon request.

4011 SPECIAL GENERAL MEETINGS

~~40.411.1~~ 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.

~~40.211.2~~ 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.

~~40.311.3~~ 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.

FINANCIAL STATEMENT

12 FINANCES AND REPORTING

12.1 The funds and property of NZKGI shall be controlled, invested, and disposed of by the Executive Committee, subject to this Constitution and devoted solely to the promotion of the Objects of NZKGI.

12.2 All payments made by NZKGI are to be approved by two of the following: NZKGI's Chairperson, Vice Chairperson, an Executive Committee Member appointed for this reason, the person performing the duties of NZKGI's Chief Executive Officer, NZKGI's accountant.

12.3 The Office Manager shall ensure that all moneys received by or on behalf of NZKGI are to be paid to NZKGI's accounts at one of the registered banks in New Zealand.

12.4 The finances of NZKGI will be managed according to any bylaws and policies set by NZKGI from time to time.

40.412.5 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.

40.512.6 Every ~~such~~ financial statement prepared in accordance with Rule 12.5 shall be audited and signed by the Chairperson and one other member of the Executive Committee, ~~certified by an auditor~~ and laid before the AGM.

12.7 NZKGI will keep accounting records in written form or in a form or manner that is easily accessible and convertible into written form, and the accounting records will be kept for the current accounting period and for the last seven completed accounting periods of NZKGI.

12.8 NZKGI will prepare and provide an annual report to Members summarising the activities undertaken by NZKGI in furtherance of its objects. This report may be included with or accompany the financial statements prepared under Rule 12.5.

12.9 NZKGI will ensure that it takes steps to inform Members of its plans for the coming year and consult with them on those plans by means or in a forum that enables Members to engage with Forum Members. This obligation may be met by carrying out annual meetings in each Region or by other means.

4413 **NOTICE**

44.113.1 Any notice in writing required to be given to Members or Forum Members by ~~these rules~~ this Constitution 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).

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.~~

4214 **ALTERATIONS TO RULESCONSTITUTION**

42.114.1 Any amendment to ~~these Rules~~ this Constitution 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~~ 5.4). Any electronic voting must comply with Rule ~~24.2~~ 25.2.

42.214.2 Rule changes may be proposed by the NZKGI Forum, by ~~members~~ Members in accordance with Rule ~~14.3~~ 14.3, or by the Executive Committee itself.

~~12.3~~14.3 Any proposal from Members for amendment of ~~these Rules~~[this Constitution](#) must be signed by Members whose votes equal 5% of the total Landowner Votes and Fruit Votes.

~~12.4~~14.4 Any Rule change proposals from the NZKGI Forum or from Members under Rule ~~17.3~~14.3 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~~[this Constitution](#) 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.

~~12.5~~14.5 In all cases, the Executive Committee must provide a notice of motion to Members setting out the proposed amendments to ~~these Rules~~[this Constitution](#):

- (a) ~~For~~ voting at an AGM or Special General meeting, in accordance with Rules ~~12.2~~10.2 or ~~13.3~~11.3; or
- (b) ~~For~~ voting by postal or electronic means, at least 14 days before voting is to close.

~~12.6~~14.6 Any amendment of ~~these Rules~~[this Constitution](#) approved by Members shall forthwith be registered with the Registrar of Incorporated Societies.

~~13~~15 STATUS OF SCHEDULES

~~13.1~~15.1 The rules set out in the Schedules to ~~these Rules~~[this Constitution](#) shall form part of the ~~Rules~~[Constitution](#) of NZKGI and be binding on the Members, Forum Members and the Executive Committee accordingly.

4416 DECLARATIONS CONFLICTS OF INTEREST

16.1 An Interested Officer must disclose details of the nature and extent of their Interest (including any monetary value of the Interest if it can be quantified):

(a) to the Executive Committee; and

(b) in the Register of Interests kept by the Executive Committee.

16.2 Disclosure must be made as soon as practicable after that Officer becomes aware that they have an Interest in the Matter.

16.3 Subject to the Act and any regulations made under the Act, an Officer who has an Interest in a Matter:

(a) must not vote or take part in the decision in relation to the Matter; and

(b) must not sign any document relating to the entry into a transaction or the initiation of the Matter; but

(c) may take part in any discussion in relation to the Matter and be present at the time of the decision on the Matter (unless the Executive Committee decides otherwise).

16.4 If 50% or more of the Executive Committee are prevented from voting on the Matter due to having an Interest in that Matter, the Executive Committee must call a meeting of the NZKGI Forum to consider and determine the Matter.

44.116.5 Before any nomination to the NZKGI Forum is accepted by the Executive Committee, the nominee shall provide a list of all ~~interests~~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 in the Register of Interests and be available to Members on request.

44.216.6 **Interested Member:** Where any matter is being debated by Members at a meeting of Members, ~~the NZKGI Forum or by the Executive Committee each member~~each Member shall, before taking part in that debate, have a duty to disclose to the meeting all other ~~interests~~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~~Interests is sufficient to cause the ~~member~~Member to have a ~~significant~~ conflict of interest, ~~such that if they were an Officer they would be an Interested Officer~~ then the meeting may require the ~~member~~Member not to vote on the matter before it, but that ~~member~~Member shall retain speaking rights.

16.7 If 50% or more of the NZKGI Forum are prevented from voting on the Matter due to having an Interest in that Matter, the Executive Committee must call a Special General Meeting of NZKGI to consider and determine the Matter.

16.8 **Conflict of Interest Policy:** The Executive Committee may from time to time set a Conflict of Interest Policy setting out processes for dealing with conflicts of interests within NZKGI, which shall be supplementary to this Constitution. In the event of any conflict between the Conflict of Interest Policy and this Constitution, the Constitution shall prevail.

4517 TRADING ACTIVITIES

45.117.1 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) of [the](#) Commodity Levies Act 1990 or any enactment passed in their place.

45.217.2 Any commercial or trading activity of NZKGI that does not come within the provisions of Section 10(6) and 10(7) of the Commodity 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.

DISPUTES

18 DISPUTE RESOLUTION

How a Complaint is Made

18.1 A Member or an Officer may make a Complaint by giving to the Executive Committee written notice that:

- (a) states the Member or Officer is starting a procedure for resolving a Dispute in accordance with this Rule 18;
- (b) sets out the allegation to which the Dispute relates and whom the allegation is against; and
- (c) sets out any other information reasonably required by NZKGI.

18.2 NZKGI may make a Complaint involving an allegation against a Member or an Officer by giving the Member or Officer a Notice in writing that:

- (a) states that NZKGI is starting a procedure for resolving a Dispute in accordance with this Rule 18; and
- (b) sets out the allegation to which the Dispute relates.

18.3 The information given under Rule 18.1(b) and 18.2(b) must be enough to ensure that a person against whom an allegation is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.

Costs of Complaint

18.4 Without limiting this Rule 18, a complainant must meet their own costs of making a Complaint.

Person Who Makes Complaint Has Right to be Heard.

18.5 A Member or an Officer who makes a Complaint has a right to be heard before the Complaint is resolved or any outcome is determined.

18.6 If NZKGI makes a Complaint:

- (a) NZKGI has a right to be heard before the Complaint is resolved or any outcome is determined; and
- (b) an Officer may exercise that right on behalf of NZKGI.

18.7 Without limiting the manner in which the Member, Officer, or NZKGI may be given the right to be heard, they must be taken to have been given the right if:

- (a) they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
- (b) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- (c) an oral hearing (if any) is held before the decision maker; and
- (d) the Member's, Officer's, or NZKGI's written statement or submissions (if any) are considered by the decision maker.

Person Who is Subject of Complaint Has Right to be Heard

18.8 Rules 18.6 to 18.9 apply if a Complaint involves an allegation that a Member, an Officer or NZKGI (the Respondent):

- (a) has engaged in misconduct;
- (b) has breached, or is likely to breach, a duty under this Constitution or the Act; or
- (c) has damaged the rights or interests of a Member or the rights or interests of Members generally.

18.9 The Respondent has a right to be heard before the Complaint is resolved or any outcome is determined.

18.10 If the Respondent is NZKGI, an Officer may exercise the right on behalf of NZKGI.

18.11 Without limiting the manner in which a Respondent may be given a right to be heard, a Respondent must be taken to have been given the right if:

- (a) the Respondent is fairly advised of all allegations concerning the Respondent, with sufficient details and time given to enable the Respondent to prepare a response;
- (b) the Respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held);
- (c) an oral hearing is held if the decision-maker considers that an oral hearing is needed to ensure an adequate hearing;
- (d) an oral hearing (if any) is held before the decision-maker; and
- (e) the Respondent's written statement or submissions (if any) are considered by the decision-maker.

Investigating and Determining Dispute

18.12 NZKGI must, as soon as reasonably practicable after receiving or becoming aware of a Complaint made in accordance with this Constitution, ensure that the Complaint is investigated and determined.

Society May Refer Complaint

18.13 Despite Rule 18.10 NZKGI may refer a Complaint to:

- (a) a complaints subcommittee or an external person to investigate and report; or
- (b) a complaints subcommittee, arbitral tribunal or an external person to investigate and make a decision.

18.14 NZKGI may, with the consent of all parties to a Complaint, refer the Complaint to any type of consensual dispute resolution.

Society May Decide Not to Proceed Further with Complaint

18.15 Despite Rules 18.11 and 18.12, NZKGI may decide not to proceed further with a Complaint if:

- (a) the Complaint is trivial;
- (b) the Complaint does not appear to disclose or involve any allegation of the following kind:
 - i. that a Member or an Officer has engaged in material misconduct;
 - ii. that a Member or an Officer, or NZKGI has materially breached, or is likely to materially breach, a duty under this Constitution or the Act; or
 - iii. that a Member's rights or interests or Members' rights or interests generally have been materially damaged;
- (c) the Complaint appears to be without foundation or there is no apparent evidence to support it;
- (d) the person who made the Complaint has an insignificant interest in the matter;
- (e) the conduct, incident, event or issue giving rise to the Complaint has already been investigated and dealt with under the Constitution; or
- (f) there has been an undue delay in making the Complaint.

Decision-makers

18.16 The Executive Committee or any such complaints subcommittee or person considering and determining a Complaint in accordance with this Constitution is referred to in this Constitution as the "decision-maker". A person may not act as the decision-maker in relation to a Complaint if two (2) or more Committee Members or any complaints subcommittee consider that there are reasonable grounds to believe that the person may not be:

- (a) impartial; or
- (b) able to consider the matter without a pre-determined view.

Resolving Disputes

18.17 The decision-maker may:

- (a) order the complainant (if a Member) or the Member complained against, to meet any of NZKGI's reasonable costs in dealing with a Complaint; and
- (b) make such directions as the decision-maker thinks appropriate (with which NZKGI and Members shall comply), including upholding a Complaint; and
 - i. reprimanding or admonishing the Member; and/or
 - ii. suspending the Member from Membership for a specified period; or
 - iii. terminating the Member's Membership.

18.18 If a dispute arises at any time in respect of a matter which is not provided for in ~~these Rules~~this Constitution or the Bylaws made pursuant to them, or any doubt exists as to the interpretation of ~~these Rules~~this Constitution 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.

19 REGISTERED OFFICE, REGISTERS AND RECORDS

19.1 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.

19.2 Office Manager and Contact Person:

- (a) the Committee shall appoint at least one (1) individual, usually the Office Manager, and no more than three (3) individuals, as the Contact Person for the purposes of the Act.
- (b) the Contact Person must be at least 18 years of age and ordinarily resident in New Zealand.
- (c) the Contact person will be the person whom the Registrar can contact when needed.

19.3 The role and duties of the Office Manager shall also be to:

- (a) keep the Register of Members;
- (b) maintain the Register of Interests kept by the Executive Committee;
- (c) record the minutes of all General Meetings and Executive Committee meetings;
- (d) hold all other records, documents and books of NZKGI; and
- (e) deal with and answer correspondence and perform such other duties and directed by the Executive Committee and otherwise meet the requirements of the Act.

19.4 Register of Members: The Office Manager shall keep an up-to-date Register of Members, recording each Member's:

- (a) name;
- (b) physical and mailing addresses;
- (c) phone number;
- (d) email address;
- (e) the date the Member became a Member; and
- (f) any other information required by this Constitution or the Act, including by regulations (if any).

19.5 Every Member shall promptly advise the Secretary of any change in their contact details.

19.6 **Access to Information for Members:** A Member may at any time make a written request to NZKGI for specific information held by NZKGI. NZKGI must, within a reasonable time after receiving a request:

- (a) provide the information;
- (b) agree to provide the information within a specified period if the Member may a reasonable charge (previously specified) to meet the cost of providing the information; or
- (c) refuse to provide the information in accordance with the Act, specifying the grounds for refusal.

20 INDEMNITY AND INSURANCE

20.1 NZKGI shall indemnify each Officer against all losses and expenses incurred by them in carrying out their duties in relation to NZKGI except insofar as they contravene the Officer's duties under the Act or this Constitution.

20.2 The Executive Committee shall maintain such insurance as it considers appropriate from time to time.

4621 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.~~

21.1 DISPOSAL~~NZKGI may be wound up under the provisions of Part 5 of the Act.~~

21.2 NZKGI may be removed from the Register of Incorporated Societies in accordance with the provisions of Part 5 of the Act

4722 DISTRIBUTION OF SURPLUS FUNDS/ASSETS

47.4-22.1 ~~If on the winding up or dissolution of NZKGI there remains after satisfaction of all its liabilities any property, no distribution shall be made to any Member, and the~~

same shall be ~~paid or~~ distributed to ~~persons or bodies~~another not-for-profit entity or entities (as defined in the Act) with similar purposes to NZKGI who may use that property for the benefit of Kiwifruit Growers, as determined at a General Meeting.

4823 REPEAL OF PREVIOUS CONSTITUTION / RULES

48.123.1 ~~These Rules~~This Constitution shall repeal and replace all previous rules of NZKGI.

4924 MEETINGS AND VOTING BY ELECTRONIC MEANS

49.124.1 If ~~these Rules permit~~this Constitution permits 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.

49.224.2 If ~~these Rules permit~~this Constitution permits 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~~Rule.

~~Dated:~~ _____ ~~2018~~

~~SIGNED by three Members of NZKGI:~~

~~Name of Member (Printed)~~ _____ ~~Signature~~

Name of Member (Printed)

Signature

Name of Member (Printed)

Signature

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DEFINITIONS

24.3 In the interpretation of this Constitution (unless the context requires a different interpretation):

Act means the Incorporated Societies Act 2022 or any other Act which replaces the Act, and any regulations made under the Act.

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 7.6(a).

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

Balance Date means NZKGI's balance date as set out in Rule 9.

Chairperson means the Forum chairperson for the time being elected pursuant to Rule 8.2.

Chief Executive means the Chief Executive of NZKGI.

Complaint has the meaning given to it in section 38 of the Act.

Conflict of Interest Policy means NZKGI's policy in relation to conflicts of interest as set by the Executive Committee from time to time. The Conflict of Interest Policy is a bylaw of NZKGI, for the purposes of the Act.

Co-opted Executive Committee Member means an Executive Committee Member co-opted to the Executive Committee in accordance with Rule 8.4.

Dispute has the meaning given to it in section 38 of the Act.

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 8 of this Constitution, and "Executive

Committee Member" means the members of the Executive Committee.

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 6.

Forum Representative means a representative of a Region, a Supply Entity or of the Māori Growers Forum appointed in accordance with Rules 6.2(b), 6.7 or 6.10.

Fruit Votes means the votes determined pursuant to Rule 5.4(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.

Interest means, in relation to a Matter, where a person:

(a) (or the spouse, civil union partner, de facto child, parent, grandparent, grandchild, sibling, nephew, niece, uncle, aunt, or first cousin of that person) may obtain a financial benefit from the Matter;

(b) may have a financial interest in a person to whom the Matter relates; or

(c) is a partner, director, Officer, Committee Member, or trustee of a person who may have a financial interest in a person to whom the Matter relates; or

(d) is interested in the Matter for any other reason specified in this Constitution or as further defined in the Act,

provided that a person will not have an Interest in a Matter where:

(a) the person receives an indemnity, insurance cover, remuneration, or other benefits authorised under the Act;

(b) the person's interest is the same or substantially the same as the benefit or interest of all or most other Members due to the membership of those Members; or

(c) if the person's interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the Member in carrying out their responsibilities under the Act or this Constitution;

(d) without limiting sub-paragraph (b), the person's interest relates to or arises from a benefit or interest that they receive from participation in the industry

(including the selling of Kiwifruit) or as a Grower provided the benefit or interest:

(ii) does not arise directly from or directly relate to NZKGI;

(ii) for the purposes of Rules 16.1 to 16.5, is shared by Members to whom the Officer is not related by way of the relationships described in section 62(1)(b) of the Act, in which the Officer does not have a financial interest, and for which the Officer is not a partner, director, officer, board member, or trustee of a person who has a financial interest in the Member or Members and

(iii) for the purposes of Rule 16.6, is shared by other Members who are not subsidiaries or holding companies of the Member referred to in Rule 16.6 or are not related to that Member by way of the relationships described in section 62(1)(b) of the Act.

Interested Officer means an Officer who has an Interest in a Matter.

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 5.4(a).

Levy means any amount paid or to be paid to NZKGI under the Commodity Levies (Kiwifruit) Order 2024 (as amended, supplemented or replaced from time to time).

Māori Growers Forum means the forum formally established by Māori Growers to represent Māori Growers commercial and political interests.

Matter means NZKGI's performance of its activities or exercise of its powers

pursuant to this Constitution, including any arrangement, agreement, or contract made or entered into, or proposed to be entered into, by NZKGI.

Member means a Grower who has become a Member pursuant to Rule 5.

NZKGI means New Zealand Kiwifruit Growers Incorporated.

NZKGI Forum means the body of Members forming the New Zealand Kiwifruit Growers Forum established under Rule 6.

Objects means NZKGI's purposes as that term is used in the Act and as set out in Rule 3.

Officer means an Executive Committee Member, a Forum Member, the Chief Executive, and any natural person occupying a position in NZKGI that allows the person to exercise significant influence over the management or administration of NZKGI and includes any class or classes of natural persons that are declared by regulations to be officers for the purposes of the Act. For the avoidance of doubt, the NZKGI Representatives as referred to in Schedule 1 are not officers for the purposes of the Act.

Office Manager means the officer manager of NZKGI appointed in accordance with Rule 19.2.

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 Rule 6.6(b) and shall be determined by the returning officer, each time the returning officer counts votes under that Rule, 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 6.6(d) and "Regional" shall have the corresponding meaning.

Regional Forum Member means a Forum Member elected under Rule 6.6.

Register of Interests means the register of interests kept under this Constitution.

Register of Members means the register of Members kept under this Constitution.

Registrar means the Registrar of Incorporated Societies.

Representative of a Member means a representative of a member appointed in accordance with Rule 5.2(f).

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 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 Rule 6.6 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 this Constitution 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.

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

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

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

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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:

(a) Industry Advisory Council;

(b) Industry Supply Group;

(c) New Zealand Kiwifruit Product Group to Australia; and

Share Committee

Hail Committee

Remuneration Review Committee

(d) aAny other industry committees or ad hoc committees to which NZKGI appoints representatives.

2 Definitions

For the purposes of this Schedule 1:

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

“IAC” means the Industry Advisory Council.

“IAC Representative Member” is defined in Rule 3(b)3(a) 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 and any other, Share Committee and Hail Committee who are elected to those Committees in accordance with Rule ~~33~~ 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; and
 - iii. ~~Three~~ Growers or Grower representatives (each an IAC Representative Member) elected in accordance with Rule ~~44~~ of this Schedule ~~1~~.
- (b) The Chairperson of NZKGI is the leader of NZKGI ~~representatives~~ Representatives on the IAC.
- (c) The number of NZKGI Representatives on the ISG, KPG and any other, Share Committee and Hail Committee will be:
 - (i) ISG: Two Members or representatives of Members pursuant to Rule 5.2(f) ~~7.2(b)~~ of the main part of this Constitution; and
 - (ii) KPG, Share Committee, Hail Committee: Three Members or representatives of Members pursuant to Rule 5.2(f) ~~7.2(b)~~ of the main part of these Rules; and
 - ~~(ii)~~ (iii) Any other Committee: As determined by the NZKGI Forum, being Members or representatives of Members pursuant to Rule 5.2(f) 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 44 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.~~ii.

- ~~iv.~~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.~~ An 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.

~~(e)~~(b) 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)~~(c) 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)~~(d) ~~Subject to Rule 5(b) of this Schedule 1, e~~Each IAC Representative Member must either be a Grower or a representative of a Grower appointed under ~~clause~~Rule 5.2(f) ~~8-2~~ of the main part of ~~these Rules~~this Constitution.

~~(f)~~(e) 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)~~(f) If there are insufficient valid nominations received under Rule 4(b) 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)~~(g) 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)~~(h) 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)~~(i) 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 (h)~~Rules 4(a) to ~~(h)~~4(h) of this Schedule 1 shall apply with necessary modifications to by-elections.

5 Term of Office

(a) ~~Except as provided in paragraph (b) below, e~~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~~ two years after the date of their election under Rule ~~34~~ of this Schedule ~~1~~ 1 or the

nearest NZKGI Forum meeting after that date, except as provided in clause 4(i) ~~4(j)~~ of this Schedule 1.

- ii. All other ~~NZ members of the RKGIN~~NZKGI Representatives: the day prior to the NZKGI Forum meeting that occurs ~~3~~three years after the date of their election under Rule ~~34~~ of this Schedule ~~1~~ or the nearest NZKGI Forum meeting after that date, except as provided in clause 4(i)~~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.~~

~~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.~~

~~iii. 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.~~

~~iv.~~

~~(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)~~(b) Members retiring from office are eligible for re-election in accordance with Rule ~~34~~ of this Schedule 1.

~~(e)~~(c) An IAC Representative Member shall cease to hold office if ~~he or she~~they:

- 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~~Rule 8.25.2 of the main part of ~~these Rules~~this Constitution.

~~(f)~~(d) 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)~~(e) If any NZKGI Representative on the ISG, KPG or any other, ~~Share Committee or Hail Committee~~ is a Forum Member and ~~he or she~~ 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)~~(f) A NZKGI Representative Member shall cease to hold office if ~~he or she is~~ they are absent for three consecutive Committee meetings without the prior written approval of the Executive Committee.

~~(i)~~(g) 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~~ their 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 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 to Remuneration Committee

- (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 1.~~
- ~~(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; ~~and~~
- consider the views of the New Zealand Kiwifruit industry ahead of the views of their appointor when casting ~~his or her~~their vote.

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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:

- [a#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.
- [aA](#) 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.
- [aA](#) 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](#)16.1, and be available to Members on request. Each Representative must strictly adhere to the requirements of Rule [16](#)[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 6.16~~8-16~~ are to be followed when dealing with any alleged breach.

Dated: _____ 2018

SIGNED by threetwo Members of NZKGI:

Name of Member (Printed) _____ Signature _____

Name of Member (Printed) _____ Signature _____

Name of Member (Printed)

Signature

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