

Rules of Kiwifruit Vine Health Incorporated

1. THE SOCIETY

- 1.1 **Name:** The name of the society is Kiwifruit Vine Health Incorporated (the "Society").
- 1.2 **Resolution:** The Society is constituted by resolution dated 1 December 2010.
- 1.3 **Registered office:** The Registered Office of the Society is Level 1, Customhouse Building, 314 Maunganui Road, Mount Maunganui, or such other place as the Directors may determine from time to time and notify to the Registrar of Incorporated Societies.

2. PURPOSES OF SOCIETY

- 2.1 **Purpose of Society:** The primary purpose of the Society is to become a Management Agency under the Biosecurity Act 1993 and to do all things required of the Society for the management of a National Pest Management Plan for *Pseudomonas Syringae* pv. *Actinidiae* (Psa) within New Zealand. Other purposes of the Society are:
 - (a) To monitor and identify biosecurity risks to the kiwifruit industry, to undertake and arrange biosecurity surveillance, to prepare for responses to biosecurity risks to the kiwifruit industry, including ensuring adequate operational arrangements are in place, to lead biosecurity responses as required and to liaise with governments, agencies, industry groups and other agencies as appropriate in relation to any such biosecurity risks;
 - (b) To promote and encourage in the national interest research into and the dissemination of information relating to biosecurity risk management and monitoring for kiwifruit vines in New Zealand; and
 - (c) To do any act or thing necessary or incidental to the attainment of the above objectives.
- 2.2 **Pecuniary gain:** Pecuniary gain is not a purpose of the Society.

3. POWERS OF THE SOCIETY

- 3.1 **Non-profit body:** The Society shall operate as a non-profit body expending all funds and revenue in the furtherance of its purpose for the purpose of protecting and advancing the interests of its Members and those whom the Members represent.
- 3.2 **Additional powers:** In addition to its statutory powers, the Society:
 - (a) May use such of its funds to pay the costs and expenses of furthering or carrying out its purposes, and for that purpose may employ such people, consultants, researchers and companies.
 - (b) May purchase, lease, borrow, hire or otherwise acquire, may exchange, and may sell, lease, lend or otherwise dispose of property, rights or privileges to further or carry out its purposes.
 - (c) May contract for research to be undertaken or jointly participate in research to further or carry out its purposes.

- (d) May conduct or contract for technical transfer or jointly participate in technical transfer to further or carry out its purposes.
- (e) May become jointly, or jointly and severally liable with any person, partnership, corporation, company or society on any contract or obligation which the Board may decide to be in the best interests of the Society to enter into to further or carry out its purposes; and
- (f) May invest in any investment in which a trustee might invest.

3.3 **Declaration of association:** Every Member or person associated with a Member shall disclose any association of conflict prior to participating in or materially influencing any decision made by the Society in respect of the payment to or on behalf of the Member or associated person of any income, benefit, compensation or advantage whatsoever.

3.4 **Arm's length:** Any income or compensation paid to a member of the Society or any person associated with a member shall be reasonable and relative to that which would be paid in an arm's-length transaction (being the open market value).

4. SOCIETY STRUCTURE

4.1 The Society shall consist of:

- (a) Members;
- (b) Grower Advisory Forum Members as provided in Rule 7; and
- (c) The Board of Directors elected and/or appointed pursuant to Rule 5.

5. MANAGEMENT OF THE SOCIETY

5.1 **Directors:** The Society shall have a board of Directors to manage the Society.

5.2 **Minimum:** There shall be six Directors, comprising the following people:

- (a) ~~Subject to clause 5.3, two~~Three Directors elected by the Grower Members in accordance with Rule 5.3;
- (b) One Director appointed by Zespri Group Limited;
- (c) One Director appointed by the Members who are registered suppliers under the Zespri Group Limited Annual Supply Agreement; and
- (d) One independent director, nominated by the Board and elected by the Society in General Meeting.; and
- ~~(e) Subject to clause 5.3, one Director appointed by the Crown.~~

~~5.3 **Crown appointment:** In addition to the Directors appointed as noted above, until such time as the \$50 million PSA Response Fund shall be expended in full, the Crown shall be entitled to appoint an additional Director by providing written notice to the Society. If the Crown is no longer entitled to appoint a Director, then from the next election held under clause 5.4, the Grower Members shall be entitled to elect three Directors for the purpose of clause 5.2(a).~~

5.45.3 Nomination and Election of Grower Directors:

- (a) ~~Approximately e~~Every ~~two~~ years in conjunction with the Annual General Meeting voting process, the Board shall conduct a postal ballot of Grower Members to elect the Grower Member representative Director(s). The Board shall determine nomination and voting procedures consistent with these Rules.
- (b) Before nominations are called for, the Board shall appoint a returning officer to run and administer the election and shall appoint an independent scrutineer to oversee the election.
- (c) Nominations shall be opened eight weeks prior to the vote commencing and close four weeks before voting commences.
- (d) Candidates for director shall be Grower Members and shall be nominated and seconded by other Grower Members.
- (e) Before any nomination for director is accepted by the Board, the nominee shall provide a list of all interests in the kiwifruit industry, both in New Zealand and elsewhere on the form provided by the Board. This information shall be held by the Board and be available to Members on request.
- (f) The provisions of clause 10.5 shall apply, adapted as required, to the election of the Grower Member representative directors and all references to "Members" in clause 10.5 shall be read and construed as references to "Grower Members" for the purpose of the director elections.

5.55.4 Term: Directors shall have terms of ~~two~~ three years, provided that appointed Directors may be changed at any time by the appointing party. A director shall not be barred from reappointment for subsequent terms. It is intended that the Directors shall retire in rotation so that two of the six directors shall retire or have their term ending at each Annual General Meeting.

5.5 Transitional provisions: From the 2018 Annual General Meeting, to give effect to the intended retirement by rotation provisions in Rule 5.4:

- (a) the three Grower Member representative Directors appointed under Rule 5.2(a) and elected at the 2018 Annual General Meeting shall hold office as follows:
 - (i) the Director elected by the highest number of votes shall hold office for a term of three years ending at the 2021 Annual General Meeting;
 - (ii) the Director elected by the second highest number of votes shall hold office for a term of two years ending at the 2020 Annual General Meeting; and
 - (iii) the Director elected by the third highest number of votes shall hold office for a term of one year ending at the 2019 Annual General Meeting;
- (b) the Independent Director elected pursuant to Rule 5.2(d) shall hold office from the 2018 Annual General Meeting for a term of three years;

- (c) the Director appointed by Zespri pursuant to Rule 5.2(b) shall hold office for a term of one year ending at the 2019 Annual General Meeting;
- (d) the Director appointed by suppliers pursuant to Rule 5.2(c) shall hold office for a term of two years ending at the 2020 Annual General Meeting; and
- (e) thereafter, upon a Director's term ending, the Director elected/appointed or re-elected/re-appointed in place of the retiring Director shall hold office for a term of three years.

5.6 **Alternate Directors:** Every director may by notice given in writing to the Society, appoint any person (including any other director) to act as an alternate director in the director's place either generally or in respect of a specified meeting or meetings during the director's absence or inability to act as a director and at the director's discretion by notice in writing to the Society, may remove the director's alternate director. On any such appointment being made the alternate director may, while acting in the place of the director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as chairperson) of the director appointing the alternate director and is subject in all respects to the same terms and provisions as that director except as regards remuneration and except as regards the power to appoint an alternate director under these Rules. For the purpose of establishing a quorum of the board an alternate director is deemed to be the director appointing him or her.

5.7 **Removal of Directors:** Persons cease to be Directors when:

- (a) They resign by giving written notice to the Society; or
- (b) Their Term expires.

If a person ceases to be a Director and is not reappointed pursuant to these rules, that person must within one month return all Society documents and property to the Society's registered office.

5.8 **Qualification of Directors:** In selecting appointees to the Board, each member shall have regard to the ability and willingness of a candidate to make a substantial commitment to the Society and the commercial experience and any relevant background of the appointee to be a Director. The Members recognise the desirability of reaching a suitable balance of skills and experience on the Board of Directors. In this respect, Members agree to take the balance of skills and experience of the whole Board into account in making recommendations and in appointing Directors to the Board.

5.9 **Vacancies:** In the event of any casual vacancy occurring among the directors, the appointing party under Rule 5.2 shall appoint a replacement as soon as possible and, in the case of a casual vacancy arising for a director elected pursuant to Rule 5.2(a) or an independent director, the Board may, in its discretion, call a Special General Meeting to appoint a replacement director or continue with a reduced number of directors until the next occurring Annual General Meeting. Any replacement director so appointed shall hold office until the remainder of the vacating director's term, but shall be eligible for appointment or election in accordance with the provisions of these rules. The Board may continue to act notwithstanding any vacancy in their number.

- 5.10 **Role of the Board:** Subject to the rules of the Society ("The Rules"), the role of the Board is to:
- (a) Administer, manage, and control the Society;
 - (b) Carry out the purposes of the Society, and Use Money or Other Assets to do that;
 - (c) Manage the Society's financial affairs, including approving the annual financial statements for presentation to the Members at the Annual General Meetings;
 - (d) Set accounting policies in line with generally accepted accounting practice;
 - (e) Delegate responsibility and contract resources where necessary;
 - (f) Ensure that all Members follow the Rules;
 - (g) Decide how a person becomes a Member, and how a person stops being a Member;
 - (h) Decide the times and dates for Meetings, and set the agenda for Meetings;
 - (i) Decide the procedures for dealing with complaints;
 - (j) Set Membership fees, including subscriptions and levies.
- 5.11 **Powers of the Board:** The Board has all of the powers of the Society, unless the Board's power is limited by these Rules, or by a Majority vote of the Society.
- 5.12 **Election/appointment of Chair, Vice Chair and Secretary:** The Directors shall choose a Chair and Vice Chair and shall determine the period of time for which the Chair and Vice Chair are to hold office and unless otherwise determined the Chair and Vice Chair shall be elected or re-elected annually. The Board shall also appoint a Secretary, who need not be Director or a Member, but shall be a person considered by the Board to have the appropriate skills to carry out the function of the secretary. The Board may remove and replace the Secretary from time to time.
- 5.13 **Decisions of the Board:** All decisions of the Board shall be by a majority vote. Each director shall have one vote. In the event of an equal vote, the Chair shall have a casting vote. Decisions of the Board bind the Society, unless the Board's power is limited by these Rules or by a Majority vote of the Society.
- 5.14 **Minutes:** Minutes shall be taken at each meeting of the Board by the Secretary.
- 5.15 **Form of meetings:** Board meetings may be held via video or telephone conference, or other formats as the Board may decide, provided that:
- (a) No Board Meeting may be held unless more than half of the Directors attend;
 - (b) The Chair shall chair Board Meetings, or if the Chair is absent, the Vice Chair, and if both the Chair and the Vice Chair are absent, the Board shall elect a Board Member to chair that meeting;
 - (c) Only Directors present at a Board Meeting may vote at that Board Meeting.

Subject to these Rules, the Board may regulate its own practices and procedures.

- 5.16 **Indemnity:** The Society will indemnify the Directors and employees in respect of all liabilities and expenses incurred by the Directors in carrying out or attempting to carry out any of their powers under these Rules or the by-laws and against all actions, proceedings, costs, expenses, claims and demands in respect of any matter done or omitted in relation to these Rules unless done or omitted through their own bad faith, dishonesty or gross negligence. The Directors may retain and pay out the funds of the Society all sums necessary to give effect to this indemnity, including without limitation arranging for insurance.

6. SOCIETY MEMBERSHIP

- 6.1 **Types of Members:** Membership shall comprise the following categories of persons:

- (a) Grower members who shall become Members by either paying a Levy or completing a membership application form, approved by the Board pursuant to Rule 6.3;
- (b) Registered suppliers who are party to the Zespri Group Limited Annual Supply Agreement;
- (c) Zespri Group Limited; and
- (d) A party determined by the Board in its sole discretion as being appropriate for membership and whose application for membership has been approved by the Board pursuant to Rule 6.3.

- 6.2 **Rights and Responsibilities of Members:** Members have the rights and responsibilities set out in these Rules. All Members (and Board Members) shall promote the purposes of the Society and shall do nothing to bring the Society into disrepute. For the avoidance of doubt, and subject to these Rules, the role of Members shall be as follows:

- (a) To set remuneration of Directors;
- (b) To approve changes to these Rules;
- (c) To receive reports on finances and proceedings of the Society, proposed budgets, annual plans, achievement of milestones and any other matters considered by the Members to be relevant;
- (d) To receive audited accounts; and
- (e) To appoint or re-appoint an auditor.

- 6.3 **Admission of Members:**

Upon receipt of an application for membership, the Board shall place the application on the agenda of the next meeting of the Board of Directors. The Board shall have complete discretion when it decides whether or not to allow an individual or entity to become a Member. The Board shall advise the applicant of its decision, and that decision shall be final.

- 6.4 **The Register of Members:** The Society shall keep a register of Members ("the Register"), which shall contain the names, the postal and email addresses and telephone numbers of all Members, and the dates at which they became Members. If a Member's contact details change, that Member shall give the new postal or email address or telephone number to the Society. Each Member shall provide such other details as the Board requires.

6.5 **Cessation of Membership:** Any Member may resign by giving written notice to the Society.

6.6 **Termination of Membership:** If, for any reason, the Board is of the view that a Member is breaching the Rules or acting in a manner inconsistent with the purposes of the Society, the Board may give written notice of this to the Member ("the Board's Notice"). The Board's Notice must:

- (a) Explain how the Member is breaching the Rules or acting in a manner inconsistent with the purposes of the Society.
- (b) State what the Member must do in order to remedy the situation; or state that the Member must write to the Board giving reasons why the Board should not terminate the Member's Membership.
- (c) State that if, within 14 days of the Member receiving the Board's Notice, the Board is not satisfied, the Board may in its absolute discretion immediately terminate the Member's Membership.
- (d) State that if the Board terminates the Member's Membership, the Member may appeal to the Society.

14 days after the Member received the Board's Notice, the Board may in its absolute discretion by majority vote terminate the Member's Membership by giving the Member written notice ("Termination Notice"), which takes immediate effect.

7. GROWER ADVISORY FORUM

7.1 **Members of the Advisory Forum:** The Grower Advisory Forum shall comprise the New Zealand Kiwifruit Growers Forum Members from time to time elected and/or appointed in accordance with the rules of New Zealand Kiwifruit Growers Incorporated.

7.2 **Role of Advisory Forum:** The role of the Grower Advisory Forum shall be to:

- (a) Make themselves available at reasonable times to Grower Members who wish to make representations to the Society through that Grower Advisory Member;
- (b) Take reasonable steps to consult with Grower Members in order to become aware of the views of Members on matters relating to the National Pest Management Plan and wider biosecurity issues for the kiwifruit industry;
- (c) Represent the views of Grower Members to the Board and staff of the Society and provide commentary and opinions to the Board and staff of the Society on proposals and initiatives developed or being developed by the Society; and
- (d) Fully and fairly represent the opinions of Grower Members at meetings of the Society.

8. MONEY AND OTHER ASSETS

8.1 **Use of Money and Other Assets:** The Society may only Use Money and Other Assets if:

- (a) It is for a purpose of the Society;

- (b) It is not for pecuniary gain in accordance with the Incorporated Societies Act 1908; and
- (c) That use has been approved by either the Board or by Majority vote of the Society.

8.2 **Subscriptions:** The Board of Directors may in its discretion fix member subscriptions and other charges from time to time. Any such subscriptions or other charges may vary from Member to Member (but shall be the same for all Members in a category referred to in Rule 6.1). Nothing in this rule shall affect the imposition and collection of a levy or levies payable to the Society under applicable legislation. If any Member does not pay a subscription by the date set by the Board and unless the arrears are paid by a nominated date, the Membership may be terminated. If terminated, the Member shall (without being released from the obligation of payment of any sums due to the Society) have no Membership rights and shall not be entitled to participate in any Society activity.

8.3 **Control of funds:** All moneys received by or on behalf of the Society shall forthwith (unless otherwise directed by the Board) be paid to the credit of the Society in an account or accounts with the bankers for the time being of the Society.

8.4 **Additional Powers:** The Society may:

- (a) Employ people for the purposes of the Society, including without limitation appointing a Chief Executive Officer for such period and on such terms as the Directors think fit;
- (b) Exercise any power a trustee might exercise;
- (c) Invest in any investment that a trustee might invest in;
- (d) Borrow money and provide security for that if authorised by Majority vote of the Society.

8.5 **Financial Year:** The financial year of the Society begins on 1 April of every year and ends on 31 March of the next year.

8.6 **Annual Accounts:** The Board shall cause true and fair accounts to be kept of the assets and liabilities of the Society and of its annual income and expenditure in each financial year. In particular, the Board shall ensure compliance with any requirements for financial reporting of the Minister for Primary Industries, whether pursuant to any agreement for funding or the *Biosecurity Act 1993*.

9. **ASSURANCE ON THE FINANCIAL STATEMENTS**

9.1 **Appointment of Auditor:** The Society shall appoint an Auditor to audit the annual financial statements of the Society. The Auditor shall report on whether the financial statements are prepared in all material respects in accordance with the Society's accounting policies. The Auditor must be a suitably qualified person, a member of the New Zealand Institute of Chartered Accountants, and must not be a member of the Board, or an employee of the Society or any Member. If the Society appoints an Auditor who is unable to act for some reason, the Board shall appoint another Auditor as a replacement.

9.2 **Responsibility to auditor:** The Board is responsible to provide the auditor with:

- (a) Access to all information of which the Board is aware that is relevant to the preparation of the financial statements such as records, documentation and other matters;
- (b) Additional information that the auditor may request from the Board for the purpose of the audit; and
- (c) Reasonable access to persons within the Society from whom the auditor determines it necessary to obtain evidence.

9.3 **Approval of financial statements:** The audited financial statements shall be approved at the annual general meeting of members by a Majority vote.

10. SOCIETY MEETINGS

10.1 **Society Meetings:** A Society Meeting is either an Annual General Meeting or a Special General Meeting.

10.2 **Annual General Meeting:** The Annual General Meeting shall be held once every year no later than five months after the Society's balance date. The Board shall determine when and where the Society shall meet within those dates. At least 10 business days' Written Notice shall be provided of the Annual General Meeting.

10.3 **Special General Meetings:** Special General Meetings may be called by the Board at any time. The Board must call a Special General Meeting if the Secretary receives a written request signed by at least 10% of the Members. At least 5 business days' notice shall be provided of a Special General Meeting.

10.4 **Notice of Society Meetings:** The Society shall give all Members at least 3 business days' Written Notice of the business to be conducted at any Society Meeting and provide with such notice a description of any business to be considered at the meeting, notice of any motions and the Board's recommendations about those motions. If the Secretary has sent a notice to all Members in good faith, the Meeting and its business will not be invalidated simply because one or more Members do not receive the notice. Notices shall be given by email unless a Member has notified the Secretary that email notices are not acceptable to that Member.

10.5 **Voting on motions:** All Members may attend and vote at Society Meetings.

10.6 **Number of votes:** For the purposes of calculating votes:

- (a) A Member (other than a Grower Member) who is a body corporate shall have a single vote and each individual Member (other than a Grower Member) shall have one vote;
- (b) A Grower Member 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 an exporter to markets other than Australia in the most recently completed season. 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; and

- (c) Where a Grower Member notifies the Secretary that the Grower Member has top grafted to a new variety, or has lost production to vine disease, or had an adverse weather event or other act of God, or any other event, then the Board shall determine the number of votes held by the Grower Member. The determination of the Board of the number of votes held by any Grower Member shall be final
- 10.7 **Method of voting:** The method of voting at all Society Meetings shall be by postal ballot and by voting at the Society Meeting. The Board shall establish the voting process and appoint Returning Officers to administer it.
- (a) Each postal ballot shall be sent to Members in sufficient time prior to the date of the Society Meeting to enable the ballot papers to be received and Members to cast their votes. Ballot papers sent to Members shall include sufficient information to enable Members to cast their votes.
 - (b) Voting in a postal ballot may be by ballots returned to the Secretary by mail, delivery (before or at the Society Meeting), facsimile, email or other electronic process as determined by the Board.
 - (c) The Board shall declare the result of the postal ballot.
 - (d) The result of each postal ballot shall be as effective and binding on Members as a resolution passed at a Society Meeting.
 - (e) A resolution shall be passed if 50% or more of the votes cast by Members are in favour of the resolution.
- 10.8 **Quorum:** No Society Meeting may be held unless a quorum of 20 Members is present in person. For the purposes of calculating the quorum, a member who is a body corporate shall be considered to attend if one person representing such body corporate attends.
- 10.9 **Chairmanship:** All Society Meetings shall be chaired by the Chair of the Board. If the Chair is absent, the Vice Chair of the Board shall be the chair of the meeting and if both the Chair and the Vice Chair are absent, the Society shall elect another Director to Chair that meeting. No person chairing a Society Meeting shall have a casting vote.
- 10.10 **Annual General Meeting:** The business of an Annual General Meeting shall be:
- (a) Receiving any minutes of the previous Society's Meeting(s);
 - (b) The Board report on the business and finances of the Society, and the Annual Financial Statements for the financial year end immediately preceding the meeting;
 - (c) Approval of the budget for the subsequent financial year commencing the year following the meeting and any Levy;
 - (d) Appointment of Board Members;
 - (e) Motions to be considered; and
 - (f) General business.
- 10.11 **Adjourned Meetings:** The Chair or his nominee shall adjourn the meeting if necessary. If within half an hour after the time appointed for a meeting a quorum is not present, the meeting, if convened upon requisition of members, shall be dissolved; in any other case it shall stand adjourned to a day, time and place determined by the Chair of the Society, and if at such adjourned meeting a quorum is not present the meeting shall be dissolved without further

adjournments. The Chair may with the consent of any Society Meeting adjourn the same from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

10.12 **Member's Motions:** Any Member may request that a motion be voted on ("Member's Motion"), by giving written notice to the Secretary. The Member may also provide information in support of the motion ("Member's Information"). The Board may in its absolute discretion decide whether or not to convene a meeting to allow the Society to vote on the Member's Motion. However, if the Member's Motion is signed by at least 10 % of Members:

- (a) The Board will convene a Society Meeting not more than 5 business days following receipt of the Member's Motion ; and
- (b) The Secretary must give the Member's Information to all Members at least 3 business days before the Society Meeting.

10.13 **No business unless notified:** At any Society Meeting, the Society shall only consider matters contained in the notice of meeting sent to Members and no other business.

11. **SIGNING OF DOCUMENTS AUTHORITY TO BIND SOCIETY**

11.1 **Method of contracting:** A contract or other enforceable obligation may be entered into by the Society as follows:

(a) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Society in writing signed under the name of the Society by:

(i) two or more directors of the Society; or

(ii) one or more attorneys appointed by the Society in accordance with Rule 12;

(b) an obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the Society in writing by a person acting under the Society's express or implied authority; and

(c) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Society in writing or orally by a person acting under the Society's express or implied authority.

11.2 The Society may, in addition to complying with Rule 11.1, affix its common seal, if it has one, to the contract or document containing the enforceable obligation.

11.3 Rule 11.1 applies to a contract or other obligation:

(a) whether or not that contract or obligation was entered into in New Zealand; and

(b) whether or not the law governing the contract or obligation is the law of New Zealand.

12. ATTORNEYS

12.1 Attorneys: A company may, by an instrument in writing executed in accordance with Rule 11.1(a), appoint a person as its attorney either generally or in relation to a specified matter.

12.2 An act of the attorney in accordance with the instrument binds the company.

12.3 Sections 19 to 21 of the Property Law Act 2007 apply, with all necessary modifications, in relation to a power of attorney executed by the Society, to the same extent as if the Society was a natural person and as if the commencement of the liquidation or, if there is no liquidation, the removal of the Society from the register kept for the purposes of this Act of the company was an event revoking the power of attorney within the meaning of those sections.

~~**11.1 Signing of Documents:** Documents may be signed by any party authorised by the Board to sign such documents, provided that any document which if entered into between individuals would be required to be in the form of a deed, must be executed under the common seal.~~

~~**11.2 Execution of financial decision documents:** Financial decision documents, together with any cheques or other financial instruments with a value exceeding \$50,000 (including without limitation electronic funds transfers, other than between accounts of the Society or payments to The KVH Foundation Inc) must be signed by two Directors, who are appointed by different parties.~~

~~**11.3 Seal:** The common seal of the Society shall be kept at the Society's registered office and shall be used only by authority of a resolution of the Board of Directors.~~

12.13. ALTERING THE RULES

12.13.1 Altering the Rules: The Society may alter or replace these Rules at a Society Meeting by a resolution passed either by a Majority vote of the Members present and voting, or voting by postal ballot at the AGM or at a meeting called for that purpose.

12.213.2 Motion to amend the rules: Any proposed motion to amend or replace these Rules shall be by postal ballot sent to Members at least 10 business days before the Society Meeting at which the motion is to be considered, and accompanied by a written explanation of the reasons for the proposal and any recommendations of the Board.

~~**12.313.3 Filing of Rules:** When a Rule change is approved by a Society Meeting no Rule change shall take effect until the Society has filed the changes with the Registrar of Incorporated Societies.~~

13.14. WINDING UP

13.114.1 Resolution to wind up: The Society may be wound up in the manner prescribed by Section 24 of the Incorporated Societies Act 1908. 21 days notice of the required General Meeting shall be called by advertisement inserted once in one or more public newspapers and by notice to Members. Every Member represented at the meeting shall on a show of hands and on a poll have one vote.

At such meeting, a quorum shall consist of at least 20 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.

~~13.2~~14.2 **Winding up:** If the Society is wound up:

- (a) The Society's debts, costs and liabilities shall be paid;
- (b) Surplus Money and Other Assets of the Society may be disposed of in accordance with the provisions of the Incorporated Societies Act 1908, or otherwise by resolution of the Board returning surplus funds to entities which have provided funds to the Society over a period considered to be appropriate by the Board.

~~14.15.~~ **DISPUTES**

~~14.4~~15.1 **Alternative dispute resolution:** In the event of any dispute arising between the Members of the Society in respect of the activities or functioning of the Society, the Members shall, without prejudice to any other right or entitlement they may have pursuant to these Rules or otherwise, explore whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted shall be as agreed between the Members or as selected by LEADR NZ.

~~15.16.~~ **DEFINITIONS**

~~15.4~~16.1 **Definitions and Miscellaneous matters:** In these Rules:

"Grower Members" means any or each of those Members referred to in Rule 6.1(a).

"Levy" means a levy under the Biosecurity (Psa-V – Kiwifruit Levy) Order 2013 or the Biosecurity (Readiness and Response – Kiwifruit Levy) Order 2015.

"Majority vote" means a vote made by more than half of the Members who are either present at a Meeting and entitled to vote and voting at that Meeting, or voting by postal ballot upon a resolution put to that Meeting.

"Money or Other Assets" means any real or personal property or any interest therein, owned or controlled to any extent by the Society.

"Society Meeting" means any Annual General Meeting, or any Special General Meeting, but not a Board Meeting.

"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.

“Use Money or Other Assets” means to use, handle, invest, transfer, give, apply, expend, dispose of, or in any other way deal with, Money or Other Assets.

“Written Notice” means communication by post, electronic means (including email, and website posting), or advertisement in periodicals, or a combination of these methods.

~~15-2~~16.2 **Assumption:** It is assumed that

- (a) Where the singular is used, plural forms of the noun are also inferred.
- (b) Headings are a matter of reference and not a part of the rules
- (c) Matters not covered in these rules shall be decided upon by the Board.

~~16-17.~~ **REPEAL OF PREVIOUS RULES**

~~16-4~~17.1 These Rules shall repeal all previous rules of the Society.

Dated: 201~~7~~⁵

SIGNED on behalf of New Zealand Kiwifruit Growers Inc
by its authorised signatory:

Name:
Position:

SIGNED on behalf of Zespri Group Limited
by its authorised signatory:

Name:
Position:

SIGNED by a Member of the Society
by its authorised signatory:

Name:
Position: