

Constitution of Kiwifruit Vine Health Incorporated



Contents

Clause	Page
1. DEFINITIONS AND INTERPRETATION	3
2. NAME AND REGISTERED OFFICE	5
3. OBJECTS AND PURPOSES	5
4. SOCIETY STRUCTURE	7
5. MEMBERSHIP OF SOCIETY	7
6. GENERAL MEETINGS	11
7. VOTING	13
8. BOARD	15
9. CHIEF EXECUTIVE OFFICER.....	21
10. CONTACT PERSON/BOARD SECRETARY.....	22
11. CONFLICTS.....	22
12. FINANCES.....	23
13. DISPUTE RESOLUTION	25
14. WINDING UP	26
15. ALTERATION OF CONSTITUTION	27
16. CONTRACTING.....	27
17. NOTICES	28
Schedule 1 – Dispute resolution process	30
Schedule 2 – Form of proxy voting form.....	33
Schedule 3 – Qualifications of Officers.....	34

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Constitution, unless the context otherwise requires:

Act means the Incorporated Societies Act 2022.

AGM is an annual general meeting as further described in clause 6.1.

balance date means 31 March or the date the Society has selected and is the final date in the Society's financial year

Board means the Directors from time to time elected or appointed to manage the affairs of the Society as further described in clause 8.

Board Notice has the meaning described in clause 5.6(g).

Board Secretary has the meaning described in clause 10.

body corporate means an association of persons regarded in law as a single legal person, such as a limited liability company, a limited partnership or an incorporated trust board.

Chief Executive has the meaning described in clause 9.

Constitution means this Constitution as amended or added to, including all schedules to this Constitution.

Contact Person(s) has the meaning described in clause 10.

Corporate Representative has the meaning described in clause 5.2(b).

Delegated Authorities Manual has the meaning described in clause 16.1.

Dispute has the meaning described in clause 13.1.

general meeting means a meeting of Members, in particular an AGM or Special General Meeting.

generally accepted accounting practice has the meaning described in s8 Financial Reporting Act 2013.

Grower Directors has the meaning described in clause 8.4(a).

Grower Members means the members referred to in clause 5.4(a).

Independent Director has the meaning described in clause 8.4(b).

Industry Member has the meaning described in clause 5.4(b).

KPIN means a unique kiwifruit property identification number.

Levy means a levy under the Biosecurity (National Kiwifruit Pathway Management Plan—Kiwifruit Levy) Order 2022 or the Biosecurity (Readiness and Response — Kiwifruit Levy) Order 2015 and **Levies** has a corresponding meaning.

Member means each person who is a member of the Society from time to time, as described in clause 5 and **Members** has a corresponding meaning.

Member Motion has the meaning described in clause 6.7.

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

Officer means any director or person holding a position which allows them to exercise significant influence over the management or administration of the Society, including the Chief Executive.

Register of Members has the meaning described in clause 5.10.

Registrar means the person holding office from time to time as Registrar of Incorporated Societies in terms of the Act (as applicable).

Registrar's Website means the incorporated societies website at <https://is-register.companiesoffice.govt.nz/>.

Regulations means the Incorporated Societies Regulations 2023.

PMP means the National Kiwifruit Pathway Management Plan 2022.

Society means Kiwifruit Vine Health Incorporated, incorporation number 9429043226849, New Zealand Business Number 2542737.

Special General Meeting has the meaning described in clause 6.6(b).

Supplier Member means a Member described in clause 5.4(b)(ii).

Supplier Director has the meaning described in clause 8.4(c).

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.

working day means a day that is not a Saturday, Sunday, a public holiday or a regional holiday in Tauranga, New Zealand between the hours of 9:00am and 5:00pm.

Zespri Supply Agreement means annual Supply Agreement between Zespri Group Limited and its registered suppliers.

Zespri Director has the meaning described in clause 8.4(d).

Zespri Grower Registration Form means the form completed by kiwifruit growers in order to register as a grower with Zespri Group Limited.

1.2 **Interpretation:** In this Constitution, unless the context otherwise requires:

- (a) **Clauses and schedules:** A reference to a clause or to a schedule is a reference to clauses in, and schedules to, this Constitution. Each schedule forms part of this Constitution.
- (b) **Documents:** References to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.
- (c) **Headings:** The headings in this Constitution are inserted for convenience and reference only and do not affect the meaning or interpretation of this Constitution.

- (d) **Inclusive expressions:** The term “includes” or “including” (or any similar expression) is deemed to be followed by the words “without limitation”.
- (e) **In writing:** References to “writing” will be construed as including references to words printed, typed, or any words sent by email or other electronic form, or otherwise reproduced.
- (f) **Persons:** References to a “person” include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity.
- (g) **Plural and singular:** References to the singular include the plural and vice versa.
- (h) **Statutory Provisions:** References to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends, replaces or re-enacts it, and any bylaw, regulation, order, statutory instrument, determination or subordinate legislation made under it.
- (i) **Statutory Timeframes:** References to any timeframes set by statutory provisions are to timeframes in force in New Zealand and include any revised timeframe which amends, replaces or re-enacts it under any bylaw, regulation, order, statutory instrument, determination or subordinate legislation made under it.
- (j) **Negative obligations:** Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.

2. NAME AND REGISTERED OFFICE

- 2.1 **Name:** The name of the Society is Kiwifruit Vine Health Incorporated.
- 2.2 **Name change:** Any change to the name of the Society will be in accordance with s117 of the Act. Any change to the Society’s name will be updated on the Registrar’s Website.
- 2.3 **Registered office:** The registered office of the Society is 25 Miro Street, Mount Maunganui, 3116, New Zealand or such other place as the Board nominates from time to time. Any change to the Society’s registered address will be updated on the Registrar’s Website not less than 5 business days prior to the address being changed.

3. OBJECTS AND PURPOSES

- 3.1 **Objects/Purposes:** The primary purpose of the Society is to be the Management Agency under the Biosecurity Act 1993 and to do all things required of the Society for the management of the National Kiwifruit Pathway Management Plan 2022 (**PMP**) within New Zealand. Other purposes of the Society are:
 - (a) to monitor and identify biosecurity risks across pathways in 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 biosecurity excellence across the kiwifruit industry through a programme of education and awareness to ensure all growers and industry participants are aware of their biosecurity responsibilities under the PMP and manage risk;
- (c) 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;
- (d) to coordinate emergency readiness and response activities across the kiwifruit industry where it is agreed there is a significant impact to growers and vine health;
- (e) to do any act or thing necessary or incidental to the attainment of the above objectives; and
- (f) any incidental activities beneficial for Members of the Society.

3.2 **No financial gain:** The Society does not have any financial gain purpose and in particular:

- (a) there will be no distributions, in money or in kind, to Members;
- (b) no Member will have a disposable interest in any property owned by the Society;
- (c) no capital of the Society will be divided into shares to be held by Members.

3.3 **Permitted activities:** The following activities are not for the purpose of financial gain of Members merely because the Society will or may:

- (a) pay a Member for matters that are incidental to the purposes of the Society, and the Member is a not-for-profit entity;
- (b) distribute funds to a Member to further the purposes of the society, and the Member:
 - (i) is a not-for-profit entity; and
 - (ii) is affiliated or closely related to the Society (or proposed society); and
 - (iii) has the same, or substantially the same, purposes as those of the Society;
- (c) reimburse a Member for reasonable expenses legitimately incurred on behalf of the Society or while pursuing the Society's purposes;
- (d) provide benefits to members of the public, or of a class of the public, including Members of the society or their families;
- (e) provide benefits to Members or their families to alleviate hardship;
- (f) provide educational scholarships or grants to Members or their families;

- (g) pay a Member a salary, wages, or other payments for services, or enter into any other transaction with a Member, on arm's-length terms (as described in clause 3.4);
- (h) have its surplus assets distributed under subpart 5 of Part 5 of the Act and in accordance with clause 14 to a Member that is a not-for-profit entity;
- (i) amalgamate with or into another society under subpart 2 of Part 5 of the Act (with the result that the amalgamated society succeeds to any gain, profit, surplus, dividend, or other financial benefit of the amalgamating society).

3.4 **Arms-length terms:** In subsection 3.3(g), salary, wages, or other payments for services, or other transactions, are on arm's-length terms if:

- (a) the terms:
 - (i) would be reasonable in the circumstances if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or
 - (ii) are less favourable to the Member than the terms referred to in subparagraph (i); and
- (b) the salary, wages, or other payments for services, or other transaction, does not include any share of a gain, profit, or surplus, percentage of revenue, or other reward in connection with any gain, profit, surplus, or revenue of the Society.

3.5 **Industry group:** The Society does not have a purpose of being carried on, and is not being carried on, for the financial gain of any of its Members merely because it is established for the protection or regulation of an industry in which the Members are engaged or interested, if the Society itself does not engage or take part in the industry.

4. SOCIETY STRUCTURE

4.1 The Society shall consist of:

- (a) Members;
- (b) the Board of Directors elected and/or appointed pursuant to clause 8.

5. MEMBERSHIP OF SOCIETY

5.1 **Number of Members:** The Society will have a minimum of 20 Members at all times.

5.2 **Body corporate Members:** A Member that is a body corporate:

- (a) is equivalent to 3 members for the purposes of clause 5.1; and
- (b) may, by resolution of its directors or other governing body, authorise a person to act as its representative (**Corporate Representative**) at any meeting of the Society.

5.3 **Rights and responsibilities of Members:** Members have the rights and responsibilities set out in this Constitution. All Members and their Corporate Representatives shall promote the purposes of the Society and do nothing to bring the Society into disrepute. Subject to this Constitution, the role of Members shall be to:

- (a) set remuneration of Directors;
- (b) to approve changes to this Constitution;
- (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.

5.4 **Types of Members:** The Society has the following membership types, all of which are Members:

- (a) **Grower Members** being growers of kiwifruit in New Zealand who have registered as growers with Zespri Group Limited;
- (b) **Industry Members** being:
 - (i) Zespri Group Limited; and
 - (ii) registered suppliers who are party to the Zespri Supply Agreement;
 - (iii) other parties whose application for membership has been deemed appropriate by the Board pursuant to clause 5.5.

5.5 **Becoming a Member:** A person consents to Membership and becomes a Member of the Society by:

- (a) Grower Members:
 - (i) by paying Levies;
 - (ii) completing and consenting to membership on their Zespri Grower Registration Form

effective from the date the Grower Member completed the Zespri Grower Registration Form;
- (b) Industry Members:
 - (i) by making an application to the Society to become a Member, such application:
 - A may be in the form of an email or hard copy;
 - B must include name, address, reason for membership and other such information as the Board requires from time to time;

C where the applicant is a registered supplier, confirmation they are party to the Zespri Supply Agreement (**Supplier Member**); and

D acts as the applicant's consent to membership; and

(ii) the Board, in its sole discretion, approves the application, effective from the date the application was approved by the Board;

(c) Zespri Group Limited is not required to apply for Membership to the Society.

5.6 **Ceasing Membership:** A Member ceases to be a Member when, and from the date, the Member:

- (a) gives notice in writing to the Society that the Member is resigning their membership, effective from the date the notice is received; or
- (b) does not comply with their responsibilities under clause 5.3;
- (c) fails to meet the membership criteria in clause 5.5;
- (d) fails to pay any Levy or Levies by for a period of 15 months other than by arrangement with the Board due, for example, to adverse events resulting in no Levy being payable during that period; is convicted of an indictable offence or an offence for which the punishment includes imprisonment;
- (e) dies; or
- (f) being:
 - (i) a natural person, the Member becomes bankrupt;
 - (ii) a body corporate Member, the Member is wound up, placed in receivership, liquidated or makes an arrangement with its creditors;
- (g) if, the Board is of the view that a Member has breached or is breaching this Constitution or acting in a manner inconsistent with the purposes of the Society, the Board may give written notice of this to the Member (**Board Notice**). The Board Notice must:
 - (i) explain how the Member is breaching the Constitution or acting in a manner inconsistent with the purposes of the Society;
 - (ii) 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;
 - (iii) state that if, within 14 days of the Member receiving the Board Notice, the Board is not satisfied, the Board may immediately terminate the Member's membership; and
 - (iv) state that if the Board terminates the Member's membership, the Member may appeal in accordance with the process set out in clause 13,

14 days after the Member received the Board Notice, the Board may by simple majority vote to terminate Member's membership and notify the Member by written notice, with immediate effect.

- 5.7 **Corporate Representatives:** Where a Member is represented by a Corporate Representative and the Board is of the view that the Corporate Representative is in breach of their obligations in clause 5.35.6(g) or if clause 5.6(g) applies, the Board may give notice to the Member to replace their Corporate Representative within 14 days.
- 5.8 **Obligations:** Resignation does not relieve a person of any obligation or liability incurred while the person was a Member.
- 5.9 **Not Assignable:** The rights, privileges and obligations of a Member are not assignable.
- 5.10 **Register of Members:** The Society will maintain a register of Members recording:
- (a) **For each Member:**
 - (i) name;
 - (ii) membership type;
 - (iii) postal address;
 - (iv) email address;
 - (v) telephone number;
 - (vi) where the Member is a body corporate, Corporate Representative;
 - (vii) KPIN;
 - (viii) any applicable information related to biosecurity matters under the PMP; and
 - (ix) other information as may be specified by the Board.
 - (b) **Membership dates:** the dates on which each Member:
 - (i) consented to become a Member; and
 - (ii) ceases to be a Member.
 - (c) **Member information:** Members must notify the Society of any change to the Member's information on the Register of Members.
- 5.11 **Access to Information:** Members may make a written request to the Society for information held by the Society at any time. The request must specify the information sought in sufficient detail for it to be identified. Within a reasonable time of receiving the request the Society will:
- (a) provide the information; or
 - (b) agree to provide the information within a specified period; or

- (c) agree to provide the information within a specified period if the Member pays a reasonable charge, specified and explained to the Member, to meet the cost of providing the information; or
- (d) refuse to provide the information, specifying the grounds set out in s81 of the Act which apply to the refusal.

Nothing in this clause limits the Information Privacy Principle 6 of the Privacy Act 2020.

6. GENERAL MEETINGS

- 6.1 **Annual General Meeting:** The Society must hold an AGM not later than 6 months following the balance date and no more than 15 months after the date of the previous AGM.
- 6.2 **Information presented for the AGM:** The following must be presented at the AGM:
- (a) the annual report on the operations and affairs of the society during the preceding year;
 - (b) the financial statements described in clause 12.8;
 - (c) disclosure of interests made by officers under clause 11.2;
 - (d) minutes from the last AGM and any subsequent Special General Meeting;
 - (e) approval of the budget for the subsequent financial year commencing the year following the meeting and any Levy;
 - (f) appointment of directors;
 - (g) appointment of auditor in accordance with clause 12.10;
 - (h) motions to be considered; and
 - (i) any other information prescribed in regulations.
- 6.3 **Minutes:** The Board must ensure that minutes are kept of every general meeting of the Society.
- 6.4 **Access to Minutes and Financial Statements:** Members may make a written request for:
- (a) the financial statements presented at the most recent AGM of the Society; and/or
 - (b) minutes of the most recent general meeting of the Society,
- the Society will provide the requested information without charge within a reasonable period of receiving the request.
- 6.5 **Method of Meetings:** Meetings may be held in person, by audio, audio-visual or other electronic means or by a combination of those methods.
- 6.6 **Calling Meetings:**

- (a) The Board will determine the time and place of each year's AGM.
- (b) A general meeting other than an AGM (**Special General Meeting**) may be requested by:
 - (i) the Board; or
 - (ii) by written requisitions signed by not less than 10% of current Members,

the Board Secretary shall call a Special General Meeting within 14 days of receiving an effective request.

6.7 **Member motions:** A Member may request a motion (**Member Motion**) be voted on at a general meeting by giving notice to the Board Secretary. The Member may provide information in support of the Member Motion. If the request is received:

- (a) not more than 60 days but not less than 30 days prior to the AGM, the Member Motion will be considered at the AGM; and
- (b) if the Member Motion is received other than as described in clause 6.7(a):
 - (i) if the Member Motion is signed by at least 10% of Members, the Board will call a Special General Meeting not more than 5 business days following receipt of the Member's Motion; or
 - (ii) if the Member Motion is not signed by at least 10% of Members, the Board may decide in its absolute discretion whether or not to convene a Special General Meeting to vote on the Member's Motion.

6.8 **Notice of general meetings:** Other than as provided in clause 6.14(c), a notice of an AGM or Special General Meeting must be sent to every Member not less than 10 business days before the date of the meeting. The notice must specify:

- (a) the date, time and venue of the meeting;
- (b) the nature of business to be transacted;
- (c) the text of any resolutions to be voted on;
- (d) the Board's recommendations about the resolutions to be voted on; and
- (e) any Member motions submitted in accordance with clause 6.7 including supporting information (where applicable and practical); and
- (f) the right to appoint a proxy or to vote by postal or electronic means and include applicable voting form(s) by which Members may exercise those rights,

notices will be sent by email unless a Member has notified the Board Secretary that email notices are not acceptable to that Member.

6.9 **Failure to Give Notice:** The accidental omission to give notice or a Member not receiving such notice does not invalidate the proceedings at any general meeting.

- 6.10 **Quorum:** No business may be transacted at any general meeting of the Society unless a quorum of not less than 20 Members eligible to vote at general meetings is present. For the purposes of calculating a quorum, a body corporate Member shall be considered present if one person representing the body corporate attends. Members may be present:
- (a) in person; or
 - (b) by proxy; or
 - (c) participating in the meeting by means of audio, audio and visual, or electronic communication; or
 - (d) a combination of the above.
- 6.11 **Resolution in lieu of general meeting:** The Society may not pass a resolution in writing in lieu of at a general meeting.
- 6.12 **Postal instructions:** If postal voting is permitted the Board Secretary is authorised to receive and count postal votes at that meeting.
- 6.13 **The Chair:** The chair at any general meeting shall be:
- (a) the Chair of the Board; or
 - (b) if the Chair is unable, 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 Director to chair that meeting; and
 - (c) no person chairing a general meeting will have a casting vote.
- 6.14 **Adjournment:**
- (a) If a quorum is not present within 30 minutes after the time appointed for a general meeting, the meeting is adjourned to the same day the following week at the same time and place, or to such other date, time and place as the Board determines (no later than 14 days from the date of the adjourned meeting).
 - (b) If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Members present or their proxies are a quorum.
 - (c) No business other than the business which might have been transacted at the meeting from which the adjournment took place may be transacted at any adjourned meeting. Notice of the adjourned meeting will be provided not less than 5 days before the date of the adjourned meeting.

7. VOTING

- 7.1 **Voting:** 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 Board 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.

7.2 **Corporation Representatives:** A Corporate Representative may exercise the body corporate Member's powers.

7.3 **Voting at Meetings:** The Board shall establish the voting method and process for all general meetings and appoint returning officers to administer it. At the discretion of the Board, Members may vote in person, by postal vote, electronic means or by proxy:

- (a) If applicable, Members may appoint a proxy by notice in writing signed by the Member in the form set out in the notice of meeting or, in the case of electronic notice, sent by the Member. A proxy for a Member is entitled to attend and be heard and vote at a general meeting as if the proxy were the Member.
- (b) Each notice of proxy and/or postal ballot (as applicable) shall be sent to Members in sufficient time prior to the date of the Society Meeting to enable the notice of proxy to be returned and/or 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.
- (c) Voting in a postal ballot may be by ballots returned to the Board Secretary by mail, delivery (before or at the Society Meeting), email or other electronic process as determined by the Board.
- (d) The Board shall declare the result of the ballot.
- (e) The result of each ballot shall be as effective and binding on Members as a resolution passed at a Society Meeting.
- (f) A resolution shall be passed if 50% or more of the votes cast by Members are in favour of the resolution.
- (g) Where postal ballots are not applicable, resolutions put to the vote shall be decided on show of hands unless a ballot is demanded before the vote is taken by:
 - (i) the chairperson of the meeting; or
 - (ii) at least 50% of the Members present in person or by proxy;
- (h) If a vote is taken on a resolution for which postal votes have been cast, the chairperson must count each postal vote for or against the resolution in a vote by show of hands or by ballot;

- (i) where a resolution is put to the vote of the meeting by show of hands, the number of votes recorded in favour and against the resolution will be entered in the Society's minute book;
- (j) resolutions are passed by a majority of votes unless a Special Resolution or the unanimous resolution of all Members is required by this Constitution;
- (k) The chairperson does not have a casting vote.

7.4 **Postal and proxy and electronic votes:**

- (a) Members may vote by postal vote solely for the purposes of the Grower Director election process described in clause 8.7.
- (b) Members may vote by proxy or electronic means.
- (c) Members may appoint a proxy by notice in writing signed by the Member substantially in the form set out in Schedule 2 or, in the case of electronic notice, sent by the Member. A proxy for a Member is entitled to attend and be heard and vote at a general meeting as if the proxy were the Member.
- (d) Notices of proxy must be received by the Board Secretary not less than 48 hours before the start of the meeting and may be sent physically by courier, standard post or by hand or by electronic means such as email.

8. **BOARD**

8.1 **Powers and duties:**

- (a) Subject to any restrictions set out in the Act or this Constitution, the Board has all powers necessary for managing the operation of the Society including to:
 - (i) administer, manage, and control the Society;
 - (ii) carry out the purposes of the Society, and use Money or Other Assets to do that;
 - (iii) manage the Society's financial affairs, including approving the annual financial statements for presentation to the Members at the AGM;
 - (iv) set accounting policies;
 - (v) delegate responsibility and contract resources where necessary in accordance with the Delegated Authorities Manual;
 - (vi) ensure that all Members follow this Constitution;
 - (vii) decide how a person becomes a Member, and how a person stops being a Member;
 - (viii) decide the times and dates for Meetings, and set the agenda for Meetings;

- (ix) decide, in accordance with the requirements of the Act, the procedures for dealing with complaints;
 - (x) set Membership fees, including subscriptions and levies.
- (b) Except where a right, power or discretion is expressly reserved to the Members under the Act or this Constitution, the Board may exercise a right, power or discretion on behalf of the Society.
- (c) Each director must comply with all duties required of an "officer" under the Act (as applicable).
- 8.2 **Delegation of powers to sub-committee:** The Board may delegate any of its powers to sub-committees consisting of members of the Board and at the discretion of the Board may include non-Board advisors. Any sub-committee will comply with the directions of the Board in the exercise of those powers.
- 8.3 **Bank Accounts:** The Society will establish a bank account. Any transactions on that account must be approved in accordance with the Delegated Authorities Manual.
- 8.4 **Composition:** The Board shall have not less than six nor more than seven directors comprised of:
- (a) **Grower Directors:** three directors (which may include Corporate Representatives appointed under clause 5.2(b)) elected by the Grower Members in accordance with clause 8.6(a);
 - (b) **Independent Director:** one or two independent director(s), nominated by the Board and elected by the Society in a General Meeting;
 - (c) **Supplier Director:** one director appointed by the Supplier Members; and
 - (d) **Zespri Director:** one director appointed by Zespri Group Limited.
- 8.5 **Changes to Board composition:** any change to the number of directors will be determined by resolution of the Members at a General Meeting of the Society.
- 8.6 **Election and appointment of Board:** Persons wishing to be appointed to the Board must be qualified to be officers under s47 of the Act.
- (a) Grower Directors will be elected by the Members at the AGM from amongst the Members in accordance with the process set out in clauses 8.7.
 - (b) The Independent Director will be elected by the Members at the AGM in accordance with the process set out in clauses 8.8.
 - (c) On election or appointment all directors must:
 - (i) consent in writing to being a director; and
 - (ii) certify they are not disqualified from holding office due to any reason set out in s47(3) of the Act,
 by completing the form available on the Registrar's Website.

- (d) Directors will hold their position from:
- (i) **Elected Directors:** the date following the AGM at which they were elected; and
 - (ii) **Appointed Directors:** the date on which they are appointed.

8.7 **Grower Director election process:** Every year in conjunction with the Annual General Meeting voting process, the Board will conduct a postal ballot of Grower Members to elect one Grower Director. The Board will determine nomination and voting procedures consistent with this Constitution:

- (a) before nominations are called for, the Board will appoint a returning officer to run and administer the election and will appoint an independent scrutineer to oversee the election;
- (b) nominations will be opened eight weeks prior to the vote commencing and close four weeks before voting commences;
- (c) candidates for director shall be Grower Members and shall be nominated and seconded by other Grower Members;
- (d) before any nomination for director is accepted by the Board, the nominee will 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 will be held by the Board and be available to Members on request;
- (e) The provisions of clause 7 shall apply, adapted as required, to the election of the Grower Directors and all references to "Members" in clause 7 shall be read and construed as references to "Grower Members" for the purpose of the Grower Director elections.

8.8 **Independent Director election process:** Every third year in conjunction with the Annual General Meeting voting process, the Board will make a preliminary appointment of an Independent Director to be ratified by way of a postal ballot of Members. The Board will determine the voting procedures for ratification of the Independent Director consistent with this Constitution.

8.9 **Removal of Directors:** Directors will hold their position until the earliest of:

- (a) for all directors:
 - (i) the date the director resigns by giving notice in writing to the Society; or
 - (ii) the date from which the director becomes disqualified from being an officer in accordance with s47 of the Act; or
 - (iii) if the director has been absent from 3 Board meetings without leave of absence from the Board, the date of the third such Board meeting; or
 - (iv) if the director has brought the Society into disrepute, the date the Board becomes aware of the director's behaviour; or
 - (v) the Board passes a vote of no confidence in the director; or

- (vi) the director dies,
 - (b) for Grower Directors and Independent Directors:
 - (i) the third AGM following the date of their election;
 - (ii) the date the Director is removed from the position by the Members in a General Meeting; or
 - (iii) the date a Grower Director ceases to be a Member of the Society,
 - (c) for Appointed Directors:
 - (i) the third anniversary of the date on which they were appointed under clause 8.6(d); or
 - (ii) the date the Appointed Director is removed from the position by its appointer.
 - (d) In the event of a casual vacancy:
 - (i) in any Grower Director position on the Board for whatever reason, the remaining directors may appoint another Member to fill the vacancy until the position is elected by the Members at a General Meeting;
 - (ii) in an Independent Director position on the Board for whatever reason, the remaining directors may appoint another person to fill the vacancy until the position is elected by Members at a General Meeting;
 - (iii) in any Appointed Director position on the Board for whatever reason, the appointing party under clause 8.4(c) or (d) (as applicable) will appoint a replacement as soon as practicable;
 - (iv) Any replacement director appointed under this clause 8.9(d) must be qualified to act as an officer of the Society in accordance with s47 of the Act; and
 - (v) The replacement director appointed under this clause 8.9(d) shall hold office for the remainder of the vacating director's term and shall be eligible for reappointment in accordance with this Constitution.
 - (e) Directors will not be barred from reappointment for subsequent terms.
 - (f) It is intended that the Directors will retire in rotation so that two of the directors shall retire or have their term ending at each AGM.
 - (g) A person who ceases to be a Director and is not reappointed in accordance with this Constitution must return all Society documents and property to the Society's registered office within one month of the date they ceased to be a Director.
- 8.10 **Notice to Registrar:** Notice of any change to directors must be notified to the Registrar via the form available on the Registrar's Website within 20 business days of the change.

- 8.11 **Chair, Vice Chair:** The Directors shall choose a Chair and Vice Chair. Unless otherwise determined by the Directors, the Chair and Vice Chair shall be elected or re-elected annually.
- 8.12 **Alternate Directors:**
- (a) Every Appointed 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.
 - (b) On any such appointment being made the alternate director may, while acting in the place of the Appointed 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 this Constitution.
 - (c) For the purpose of establishing a quorum of the board an alternate director is deemed to be the director appointing him or her.
 - (d) Any alternate director appointed under this clause 8.12 must be qualified to act as an officer of the Society in accordance with s47 of the Act.
- 8.13 **Associate Directors:** for the purpose of succession planning and development within the industry, the Board may appoint an Associate Director:
- (a) The Associate Director shall have the right to attend and speak at Board meetings but shall not have voting rights.
 - (b) The Associate Director will be appointed for a term of one year, with an option to renew their term for a further one year period:
 - (i) if they choose not to renew, the Associate Director will notify the Board in writing not less than two months prior to the anniversary of their appointment; and
 - (ii) following expiry of their one or two years (as applicable) they will not be eligible for reappointment as Associate Director.
 - (c) The Board will form a sub-committee for the purpose of reviewing and appointing Associate Director candidates.
 - (d) The sub-committee shall call for applications for the role of Associate Director from amongst the Grower Members and Supplier Members 3 months prior to the role becoming available.
 - (e) Applicants will apply to the Board Secretary on behalf of the sub-committee providing the information requested by the sub-committee.
 - (f) Following review of the applications, the sub-committee shall recommend a candidate to the Board.

- (g) The Board shall take the sub-committee's recommendations into account but shall have sole discretion to appoint the Associate Director.
- (h) The Associate Director ceases to be an Associate Director:
 - (i) on the date:
 - A one year after the date they were appointed if they do not renew their term as set out in clause 8.13(b)(i); or
 - B two years after the date they were appointed if they have chosen to renew their term in accordance with clause 8.13(b); or
 - (ii) on the date they resign in writing to the Board; or
 - (iii) if they are removed by a majority vote of Board members.
- (i) The Associate Director role is unpaid but may, at the discretion of the Board, claim per diem or reimbursable expenses.
- (j) The Associate Director is not an officer for the purposes of the Act.
- (k) An Associate Director may not be appointed or elected as a Director of the Board for a period of six months from the date their term finishes under clause 8.13(b).

8.14 Conduct of Meetings:

- (a) The Board may meet together, adjourn or otherwise regulate its meeting and procedures for conducting its business as it thinks fit.
- (b) A quorum comprises a majority of Directors. No Board business may be conducted unless a quorum is present.
- (c) Meetings may be held in person, by audio link, audio-visual link or other electronic communication or by a combination of these methods.
- (d) The Board may meet at any time and the Board Secretary will convene a meeting of the Board the request of:
 - (i) the Chair; or
 - (ii) not less than 50% of Directors.
- (e) 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 Director to chair that meeting;
- (f) Only Directors present at a Board Meeting or appointed in accordance with clause 8.12 may vote at that Board Meeting.

8.15 Voting:

- (a) Resolutions of the Board will be passed by simple majority.
- (b) Each director is entitled to exercise one vote.

- (c) The Board Secretary will not be entitled to vote unless the Board Secretary is also a Director.
- (d) In the event of an equal vote, the Chair shall have a casting vote.
- (e) A resolution may be passed in writing in lieu of at a Board meeting by the resolution being signed by such of the directors as would constitute a quorum at a Board meeting.
- (f) Directors voting on a resolution may vote by electronic means.
- (g) Decisions of the Board bind the Society, unless the Board's power is limited by this Constitution or by a majority vote of the Society.

8.16 **Minutes:** The Board must ensure that minutes are kept of all Board meetings.

8.17 **Policies:** The Board may make and amend policies, procedures and bylaws from time to time for the conduct and control of Society activities and codes of conduct applicable to Members. No policies, procedures and bylaws shall be inconsistent with this Constitution, the Act or any regulations under the Act, or any other legislation.

8.18 **Directors' and officers' insurance:** The Society may take out and maintain directors' and officers' liability insurance cover (in respect of those risks which can be lawfully covered) to an appropriate level approved by the Board in respect of:

- (a) liability (other than criminal liability) for failure to comply with officers' duties (other than actions or omissions done in bad faith, dishonestly or due to gross negligence) under the Act or any other duty imposed on the officer in their capacity as an officer; and

costs incurred by the officer for any claim or proceeding relating to that liability.

9. CHIEF EXECUTIVE OFFICER

9.1 **Chief Executive:** The Board may appoint a Chief Executive for the Society and may remove and replace the Chief Executive from time to time. The Chief Executive is responsible for the day-to-day management of the Society as set out in a job specification agreed at the time of appointment or as modified from time after consultation between the parties including to:

- (a) operate the Society in line with the expectations of the Board;
- (b) will hold the level of financial authority delegated and set out in a letter of delegation by the Board. Such delegation may be revoked or amended by the Board at any time by issuing a letter of revocation or a subsequent letter of delegation;
- (c) may attend Board meetings except those Board meetings, or parts of Board meetings, where the Board wishes to meet without the Chief Executive present.

9.2 **Status of Chief Executive:** The Chief Executive is deemed to be an officer under the Act and must comply with all officer duties. Any change to the Chief Executive will be notified in accordance with the requirements set out in clause 8.10 to the Registrar as if the Chief Executive is a Director.

10. CONTACT PERSON/BOARD SECRETARY

10.1 Appointment:

- (a) The Board shall also appoint a Board 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 Board Secretary from time to time.
- (b) The Board Secretary will act as the contact person (**Contact Person**) for the Society. The Board may appoint up to 2 additional Contact Persons and may remove or replace such additional Contact Persons from time to time.
- (c) The Contact Person will be at least 18 years of age and ordinarily resident in New Zealand.

10.2 **Replacement:** If the Society has only one Contact Person, the position must be filled within 20 business days of a vacancy occurring.

10.3 **Notification:** The Society must notify the Registrar of any change to the Contact Person(s) or to a Contact Person's name or contact details within 20 business days of the change. Notification must be in the form available on the Registrar's Website.

10.4 **Status of Contact Person:** Unless the Contact Person is also a Director or deemed an "officer" as that term is defined under the Act in another capacity, the Contact Person is not an officer of the Society.

10.5 **Duties and status of Board Secretary:** The Board Secretary appointed under clause 10.1 will be responsible for the duties determined by the Board including:

- (a) convening general meetings when requested to do so in accordance with this Constitution;
- (b) attending Board meetings except those Board meetings, or parts of Board meetings, where the Board wishes to meet without the Board Secretary present.
- (c) giving all notices as required under the Act, this Constitution, or as directed from time to time by the Society or the Board;
- (d) recording minutes at all general meetings and Board meetings, including:
 - (i) the time, date and venue of the meeting; and
 - (ii) all business considered and resolutions passed.

11. CONFLICTS

11.1 **Interested:** A Director is interested in a matter if they:

- (a) may obtain a financial benefit from the matter;
- (b) have a financial interest in, or are a partner, director, officer, board member or trustee of, a person to whom the matter relates; or

- (c) are a spouse, civil union partner, de facto partner, child, parent, grandparent, grandchild, sibling, niece, nephew, uncle, aunt or first cousin of someone who may obtain a financial interest in the matter.

11.2 **Disclosure:** A Director must disclose if, to the best of their knowledge, they are interested as described in 11.1 including details of the nature and extent of their interest to the Board.

11.3 **Interests register:**

- (a) The interest must be recorded in the Society's interests register.
- (b) Each year the Chief Executive will prepare a report stating the disclosures or types of disclosures made under clause 11.2 in the preceding financial year including a brief summary of the matters or types of matters to which the disclosures relate.

11.4 **Consequences of being interested:**

- (a) **Actions:** A Director who is interested may not:
 - (i) vote on the matter; or
 - (ii) take part in a decision on the matter; or
 - (iii) sign any documents in relation to the matter,
 but may:
 - (iv) take part in a discussion on the matter; and may
 - (v) count towards a quorum and be present during the vote.
- (b) **Exceptions:** If all Directors who are not interested in the matter consent, the interested Director may vote on the decision and/or sign documents relating to the decision.
- (c) **Majority conflict:** If 50% or more of the Board are prevented from voting on a matter due to conflicts of interest, a Special General Meeting must be called to determine the matter.

11.5 **Acknowledgement:** All Grower Directors and the Supplier Director may be interested in matters under clauses 11.1(a) and 11.1(b). Where a matter relates to and may impact all, or a large proportion of, Grower Members and/or Supplier Members (as applicable), clauses 11.4(a)(i) to (iii) do not apply.

11.6 **Failure to comply:** Subject to clause 11.5, if a Director fails to disclose an interest, fails to record an interest in the interests register or fails to comply with the restrictions in 11.4(a), the Board must notify all Members of the failure.

11.7 **Arms-length transactions:** A Member may enter into any agreement or understanding with the Society for the supply of any goods or services on terms and conditions that would be reasonable if that person were not a Member.

12. FINANCES

12.1 **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 clause 3.2; and
- (c) that use has been approved by either the Board or by simple majority vote of the Society.

12.2 **Subscriptions:** The Board has discretion to set Member subscriptions and other charges from time to time:

- (a) any such subscriptions or other charges may vary between Member types but shall be the same for all Members in a category referred to in clause 5.4;
- (b) nothing in this rule shall affect the imposition and collection of a Levy or Levies payable to the Society under applicable legislation;
- (c) 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;
- (d) 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.

12.3 **Control of funds:** All moneys received by or on behalf of the Society shall (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.

12.4 **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; and
- (d) borrow money and provide security for that if authorised by simple majority vote of the Society.

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

12.6 **Accounting records:** The Board will ensure that proper accounts and records of the Society are kept at all times. Accounting records will be kept for the current accounting period and for a further 7 years. 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.

12.7 **Reporting to Registrar:** The Society will submit an annual return via the Registrar's Website within 6 months of the balance date. The annual return must include the following information:

- (a) Society name;

- (b) balance date;
- (c) New Zealand Business Number and registration number;
- (d) physical address of registered office;
- (e) name and contact details of at least one contact person;
- (f) confirmation the Society has 10 or more members at the time the return is given; and
- (g) confirmation by an officer that the information given is correct.

12.8 **Financial statements:** The Society a specified not-for-profit society as defined in s103 of the Act. The Society will prepare financial statements in accordance with generally accepted accounting practice.

12.9 **Completion of financial statements:** The Society must ensure that, within 6 months after the balance date, financial statements are:

- (a) completed, dated and signed by two Directors; and
- (b) copies of the financial statements are provided to the Registrar.

12.10 **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.

12.11 **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.

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

13. DISPUTE RESOLUTION

13.1 **Disputes:** A dispute is a disagreement or conflict that relates to an allegation that:

- (a) a Member or an Officer has engaged in misconduct; or
- (b) a Member or an Officer has breached, or is likely to breach, a duty under this Constitution or the Act; or

- (c) the Society has breached, or is likely to breach, a duty under this Constitution or the Act; or
- (d) a Member's rights or interests as a member have been damaged or Members' rights or interests generally have been damaged,

and may arise between:

- (e) Members;
- (f) Member(s) and the Society;
- (g) Member(s) and Officer(s);
- (h) Officers; or
- (i) Officer(s) and the Society,

the Society will follow the process set out in sections 2 to 8 of Schedule 2 of the Act, as amended from time to time. Schedule 2 of the Act at the time of incorporation/re-registration is set out in Schedule 1 of this Constitution.

- 13.2 The Disputes Procedure will not apply to a Dispute to the extent that other legislation requires the Dispute to be dealt with in a different way. The Disputes Procedure will have no effect to the extent that it contravenes, or is inconsistent with, that legislation.

14. WINDING UP

- 14.1 **Winding up:** The Society may be wound up in accordance with Part 5 of the Act and must:

- (a) call a Special General Meeting for the purpose of resolving the intention to wind up the Society;
- (b) the resolution referred to in 14.1(a) must state the date on which the Society will be dissolved and may direct the method of disposing of the Society's assets and potential recipient organisation(s);
- (c) a second Special General Meeting must be called not less than 30 days after the date of the resolution in being passed to confirm the resolution to dissolve the Society and request the Society be removed from the Register;
- (d) notice of the resolution and its confirmation must be given to the Registrar,

on dissolution, the Society must:

- (e) discharge its debts and liabilities in full;
- (f) distribute its surplus assets as set out below.

- 14.2 **Surplus Assets:** Any surplus assets of the Society shall, by resolution of the Board, be distributed in accordance with the Biosecurity Act 1993 or its applicable delegated legislation.

15. ALTERATION OF CONSTITUTION

15.1 **Planned changes:** Any amendment, addition or replacement of this Constitution must be:

- (a) in writing; and
- (b) approved by an ordinary resolution at an AGM or at a Special General Meeting convened for that purpose; and
- (c) notice of any motion for alteration, amendment or rescission of the Constitution must be given to Members at least 10 business days prior to the applicable general meeting and accompanied by a written explanation of the reasons for the proposal and any recommendations of the Board;
- (d) any alteration to:
 - (i) clause 3.2 must retain the prohibition on financial gain; and
 - (ii) clause 14.2 must retain the requirement for surplus assets to be distributed to a not-for-profit organisation.

15.2 **Minor and technical changes:** The Society may make minor or technical amendments to fix errors by giving written notice of the proposed amendment to all members. The notice must state the text of the amendment and the right of members to object to the amendment and:

- (a) if no objections are received within 20 business days of the notice being sent to members, the Board may make the amendment; or
- (b) if any member objects to the amendment, the amendment may only be made in accordance with clause 15.1.

15.3 **Timeframes prescribed by law:** Timeframes described in clause 1.2(i) are included in this Constitution for convenience. Where such timeframe is amended, the applicable reference in this Constitution may be updated by the Board and is not an alteration as described in clause 15.1 or 15.2.

15.4 **Notification to Registrar:** The Board must notify the Registrar of amendments to the Constitution within 25 business days of the amendment being made by using the form provided on the Registrar's Website. Notification must include the following:

- (a) the amendment;
- (b) a copy of the constitution, as amended;
- (c) a certificate from an officer of the Society in the form provided by the Registrar; and
- (d) any other information prescribed by regulations from time to time.

15.5 **No name change:** The Society's name may not be changed under this clause 15.

16. CONTRACTING

16.1 **Delegated Authorities Manual:**

- (a) The Society will maintain a manual (**Delegated Authorities Manual**) setting out the authorisations required for financial approval of decisions and transactions including any applicable formalities.
- (b) The Delegated Authorities Manual will be reviewed annually by the Board.

16.2 **Contracting:** The Society will enter contracts in accordance with the requirements of the Delegated Authorities Manual as amended from time to time.

17. NOTICES

17.1 Notices:

- (a) Any notice given under this Constitution must be in writing.
- (b) Notices to Members may be:
 - (i) delivered personally to the Member(s); or
 - (ii) sent by ordinary post or courier addressed to the Member(s) at the address of the Member appearing in the Register of Members; or
 - (iii) transmitted to the email address of the Member(s) appearing in the **Register of Members**; or
 - (iv) where the notice applies to the entire membership of the Society, published in an industry periodical.
- (c) Notices to the Society may be:
 - (i) delivered to the Society's registered office; or
 - (ii) sent by ordinary post or courier addressed to the Society at its registered office.
- (d) Notices to the Registrar must be:
 - (i) in the form prescribed and accompanied by any other information or documentation required by the Registrar, the Act or the Regulations;
 - (ii) within the timeframe set out in the Act or the Regulations.

17.2 **Deemed Delivery:** A notice is deemed to be given:

- (a) when delivered by hand, on delivery to the intended recipient if delivered before 5pm on a working day; or
- (b) when sent by post, 5 business days after the date of mailing; or
- (c) when sent by e-mail, one hour after the e-mail is sent, if sent prior to 5pm on a working day and unless a return e-mail is received by the sender within that one hour period stating that the e-mail address is wrong or that the message cannot be delivered; or

- (d) when published in an industry periodical insert eg one week after the date of publication,

and provided that any notice that is delivered by hand or sent by e-mail after 5pm on a working Day, or at any time on a non-working day, will be deemed received at 9 am on the next working day.

- 17.3 **Omission:** The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Member entitled to receive notice will not invalidate the proceedings at the meeting.

Schedule 1 – Dispute resolution process

Section references in this schedule refer to sections in the Incorporated Societies Act 2022
Incorporated Societies Act 2022 (as enacted) Schedule 2

1. Overview of this schedule

- (1) Section 39 requires the procedures in a society's constitution relating to disputes to be consistent with the rules of natural justice.
- (2) A society may choose (but is not required) to include the procedures in this schedule in its constitution.
- (3) The procedures in a society's constitution must be treated as being consistent with the rules of natural justice if those procedures consist of—
 - (a) all of the procedures in this schedule; and
 - (b) any additional procedures that are consistent with those procedures.

2. How complaint is made

- (1) A member or an officer may make a complaint by giving to the Board (or a complaints subcommittee) a notice in writing that—
 - (a) states that the member or officer is starting a procedure for resolving a dispute in accordance with the society's constitution; and
 - (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 the society.
- (2) The society may make a complaint involving an allegation against a member or an officer by giving to the member or officer a notice in writing that—
 - (a) states that the society is starting a procedure for resolving a dispute in accordance with the society's constitution; and
 - (b) sets out the allegation to which the dispute relates.
- (3) The information given under subclause (1)(b) or (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.
- (4) A complaint may be made in any other reasonable manner permitted by the society's constitution.

3. Person who makes complaint has right to be heard

- (1) 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.
- (2) If the society makes a complaint,—
 - (a) the society 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 the society.
- (3) Without limiting the manner in which the member, officer, or society 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 society's written statement or submissions (if any) are considered by the decision maker.

4. **Person who is subject of complaint has right to be heard**

- (1) This clause applies if a complaint involves an allegation that a member, an officer, or the society (the **respondent**)—
 - (a) has engaged in misconduct; or
 - (b) has breached, or is likely to breach, a duty under the society's constitution or bylaws or this Act; or
 - (c) has damaged the rights or interests of a member or the rights or interests of members generally.
- (2) The respondent has a right to be heard before the complaint is resolved or any outcome is determined.
- (3) If the respondent is the society, an officer may exercise the right on behalf of the society.
- (4) 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; and
 - (b) the respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
 - (c) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
 - (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.

5. **Investigating and determining dispute**

- (1) A society must, as soon as is reasonably practicable after receiving or becoming aware of a complaint made in accordance with its constitution, ensure that the dispute is investigated and determined.

- (2) Disputes must be dealt with under the constitution in a fair, efficient, and effective manner.

6. Society may decide not to proceed further with complaint

Despite clause 5, a society may decide not to proceed further with a complaint if—

- (a) the complaint is trivial; or
- (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, an officer, or the society has materially breached, or is likely to materially breach, a duty under the society's constitution or bylaws or this Act:
 - (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; or
- (d) the person who makes the complaint has an insignificant interest in the matter; or
- (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.

7. Society may refer complaint

- (1) A society may refer a complaint to—
- (a) a subcommittee or an external person to investigate and report; or
 - (b) a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.
- (2) A society may, with the consent of all parties to a complaint, refer the complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).

8. Decision makers

A person may not act as a decision maker in relation to a complaint if 2 or more members of the Board or a 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 predetermined view.

Schedule 2 – Form of proxy voting form

Incorporated Societies Act 2022

Kiwifruit Vine Health Incorporated

PROXY VOTING FORM

Dear Member

This form has been provided together with a Notice of [Annual/Special] General Meeting of Members (**Meeting**) of Kiwifruit Vine Health Incorporated (**KVH**) dated [date]. The Meeting will be held at [insert time] on [insert day and date] at the [insert location].

If you are unable to attend the Meeting and would like to appoint a proxy to attend and vote on your behalf, please fill out, sign and return this form by [time] on [day and date] by email to [contact email address].

APPOINTMENT OF PROXY

I being a Member of KVH entitled to vote at the Special Meeting to be held on [day and date] appoint:

PROXY DETAILS

Name (full name):

.....

Address:

.....

Occupation:

.....

To be my proxy and exercise my vote at the Special Meeting of Members on [day and date]

Signed by:

Name:

Signature:

Dated:

Schedule 3 – Qualifications of Officers


INCORPORATED SOCIETIES ACT 2022

47 Qualifications of officers


- (1) Every officer of a society must be a natural person.
- (2) A natural person who is not disqualified by subsection (3) may be elected or appointed as an officer of the society, so long as that person—
- (a) has consented in writing to be an officer; and
 - (b) certifies that they are not disqualified from being elected or appointed or otherwise holding office as an officer of the society.
- (3) The following persons are disqualified from being elected or appointed or otherwise holding office as an officer of a society:
- (a) a person who is under 16 years of age;
 - (b) a person who is an undischarged bankrupt;
 - (c) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Financial Markets Conduct Act 2013, or the Takeovers Act 1993;
 - (d) a person who is disqualified from being an officer of a charitable entity under section 36C of the Charities Act 2005;
 - (e) a person who has been convicted of any of the following, and has been sentenced for the offence, within the last 7 years:
 - (i) an offence under subpart 6 of Part 4;
 - (ii) a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961);
 - (iii) an offence under section 143B of the Tax Administration Act 1994;
 - (iv) an offence under section 22(2);
 - (v) an offence, in a country, State, or territory other than New Zealand, that is substantially similar to an offence specified in subparagraphs (i) to (iv);
 - (vi) a money laundering offence or an offence relating to the financing of terrorism, whether in New Zealand or elsewhere;
 - (f) a person who is subject to any of the following orders:
 - (i) a banning order under subpart 7 of Part 4;
 - (ii) an order under section 108 of the Credit Contracts and Consumer Finance Act 2003;
 - (iii) a forfeiture order under the Criminal Proceeds (Recovery) Act 2009;
 - (iv) a property order made under the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act;
 - (g) a person who is subject to an order that is substantially similar to an order referred to in paragraph (f) under a law of a country, State, or territory outside New Zealand that is a country, State, or territory prescribed by the regulations;
 - (h) in relation to any particular society, a person who does not comply with any qualifications for officers contained in the society's constitution.
- (4) A natural person who is disqualified from being an officer but who acts as an officer is an officer for the purposes of a provision of this Act that imposes a duty or an obligation on an officer.

This document is the new Constitution of the Kiwifruit Vine Health Incorporated adopted by the Members of the Club at the Annual General Meeting held on 21 August 2025 as authenticated by the following Members:

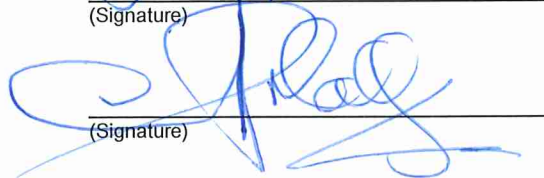
Simon Cook
(Name)


(Signature)

Fiona Carrick
(Name)


(Signature)

DERMOTT MALLEY
(Name)


(Signature)