

**AMALGAMATION PROPOSAL  
FOR AMALGAMATION OF TE AWANUI HUKA PAK LIMITED  
AND KIWI COAST GROWERS (TE PUKE) LIMITED**

**1. INTRODUCTION**

- 1.1 **Proposal:** This document sets out the terms of a proposal for Te Awanui Huka Pak Limited ("**Huka Pak**") to amalgamate with Kiwi Coast Growers (Te Puke) Limited ("**Seeka Sub**") under part 13 of the Companies Act 1993. After the Amalgamation, Huka Pak will be the amalgamated company ("**Amalgamated Company**"), and Seeka Sub will cease to exist as a separate company.
- 1.2 **Defined Terms:** The terms used in this document with capital letters are defined in the glossary in clause 7.
- 1.3 **Implementation Agreement:** Seeka Kiwifruit Industries Limited ("**Seeka**"), Huka Pak, Te Awanui Whenua Trusts Limited ("**Te Awanui**") and Coolstore Management Services Limited ("**CMS**") have entered into an Amalgamation Implementation Agreement dated 9 November 2009 in respect of the proposed Amalgamation. A copy of that agreement may be obtained by a shareholder of Huka Pak on request from Paul Tustin, Partner, Cooney Lees Morgan, PO Box 143, Tauranga 3140, New Zealand, email [ptustin@clmlaw.co.nz](mailto:ptustin@clmlaw.co.nz).
- 1.4 **Conditions:** The Amalgamation is subject to the conditions listed in Appendix A, which are contained in the Amalgamation Implementation Agreement. If those conditions are not satisfied or waived by the party entitled under the Amalgamation Implementation Agreement to waive them by the date specified in respect of each condition in Appendix A, the Amalgamation will not proceed.

**2. DETAILS OF AMALGAMATED COMPANY**

This clause 2 sets out the key details of the Amalgamated Company after the Amalgamation is effective.

- 2.1 **Name:** The Amalgamated Company will change its name on Amalgamation to Kiwi Coast Growers (Te Puke) Limited.
- 2.2 **Address:** The registered office and address for service of the Amalgamated Company will be C/- .Wood Walton Chartered Accountants Limited, 55 Eighth Avenue, Tauranga.
- 2.3 **Directors:** The names and residential addresses of the directors of the Amalgamated Company will be:
- (a) Michael Gilbert Franks, 154 Valley Road, Mount Maunganui 3116; and
  - (b) Stuart Thomas McKinstry, 34 Norton Road, Otumoetai, Tauranga.
- 2.4 **Share Structure:** The Amalgamated Company will have 100 ordinary shares, all owned by Seeka Kiwifruit Industries Limited, and these shares will have the rights, privileges, limitations and conditions set out in section 36 of the Companies Act 1993.

**3. CONSIDERATION FOR HUKA PAK SHAREHOLDERS**

- 3.1 **Consideration:** This clause 3 sets out the consideration which Huka Pak Shareholders are entitled to receive in the Amalgamation.

3.2 **Cash:** A Huka Pak Shareholder who is not a Securities Act Exempted Person (see the explanation in paragraph 3.4) will receive \$2.20 in cash for each Huka Pak Share owned by that Huka Pak Shareholder as at the Record Date.

3.3 **Cash for Seeka Shares:** A Huka Pak Shareholder who is a Securities Act Exempted Person may elect to receive either:

(a) \$2.20 in cash for each Huka Pak Share owned by that Huka Pak Shareholder as at the Record Date; and/or

(b) 0.61 Seeka Shares (at an issue price of \$3.60 per Seeka Share) for each Huka Pak Share owned by that Huka Pak Shareholder as at the Record Date,

in such proportions as that Huka Pak Shareholder may elect. See paragraph 3.6 for the procedure for making that election. If Seeka Shares are issued, fractions of a share will be rounded up to the nearest whole number.

3.4 **Securities Act:** A Securities Act Exempted Person is a Huka Pak Shareholder who satisfies Seeka that that shareholder is a person who is exempted from the Securities Act 1978 (which restricts the offer of shares to the "public"). A person may be exempted from the Securities Act if, amongst other things:

(a) the person is a person whose principal business is the investment of money or who, for the purposes of their business, habitually invests money; or

(b) an independent chartered accountant certifies that the chartered accountant is satisfied on reasonable grounds that the person:

(i) has net assets of at least \$2 million; or

(ii) had an annual gross income of at least \$200,000 for each of the last two financial years; or

(c) an independent financial service provider undertakes the procedure set out in section 5(2CE) of the Securities Act.

The relevant provisions of the Securities Act are sections 5(2CBA), 5(2CC) to 5(2CF) and 3(2).

3.5 **Exempted persons:** Any Huka Pak Shareholder who believes that he, she or it is exempted from the Securities Act should produce to Mr Stuart McKinstry of Seeka not later than 20 November 2009, evidence to support that. Huka Pak Shareholders may also wish to take their own legal advice on the question. The decision of Seeka as to whether any Huka Pak Shareholder is a Securities Act Exempted Person will be final and conclusive.

3.6 **Election:** If Seeka accepts that a Huka Pak Shareholder is a Securities Act Exempted Person, Seeka Sub will provide that Huka Pak Shareholder with a form by which that Huka Pak Shareholder may elect to receive Seeka Shares and/or cash. That form must be completed and returned to Seeka Sub not later than 27 November 2009. Huka Pak Shareholders who do not make a valid election by that date will be deemed to have elected to receive cash.

3.7 **Transfer of Shares:** If a Huka Pak Shareholder transfers any Huka Pak Shares held by that Huka Pak Shareholder after 20 November 2009 and before the Amalgamation becomes effective, the transferee of those Huka Pak Shares will be deemed not to be a Securities Act Exempted Person and will be paid cash.

3.8 **Record Date:** Cash consideration will be paid, and/or Seeka Shares issued, to Huka Pak Shareholders whose name is entered in the share register as at the Record Date.

#### 4. **SHARE LIMITATIONS**

4.1 **Share Limitations:** There are limitations on the total number of Seeka Shares which Seeka can issue for the purposes of the Amalgamation. These are set out in Appendix B.

#### 5. **OTHER PAYMENTS TO SHAREHOLDERS**

5.1 **CMS:** CMS holds 4.5 million Huka Pak Shares (approximately 40.9% of the total). CMS and Huka Pak are party to the CMS Management Agreement. CMS and Huka Pak have agreed that the CMS Management Agreement will be terminated when the Amalgamation becomes effective. On that termination, the Amalgamated Company will pay to CMS an amount equal to \$3.9 million plus a final management fee for the financial year ending 31 March 2010, of an amount (plus GST) equal to:

- (a) \$1,001,792.86 if the Effective Date is 4 December 2009; or
- (b) if the Effective Date is after 4 December 2009, the sum of \$1,001,792.86 and \$3,571 per Working Day after (but excluding) 4 December 2009 until (but including) the Effective Date.

5.2 **Te Awanui:** Te Awanui holds 4.5 million shares in Huka Pak (approximately 40.9% of the total). Immediately following the Amalgamation, Te Awanui will purchase from Huka Pak the land of the Huka Pak premises at Totara Street, Mount Maunganui (but not the buildings) for a purchase price of \$11 million plus GST and will:

- (a) lease that land back to Huka Pak under a long term ground lease; and
- (b) lease some or all of the land owned by Te Awanui on the corner of Taiaho Place and Te Awanui Way to Huka Pak under a long term ground lease.

#### 6. **ARRANGEMENTS NECESSARY TO COMPLETE AMALGAMATION**

6.1 **Effective Date:** The Amalgamation will, subject to satisfaction of the Conditions, become effective on the later of:

- (a) 4 December 2009; and
- (b) 20 working days (as defined in the Act) following the date of sending of the required notices prescribed by section 221 of the Act; and
- (c) one working day after the date on which all the conditions in Appendix A are either satisfied or waived in accordance with the Amalgamation Implementation Agreement.

6.2 **Special Resolutions:** The shareholders of each of Huka Pak and Seeka Sub must approve the Amalgamation by passing a special resolution in accordance with part 13 of the Act. The sole shareholder of Seeka Sub has already passed the necessary resolution.

6.3 **Notices:** Public notice of the proposed Amalgamation has been given advising shareholders and creditors, and any person to whom Seeka Sub or Huka Pak is under an obligation, that the Amalgamation proposal is available for inspection and that a copy will be provided to such persons free of charge on request. A copy of the Amalgamation proposal will also be sent to all secured creditors of Huka Pak and Seeka Sub.

6.4 **Registration:** If the necessary special resolution of Huka Pak is passed then, after the expiry of the period of 20 working days from the date when public notice of the Amalgamation has been given and the Amalgamation proposal has been sent to secured creditors, and provided that, the Conditions have been satisfied or waived, a copy of the Amalgamation proposal will be delivered to the Registrar of Companies together with the necessary directors' certificates of Huka Pak and Seeka Sub, and the other documents referred to in section 223 of the Act. Following receipt of those documents, the Registrar of Companies will issue a certificate of amalgamation in accordance with section 224 of the Act.

6.5 **Subsequent management and operation:** Following the Amalgamation becoming effective, Seeka intends to operate the Huka Pak business on the same basis as it has been operated to date.

## 7. GLOSSARY

7.1 In this document unless the context otherwise requires:

“**Act**” means the Companies Act 1993.

“**Amalgamation**” means the amalgamation of Seeka Sub and Huka Pak under Part 13 of the Act, in which Huka Pak will be the surviving company.

“**Amalgamation Implementation Agreement**” means the agreement between Seeka, Te Awanui, Huka Pak and CMS dated 9 November 2009.

“**CMS**” means Coolstore Management Services Limited.

“**Conditions**” means the conditions to the Amalgamation set out in Appendix A.

“**CMS Management Agreement**” means the Management Agreement between Huka Pak, CMS and Te Awanui dated 30 November 2001 as amended by an addendum dated 18 December 2003.

“**Huka Pak**” means Te Awanui Huka Pak Limited.

“**Huka Pak Share**” means a share issued by Huka Pak.

“**Huka Pak Shareholder**” means a holder of a Huka Pak Share.

“**Record Date**” means 5:00 p.m. on the working day that is three working days prior to the date on which the Amalgamation becomes effective.

“**Securities Act**” means the Securities Act 1978.

“**Securities Act Exempted Person**” means a Huka Pak Shareholder who or which satisfies Seeka that the Huka Pak Shareholder is a person who or which falls within section 5(2CBA) of the Securities Act.

“**Seeka**” means Seeka Kiwifruit Industries Limited.

“**Seeka Share**” means an ordinary share issued by Seeka.

“**Seeka Sub**” means Kiwi Coast Growers (Te Puke) Limited, which is a wholly owned subsidiary of Seeka.

“**Te Awanui**” means Te Awanui Whenua Trusts Limited.

**APPENDIX A****CONDITIONS**

The Amalgamation is subject to the following conditions. Each condition is required to be satisfied or waived by the date specified after that condition.

- (a) Seeka giving notice to the other parties that it has completed its due diligence investigations of Huka Pak, and that the result of those investigations is satisfactory to Seeka in its sole discretion.

20 November 2009

- (b) Huka Pak Shareholders approving the Amalgamation by special resolution.

23 November 2009, or such later date as the parties may agree in writing

- (c) The grower supplying shareholders to Huka Pak entering into agreements satisfactory to Seeka for Seeka to pack those growers' entire fruit crops and to provide other post harvest services to those growers, for the 2010 and 2011 seasons.

20 November 2009, or such later date as the parties may agree in writing

- (d) Seeka Sub and Te Awanui entering into an agreement pursuant to which Seeka Sub will procure that Huka Pak sells Te Awanui the land comprised in Certificate of Title 439126 immediately following the Amalgamation becoming effective, and Seeka Sub agreeing to lease that land and the land comprised in Certificates of Title 302340, 302341, 439124 and 439125 from Te Awanui, on terms acceptable to Seeka Sub and Huka Pak.

20 November 2009, or such later date as the parties may agree in writing

- (e) Seeka Sub obtaining finance on terms satisfactory to Seeka Sub to complete the Amalgamation.

20 November 2009, or such later date as the parties may agree in writing

- (f) CMS obtaining all necessary bank and third party consents and approvals to the transactions contemplated by the Amalgamation.

20 November 2009

- (g) Te Awanui obtaining Board and Shareholder approvals to the transactions contemplated by the Amalgamation Implementation Agreement and the agreements referred to in paragraph (d) above.

20 November 2009

- (h) Seeka obtaining assurances from Kiwifruit New Zealand that are acceptable to it in all respects that the collaborative marketing programme in Malaysia has been, or is likely to be, retained on terms acceptable to Seeka in all respects.

20 November 2009, or such later date as the parties may agree in writing

- (i) A waiver being obtained under the pre-emptive rights provisions in the constitution of CMS Logistics Limited or a resolution of the Board of CMS Logistics Limited being passed to wind up and distribute its assets to its shareholders, in each case in a form acceptable to Seeka.

20 November 2009, or such later date as the parties may agree in writing

- (j) Te Awanui and CMS entering into an agreement pursuant to which those parties and certain related persons provide covenants in respect of certain of their obligations under this Agreement, in a form acceptable to Seeka, CMS and Te Awanui.

20 November 2009, or such later date as the parties may agree in writing

**APPENDIX B****LIMITATION ON NUMBER OF SEEKA SHARES WHICH CAN BE ISSUED**

1. Seeka is not obliged to issue Seeka Shares for the purposes of the Amalgamation to the extent that:
  - (a) the total number of Seeka Shares to be issued would exceed the number permitted to be issued under Rule 7.3.5 of the NZSX Listing Rules; or
  - (b) as a consequence of the issue a person and that person's associates would hold or control in total more than 20% of the voting rights in Seeka (the expressions used in this subclause (b) being as defined in the Takeovers Code 2001).
  
2. If by reason of this clause the number of Seeka Shares to be issued to Huka Pak Shareholders is required to be reduced:
  - (a) that reduction shall be made in such manner as Seeka in its discretion considers equitable and so far as possible proportionate; and
  - (b) the cash price per Huka Pak Share specified in paragraph 3.2 of the amalgamation proposal shall be paid in lieu of the Seeka Shares not issued.