



# **GROWER LOYALTY SHARE SCHEME**

## **TRUST DEED AND RULES**



## DATED

15 March 2019

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## PARTIES

SEEKA LIMITED ("Company")

SEEKA SHARE TRUSTEE LIMITED ("Trustee")

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## INTRODUCTION

- A. The Company desires to establish a share scheme for growers that supply the Company or its subsidiaries.
  - B. The Trustee is to act as trustee for the purposes of the share scheme referred to in paragraph A.
  - C. The Company has paid to the Trustee the sum of \$10.00 to be held upon the trusts in this Deed.
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## THIS DEED RECORDS

### 1. INTERPRETATION

- 1.1 Definitions: In this Deed unless the context otherwise requires:

"**Rules**" means the rules of the Scheme set out in the appendix to this Deed.

"**Trust**" means the trust created by this Deed.

"**Trust Fund**" means the sum of \$10.00 referred to in paragraph C of the Introduction and includes any Shares or other investments or property acquired or agreed to be acquired by the Trustee after the date of this Deed with the intention that it be held by the Trustee subject to the trusts set out in this Deed.

- 1.2 **Interpretation:** Expressions defined in the Rules have the same meaning in this Deed. Clause 1.2 of the Rules shall be incorporated in this Deed, with the necessary modifications, as if set out in full in this Deed.

### 2. TRUST

- 2.1 **Trust Fund:** The Trustee shall hold the Trust Fund upon the trusts and with the powers set out in this Deed and in the Rules.
- 2.2 **Rules:** The Company and the Trustee are bound by the Rules by virtue of the execution of this Deed. Each Participant shall be bound by the Rules by virtue of clause 2.3(b) of the Rules.



- 2.3 **The Company:** Neither the Company nor any subsidiary of the Company has any beneficial interest in the Trust. Any assets of the Trust which remain at the time the Trust is terminated or wound up shall be paid to or applied for the benefit of a charitable entity (as defined in the Charities Act 2005) selected by the Board.

### 3. TRUSTEE

- 3.1 **First and subsequent trustees:** Seeka Share Trustee Limited is the first trustee of the Trust. There must at all times be one trustee which must be a company incorporated in New Zealand or the Public Trust.
- 3.2 **Appointment and removal:** The Company may from time to time by an instrument signed by the Company remove any trustee from office and appoint a replacement trustee.

### 4. POWERS OF TRUSTEE

- 4.1 **Powers:** The Trustee shall have the fullest possible powers in relation to the Trust Fund and may do anything the Trustee thinks desirable even though it is something which a trustee would not normally have power to do in the absence of an express power or an order of the Court. The Trustee may in its discretion do anything related to the Trust Fund as if the Trustee owned the Trust Fund absolutely.
- 4.2 **Investment:** The Trust Fund may be invested in Shares or in deposits with any registered bank in New Zealand.

### 5. LIABILITY AND INDEMNITY

- 5.1 **Liability:** The Trustee shall be liable only for any loss attributable to its dishonesty or to its wilful commission or omission of an act which it knows to be a breach of trust.
- 5.2 **Provisions:** Pursuant to section 13D of the Trustee Act 1956, the provisions of sections 13B and 13C of that Act shall not apply to the Trustee. The Trustee is not liable for any breach of trust merely because the investments of the Trust are not diversified and do not or might not produce income or other returns.
- 5.3 **Indemnity:** The Trustee shall be entitled to an indemnity out of the Trust Fund for any liability which the Trustee incurs in relation to the Trust and which is not attributable to the Trustee's dishonesty or wilful commission or omission of an act which it knows to be a breach of trust. To the extent that the Trustee is not indemnified in full out of the Trust Fund, the Company shall indemnify the Trustee for any liability of the Trustee relating to the Trust or the Scheme, except where the liability occurs as a result of the Trustee's dishonesty or wilful commission or omission of an act which it knows to be a breach of Trust.
- 5.4 **Association:** The Trustee is entitled to act and exercise the powers conferred by this Deed notwithstanding that the Trustee may be associated in any other capacity with the Company, and notwithstanding that the duty of the Trustee acting in that capacity may conflict with the duties of the Trustee under this Deed.

### 6. PERPETUITY

- 6.1 The Trust commences on the date of this Deed and shall terminate on:
- the date 80 years less one day after the date of this Deed; or
  - such earlier date as the Trustee in its absolute discretion may appoint by deed.

### 7. MANAGEMENT FEE

- 7.1 The Trustee may pay, out of the Trust Fund, to the Company from time to time such reasonable fees as the Company and the Trustee may agree in respect of the services provided by the Company to the Trust in the nature of management and administration services.



## 8. VARIATION

- 8.1 The Trustee and the Company may by deed amend or add to the provisions of this Deed. This clause does not limit the power of the Board to amend the Rules in accordance with clause 11 of the Rules.

## 9. GOVERNING LAW

- 9.1 This Deed is governed by the laws of New Zealand.

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# SIGNED AS A DEED

**SEEKA LIMITED** by:

A handwritten signature in black ink, appearing to read "Ashley Waugh".

Signature of director

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Ashley Waugh

Name of director

A handwritten signature in black ink, appearing to read "Amiel Diaz".

Signature of director

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Amiel Diaz

Name of director

**SEEKA SHARE TRUSTEE LIMITED** by:

A handwritten signature in blue ink, appearing to read "Fred Hutchings".

Signature of director

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Fred Hutchings

Name of director

A handwritten signature in blue ink, appearing to read "Peter Ratahi Cross".

Signature of director

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Peter Ratahi Cross

Name of director



## **APPENDIX**

### GROWER LOYALTY SHARE SCHEME RULES



# RULES OF THE SEEKA LIMITED 2018 GROWER LOYALTY SHARE SCHEME

## 1. INTERPRETATION

1.1 **Definitions:** In these rules, unless the context otherwise requires:

“**Acquire**” in respect of Shares means for the Company to acquire those Shares under sections 58 to 67C of the Companies Act, and “**Acquisition**” has a corresponding meaning.

“**Acquisition Parcel**” has the meaning in clause 8.1.

“**Allocated Shares**” means Shares which are held by the Trustee on trust for a particular Participant in accordance with clause 3.2.

“**Board**” means the board of directors of the Company.

“**Business Day**” means any day other than a Saturday, Sunday, or a statutory public holiday in Auckland.

“**Capital Change**” means any alteration or variation to the Shares, share capital, or capital structure of the Company and includes without limitation, a bonus issue, rights offer, or consolidation or subdivision, but does not include an issue of shares made pursuant to a dividend reinvestment plan.

“**Cash Distribution**” means a Distribution made by the Company in respect of Shares in cash or cash equivalent.

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

“**Company**” means Seeka Limited.

“**Distribution**” has the meaning in the Companies Act.

“**Fruit**” means kiwifruit, kiwiberry or avocados.

“**Group**” means the Company and all of its subsidiaries.

“**Grower**” means a person that supplies to the Company or a subsidiary, Fruit grown on an Orchard.

“**Issue Price**” has the meaning in clause 2.1(c).

“**Loan**” means a loan made to a Participant in accordance with clause 4.

“**Orchard**” in respect of a Grower means a property, identified by a kiwifruit or persea (avocado) number, on which Fruit is grown and which is owned by that Grower, but excludes a property leased by that Grower to the Company or a subsidiary under a lease for a term of 10 years or more.

“**Participant**” means a Grower who has been invited in accordance with clause 2 to participate in the Scheme, and has accepted in writing that invitation.

“**Related Loan**” in respect of Shares means the Loan in respect of which those Shares are Related Shares.

“**Related Orchard**” means in respect of Shares the Orchard in respect of which Shares were allocated to a Grower under clause 2.



**"Related Shares"** in respect of a Loan means the Shares which were allocated to a Participant at the time that Loan was made to that Participant and which were paid for from the proceeds of that Loan.

**"Scheme"** means the Seeka Limited 2019 Grower Loyalty Share Scheme.

**"Share"** means an ordinary share in the Company.

**"Supply Period"** means:

- (a) in respect of the first offer made under the Scheme:
  - (i) in the case of kiwifruit or kiwiberry, the period from 1 February 2019 to 30 June 2021; and
  - (ii) in the case of avocado, the period from 1 July 2019 to 31 March 2022; and
- (b) in respect of other offers made under the Scheme, a period of such term, and commencing on such date, as the Board may determine as a term of that offer.

**"Takeover Offer"** means any:

- (c) offer relating to Shares to which the Takeovers Code applies;
- (d) proposal to effect an amalgamation under Part 13 of the Companies Act;
- (e) proposal to effect an arrangement under Part 15 of the Companies Act; or
- (f) transaction or arrangement having substantially the same effect as any of them;

which:

- (g) is recommended or supported by the Board; and
- (h) if successful will have the effect that a person or group of associates (as defined in the Takeovers Code) will hold or control more than 50% of the voting rights (as defined in the Takeovers Code) of the Company.

**"Trustee"** means the trustee of the Scheme, being at the date of these rules, Seeka Share Trustee Limited.

**"Trust Deed"** means the trust deed between the Trustee and the Company to which these rules are annexed.

**"Unallocated Shares"** means Shares held by the Trustee which are not Allocated Shares.

**1.2 Interpretation:** In these rules, unless the context otherwise requires, or specifically stated otherwise:

- (a) headings are to be ignored in construing these rules;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other genders;
- (d) references to individuals include companies and other corporations and vice versa;



- (e) reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of these rules);
- (f) reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
- (g) reference to a party, person or entity includes:
  - (i) an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
  - (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person or entity;
- (h) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (i) references to money are to New Zealand dollars;
- (j) references to time of day or dates are to New Zealand times and dates;
- (k) each schedule or other attachment forms part of these rules;
- (l) a right or power may be exercised from time to time and at any time;
- (m) any word or expression cognate with a definition in these rules has a meaning corresponding or construed to the definition;
- (n) reference to a section, clause, sub-clause, schedule or a party is a reference to that section, clause, sub-clause, schedule or party in these rules; and
- (o) any covenant or agreement on the part of two or more persons binds those persons jointly and severally.

- 1.3 **Business Days:** If the day on which any payment is required to be made, or thing is required to be done, under these rules is not a Business Day, that payment shall be made or thing shall be done on the next Business Day.
- 1.4 **Multiple allocations:** If a Participant has two or more separate parcels of Allocated Shares held by the Trustee for that Participant, each of those parcels shall be treated separately, as if they were held for different Participants, so that, for example, a reference to a Participant ceasing to have rights under the Scheme shall be deemed to be a reference to that Participant ceasing to have rights in respect of the Allocated Shares in question.

## 2. OFFERS TO PARTICIPATE

- 2.1 **Invitation:** The Board may at any time offer to any Grower or Growers the right to participate in the Scheme. The offer shall be made in writing and shall include details of:
  - (a) the Orchard(s) in respect of which the offer is made;
  - (b) the number of Shares, or basis for the calculation of that number, which a Grower is invited to acquire under the Scheme;



- (c) the price per Share, or basis for the calculation of the price per Share, at which those Shares are to be issued or transferred to the Trustee to be held on behalf of the Grower ("Issue Price");
  - (d) a time and date by which the Grower must apply to participate in the Scheme; and
  - (e) any other matter which the Board considers appropriate.
- 2.2 **Board's discretion:** The Board shall determine the number of Shares to be offered to a Grower on the basis of the production from that Grower's Orchard(s), or the area of that Grower's Orchard, on such basis, or in accordance with such formula, as the Board may determine from time to time. The Board may determine other matters relating to the offer made under clause 2.1 at its discretion.
- 2.3 **Acceptance binding:** If a Grower who has received an offer under clause 2.1 applies in writing to participate in the Scheme, that Grower shall:
- (a) acquire beneficial ownership of Shares and become a Participant;
  - (b) be bound by these rules;
  - (c) without limiting clause 2.3(b), be bound by the terms of the Loan made to that Grower.
- 2.4 **Shares:** Upon receipt of the Issue Price, the Company shall issue to the Trustee a number of Shares determined in accordance with clause 2.1(b), unless clause 2.5 applies. For the purposes of this clause, the transfer of Shares held by the Company pursuant to sections 67A to 67C of the Companies Act shall be deemed to be an issue of Shares.
- 2.5 **Transfer of existing shares:** The Company, instead of issuing Shares to the Trustee in accordance with clause 2.4, may, in order to meet its obligation to deliver Shares to the Trustee on behalf of a Participant:
- (a) cause a third party to transfer Shares to the Trustee; or
  - (b) cause the Trustee to hold Unallocated Shares on trust on behalf of the relevant Participant (and those Unallocated Shares will become Allocated Shares).
- 2.6 **Limitations:** The Board shall not make an offer under clause 2.1 if the making or acceptance of that offer and/or the making of the Loan arising from that offer would cause a breach of:
- (a) the Financial Markets Conducts Act 2013;
  - (b) any provision of the NZX Listing Rules (including relating to the issue of Shares or the giving of financial assistance for the purpose of or in connection with the acquisition of Shares); or
  - (c) any provision of the Companies Act or any other law.

### **3. TERMS OF SHARES AND HOLDING**

- 3.1 **Ranking:** Each Share held by the Trustee shall subject to clause 3.6 rank equally in all respects with the other Shares.



- 3.2 **Trustee:** Each Allocated Share shall be held by the Trustee on trust on behalf of the relevant Participant (who shall be the beneficial owner of that Share). Participants have the right to require the Trustee to transfer legal title to Allocated Shares to Participants provided the terms of these rules are complied with. Each Participant irrevocably authorises the Trustee to do anything required or permitted by, or provided for in, these rules.
- 3.3 **Voting rights:** The Trustee shall not exercise voting rights attached to Allocated Shares unless the Participant in respect of those Allocated Shares provides to the Trustee directions in writing as to the manner in which those voting rights are to be exercised, and those directions are received by the Trustee not later than five Business Days before the date of the meeting of shareholders of the Company at which the voting rights are required to be exercised. The Trustee has no obligation to seek from any Participant such directions.
- 3.4 **Breach:** If a Participant breaches or fails to perform any provision of these rules, or this clause 3.4 is expressed by these rules to apply, the Board may by notice to that Participant declare that the Participant has forfeited his or her beneficial ownership of the Participant's Allocated Shares and ceased to have rights under the Scheme, and that Participant's Loan and the Related Shares shall then be dealt with in accordance with clause 7.
- 3.5 **No sale etc:** Except as expressly provided in these rules, Participants have no right to dispose of, charge or encumber in any way, or require the Trustee to dispose of, charge or encumber in any way, Shares or any interest in Shares, until legal title to those Shares is transferred to the Participant pursuant to these rules.
- 3.6 **Dividends:** Shares issued in respect of the first offer made under the Scheme shall not participate in any dividend paid in respect of the year ended 31 December 2018.

#### 4. LOANS

- 4.1 **Loan:** The Company shall (unless clause 4.2 applies) make a loan equal to the aggregate Issue Price of Shares issued, transferred or dealt with in accordance with clause 2.4 or 2.5 to the Participant for the purpose of acquiring the Shares. The amount of that Loan shall be paid to the Trustee and shall be applied by the Trustee in paying for the Shares.
- 4.2 **Assumption of Existing Loan:** A Participant may assume the liability of the Trustee under an existing loan from the Company to the Trustee in respect of an amount equal to the amount referred to in clause 4.1. If a Participant does so, that amount shall be deemed outstanding as a loan by the Company to the Participant on the terms recorded in clause 4.3.
- 4.3 **Terms:** Each Loan shall be on the following terms:
  - (a) it shall not bear interest;
  - (b) it shall be applied only for the purpose of acquiring Shares;
  - (c) all Cash Distributions made by the Company shall be applied in repayment of the Loan in accordance with clause 6;
  - (d) the Loan shall, if the Board so requires, be secured over Allocated Shares held by the Trustee by a security in such form as the Board may require;
  - (e) the Loan will be repayable under the terms of these rules, and, for the avoidance of doubt, shall be immediately repayable should the Participant cease to be the beneficial owner of the Participant's Allocated Shares; and
  - (f) the Loan shall be limited in recourse to the Allocated Shares of the Participant in respect of which the Loan is made. This sub-clause (f) does not however prejudice the obligation of a Participant to make payments by way of application of Cash Distributions in terms of clause 6.



- 4.4 **Financial assistance:** A Loan shall not be made unless the Company has complied with the provisions of the Companies Act (if applicable) and the NZX Listing Rules relating to the giving of financial assistance in respect of the acquisition of Shares.

## 5. ACTION AT END OF SUPPLY PERIOD

- 5.1 **Right of Participant:** If the Board is satisfied that during the Supply Period a Participant has supplied all Fruit grown on the Related Orchard to the Company or a subsidiary, a Participant may, as soon as practicable after the end of the Supply Period, receive that Participant's Related Shares in accordance with 5.3.
- 5.2 **Action at end of Supply Period:** The Board shall as soon as practicable after the end of the Supply Period in respect of a Participant notify that Participant:
- (a) whether or not the Board is satisfied that during the Supply Period the Participant has supplied all Fruit grown on the Related Orchard to the Company or a subsidiary;
  - (b) if the Board is so satisfied, that the Participant is entitled to receive the Participant's Related Shares in accordance with clause 5.3; and
  - (c) of a date by which a Participant referred to in sub-clause (b) must notify the Company whether or not the Participant elects to receive the Participant's Related Shares in accordance with clause 5.3.
- 5.3 **Vesting:** If a Participant elects by the date referred to in clause 5.2(c) to receive that Participant's Related Shares in accordance with this clause, that Participant shall repay to the Company the outstanding balance of that Participant's Loan, and on repayment of that Participant's Loan, the Trustee shall transfer to that Participant the Related Shares in respect of that Participant's Loan.
- 5.4 **No vesting:** If the Board is not satisfied in terms of clause 5.2(b), or if the Participant does not elect to receive the Participant's Related Shares in accordance with clause 5.3 (including by failing to make any election by the date referred to in clause 5.2(c)) then that Participant shall forfeit that Participant's ownership of the Participant's Allocated Shares and shall cease to have rights under the Scheme and that Participant's Loan and the Related Shares shall be dealt with in accordance with clause 7.
- 5.5 **Sale of Orchard:** If during the Supply Period a Participant sells or otherwise disposes of the Related Orchard:
- (a) that Participant must notify the Company in writing of the sale and the name(s) of the new owner(s);
  - (b) that Participant shall nevertheless retain rights under the Scheme; and
  - (c) supply by the new owner of the Related Orchard shall be deemed to be supply by the Participant, so that if the Participant and the new owner together supply all Fruit from the Related Orchard to the Company or a subsidiary, the Participant shall for the purposes of clauses 5.1 and 5.2 be deemed to have supplied that Fruit, but if the Participant and the new owner together do not supply all Fruit from the Related Orchard to the Company or a subsidiary for the Supply Period, clause 5.4 shall apply.
- 5.6 **Decision binding:** The decision of the Board as to whether during the Supply Period a Participant has supplied all Fruit grown on the Related Orchard to the Company or a subsidiary shall be conclusive and binding on Participants.



5.7 **Clarification:** For clarity;

- (a) a Participant is not in any circumstances, except as provided in clause 11, entitled to a transfer of Shares until the end of the Supply Period; and
- (b) a Participant is not entitled to elect to receive less than all of the Participant's Related Shares.

## 6. DISTRIBUTIONS

6.1 All Cash Distributions paid by the Company shall be applied by the Trustee in the following manner (and each Participant authorises that application):

- (a) first, by payment to or on behalf of each Participant, or deduction from an amount payable, of any amount that in the opinion of the Board is necessary for that Participant to satisfy any income taxes payable by that Participant in respect of the Cash Distribution;
- (b) secondly, in repayment of that Participant's Loan (for clarity including after that Participant's Loan has been novated to the Trustee under clause 7.1(c)); and
- (c) if that Participant's Loan has been repaid, in payment to that Participant (or to the Trustee, if that Participant's Loan has been novated to the Trustee under clause 7.1(c)).

## 7. UNALLOCATED SHARES

7.1 If a Participant ceases to have rights under the Scheme in terms of clause 3.4 or 5.4;

- (a) the Trustee shall, in its capacity as trustee of the Trust, purchase the Participant's beneficial interest in that Participant's Allocated Shares for a consideration equal to the balance outstanding under the Related Loan, to be held on the basis in sub-clause (b) and shall cease to hold that Participant's Allocated Shares for that Participant;
- (b) the Trustee shall thereupon hold those Shares for all other Participants from time to time on the terms recorded in these rules, and those Shares shall become Unallocated Shares; and
- (c) the consideration payable under sub-clause (a) shall be settled by way of novation of the Participant's Loan from the Participant to the Trustee, with the result that the Trustee will assume the liability of that Participant to the Company in respect of that Participant's Loan, and that Participant shall be released from liability to the Company in respect of that Participant's Loan.

## 8. PUT OPTION

8.1 **Acquisition:** The Trustee may at any time by notice to the Company require the Company to acquire any parcel of Unallocated Shares which were formerly Allocated Shares held for a particular Participant (an "**Acquisition Parcel**"). If the Trustee gives that notice, the Company shall, subject to clause 8.2, acquire the Acquisition Parcel on the terms in this clause 8.

8.2 **Exception:** The Company is not obliged to Acquire an Acquisition Parcel if:

- (a) the Board concludes that it is not able in respect of the Acquisition to resolve the matters the Board is required to resolve under sections 52, 60, and 61 of the Companies Act; or



- (b) the Board concludes before the Acquisition that sections 60(6) or 61(4) of the Companies Act apply in respect of the Acquisition; or
- (c) the Company is prohibited by the NZX Listing Rules, the Financial Markets Conduct Act 2013 or any other applicable law from effecting the Acquisition.

If this clause 8.2 applies, the Company shall give notice to that effect to the Trustee, and shall specify in that notice the reason why this clause 8.2 applies.

- 8.3 **Terms of Acquisition:** The price at which an Acquisition Parcel shall be Acquired by the Company shall be the outstanding amount of the Related Loan in respect of the Shares in that Acquisition Parcel. The Trustee shall immediately on receipt of that amount apply that amount in repayment of that Loan. The Acquisition shall be settled as soon as reasonably practicable after the Trustee gives notice under clause 8.1, having regard to the need for the Company to comply with the procedures in the Companies Act (including, if not already done, sending a disclosure document to shareholders under section 64). The Company and the Trustee shall do all things necessary, including signing and delivering any documents, to complete each Acquisition required under this clause 8.

- 8.4 **Authority to Trustee:** For clarity, and without limiting any other provision of these rules, or the Trust Deed, the Trustee may dispose of Shares to the Company by way of an Acquisition notwithstanding that the Trustee may be able to obtain a better price for those Shares in some other manner.

## 9. OTHER DISPOSAL

- 9.1 **Sale:** The Trustee may, with the approval of the Board, sell Unallocated Shares on the share market, or in some other manner otherwise than by way of an Acquisition.
- 9.2 **Application of proceeds:** The Trustee shall apply the proceeds of sale first in repayment of the outstanding balance of the Related Loan in respect of the Shares sold, and shall then, at the Trustee's discretion, hold the balance of the proceeds of sale or apply the balance toward payment of a management fee under clause 7 of the Trust Deed or other costs or expenses of the Trust, and/or, subject to clause 9.3, apply the balance in reduction of all other Loans outstanding at the time of sale, pro rata so far as practicable to the amount outstanding under each Loan.
- 9.3 **Minimum Amount:** Without limiting the fact that the Trustee has a discretion whether or not to apply proceeds of sale in payment of other loans, the Trustee will not do so unless and until the amount available to be so applied exceeds \$20,000.

## 10. TAX

- 10.1 **Liability for tax:** Any taxation payable in respect of:
- (a) the issue or transfer of Shares to the Trustee to be held for a Participant;
  - (b) any payment made to a Participant under the Scheme; or
  - (c) the remission or forgiveness of all or part of any Loan,

shall be the sole responsibility of, and be paid by, the relevant Participant.



- 10.2 **Company may withhold:** Notwithstanding clause 10.1, the Company is authorised to withhold from any sum payable to a Participant, or the Trustee on behalf of a Participant, under the Scheme amounts of withholding income taxes and other taxes or duties due in connection with any matter referred to in clause 10.1 which the Board may deem advisable to enable the Company or the Participant to satisfy any obligation for taxation.

## 11. AMENDMENT, ETC

- 11.1 **Amendment:** The Board may at any time by resolution amend these rules. The Board shall not however make an amendment if in the opinion of the Board that amendment will materially prejudice the rights or benefits held by Participants at the date of the amendment, unless the prejudiced Participants have consented to the amendment. The Company shall give notice to each Participant who is materially affected by any amendment made under this clause to the last known address of that Participant.
- 11.2 **Waiver:** The Board may at any time waive the application of any these rules in respect of any Participant.
- 11.3 **Capital Change:** If a Capital Change occurs, the terms of the Scheme may be adjusted by the Board in such manner as the Board sees fit to take account of that Capital Change and in the opinion of the Board to leave Participants and the Company in the same overall economic position (so far as reasonably possible) as they were in before that Capital Change. Any such adjustment may include a direction to the Trustee to take any action, and the Trustee shall take that action.
- 11.4 **Takeover Offer:** If a Takeover Offer is made to holders of Shares the Board shall take such steps as the Board considers appropriate to enable a Participant to have the benefit of that Takeover Offer in respect of Allocated Shares held for that Participant if:
- (a) that Participant has, during the period from the commencement of the Supply Period to the date on which the Takeover Offer becomes effective, supplied all Fruit grown on the Related Orchard to the Company or a subsidiary; and
  - (b) that Participant repays to the Company the outstanding balance of that Participant's Loan.
- 11.5 **Decisions binding:** All Participants, the Trustee, and the Company, shall be bound by, and shall not be entitled to question, any decision of the Board under clauses 11.1, 11.2, 11.3 or 11.4.
- 11.6 **Delegation:** The Board may delegate all or any of the Board's powers, functions or discretions under these rules to the Chief Executive Officer or Chief Financial Officer of the Group.

## 12. GENERAL

- 12.1 **Rules binding:** These rules are binding on the Company and the Trustee by virtue of clause 2.2 of the Trust Deed. These rules are binding on each Participant by virtue of clause 2.3(b).
- 12.2 **Confidentiality:** These rules, the terms of the Scheme, details of allocations made under these rules, and all other information arising out of or connection with the Scheme and provided to Participants by the Company, are confidential to the Company, the Trustee and the applicable Participant, and no Participant shall disclose any such information except with the prior written consent of the Board (which may be given or withheld in its complete discretion) or as required by law.
- 12.3 **No assignment:** The rights, benefits and obligations granted to Participants under the Scheme are personal to each Participant and may not be assigned or novated (in whole or in part, or directly or indirectly) or transferred to any other person.



- 12.4 **Severability:** If any provision of these rules is held by a court or administrative body to be illegal, void, or unenforceable such determination will not impair the enforceability of the remaining parts of these rules, which will remain in full force, and that provision will be deemed to be modified to the extent necessary to render it legal, valid, and enforceable.
- 12.5 **Governing law:** These rules are governed by the laws of New Zealand and are subject to the exclusive jurisdiction of the courts of New Zealand.



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