

CONSTITUTION

OF

KIA ORANA KAI NATURA TAOKOTAI LIMITED

VISION, MISSION, VALUES / COOPERATIVE PRINCIPLES

Vision

A sustainable COOK ISLANDS primary industries support mechanism that contributes to the Cook Islands economy in a manner that is respectful of environmental, social, and cultural values.

*Vision-Tamanako'anga, Akara'anga ki mua, Akarakara atu anga ki mua.
- E tuanga turu i te anga'anga tanu no te tauturu e te akameitaki i te turanga kimi puapinga o te Kuki Airani, na roto i te akangateitei atu anga i te aorangi, te natura o te enua, te ora'anga o te tangata e te peu Maori.*

Mission

The Cooperative mission is to establish a Cook Islands Growers company (Farmers Coop) to support, upskill, manage risk & innovate our primary producers' farm businesses & to mitigate **commercial risks** of agricultural production & exporting primary produce (starting with Nita) on behalf of its members.

*Akakoro'anga
E taokotai'anga te ka turu ua atu i te kimi apii'anga ou no te akangateitei i te marama tanu tanu o te tupu'anga kia puapinga na roto i te akatere'anga tiratiratu ma te/ e te matakite i tetai ua atu timata'anga o te akakoro'anga.*

Commercial risks include the technical support services provided to its Farmers, in their production, management, insurance, disease & pest control, grading, treatment & border security, packaging, branding, marketing, storage, transport, distribution, sales and collection of revenue and distribution of net proceeds determined by the quantities of product a member grower sells to the Cooperative.

Definition of a Cooperative

A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.

Te Taokotai'anga e pupu tangata tei piri ki tetai putuputu'anga no te turu i to ratou anoano, i te kimi puapinga ei tauturu i to ratou ora'anga, to ratou turanga e ta ratou peu Maori na roto i te akono'anga tiratira tau/tau/tu.

Cooperative values

Cooperatives are based on the values of self help, self responsibility, democracy, equality, equity, and solidarity. In the tradition of their founders, cooperative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

Taokotai'anga ture

E mema au no teia taokotai'anga no te mea kua irinaki au i teia turanga tauturu tatakitai'anga, e te au manako meitaki e te tiratira tu mate oronga i to matou kite tanutanu no te/ki te katoatoa.

Cooperative Principles

The cooperative principles are guidelines by which cooperatives put their values into practice.

★ Voluntary and Open Membership

Cooperatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

Ka piri/tomo au ki roto i te taokotai'anga no te mea ka puapinga no tatou aronga tanu pouroa.

★ Democratic Member Control

Cooperatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary cooperatives members have equal voting rights (one member, one vote).

★ Member Economic Participation

Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the cooperative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their cooperative, setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the cooperative; and supporting activities approved by the membership.

Ka mataora te mema i te tutaki i ta/to ratou tuanga o te taokotai'anga no te mea me taokotai ka tauturu i to tatou pouroa anoano puapinga.

★ Autonomy and Independence

Cooperatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy.

Ko te mema te pu/ona o te taokotai'anga e ka angaanga ratou e te Kavamani e tetai aronga piri mai no te puapinga o te au mema katoatoa.

★ Education, Training, and Information

Cooperatives provide education, training and farm management advisory for their farm owning members, farm managers, and farm employees so they can best farm and contribute effectively to the productivity of primary industry. The Coop informs the general public - particularly young people and opinion leaders - about the nature and benefits of cooperation.

Ka akara meitaki te taokotai'anga ki runga i te aronga tanu e te akakite atu e te oronga i te au manako tukeke o teia nei ao i te manako puapinga aere i roto i te tu'anga o te tanu e te au kai no te tauturu i to tatou baseleia turanga tanutanu.

★ Cooperation among Cooperatives

Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures.

I roto i teia nei ao takapini te tuanga tanu kai na te au taokotai'anga ona e akatere/akaere ana e te ta'anga'anga no to ratou aronga tanutanu.

★ Concern for Community

Cooperatives work for the sustainable development of their communities through policies approved by their members

Ta tatou peu Maori/Porinetia or ta tatou ture Maori/Porinetia e aru ana te reira kia taokotai te manako o te iti tangata.

Ta tatou peu/ture Maori nana e akaora ana to tatou ora'anga i te akamarama mai e puapinga te manako taokotai. Or e puapinga me taokotai te manako.

THE CONSTITUTION

1 DEFINITIONS

In this Constitution the following expressions have, subject to clause 2, the following meanings:

Act means the Companies Act 2017.

A Shares means shares issued in accordance with clauses 4.1 and 9.6 and with the rights set out in clause 4.3.

Association means any body or group of individuals who collectively work together for one or more of the following objectives:

- (a) to sell produce to one or more buyers;
- (b) to export produce from their island;
- (c) to promote a particular produce;
- (d) to promote the welfare of a particular group of farmers or producers

but who are not, collectively, a person at law.

B Shares means share warrants issued in accordance with clause 9.5 and with the rights set out in clauses 4.4, 4.5 and 18.1.

Board means the board of Directors.

C Shares means the shares issued in accordance with clause 4.7 and with the rights set out in clause 4.13.

Change of Control means a change of owner of a Share other than a transfer or to a:

- (a) spouse;
- (b) child;
- (c) spouse of a child;
- (d) parent;
- (e) relative;

of the Shareholder and an executor where all the beneficiaries a persons listed in (a) to (e) above.

Child means:

- (e) a natural child;
- (f) an adopted child;
- (g) tama angai;

Company means Kia Orana Kai Natura Taokotai Limited

Constitution means this constitution as it may be altered from time to time.

Director means a person appointed as a director of the Company.

FMV means fair market value as determined from time to time by the Board acting reasonably but otherwise in its sole discretion.

Farmer means any person who in the Cook Islands farms land and/or husband animals whether on land or in the sea and includes fisherman for the purpose of creating or harvesting Produce for commercial gain.

Financial year means the year beginning 1 January and ending 31 December.

Nominated Return means the amount Directors from time to time aim to pay to each Farmer in respect to Produce supplied by that Farmer.

Notice means notice delivered personally to the addressee or delivered to that person's last known address or post office box or e-mail contact.

Overheads means the general expenses of the Company, including taxes of any kind, and such amount as the Directors allocate from time to time for depreciation, contingencies and future growth of the Company and allowance for any dividend.

Person means an individual.

Proceeds means cash payments from the sale of Produce.

Produce means fruit, vegetables, flowers, animals, fish and other aquatic life and other components of floral arrangements, grains and seeds, whether raw or processed. Producer means a grower and farmer of produce.

Relevant Period means the relevant financial year

Relative means a person who is a

- (a) brother;
- (b) sister;
- (c) cousin;
- (d) uncle;

- (e) aunt;
- (f) nephew;
- (g) niece

Share Certificate means a certificate containing the following:

- (a) date of issue;
- (b) name of Shareholder;
- (c) number of Shares issued to that Shareholder;
- (h) class of Shares;
- (i) name of the Company;
- (j) signature of a Director

provided Shares of different classes may be recorded on the same certificate.

Representative means the individual or individuals who hold C Shares for and on behalf, and as the representatives, of the members of an Association.

Shares means A Shares, B Shares and C shares in the Company.

Shareholder means a holder of one or more Shares.

Spouse means any person living with the Shareholder at the relevant time either as that Shareholder's partner in marriage or *de facto* relationship.

Standard Terms means any terms determined by the Board from time to time under clause 10.1.

Voting Rights means the right of a shareholder to vote on any matter which this constitution or the Act provides for a shareholder to cast a vote on.

2 **INTERPRETATION**

Any capitalised term in this Constitution not defined in clause 1 shall have the same meaning as is given to that word in the Act.

3 **PURPOSE**

3.1 The Company is established to carry on business as a collector, purchaser, processor, marketer, manufacturer and seller of the Produce of Shareholders.

4 **TERMS OF ISSUE OF SHARES**

A Shares

4.1 Any Farmer shall be eligible upon:

- (a) application to a Director;
- (b) the payment of \$1000.00

to be issued with 1000 A Shares.

4.2 Shareholders of A Shares shall have Voting Rights.

4.3 A Shares carry *pro rata* rights to dividends, bonus issues and return of capital.

B Shares

4.4 B Shares have no voting rights.

4.5 B Shares carry no right to participate in a dividend, bonus issues or return of capital.

4.6 If the holder of B Shares:

- (a) surrenders to the Company the Share Certificate evidencing the holding of the B Shares; after
- (b) five (5) years from the date of issue of the B Shares

the Company must forthwith issue to that person an equivalent number of A Shares.

C Shares

4.7 The Directors may from time to time in respect to any Association issue to such one or more persons the Directors in their sole discretion believe to be Representatives in respect to that Association C Shares.

- 4.8 The Representatives of any Association shall not hold, collectively, more than 100 C Shares and if there is more than one Representative they shall hold equally but if their number is not divisible evenly the Directors shall decide who shall hold the majority of the C Shares.
- 4.9 Unless the Directors otherwise decide an Association shall pay \$100 in consideration for the issue of C Shares.
- 4.10 C Shares carry no right to vote, participate in a dividend, bonus issues or return of capital.
- 4.11 C Shares carry no right of conversion to A Shares or B Shares.
- 4.12 The holder of C Shares must at all times act in a manner:
- (a) consistent with the objects of the Company; and
 - (b) in the best interests of the members of the Association as a collective.
- 4.13 The holder of C Shares has the right to:
- (a) attend general and special meetings of the Company;
 - (b) receive intellectual property held or created by the Company including but not limited to:
 - (i) innovations;
 - (ii) science and scientific papers;
 - (iii) technologyconcerning:
 - a. farming practices;
 - b. harvesting and transport of produce;
 - c. preservation and care of produce;
 - d. export of produce.

5 SHARE REGISTER & SHARE CERTIFICATES

- 5.1 The directors shall forthwith on the issue Shares issue to the recipient thereof a Share Certificate.
- 5.2 The Share Register shall be kept at the registered office of the Company and as required by section 49 of the Act.

5.3 Subject to the Act and this Constitution the person whose name is recorded as the owner of Shares in the Share Register shall be recognised by the Company as the only person holding and able to exercise the rights attached to those Shares.

6 TRANSFER OF SHARES

6.1 Where there is a transfer of shares:

- (a) but no change of control;
- (b) a transfer is signed by the Shareholder and by the intended transferee in a form approved by the Directors;
- (c) the Share Certificate for those Shares is surrendered (or, if lost, evidence satisfactory to the Directors has been furnished);
- (d) any debt owed by that Shareholder to the Company has been paid;
- (e) the intended transferee is a Farmer;

the Directors shall:

- (i) Cancel the surrendered Share Certificate;
- (ii) Issue a new Share Certificate to the transferee;
- (iii) Register the details of that transferee in accordance with the Act.

7 REDEMPTION OF SHARES

7.1 Shares shall be deemed redeemed and cancelled upon the happening of any of the following:

- (a)** A Shareholder:
 - (i)** surrenders the Shareholder's Shares to the Company;
 - (ii)** ceases to be a Farmer;
 - (iii)** in the absence of an agreement with the Directors ceases to supply all the Shareholder's Produce to the Company;
 - (iv)** has materially breached the Standard Terms.
- (b) There is a Change of Control.

- 7.2 Cancelled Shares shall be held as Treasury Stock and may be reissued. The consideration for the redemption of Shares under this Clause payable by the Company to the Shareholder shall be FMV.
- 7.3 If the consideration payable for the redemption of Shares will cause the Company to fail to meet the solvency test the redemption shall be suspended until such time the redemption will not cause the Company to breach the solvency test.

8 DIVIDENDS

- 8.1 Dividends may be declared by the Directors or the unanimous vote of all the Shareholders provided the Company meets the solvency test the determination of which shall rest with the Directors.

9 PRODUCE TO BE GIVEN TO AND SOLD BY COMPANY

- 9.1 Every Shareholder shall, unless the Shareholder and the Directors otherwise agree, supply all that Shareholder's Produce to the Company.
- 9.2 The Company shall hold the Produce on consignment.
- 9.3 The Company shall make its best endeavours to sell Produce on the most favourable terms.
- 9.4 Proceeds are the property of the Company. The Company shall meet the expenses directly associated with the sale of the Produce from the Proceeds. From any Proceeds there shall be deducted to meet the Overheads a portion of the Proceeds. The portion deducted shall bear the same percentage to all the Overheads that the Proceeds bears to all the Proceeds for the Relevant Period. Each Farmer shall be entitled to receive the lesser of:
- (a) the same percentage of the balance remaining of the Proceeds as that Farmer contributed to all the Proceeds arising from that Produce; or
 - (b) the Nominated Price
- 9.5 Within three months of the end of each Relevant Period every Farmer shall receive, issued by the Company, such number of B Shares, based on that Farmer's contribution to Proceeds which go to the Overheads and is attributable to that Farmer, as is set out from time to time in the Standard Terms.
- 9.6 When B Shares are issued under Clause 9.6 the Farmer shall be issued with such number of A Shares, if any, as are set out from time to time in the Standard Terms.

10 STANDARD TERMS

- 10.1 The Directors may determine from time to time the:

- (a) terms for the:
 - (i) purchase; and
 - (ii) saleof Produce;
- (b) for the issue of Shares;
- (c) Standard Terms which shall be binding on the Company, the Directors and all Shareholders;

11 **CALLING SHAREHOLDER MEETINGS**

- 11.1 Shareholders shall be entitled to attend meetings of Shareholders and to receive copies of all reports, including accounting reports, issued generally to holders of Shares carrying voting rights.
- 11.2 The Directors must call an annual meeting of Shareholders to be held:
 - (a) not less than 6 months after the end of the Financial Year;
 - (b) not later than 15 months after the last annual meeting.
- 11.3 The Directors must call a special meeting of Shareholders if;
 - (a) The Directors resolve to call a special meeting; or
 - (b) The Shareholders holding 10% or more of the A Shares by notice to a Director demand a special meeting be held.
- 11.4 The Directors must give to Shareholders notice of holding a special meeting called by Shareholders under clause 11.3(b) not less than 20 days before and not more than 40 days after the Shareholders have received the notice to call the special meeting.
- 11.5 Any resolution made under Clause 11.3(a) or notice received under Clause 11.3(b) must state the purpose of the special meeting and only the matters contained therein may be subject to deliberation at the special meeting and no other business shall be transacted thereat.
- 11.6 No meeting of Shareholders shall be held less than 25 days after the notice has been sent to Shareholders.
- 11.7 Every notice must state the time, date and place of the Shareholder's meeting and the business to be transacted thereat.

11.8 accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Shareholder does not of itself invalidate the proceedings at that meeting.

12 HOLDING SHAREHOLDER MEETINGS

12.1 The Chairperson of the Board shall chair meetings of Shareholders provided that:

- (a) if there is no chairperson, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling or considers it inappropriate to act (either in relation to the entire meeting or in relation to any particular business to be considered at the meeting), the deputy chairperson of the Board shall be chairperson of the meeting (or for that part of the meeting which relates to the particular business); and
- (b) if there is no deputy chairperson of the Board, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling or considers it inappropriate to act (either in relation to the entire meeting or in relation to any particular business to be considered at the meeting), the Directors present shall elect one of their number to be chairperson of the meeting (or for that part of the meeting which relates to the particular business).

12.2 If at any meeting no Director is present or if present willing to act as chairperson the Shareholders present shall choose one of their number to be chairperson of the meeting.

12.3 The quorum for a meeting of shareholders is:

- (a) 5 Shareholders; and
- (b) Holders of not less than 20% of the A Shares

provided the holders of C Shares shall not be included in the count for a quorum.

12.4 No business may be transacted at a meeting of Shareholders if a quorum is not present.

12.5 In the absence of a quorum the chairperson may nominate a further date for the meeting being not more than 14 days later.

12.6 The Directors shall not be required to send out any further notice in the event a meeting is adjourned.

12.7 A Shareholder:

- (a) may appoint a proxy;

- (b) who is a Director or a Shareholder;
- (c) with such delegated powers as are set out in the proxy (other than holders of C Shares);
- (d) which must be in such form as the Directors' approve; and
- (e) must be filed with a director prior to the meeting commencing.

12.8 A proxy form shall be sent with each notice of meeting of Shareholders and:

12.9 The Company is under no obligation to check:

- (a) the authenticity of the signatory on the proxy form; or
- (b) in the case of an electronic notice the authority of the person who sent the notice to send the notice,

and is entitled to assume that the proxy form has been signed or sent with the proper authority of the Shareholder.

12.10 The appointment of a proxy may be withdrawn at any time.

12.11 Except where the Act provides the Company may only take an action after the passage of a special resolution resolutions at a meeting of Shareholders shall be passed by ordinary resolution.

12.12 The Chairperson shall not have a casting vote.

12.13 Each A Share shall carry 1 vote.

12.14 A vote shall be taken by voice or show of hands as determined by the Chairperson.

12.15 The Chairperson's declaration on whether the resolution is passed is final.

12.16 However, any Shareholder on the Chairperson's declaration may call for a poll.

12.17 If a poll is called for then the votes:

- (a) must be counted according to holding of the A Shares.
- (b) of each Shareholder must be recorded in the minutes of the meeting.

12.18 Meetings may be held electronically and for such time a person is connected to the meeting electronically and can be heard by all other persons present at the meeting and that person can hear all other persons present at the meeting when they speak that person shall for all purposes be deemed in attendance at the meeting.

12.19 Except as provided in this Constitution and the Act, the chairperson of the meeting shall determine the procedure at any meeting of Shareholders including who may attend and speak at the meeting (including persons that are not Shareholders) and whether a meeting may be recorded in any form.

12.20 The Directors shall ensure minutes are kept of all meetings of Shareholders.

13 APPOINTMENT AND REMOVAL OF DIRECTORS

13.1 Directors shall be appointed by ordinary resolution at a general meeting.

13.2 The number of Directors shall not be less than 5 and not more than 7.

13.3 Without limiting section 45 of the Act Directors shall hold office until the next general meeting.

13.4 A Director shall at a general meeting be eligible for reappointment.

13.5 Subject to the Act any person may be nominated as and appointed a Director.

13.6 Where there are more nominees than the maximum number of Directors the appointment of Directors shall be put to a vote.

13.7 The person with the highest number of votes shall be deemed appointed a director and if more than one director.

13.8 A further poll must then be conducted with the remaining candidates and the person with the highest number of votes shall be deemed appointed a director and if more than one director.

13.9 The procedure set out in Clauses 13.12 and 13.13 is to be continued until 7 Directors have been appointed.

13.10 A vacancy on the Board shall be filled by the Board but only if such vacancy will reduce the number of Directors to 4.

13.11 A Director appointed under Clause 13.10 shall only hold office until the next annual meeting.

13.12 The Directors must elect a Director as chairperson of the Board and a Director as the deputy chairperson of the Board.

13.13 The Directors may at any time replace any chairperson or deputy chairperson of the Board.

13.14 The deputy chairperson of the Board shall act as the chairperson of the Board whenever the chairperson of the Board is unable or unwilling to act as chairperson of the Board.

14 **BOARD MEETINGS**

- 14.1 The Board may meet together for the despatch of business, adjourn, or otherwise regulate their meetings and proceedings as, subject to this Constitution, it thinks fit.
- 14.2 Any two Directors or the chairperson of the Board acting alone may summon or convene a meeting of the Board.
- 14.3 Notice of every meeting stating the date, time and place of the meeting must be given to all Directors personally or by email address if an email address is supplied or by leaving it at the residential address of that Director.
- 14.4 Any irregularity in the calling of a meeting may be waived if all Directors waive the irregularity.
- 14.5 If a Director wishes to attend a meeting but cannot attend in person, then every reasonable attempt shall be made to include that Director in the meeting by audio or audio and visual or other electronic communication means.
- 14.6 At least 48 hours' notice shall be given of a proposed Board meeting unless the chairperson of the Board (or, if the chairperson is unable to be contacted, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least two hours' notice is given.
- 14.7 The quorum for a meeting of Directors is a majority of them.
- 14.8 A meeting of the Board at which a quorum is present shall be competent to exercise any of the powers under this Constitution or the Act for the time being vested in or exercisable by the Directors generally.
- 14.9 If a quorum is not present at a meeting then the meeting may be adjourned for such period as is determined by the chairperson of the meeting of the Board and notice of the day, time and place for the adjourned meeting shall be given to all directors as soon as practicable after the meeting is adjourned.
- 14.10 Directors may act notwithstanding any vacancy provided there is a quorum provided that if there is at any time 2 vacancies the quorum shall be 3 directors.
- 14.11 The chairperson of the Board shall act as chairperson of meetings of the Board provided that:
 - (a) if at any meeting the chairperson is not able to be present or is not present within 15 minutes after the time appointed for holding the meeting, or is unwilling to act in respect of the meeting or any part of

the meeting, the deputy chairperson of the Board shall be chairperson of the meeting or part of the meeting; and

- (b) if at any meeting the deputy chairperson of the Board is not able to be present or is not present within 15 minutes after the time appointed for holding the meeting, or is unwilling to act in respect of the meeting or any part of the meeting, the Directors present shall choose one of their number to be chairperson of the meeting or part of the meeting.

14.12 A meeting of the Board may be held by means of audio, or audio and visual, or electronic communication, by which all the Directors participating and constituting a quorum can hear each other. Each of the Directors taking part in such a meeting must be able to hear each of the other Directors taking part.

14.13 Questions arising at any meeting of the Board shall be determined by a majority of votes of the Directors.

14.14 Each Director shall have one vote.

14.15 In the case of an equality of votes the chairperson of the meeting shall have a second or casting vote.

14.16 A Director may abstain from voting on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Companies Act.

14.17 The Board shall cause minutes to be kept for the purpose of recording:

- (a) the names of the Directors present at each meeting of the Board; and
- (b) all resolutions and proceedings at all meetings of the Board.

14.18 Any minutes of any meeting signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting shall be prima facie evidence of the matters stated in the minutes.

15 **DIRECTORS' REMUNERATION**

15.1 No remuneration shall be paid to Directors unless such remuneration has been authorised by an ordinary resolution. Each resolution shall express Directors' remuneration as either:

- (a) a monetary sum per annum payable to all Directors taken together; or
- (b) a monetary sum per annum payable to any person who from time to time holds office as a Director.

15.2 The Chairperson shall be paid the remuneration for a Director plus fifty percent.

15.3 The Directors shall be entitled to be paid and reimbursed reasonable travelling, hotel, entertaining and other expenses incurred in attendance at meetings of the Board and when, in any other manner, engaged on the business or affairs of the Company.

16 **INDEMNITY FOR DIRECTORS AND EMPLOYEES**

16.1 The Company may indemnify any Director and any employee of the Company and procure insurance in respect to the same to the extent permitted by the Act and otherwise at law.

17 **AUDITOR**

17.1 The Company is required to prepare financial statements and appoint a qualified auditor.

18 **DISTRIBUTION OF SURPLUS ASSETS**

18.1 Any surplus assets after the winding up, dissolution or liquidation of the Company must be distributed to Shareholders in proportion to the number of A Class Shares held.

19 **MISCELLANEOUS**

19.1 It shall be the duty of the Directors on the issue of Shares to file the prescribed notice with the Companies Office within 10 working days of issue as is required by section 25(2) of the Act.

19.2 Pursuant to section 26(3) of the Act pre-emptive rights are hereby expressly negative.