

Amalgamation Proposal

This document describes the terms of a proposal under Part XIII of the Companies Act 1993 (“**Act**”) to amalgamate Orangewood Limited (“**Orangewood**”) and Northland Horticulture Limited (“**Seeka Sub**”) (a wholly-owned subsidiary of Seeka Limited (“**Seeka**”)), with Seeka Sub as the amalgamated (surviving) company in the amalgamation (“**Amalgamation**”).

This document contains the details required by section 220(1) of the Act, and is expected to be filed with the New Zealand Companies Office, together with the other documents required to give effect to the Amalgamation under section 223 of the Act.

1. **Name:** The name of the amalgamated company will be Northland Horticulture Limited (the “**Amalgamated Company**”).
2. **Registered Office:** The registered office of the Amalgamated Company is 34 Young Road, Paengaroa, Te Puke 3189.
3. **Directors:** Details of the directors of the Amalgamated Company after the Amalgamation will be:

Director's Full Name	Director's Residential Address
Michael Gilbert Franks	62 Sixth Avenue, Tauranga 3110
Stuart Thomas McKinstry	23a Rita Street, Mount Maunganui 3116

4. **Address for service:** The Amalgamated Company’s address for service is 34 Young Road, Paengaroa, Te Puke 3189.
5. **Final share structure:** Upon Amalgamation, the Amalgamated Company will be a wholly-owned subsidiary of Seeka with 1,000 ordinary shares, and those shares will have the rights, privileges, limitations and conditions set out in section 36 of the Act.
6. **Ultimate holding company:**
 - (a) The ultimate holding Company of Orangewood is KFG Limited
 - (b) The ultimate holding Company of Seeka Sub is Seeka.
 - (c) Upon Amalgamation, the ultimate holding company of the Amalgamated Company will be Seeka.
7. **No conversion:** Upon Amalgamation, all of the shares in Orangewood will be cancelled and will not be converted into shares in the Amalgamated Company. The consideration given to Orangewood shareholders for cancellation of their shares in Orangewood is described in paragraph 8 below.
8. **Consideration for cancellation of Orangewood shares:** As consideration for the cancellation of Orangewood's shares:
 - (a) Upon the Amalgamation becoming effective in accordance with the Act each Orangewood Share will be cancelled and Seeka will:

- (i) issue to each person who was registered on Orangewood's share register as a Orangewood Shareholder on the Record Date that has not given Orangewood written notice under section 111 of the Act requiring Orangewood to repurchase their Orangewood Shares after the passing of a special resolution to approve the Amalgamation:
 - (A) 0.6630 Seeka Shares; and
 - (B) \$1.35 in cash,
 for each Orangewood Share held by the applicable Orangewood Shareholder on the Record Date; or
 - (ii) subject to the provisions of section 112A of the Act, pay to each person who was registered on Orangewood's share register as a Orangewood Shareholder on the Record Date that has given Orangewood written notice under section 111 of the Act requiring Orangewood to repurchase their Orangewood Shares after the passing of a special resolution to approve the Amalgamation, \$3.31 for each Orangewood Share held by the applicable Orangewood Shareholder on the Record Date.
- (b) All fractions of a Seeka Shares will be rounded up to the next whole number of Seeka Shares.
 - (c) For the avoidance of doubt, the maximum number of Seeka Shares to be issued by Seeka to the Orangewood Shareholders in consideration for the cancellation of their respective Orangewood Shares pursuant to the Amalgamation shall not exceed 639,302 Seeka Shares, provided that such maximum number shall decrease proportionately with any reduction in the number of Orangewood Shares on issue.
 - (d) Seeka will take any necessary steps to ensure that the Seeka Shares are, immediately after the issue, quoted.
9. **Basis of issue:** The Seeka Shares issued on Amalgamation to holders of Orangewood Shares will:
- (a) be issued pursuant to clause 19 of Schedule 1 to the Financial Markets Conduct Act 2013, the Financial Markets Conduct Regulations 2014, and all applicable laws; and
 - (b) on issue, be on the same terms, and shall rank equally with, all other ordinary shares on issue in Seeka; and
 - (c) be quoted on the NZX under ticker code SEK.
10. **Other payments:** Other than as set out above, or except in accordance with sections 110 to 113 of the Act, the Amalgamation does not involve the making of any payment to a shareholder or director of either Orangewood or Seeka Sub.
11. **Arrangements to complete Amalgamation:** The arrangements necessary to complete the Amalgamation and to provide for the subsequent management and operation of the Amalgamated Company are as follows:
- (a) The boards of directors of Seeka Sub and Orangewood will consider, and if thought fit pass, the resolutions required under section 221(1) of the Act and the directors who vote in favour of those resolutions will give the certificates required under section 221(2) of the Act.

- (b) The boards of directors of Orangewood and Seeka Sub will, on or before 17 September 2021, give notice of the proposed Amalgamation to the secured creditors of Orangewood and Seeka Sub, and public notice of the proposed Amalgamation in accordance with section 221(4) of the Act.
- (c) Orangewood Shareholders will be asked to approve the Amalgamation Proposal by Special Resolution, including a special resolution of each interest group, in accordance with section 221(5) of the Act, at a meeting scheduled to take place on or about 1 October 2021.
- (d) Seeka, as shareholder of Seeka Sub, will be asked to approve the Amalgamation by a Special Resolution in writing.
- (e) If the necessary special resolutions of Orangewood are 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 Orangewood, 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.
- (f) The Amalgamation is conditional on the conditions set out in the Appendix either being satisfied or waived, by no later than 12:01 a.m. on the Effective Date (or such earlier date specified in the Appendix) in accordance with the Amalgamation Implementation Agreement between Seeka and Orangewood dated 14 September 2021.

12. **Subsequent Management and Operations:** Following the Amalgamation becoming effective:

- (a) Seeka Sub currently intends to operate its business in conjunction with Seeka's own operations in the region;
- (b) the Amalgamated Company will satisfy Orangewood's obligations under the Orangewood Supply Commitments.

13. **Glossary:** In this document unless the context otherwise requires:

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

“**Amalgamation**” means the amalgamation of Orangewood and Seeka Sub under Part XIII of the Act, in which Seeka Sub will be the amalgamated (surviving) company.

“**Condition Date**” means 30 November 2021 or such later date as agreed by Seeka and Orangewood (each acting reasonably).

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

“**Effective Date**” means the date the Amalgamation becomes effective pursuant to section 225 of the Act, which shall be:

- (a) 10 Working Days after satisfaction of the Condition in item 7 of the Appendix as it relates to regulatory approvals or the date on which the parties agree that no regulatory consents as referred to in that Condition are required, but in any event no earlier than 10 Working Days

after the satisfaction of all other Conditions (other than the Condition in Item 9 of the Appendix), which relates to the Effective Date), with the parties anticipating that the Effective Date will be on or around 15 December 2021; or

- (b) such other date as the parties agree in writing.

“**Major Growers**” means each grower who supplied fruit to Orangewood in the 2021 season.

“**Material Adverse Change**” means, in respect of a Company, a matter relating to that Company and its Related Companies, taken as a whole, that occurs after the date of this Agreement, and which:

- (a) causes or is likely to cause an adverse change of:
- (i) more than 10% of EBITDA of that Company and its related Companies in FY21, by comparison to EBITDA of that Company and its related Companies as set out in the financial statements for FY20; or
 - (ii) more than 5% of the value of the Gross Tangible Assets of that Company and its Related Companies, when compared to the value of the Gross Tangible Assets of that Company and its Related Companies as set out in the balance sheet for FY20; or
- (b) is the entry into or continuation of a COVID-19 Alert Level that results in a lockdown that materially hinders the operation of Orangewood or Seeka as a business; or
- (c) is the appointment of a liquidator, administrator or receiver (or any similar person to any of the foregoing) of that Company or over the whole or a substantial part of the property or assets of that Company; or
- (d) is the entry by that Company into a compromise or arrangement with any of its creditors; or
- (e) the calling of a meeting to consider a resolution to liquidate that Company (other than where that resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of that Company), or the making of an application or order for the liquidation or dissolution of that Company which order has not been set aside within ten (10) Working Days; or
- (f) is that Company ceasing or threatening to cease to carry on business; or
- (g) results in that Company being or becoming unable to pay its debts when they fall due in the ordinary course of business; or
- (h) is the appointment of a statutory manager to that Company under the Corporations (Investigation and Management) Act 1989, or that Company is declared at risk under that legislation.

“**Orangewood**” means Orangewood Limited.

“**Orangewood Share**” means any share in Orangewood.

“**Orangewood Shareholder**” means the holder of a Orangewood Share on the Record Date.

“**Record Date**” means 5:00 p.m. on the days that is two Working Days before Effective Date.

“**Related Company**” has the meaning given to that term in the Act.

“Seeka” means Seeka Limited.

“Seeka Share” means an ordinary share in Seeka ranking equally with all other ordinary shares in Seeka.

“Seeka Sub” means Northland Horticulture Limited, which is a wholly owned subsidiary of Seeka.

“Seeka Supply Commitment Agreement” means a commitment to supply Seeka (or Seeka Sub) in respect of each of the 2022, 2023 and 2024 supply seasons.

“Working Day” has the meaning given to that term in the Act.

Appendix

Conditions

1. All necessary shareholder approvals (including any requisite approvals of interest groups) being obtained from the Orangewood Shareholders by 1 October 2021, including a special resolution of Orangewood Shareholders (including KFG Limited) required pursuant to section 221(5) and section 106(1)(c) of the Act.
2. Seeka receiving Seeka Supply Commitment Agreements signed by Major Growers before the Condition Date, such that all Major Growers that supplied at least 90% of the total kiwifruit volume in the 2021 season (calculated by tray) from all Major Growers (such volume as estimated by Orangewood in consultation with Seeka) have committed to supply Seeka (or Seeka Sub) in the 2022, 2023 and 2024 supply seasons.
3. Immediately prior to the Effective Date, the absence of a Court order being made under section 226 of the Act directing that the Amalgamation is modified or not given effect to.
4. Seeka receiving the prior written consent of Seeka's bankers to the Amalgamation, and the conditions to such consent being satisfied or waived by or on the Condition Date.
5. Orangewood receiving the prior written consent of ANZ Bank New Zealand Limited to the Amalgamation, and the conditions to that consent being satisfied or waived by or on the Condition Date.
6. Orangewood not having received valid written notices from shareholders who together hold a number of Orangewood Shares that exceeds five per cent (5%) of the aggregate number of Orangewood Shares on issue as at the date of this Amalgamation Proposal under section 111 of the Act after the passing of a special resolution to approve the Amalgamation but prior to the latest date provided for in section 111 of the Act, requiring Orangewood to repurchase their shares.
7. Seeka and/or Orangewood obtaining any regulatory approvals (to the extent any are required) and regulatory consents in relation to, the Amalgamation by 31 January 2021 (or such other date as the parties agree in writing) including Orangewood obtaining Code of Compliance Certificate in respect of Building Consent 2018 – 361/0 by the Condition Date.
8. All Permits being obtained that are required to enable Seeka Sub to have the full use and benefit of Orangewood's business following Amalgamation by the Condition Date.
9. Immediately prior to the Effective Date, the absence of a Material Adverse Change having occurred.