

**SHAREHOLDERS' AGREEMENT**

**RELATING TO**

**SFRITO LIMITED**

(UPDATED 21 MAY 2010)

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**THIS AGREEMENT** dated February 2001

**BETWEEN**

**THE SHAREHOLDERS** of SFRITO Limited, being those of the persons set out in **clause 4.3** (the **Proposed Shareholders**) who have signed this Agreement (the **Initial Shareholders**);

**AND**

**SFRITO LIMITED** (the **Company**) a duly incorporated company having its registered office at Wellington.

**BACKGROUND**

- Various sectors are included as subfields on the national qualifications framework developed by the New Zealand Qualifications Authority under the Education Act 1989 (the **National Qualifications Framework**).
- Those sectors include the sport, fitness, community recreation, outdoor recreation and ski sectors.
- In April 1993 the Sport, Fitness and Recreation Industry Training Organisation Incorporated (**SFRITO Inc**) was created as an industry training organisation responsible for:
  - ❖ the sport, fitness, community recreation and outdoor recreation sectors including Maori representation in each sector; and
  - ❖ (in particular) setting recognised education and training standards, and facilitating training and assessment, for those sectors.
- The members of SFRITO Inc have resolved to wind up SFRITO Inc and transfer the operations of SFRITO Inc to the Company.
- The Company was incorporated on 27 February 2001, and resolved that the total issued share capital is to be 1000 shares, to be issued conditionally to the Proposed Shareholders as set out in **clause 4.3**.
- The Proposed Shareholders are, or are intended to be, the Shareholders of the Company.
- This Agreement records the matters agreed between the Initial Shareholders in relation to:
  - ❖ the operation of the Company; and
  - ❖ the relationship between the Initial Shareholders as Shareholders in the Company.
- This Agreement records, in particular, the objective of the Initial Shareholders for the Company to meet the education and training needs of, and act as an industry training organisation for:
  - ❖ the sport, fitness, community recreation, outdoor recreation and ski sectors; and

- ❖ Maori participating in those sectors.

**IT IS AGREED** as follows:

**1. TERM**

1.1 The term of this Agreement (the **Term**) is to:

- (a) commence upon the date it is signed by the Company and any one or more of the Proposed Shareholders; and
- (b) continue until it is terminated in accordance with **clause 17.1**.

**2. ACTIVITIES OF THE COMPANY AND RELATIONSHIP OF SHAREHOLDERS**

**Objective of the Initial Shareholders**

2.1 The objective of the Initial Shareholders in relation to the Company is for the Company to:

- (a) meet the education and training needs of:
  - (i) the following sectors (the **Industry Sectors**) being sectors that are included as subfields on the National Qualifications Framework:
    - (aa) the Sport Sector;
    - (bb) the Fitness Sector;
    - (cc) the Community Recreation Sector;
    - (dd) the Outdoor Recreation Sector; and
    - (ee) the Ski Sector;
  - (ii) Maori participating in the Industry Sectors (**Nga Mahi a te Rehia Sector**); and
  - (iii) any additional industry sector (any **Additional Sector**) that the Shareholders resolve by Special Resolution the Company should be responsible for under **clause 5.1(a)**; and
- (b) set skill standards (that the New Zealand Qualifications Authority is likely to register) for education and training in the Industry Sectors, Nga Mahi a te Rehia Sector and any Additional Sector; and
- (c) act as an industry training organisation for the Industry Sectors, Nga Mahi a te Rehia Sector and any Additional Sector and, in particular develop arrangements for the delivery of industry training for those Sectors that will enable trainees to attain skill standards set for those Sectors including arrangements for:
  - (i) monitoring that industry training to ensure it enables trainees to attain those skill standards; and

- (ii) assessing trainees and the extent to which they have attained those skill standards.

#### Relationship of the Initial Shareholders

#### 2.2 Each Initial Shareholder must:

- (a) use its best endeavours to co-operate with the other Initial Shareholders to ensure the Company:
  - (i) attains the objective for the Company of the Shareholders; and
  - (ii) operates efficiently and effectively;
- (b) not unreasonably delay any action, decision or notice required under this Agreement; and
- (c) (in its capacity as a Shareholder of the Company) be just and faithful and provide full information to each other Initial Shareholder in relation to the affairs and activities of the Company; -

in each case in accordance with this Agreement.

#### **Compliance with this Agreement**

#### 2.3 The Initial Shareholders must:

- (a) do all things necessary or desirable to carry out this Agreement; and
- (b) do all things necessary or desirable to ensure the Company carries out this Agreement.

#### 2.4 The Company agrees to do all things necessary or desirable to carry out this Agreement.

### **3. CONSTITUTION**

#### 3.1 The Initial Shareholders agree that:

- (a) promptly after this Agreement is signed by all the Parties, they must pass a Shareholders' resolution adopting a Constitution in the form attached to this Agreement (if the Company is not formed with that Constitution); and
- (b) if for any reason the Constitution is, or becomes, inconsistent with this Agreement, they must pass a Shareholders' resolution amending the Constitution, or adopting a new Constitution, to make it consistent with this Agreement.
- (c) if this Agreement is terminated in a circumstance where the Company is not to be liquidated or wound up they shall, prior to the termination of this Agreement, take such steps and do all such acts and things as may be necessary (including but not limited to amending the Company's Constitution):

- i. to ensure that the Company's objects continue to be exclusively for charitable purposes in New Zealand and to ensure that the Company is able to maintain its charitable status under New Zealand law and its registration as a charitable entity under the Charities Act 2005;
- ii. to ensure accumulated income is continued to be applied for charitable purposes in New Zealand.

#### 4. INITIAL SHARE CAPITAL

##### Initial Share Capital

4.1 The Initial Shareholders confirm that, promptly after this Agreement is signed by all the Parties:

- (a) the total issued share capital of the Company is to be 1000 Shares issued for no consideration (the **Initial Share Capital**); and
- (b) the 1000 issued shares are intended to be issued to the Proposed Shareholders as set out in **clause 4.3** (of which two shares have already been issued, one each to Fitness New Zealand and the Sir Edmund Hillary Outdoor Pursuits Centre respectively).

4.2 The Initial Shareholders agree that, promptly after this Agreement is signed by all the Parties:

- (a) each Initial Shareholder shall be issued the number of Shares beside that Initial Shareholder's name in **clause 4.3**;
- (b) the Initial Share Capital is to be divided into Shares of the following categories (the **Share Categories**):
  - (i) Sport Sector Shares;
  - (ii) Fitness Sector Shares;
  - (iii) Community Recreation Sector Shares;
  - (iv) Outdoor Recreation Sector Shares;
  - (v) Ski Sector Shares; and
  - (vi) Nga Mahi a te Rehia Sector Shares; and
- (c) each Initial Shareholder is to hold Shares of the Share Category beside that Initial Shareholder's name in **clause 4.3**.

##### Proposed Allocation of Initial Share Capital

4.3 The Initial Share Capital is to be held as follows:

- (a) Sport Sector Shares

Name of Proposed Shareholder	Address	Number of Shares
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David Knowles	C/-Chief Executives of Sport Forum, Crn 333 Great North Road and Trading Place, HENDERSON	33
Coaching New Zealand Te Mana Kai Whakawaiwai o Aotearoa Incorporated	10 Ettrick Grove, Papakowhai	34
Sport Science New Zealand Incorporated	Compudigm House, 49 Boulcott Street, WELLINGTON	33

(b) Fitness Sector Shares

**Name of Proposed Shareholder**                      **Address**                      **Number of Shares**

Fitness New Zealand Incorporated	204 Hereford Street, CHRISTCHURCH	99
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(c) Community Recreation Sector Shares

**Name of Proposed Shareholder**                      **Address**                      **Number of Shares**

New Zealand Recreation Association Incorporated	101 Wakefield Street, WELLINGTON	25
Artmakers Community Artists Trust	Cnr Ward Street and Seddon Road, HAMILTON	25
National Council of YMCAs of New Zealand Incorporated	74-84 Able Smith Street, WELLINGTON	25
Watersafety New Zealand Incorporated	Booth House, 202-206 Cuba Street, WELLINGTON	25

(d) Outdoor Recreation Sector Shares

**Name of Proposed Shareholder**                      **Address**                      **Number of Shares**

New Zealand Outdoor Recreation Assembly Incorporated	175 Victoria Street, WELLINGTON	6
Education Outdoors New Zealand Incorporated	655 Cumberland Street, DUNEDIN	6

New Zealand Outdoor Instructors Association Incorporated	11 Viewland Avenue, Onehunga, AUCKLAND	6
NZ Mountain Safety Council Inc	19 Tory Street, WELLINGTON	7
New Zealand Tourism Industry Association Incorporated	Paxus House, 79 Boulcott Street, WELLINGTON	6
Outward Bound Trust of New Zealand	Harbour City Tower, 40 Panama Street, WELLINGTON	7
The Project K Trust	16 Kingston Street, AUCKLAND	7
The Sir Edmund Hillary Outdoor Pursuits Centre of New Zealand	Hydro Access RD 3, Off State Highway 47, TURANGI	5
Chris Knol	175 Victoria Street, WELLINGTON	6
Womens Outdoor Pursuits Incorporated	7 Motuora Road, Manly, WHANGAPAROA	6
Christian Camping New Zealand Incorporated	72 Burwood Road, MATAMATA 2271	7
New Zealand School of Outdoor Studies Incorporated	Wikitoria Building, Kerr Road, DEVONPORT	6
Whenua-iti Trust	RD 2, UPPER MOUTERE	6
Jan Davidson	RD15-0, OAMARU	6
Sport Northland	Northern Advocate Building, Water St, WHANGAREI	6
Spirit of Adventure Trust Board	Princess Wharf, AUCKLAND	6

(e) Ski Sector Shares

<b>Name of Proposed Shareholder</b>	<b>Address</b>	<b>Number of Shares</b>
New Zealand Ski Council Incorporated	Paxus House, 79 Boulcott Street, WELLINGTON	20
Ski Areas Association (New Zealand) Incorporated	Paxus House, 79 Boulcott Street, WELLINGTON	20

New Zealand Snow Industries Federation Incorporated	Paxus House, 79 Boulcott Street, WELLINGTON	20
New Zealand Ski Instructors Alliance Inc	16a Howthorne Street, Strowan CHRISTCHURCH	20
The Canterbury Snow Sports Association Incorporated	70 St Asaph, CHRISTCHURCH	20

(f) Nga Mahi a te Rehia Sector Shares

**Name of Proposed Shareholder                      Address    Number of Shares**

Albert Dudley	396 Wairere Road, Waitakere, AUCKLAND	24
Martin Stirling	C/-Association of Private Training Establishments Incorporated, Ava Railway Station, North Street, PETONE	23
Te Hotu Manawa Maori Charitable Trust	9 Kalmia Street, Ellerslie, AUCKLAND	24
Anaru Paenga	15 Dalesford Street, HAMILTON	23
Maori Womens Welfare League Inc	24 Burnell Avenue, Thorndon	24
Gail Parata	Unit 1/9 Arawa Road, Hataitai, WELLINGTON	24
Bob Tukiri	1 Karioi Place, HAMILTON	24
Aotearoa Maori Tennis Association Incorporated	36 Curruth Road, Papatoetoe, AUCKLAND	24
Nga Kaihoe O Aotearoa New Zealand Maori Polynesian Canoe Sporting Federation Incorporated	Main Road, Broadwood PDC, NTH HOKIANGA	24
George Skudder	C/-New Zealand Maori Rugby Whakapumautanga, Huddard Parker Building, 1 Post Office Square, WELLINGTON	24
Sam Kereama	51 Gemini Avenue, PALMERSTON NORTH	24
Hauraki Maori Trust Board	41 Belmont Road, PAEROA	23
Tauranga Moana Maori	3 The Strand, TAURANGA	24

Trust Board		
National Maori Touch Trust	24 Glen Road, Ranui, WAITAKERE	24
Des Ratama	32A Ararino Street, Trentham, UPPER HUTT	24
Hine Hori	3 Desert Gold Street, Ascot Park, PORIRUA	24
Te Runanganui o Taranaki Whanui ki te Upoko o te ika a Maui Association Incorporated	Crn Riverside Drive and Guthrie Street, Waiwhetu, LOWER HUTT	24
Te Papa Takaro o Te Arawa Trust	Pukuatua Street, ROTORUA	24
Donna Grant	1194 Houpapapa Street, ROTORUA	23
Marie Winitana	148 Whites Line East, Waiwhetu, LOWER HUTT	24
Te Tini a Maui Maori Rugby Council Incorporated	61 Jellicoe Street, WANGANUI	24

**TOTAL: 998 Shares**

#### **Nature of Proposed Shareholders**

- 4.4 The Initial Shareholders acknowledge that each Proposed Shareholder is, or represents, an organisation that has as its principal focus promoting the interests of the Sector that the Share Category held by that Initial Shareholder relates to.

#### **Proposed Shareholders not Parties on Commencement Date**

- 4.5 A Proposed Shareholder who does not sign this Agreement on the date in **clause 1.1(a)** shall, subject to **clause 4.8**, be issued the number of Shares beside that Proposed Shareholder's name in **clause 4.3** subject to the following conditions being satisfied:
- (a) that Proposed Shareholder signs an undertaking in the form set out in **Schedule 1** (with any appropriate amendments) to the effect that the Proposed Shareholder will, on registration as a Shareholder of the Company, become a Party to, and bound by, the terms and conditions of this Agreement (as it may be amended) as if that Proposed Shareholder had been one of the Initial Shareholders; and
  - (b) that Proposed Shareholder signs the undertaking in **clause 4.5(a)** before 1 April 2001.

- 4.6 Each of the Initial Shareholders irrevocably appoints the Company to sign on its behalf, as each Shareholder's attorney, any undertaking with a Proposed Shareholder under **clause 4.5(a)**.

#### **Initial Share Capital not issued**

- 4.7 If any of the Initial Share Capital is not issued to:

- (a) an Initial Shareholder under **clause 4.2(a)**; or
- (b) a Proposed Shareholder under **clause 4.5**

then it shall be issued:

- (c) pro rata to all other Shareholders that hold Shares of the same Share Category; or
- (d) if there are no other Shareholders that hold Shares of the Share Category, pro rata to all other Shareholders that hold Industry Sector Shares.

#### **ERROR IN NAME OF PROPOSED SHAREHOLDER**

- 4.8 To the extent that there is a manifest error in the name, status or description of any of the Proposed Shareholders listed in **clause 4.3**, any shares that were to be issued to that person pursuant to **clause 4.2(a)** or **4.5** may be issued by unanimous resolution of the Directors, to a person who, in the opinion of the Directors:

- (a) is the proper person to whom the Company intended to issue the shares; and
- (b) is, or represents, an organisation that has as its principal focus promoting the interests of the Sector of the Share Category in which the Shares were to be issued.

#### **MINIMUM NUMBER OF SHAREHOLDERS**

- 4.9 A special meeting of Shareholders will be called to discuss amending this Agreement and the Constitution, or terminating this Agreement and liquidating the Company, if at any time after 1 April 2001 there is less than:

- (a) 10 Shareholders; or
- (b) 5 Shareholders holding Industry Sector Shares; or
- (c) 5 Shareholders holding Nga Mahi a te Rehia Sector Shares.

- 4.10 A special meeting will be called under **clause 4.9** as soon as practicable after the event referred to in **paragraph (a), (b) or (c)**, as the case may be.

### **5. NEW SHARE CAPITAL**

#### **Issue of additional Shares**

5.1 The Company may from time to time issue Shares in addition to the Initial Share Capital if (but only if):

- (a) the Shareholders resolve the following matters by Special Resolution:
  - (i) that the Company is to be responsible for a Sector (an **Additional Sector**) in addition to the Industry Sectors and Nga Mahi a te Rehia Sector;
  - (ii) that an equal number of Shares to those issued in relation to each of the Industry Sectors be issued to that Additional Sector (the **Additional Sector Shares**);
  - (iii) the names of the persons to whom the Additional Sector Shares are to be issued (the **Additional Shareholders**) (being persons who are, or represent, an organisation that has as its principal focus promoting the interest of the Additional Sector);
  - (iv) that the Additional Shareholders are each to hold an equal number of the Additional Sector Shares;
  - (v) that an equal number of Shares to the number of Additional Sector Shares be issued pro rata to the then holders of Nga Mahi a te Rehia Sector Shares (the **Additional Nga Mahi a te Rehia Sector Shares**);
  - (vi) the names of the persons to whom the Additional Nga Mahi a te Rehia Sector Shares are to be issued;
  - (vii) that the Additional Sector Shares be of a Share Category specified by the Special Resolution (the **Additional Share Category**);
  - (viii) the terms of the Share Eligibility Criteria for that Additional Share Category;
  - (ix) the terms of issue of the Additional Sector Shares and the Additional Nga Mahi a te Rehia Sector Shares; and
  - (x) any consequential changes that are to be made to this Agreement as a result of the Company resolving:
    - (aa) to be responsible for an Additional Sector; and
    - (bb) the other matters referred to in **paragraph (a)** of this clause; and
- (b) each Additional Shareholder signs an undertaking with the Company and the Shareholders:
  - (i) in the form set out in **schedule 1** (with any appropriate amendments) to the effect that the Additional Shareholder will, on registration as a Shareholder of the Company, become a party to and bound by the terms and conditions of this Agreement (as it may be amended under **clause 5.1(a)(x)**) as if that Additional Shareholder had been one of the Initial Shareholders; or
  - (ii) in any other form approved by the Special Resolution; and

- (c) all requirements of the Companies Act in relation to the issue of those Shares are met.

### **Authority for the Company to sign the undertaking on behalf of Shareholders**

- 5.2 If the Shareholders pass a Special Resolution under **clause 5.1(a)** approving the issue of Additional Sector Shares to Additional Shareholders, each Shareholder (whether or not that Shareholder has voted in favour of that Special Resolution) will be deemed to have irrevocably appointed the Company to sign on that Shareholder's behalf, and as that Shareholder's attorney, every undertaking with each Additional Shareholder under **clause 5.1(b)**.

## **6. NEW SHAREHOLDERS**

### **Request for Shares**

- 6.1 A person that meets the Share Eligibility Criteria for Shares of a particular Share Category (a **Requestor**) may make a request (a **Share Request**) to the Company for Shares of that Share Category (the **Identified Share Category**).
- 6.2 The Share Eligibility Criteria (the **Share Eligibility Criteria**), in relation to a Share Category, means that the relevant person must:
  - (a) have legal personality;
  - (b) have as a principal focus its industry representation role (as opposed to a commercial focus), representing the interests of the Sector that the Share Category relates to; and
  - (c) be a national body representing a significant part of the Sector that the Share Category relates to, or if a significant group of the sector is not represented by any national body, then be a regional body that represents that group.

provided that where an individual is appointed by an organisation that does not have legal personality to hold the Shares of the relevant Share Category, the appointing organisation will be regarded as the person that must meet the criteria set out in **paragraphs (b) and (c)** of this clause;

- 6.3 If the Company receives a Share Request it must as soon as is practicable:
  - (a) give the Shareholders a copy of that Share Request; and
  - (b) call a meeting of the Company to enable the Shareholders to consider whether they are prepared to agree by Special Resolution as to the Requestor holding shares of the Identified Share Category.

### **Consideration of Request**

- 6.4 If the Shareholders agree by Special Resolution to a Requestor holding Shares of the Identified Share Category then (subject to **clause 6.5**):
  - (a) if a Shareholder is:

- (i) willing to transfer all the Shareholder's Shares (being Shares of the Identified Share Category) to the Requestor; or
- (ii) required to transfer Shares in accordance with either of **clauses 7.4 or 7.4A**,

that Shareholder must transfer those Shares to the Requestor as soon as is reasonably practicable; or

- (b) if **paragraph (a)** of this clause does not apply, then each Shareholder that holds Shares of that Identified Share Category must transfer a sufficient number of Shares so that after those transfers each Shareholder of Shares of the Identified Share Category (including the Requestor) holds an equal number of Shares.

#### **Requestor must sign undertaking**

6.5 Shares must not be transferred under **clause 6.4** unless the Requestor has signed an undertaking with the Shareholders and the Company:

- (a) in the form set out in **schedule 1** (with any appropriate amendments) to the effect that the Requestor will, on registration as a Shareholder of the Company, become a party to and bound by the terms and conditions of this Agreement as if the Requestor had been one of the Initial Shareholders; or
- (b) in any other form approved by the Special Resolution that has approved the Requestor holding shares of the Identified Share Category.

#### **Authority for the Company to sign the undertaking on behalf of Shareholders**

6.6 If the Shareholders agree by Special Resolution to a Requestor holding Shares of the Identified Share Category, each Shareholder (whether or not that Shareholder has voted in favour of that Special Resolution) will be deemed to have irrevocably appointed the Company to sign on that Shareholder's behalf, and as that Shareholder's attorney, any undertaking with that Requestor under **clause 6.5**.

## **7. TRANSFER OF SHARES**

### **Restrictions on transfers**

7.1 Shareholders may not transfer Shares except in accordance with this **clause 7**.

### **Voluntary transfer of Share**

7.2 If a Shareholder wishes to transfer all its Shares, the Shareholder may transfer those Shares:

- (a) to a Requestor, if that transfer is in accordance with **clause 6.4(a)**;
- (b) pro rata to all other Shareholders that hold Shares of the same Share Category; or
- (c) if there are no other Shareholders that hold Shares of the same Share Category, pro-rata to all other Shareholders that hold Industry Sector Shares .

7.3 A Shareholder may transfer some of its Shares in accordance with **clause 6.4(b)**.

#### Compulsory transfer of Shares

7.4 If a Shareholder is in Default (as defined in clause 16.1), and the Shareholders, by Special Resolution, require that Shareholder to transfer its Shares or any of them, the Shareholder must immediately transfer those Shares (the **Identified Shares**) to the person or persons required by the Special Resolution.

7.4A If a Shareholder does not meet, or no longer meets, the Share Eligibility Criteria (if necessary determined under clause 8.4) for Shares of the Share Category held by the Shareholder, the Shareholder must immediately transfer those Shares:

- (i) to a Requestor if that in accordance with clause 6.4(a);
- (ii) pro rata to all other Shareholders that hold Shares of the same Share Category; or
- (iii) if there are no other Shareholders that hold Shares of the same Share Category, pro rata to all other Shareholders that hold Industry Sector Shares,

unless the Shareholders by Special Resolution, do not require that Shareholder to transfer Shares or any of them.

7.5 A Special Resolution under **clauses 7.4 or 7.4A** must require the relevant Shareholder to transfer the Identified Shares:

- (a) to a Requestor if that is in accordance with **clause 6.4(a)**;
- (b) pro rata to all other Shareholders that hold Shares of the same Share Category; or
- (c) if there are no other Shareholders that hold Shares of the same Share Category, pro-rata to all other Shareholders that hold Industry Sector Shares.

7.6 If a Shareholder that is required to transfer Shares to another person (the **Required Transferee**) under **clauses 7.4 or 7.4A** does not provide a signed transfer to every Required Transferee immediately after the passing of the Special Resolution under that clause:

- (a) that Shareholder will be deemed to have irrevocably appointed the Chairperson of the Company to act as its attorney to sign a transfer of the Shares to each Required Transferee; and
- (b) after the name of a Required Transferee has been entered in the Company's share register, that transfer will be deemed to have been validly effected.

#### **Transfer approved by all Shareholders**

7.7 A Share or Shares may be transferred by a Shareholder to any person if:

- (a) the transfer is approved in writing by all the Shareholders; and
- (b) any conditions for that transfer required by all the Shareholders are met.

### **Share Category of transferred Shares**

- 7.8 All Shares transferred under this **clause 7** will be treated, upon transfer, as being of the same Share Category as the Shares held by the relevant Required Transferee.

### **No payment for transfer of Shares**

- 7.9 There must be no payment or consideration for the transfer of any Share or Shares.

### **Void transfer**

- 7.10 Any transfer of a Share that does not comply with this **clause 7** (a **Void Transfer**), and any entry in the Company's share register of that transfer, is void and of no effect.
- 7.11 The Board must make whatever entries are necessary in the Company's share register to correct the entry of a Void Transfer in that share register.

## **8. GENERAL PROVISIONS RELATING TO SHARES**

### **Shares of only one Share Category to be held**

- 8.1 A Shareholder must hold Shares of only one Share Category.

### **No fractional Shares**

- 8.2 If this Agreement requires Shares to be issued or transferred so that certain persons hold an equal number of Shares, that issue or transfer must be done in such a way that it is achieved as nearly as possible without creating fractional Shares.

### **Shares of same category to be held equally**

- 8.3 The Shareholders holding Shares of the same Share Category are each to hold an equal number of Shares.

### **Disputes over Share Eligibility Criteria**

- 8.4 If there is any issue or dispute over whether a person satisfies the Share Eligibility Criteria, the issue or dispute will be conclusively determined by an independent person appointed by the Auditors of Sfrito.
- 8.5 The determination by an independent person in accordance with clause 8.4 as to whether a person satisfies the Share Eligibility Criteria means that clause 15 does not apply to that dispute.

## **9. BOARD OF DIRECTORS**

### **Number of Directors**

- 9.1 The Board of Directors of the Company is to comprise 7 Directors (including the Chairperson).

### **Initial Directors**

- 9.2 The initial Directors of the Company (other than the Chairperson) are set out below and they are to hold office from the date this Agreement is signed by all Parties until the Annual Meeting of the Company in the Financial Year set opposite that Director's name below:

<b>Director's Name</b>	<b>Financial Year Term of Office is to Expire</b>
Roger Ian Wood	2004
Margaret Anne Ruwai O Te Rangi Hiha	2004
Miles Hume Bate Davidson	2004
Hugh David Vincent Lawrence	2004
Professor Graham Hingangaroa Smith	2004
Grant Stephen Davidson	2004

#### **Initial Chairperson**

- 9.3 The initial Chairperson of the Board:
- (a) is to be Richard Graham Beddie; and
  - (b) is to hold office until the Annual Meeting in the Financial Year ending 2004.

#### **Appointment of subsequent Directors and Chairperson**

- 9.4 The Shareholders may elect, in accordance with the provisions of **Schedule 2**, a Director or Directors, and/or a Chairperson, if a vacancy or vacancies arise in those offices. **Clauses 11.5 to 11.12** of the Constitution do not apply to the election of Directors and/or a Chairperson.

#### **Criteria for nominating Directors and Chairperson**

- 9.5 A Shareholder, in nominating any person as a Director or as the Chairperson under **Schedule 2**, must satisfy itself that the person proposed has the required skills and qualities, including:
- (a) knowledge of a Sector; or
  - (b) experience in corporate governance; or
  - (c) significant business experience; -

so as to be able to contribute effectively to the operation of the Company and its activities.

#### **Termination of office of Directors and Chairperson**

- 9.6 The Directors and the Chairperson shall cease to hold office in accordance with the provisions of **clause 12** of the Constitution.

### **Voting by Directors and Chairperson**

- 9.7 Each Director may cast one vote on any resolution of the Board at a meeting of the Board attended by that Director.
- 9.8 The Chairperson (as a Director) has a deliberative but does not have a casting vote.

### **Board meetings**

- 9.9 The following provisions relate to meetings of the Board:
- (a) at least 4 meetings of the Board must take place each Financial Year;
  - (b) a Director must attend at least 75% of the meetings of the Board in each Financial Year;
  - (c) additional meetings of the Board must be convened at the written request of any 2 Directors; and
  - (d) the quorum required for a meeting of the Board is 4 Directors.

### **Directors' fees**

- 9.10 Any Directors' fees will be determined by ordinary resolution at the Annual Meeting of the Company.

### **Removal of Directors**

- 9.11 The Initial Shareholders will not use their power to remove a Director under **clause 12.12** of the Constitution unless that Director:
- (a) does not act in accordance with this Agreement (except where prohibited to do so by law); or
  - (b) does not resign when required to do so under the Constitution.

### **Certain requirements of Companies Act inapplicable**

- 9.12 The Initial Shareholders agree that sections 155(1) and 156(1) of the Companies Act (in relation to the appointment and removal of Directors) do not apply to the Company.

## **10. DECISION MAKING**

### **Powers of the Board**

- 10.1 The Board will have full power to direct the activities of the Company (except as otherwise provided in the Companies Act, this Agreement or the Constitution).

### **Voting generally**

- 10.2 All decisions of the Shareholders, and all decisions of the Board, are to be made by a simple majority of votes (except as otherwise provided in the Companies Act, this Agreement or the Constitution).

- 10.3 The Constitution requires a Special Resolution of Shareholders to:
- (a) approve the issue of additional Shares;
  - (b) alter or revoke the Constitution or adopt a new Constitution;
  - (c) approve a Major Transaction (as defined in the Constitution);
  - (d) amalgamate with another Company;
  - (e) liquidate the Company; or
  - (f) amend or terminate this Agreement.

10.3A If the Board so decide, any matter to be decided by the Shareholders, can be determined by way of postal vote in accordance with Schedule 4 rather than by way of a meeting of Shareholders and that for the purposes of S10.3A the form of Schedule 4 attached to the notice of Annual General Meeting be attached to the Shareholders' Agreement so as to form part of that Agreement

#### **Quorum for Meetings of Shareholders**

- 10.4 A quorum for a meeting of Shareholders is present if Shareholders holding at least 40% of the Shares are present in person or, if a body corporate, by representative.
- 10.5 Proxies do not count for the purposes of determining a quorum under **clause 10.4**.
- 10.6 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called under a requisition of Shareholders under **clause 10.5(b)** of the Constitution the meeting is dissolved; or
  - (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Directors may appoint (and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their proxies present are a quorum).

#### **Appointment of proxies and representatives**

- 10.7 A Shareholder will not appoint a person as a proxy, or as a representative, to attend a meeting of Shareholders if that person:
- (a) is a Shareholder or a proxy for another Shareholder; and
  - (b) will be able to cast votes at that meeting (in the person's own capacity and/or as a proxy or representative) in relation to 20% or more of the Shares in the Company.

### **11. DISTRIBUTION OF PROCEEDS**

- 11.1 The Company must not declare dividends, or make distributions, to Shareholders.

11.2 All profits of the Company are to be applied in furthering the objective of the Initial Shareholders for the Company as provided in **clause 2.1**.

## 12. **FINANCIAL YEAR, REPORTS AND AUDITORS**

### **Financial Year**

12.1 The financial year for the Company (**Financial Year**) shall end on 31 December (unless the Parties agree otherwise in writing).

Financial reports and records

12.2 The Company must ensure:

(a) that its financial statements:

- (i) are prepared in accordance with the Financial Reporting Act 1993; and
- (ii) comply with generally accepted accounting practice (as that term is defined by section 3 of the Financial Reporting Act 1993); and

(b) that, within four months after the end of each Financial Year, it provides to the Directors:

- (i) a statement of financial performance, and statement of cash flows, for that Financial Year; and
- (ii) a statement of financial position as at the end of that Financial Year.

### **Auditors**

12.3 The auditors for the Company will be determined by ordinary resolution at the Annual Meeting of the Company.

12.4 The auditors for the first Financial Year of the Company are to be BDO Hogg Young Cathie.

## 13. **CONFIDENTIALITY**

### **Confidentiality**

13.1 All information marked “confidential” communicated by one Party to another Party in connection with this Agreement (**Confidential Information**), whether before or after the date of this Agreement, must be used by the Party receiving that Confidential Information only for the purposes for which it is provided.

13.2 A Party that has received Confidential Information must not disclose that Confidential Information to any third party without the prior written consent of the Party that provided that Confidential Information.

## **Employees and agents**

13.3 Each Party must:

- (a) advise its employees and agents who receive any other Party's Confidential Information of its confidential nature; and
- (b) require them to comply with **clauses 13.1 and 13.2**.

## **Exclusions**

13.4 The confidentiality provisions of this **clause 13** do not apply to any Confidential Information that:

- (a) is, or becomes, generally available to the public (other than as a result of disclosure in breach of this Agreement);
- (b) was rightfully in the recipient Party's possession prior to its receipt from the other Party;
- (c) is independently developed by the recipient Party without the use of another Party's Confidential Information; or
- (d) is disclosed in a manner required by law (so long as the recipient Party promptly provides the Party that provided the information with written notice of the required disclosure and of the relevant details).

## **14. FORCE MAJEURE**

14.1 Non-performance by a Party of any of its obligations under this Agreement is to be excused, without liability for non-performance, during the time and to the extent that performance is prevented, wholly or substantially, by a Force Majeure Event.

14.2 Any Party claiming the benefit of this **clause 14** must:

- (a) promptly give written notice to the other Parties specifying:
  - (i) the cause and extent of its inability to perform any of its obligations under this Agreement; and
  - (ii) the likely duration of that non-performance; and
- (b) take all reasonable steps to remedy, and limit the effect of, the Force Majeure Event.

14.3 No Party may, by virtue of this clause, be required against its will to settle any strike, lockout or other industrial disturbance.

## 15. **DISPUTES**

### **Good faith**

- 15.1 The Parties undertake to use all reasonable efforts in good faith to resolve any dispute which arises between them, or any of them, in connection with this Agreement (a **Dispute**).

### **Notice of dispute**

- 15.2 A Party must, as soon as reasonably practicable, give the other Parties notice of any Dispute.

### **Dispute resolution**

- 15.3 The Parties will endeavour to resolve the Dispute themselves within 10 Business Days of the receipt of the notice of a Dispute.

### **Mediation**

- 15.4 If the Parties fail to resolve the Dispute themselves within 10 Business Days of the receipt of the notice of the Dispute, the Parties will try to settle the Dispute by mediation.

- 15.5 Any Party may initiate mediation by giving written notice to the other Parties. If the Parties do not agree on a mediator, and the rules of mediation, within 5 Business Days after mediation has been initiated, then:

- (a) the mediator is to be selected by the chair of LEADR New Zealand Inc (or his or her nominee); and
- (b) the Parties must mediate the Dispute within the rules of LEADR New Zealand Inc.

### **No litigation**

- 15.6 No litigation in relation to a Dispute (except for an application for interim relief) may be commenced until the mediation process under **clause 15.4** has been completed.

### **Not arbitration**

- 15.7 **Clauses 15.4 to 15.6** provide for a form of alternative dispute resolution and are not references to arbitration.

### **Venue**

- 15.8 Any dispute resolution, mediation or litigation must be held in Wellington, New Zealand.

## 16. DEFAULT BY SHAREHOLDERS

### Default

16.1 A Shareholder is in default (**Default**) if that Shareholder (the **Defaulting Shareholder**):

- (a) breaches, or is in breach of, any provision of this Agreement which:
  - (i) if capable of remedy, is not remedied by the Defaulting Shareholder within 30 Business Days of being requested to do so by notice from any other Party; or
  - (ii) is a material provision of this Agreement and is not capable of remedy;
- (b) grants any Security over any of the Shareholders' Shares;
- (c) purports to Transfer any of its Shares (other than in accordance with **clause 7**);
- (d) is, becomes, or is deemed to be, insolvent or bankrupt;
- (e) makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors;
- (f) goes into receivership or has a receiver, manager, trustee or similar official appointed in respect of all or any of its property; or
- (g) has any resolution passed, or any proceeding commenced, for the winding up, dissolution or liquidation of that Shareholder.
- (h) fails to attend and vote at two consecutive Annual Meetings, either in person, or by proxy or representative, or by Postal Vote (if permitted) as the case may be. This clause 16.1(h) shall come into effect on 10 May 2007.

### Consequences of Default

16.2 If a Shareholder is in Default, then:

- (a) (unless otherwise agreed by Special Resolution) all rights attaching to the Shares held by the Defaulting Shareholder (including voting rights) will be suspended; and
- (b) if required in accordance with either of **clauses 7.4** or **7.4A**, the Defaulting Shareholder must transfer its Shares in accordance with that Special Resolution.

### Notice of Default

16.3 If a Party gives notice to a Defaulting Shareholder under **clause 16.1(a)(i)**, that Party must as soon as practicable give all other Shareholders and the Company a copy of that notice.

### Other remedies

16.4 The remedies provided by this **clause 16** are in addition to any other rights or remedies that a Party may have against a Defaulting Party.

## 17. TERMINATION

### Termination

17.1 This Agreement will continue in full force and effect until the earliest to occur of:

- (a) the date on which the Shareholders agree by Special Resolution to terminate this Agreement; or
- (b) the date on which an order is made, or a resolution is passed, to liquidate the Company.

### Preservation of rights

17.2 Termination of this Agreement does not affect:

- (a) any right of a Party against any other Party if that right accrued before termination; or
- (b) the provisions of **clause 13** (which are to survive termination of this Agreement).

## 18. REPRESENTATIONS AND WARRANTIES BY EACH PARTY

Each Party represents and warrants that the following are true on the date of this Agreement:

- (a) it has authority to enter into, and perform its obligations under, this Agreement;
- (b) the signing of, and performance of its obligations under, this Agreement has been authorised by all necessary action;
- (c) the signing of this Agreement by it, and the performance by it of its obligations under this Agreement, will not result in a breach of:
  - (i) the terms and conditions of any other agreement or arrangement to which it is a party or bound;
  - (ii) any order of any court, administrative agency or governmental body; or
  - (iii) any legislation applicable to it; and
- (d) this Agreement is enforceable against it in accordance with its terms.

## 19. NOTICES

### Giving notice

19.1 A notice, approval, consent or other communication (a "**Notice**") in connection with this Agreement must be:

- (a) in writing; and
- (b) left at the address of the addressee; or
- (c) sent by prepaid ordinary post to the address of the addressee; or
- (d) sent by facsimile to any facsimile number of the addressee.

### **Address**

19.2 The address and facsimile numbers of the Parties are:

#### **Shareholders**

*Addresses:* (as provided in **clause 4.2**);

#### **The Company**

*Address:* Level 1  
180-188 Taranaki Street  
Wellington

Facsimile No. (04) 385 7024

or any replacement address notified by a Party to the other Parties by Notice from time to time.

### **Receipt**

19.3 A Notice will be treated as having been received:

- (a) if left at the address of the addressee, on receipt;
- (b) if sent by prepaid ordinary post, on the third day after posting; and
- (c) if sent by facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

### **Delivery on non-Business Day**

19.4 If a Notice is received by a Party on a day that is not a Business Day, then the Notice will be treated as having been received on the next Business Day.

## **20. PROVISIONS RELATING TO AGREEMENT**

### **Governing document**

20.1 In the case of any conflict, or inconsistency, between the terms of this Agreement and:

- (a) the Constitution; or
- (b) the terms of any other agreement or document between the Parties relating to, or affecting, the business or affairs of the Company, -

this Agreement will prevail (to the maximum extent permitted by law).

### **Entire agreement**

20.2 This Agreement:

- (a) constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement; and
- (b) supersedes all previous agreements, undertakings and negotiations on that subject matter.

### **Amendment**

20.3 Subject to **clause 20.4** and subject to **clause 20.8**, this Agreement may be amended:

- (a) by Special Resolution of the Shareholders and that amendment will bind the Company and every Shareholder (whether or not that Shareholder has voted for that Special Resolution); or
- (b) by an amendment in writing signed by all the Parties.

20.3A: Subject to clause 20.4 the parties shall co-operate with each other in good faith to amend this Agreement and/or the Constitution where it is (and to the extent) necessary to secure or maintain any approval from the Commissioner of Inland Revenue as to the Company's charitable status, or to secure or maintain registration as a charitable entity under the Charities Act 2005.

20.3B: The parties shall change the name of the Company if this is required to obtain or maintain registration under the Charities Act 2005.

### **Severability**

20.4 The Shareholders must not, without the prior written notice of the Inland Revenue Department:

- (a) amend or delete this **clause 11**;
- (b) amend or delete this clause;
- (c) amend or delete clauses 2.3, 7.1, 9.4 or 18.2 of the Constitution; or
- (d) revoke the Constitution and adopt a new Constitution (unless clauses identical to clauses 2.3, 7.1, 9.4 and 18.2 of the Constitution) are included in the new constitution).

20.5 If any term or provision of this Agreement is, to any extent, held to be invalid or unenforceable:

- (a) the remainder of this Agreement will not be affected; and
- (b) each term and provision of this Agreement will be valid and enforceable to the maximum extent permitted by law.

### **Counterparts**

20.6 This Agreement may be signed in several counterparts.

20.7 All of the signed counterparts taken together constitute one single agreement between the Parties.

**Further restrictions on amendment**

20.8 The shareholders in the Company must not amend this Agreement or the Constitution (including but not limited to the objectives in clause 2.1 of this Agreement) if the effect of the amendment would be such that the Company would cease to exist exclusively for charitable purposes in New Zealand so as to no longer be eligible for tax relief under relevant New Zealand tax legislation or for the purposes of New Zealand gifting legislation or if the amendment would preclude the Company being registered as (or maintaining its registration as) a charitable entity under the Charities Act 2005.

20.9: The provisions of clauses 20.8, 20.3A, 20.3B shall not be subject to amendment if this would prevent the Company maintaining any approval from the Commissioner of Inland Revenue as to the Company's charitable status or would prevent the Company securing or maintaining registration as a charitable entity under the Charities Act 2005 and shall be included in any deed, agreement or arrangement between the parties replacing this Agreement.

**21. MISCELLANEOUS**

**Governing law**

21.1 This Agreement is to be governed by New Zealand law.

**Relationship between the Parties**

21.2 Nothing in this Agreement creates any partnership, agency, trust or employment relationship between the Parties.

21.3 A Party does not have the authority to act for, or to incur any obligation on behalf of, any other Party (except as expressly provided for in this Agreement).

**Assignment**

21.4 No Party may assign any right or obligation under this Agreement.

**Binds successor and assignees**

21.5 This Agreement is binding on the Parties and their respective successors.

**Waiver**

21.6 No delay or omission by a Party to exercise any right or power under this Agreement will:

- (a) impair that right or power; or
- (b) be construed as a waiver of it.

21.7 A waiver by a Party of:

- (a) any obligation to be performed by another Party under this Agreement; or
- (b) any breach of that obligation, -

will not be construed to be a waiver by that Party of any succeeding breach of that obligation or of any other obligation.

## 22. DEFINITIONS AND INTERPRETATION

### Definitions

22.1 Terms defined in the Constitution shall have the same meaning when used in this Agreement. In addition, unless the context requires otherwise:

**Additional Sector** has the meaning given by **clauses 2.1** and **5.1**;

**Additional Nga Mahi a te Rehia Sector Shares** has the meaning given by **clause 5.1**;

**Additional Sector Shares** has the meaning given by **clause 5.1**;

**Additional Share Category** has the meaning given by **clause 5.1**;

**Additional Shareholders** has the meaning given by **clause 5.1**;

**Agreement** means this shareholders agreement including any schedule (as it may be amended from time to time);

**Board** means the board of Directors of the Company;

**Business Day** means any day (other than a Saturday, Sunday or a public holiday in Wellington) on which registered banks are open for general banking business;

**Chairperson** means any individual appointed as the Chairperson of the Board;

**Community Recreation Sector** means that sector of the recreation industry in which recreational activities take place in the general community, but which do not involve a focus on principally Maori participants or fall within the Outdoor Recreation Sector, the Fitness Sector, the Ski Sector or the Sport Sector;

**Community Recreation Sector Share** means a Share referred to in **clause 4.3** as a Community Recreation Sector Share and includes a Share that becomes a Community Recreation Sector Share under **clause 7.8**);

**Companies Act** means the Companies Act 1993;

**Company** means SFRITO Limited;

**Confidential Information** has the meaning given by **clause 13.1**;

**Constitution** means the constitution of the Company from time to time;

**Default** has the meaning given by **clause 16.1**;

**Defaulting Shareholder** has the meaning given by **clause 16.1**;

**Dispute** has the meaning given by **clause 15.1**;

**Director** means any individual appointed as a director of the Company;

**Financial Year** has the meaning given by **clause 12.1**;

**Fitness Sector** means that sector of the fitness industry in which activities are undertaken to determine, sustain or improve the physical fitness levels of an individual, but which do not involve a focus on principally Maori participants;

**Fitness Sector Share** means a Share referred to in **clause 4.3** as a Fitness Sector Share (and includes a Share that becomes a Fitness Sector Share under **clause 7.8**);

**Force Majeure Event** means an event beyond the reasonable control of a Party, including:

- (a) act of God;
- (b) earthquake, flood, fire, storm and adverse weather conditions for which provisions could not reasonably have been made;
- (c) unpredictable and reasonably unpreventable delays in the delivery of materials, equipment or services necessary for the compliance by the Party of an obligation under this Agreement;
- (d) sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not);
- (e) governmental restraint, expropriation, prohibition, intervention, direction or embargo; and
- (f) strike, lock-out, work stoppage or other labour hindrance;

**Identified Share Category** has the meaning given by **clause 6.1**;

**Identified Shares** has the meaning given by **clause 7.4**;

**Industry Sectors** has the meaning given by **clause 2.1**;

**Industry Sector Shares** means any Shares referred to in paragraphs (a) to (e) of **clause 4.3** and any Additional Sector Shares;

**Initial Share Capital** has the meaning given by **clause 4.1**;

**Initial Shareholders** means those of the Proposed Shareholders who have signed this Agreement;

**National Qualifications Framework** has the meaning given to that term by the Background to this Agreement;

**Nga Mahi a te Rehia Sector** has the meaning given by **clause 2.1**;

**Nga Mahi a te Rehia Sector Share** means a Share referred to in **clause 4.3** as a Nga Mahi a te Rehia Sector Share and any Additional Nga Mahi a te Rehia Sector

Share issued by Special Resolution under **clause 5.1(a)(v)** (and includes a Share that becomes a Nga Mahi a te Rehia Sector Share under **clause 7.8**);

**Notice** has the meaning given by **clause 19.1**;

**Outdoor Recreation Sector** means that sector of the recreation industry in which recreational activities take place in the outdoors, but which do not involve a focus on principally Maori participants or fall within the Community Recreation Sector, the Fitness Sector, the Ski Sector or the Sport Sector;

**Outdoor Recreation Sector Share** means a Share referred to in **clause 4.3** as an Outdoor Recreation Sector Share (and includes a Share that becomes an Outdoor Recreation Sector Share under **clause 7.8**);

**Party** means each of the Initial Shareholders and the Company;

**Proposed Shareholders** means the persons set out in **clause 4.3**, and includes the Initial Shareholders;

**Requestor** has the meaning given by **clause 6.1**;

**Required Transferee** has the meaning given by **clause 7.6**;

**Sector** means the Industry Sectors, the Nga Mahi a te Rehia Sector and any Additional Sector;

**Security** includes a debenture, mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, equity, deferred purchase option, right to pre-emption, and any other security interest or third party right (whether legal or equitable);

**SFRITO Inc** has the meaning given to that term by the Background to this Agreement;

**Share** means any share issued by the Company;

**Share Category** means any category of Shares referred to in **clause 4.2(b)** and includes any Additional Share Category created by Special Resolution under **clause 5.1(a)**;

**Share Eligibility Criteria** has the meaning given by **clause 6.2**;

**Shareholder** means a person who holds a Share or Shares;

**Share Request** has the meaning given by **clause 6.1**;

**Ski Sector** means that sector of the ski industry in which activities principally involving the use of snow or which are required to take place in mountainous regions are undertaken, but which do not involve a focus on principally Maori participants;

**Ski Sector Share** means a Share referred to in **clause 4.3** as a Ski Sector Share (and includes a Share that becomes a Ski Sector Share under **clause 7.8**);

**Special Resolution** means a resolution approved by a majority of 75 percent of the votes of those Shareholders entitled to vote and voting on the resolution;

**Sport Sector** means that sector of the Industry in which activities are undertaken for sport, but which do not involve a focus on principally Maori participants or fall within the Ski Sector;

**Sport Sector Share** means a Share referred to in **clause 4.3** as a Sport Sector Share (and includes a Share that becomes a Sport Sector Share under **clause 7.8**);

**Term** has the meaning given by **clause 1.1**;

**Transfer**, in relation to a Share, includes assigning, donating, conveying, mortgaging, pledging or otherwise encumbering, or granting an option in relation to, that Share; and

**Void transfer** has the meaning given by **clause 7.10**.

### **Interpretation**

22.2 Unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words of one gender include the other gender;
- (c) a reference to a **clause** or **schedule** is to a clause of, or a schedule to, this Agreement;
- (d) a reference to **dollars** or **\$** is to New Zealand dollars;
- (e) a reference to a time is to that time in New Zealand;
- (f) where the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the preceding Business Day;
- (g) references to legislation include references to:
  - (i) regulations, orders or notices made under that legislation;
  - (ii) all amendments to that legislation; and
  - (iii) all legislation passed in substitution for that legislation.
- (h) references to persons include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities (whether or not having separate legal personality).

### **Headings**

22.3 The headings and the table of contents used in this Agreement:

- (a) are for reference and convenience only; and
- (b) do not affect the interpretation of this Agreement.

## SCHEDULE 1 DEED OF UNDERTAKING

**THIS DEED** is made between:

The shareholders listed in the appendix to this deed (the **Continuing Shareholders**); and  
[SFRITO] Limited (the **Company**); and  
[                    ] (the **New Party**).

### **BACKGROUND**

- The Continuing Shareholders are Shareholders in the Company and are parties to a shareholders agreement dated [                    ] (the **Agreement**) relating to the Company.
- The Company is a party to the Agreement.
- The Company has resolved to [issue Shares] [approve the transfer of Shares] (the **Shares**) in the Company subject (amongst other things) to the New Party signing this Deed of Undertaking.

NOW BY THIS DEED the parties agree as follows:

#### **New Party bound by Agreement**

1. The New Party agrees that, from the date (the **Effective Date**) the Shares are [issued] [transferred] to the New Party, the New Party:
  - (a) becomes a party to the Agreement as if the New Party had been one of the Initial Shareholders to the Agreement and had signed it;
  - (b) must observe and perform all of the obligations of an Initial Shareholder or Shareholder under the Agreement; and
  - (c) is bound by the terms and conditions of the Agreement.

#### **Continuing Shareholders continue to be bound by Agreement**

2. The Continuing Shareholders and the Company agree with the New Party that from the Effective Date they:
  - (a) must observe and perform their respective obligations under the Agreement; and
  - (b) are bound by the terms of the Agreement.

#### **Representations and warranties**

3. The New Party gives the representations and warranties set out in clause 18 of the Agreement as if that New Party was a Initial Shareholder.

## **Address**

4. The New Party's address is, for the purposes of clause 19.2 of the Agreement:

[address]

Facsimile:

Attention:

## **Definitions and interpretation**

5. Clause 22 of the Agreement (relating to definitions and interpretation) applies with all necessary changes to this Agreement.

## **APPENDIX Continuing Shareholders**

*[Signing provisions]*

**SCHEDULE 2**  
**PROVISIONS FOR ELECTION OF DIRECTORS AND/OR CHAIRPERSON**

**Directors and Chairperson must be elected under this Schedule**

S2.1 Subject to S2.1A, the election of a Director or Directors, and/or a Chairperson, must be carried out at a meeting of Shareholders in accordance with this schedule.

- (a) **If the Board so decide, the election of a Director or Directors, and/or a Chairperson can be carried out by way of a postal vote in accordance with Schedule 3 rather than in accordance with Schedule 2 and that for the purposes of S2.1A the form of Schedule 3 attached to the notice of Annual General Meeting (and as amended by the inclusion of the attached clauses S3.12, 3.14 and 3.15) be attached to the Shareholders' Agreement so as to form part of that Agreement**

**Interpretation**

S2.2 In this schedule, except where the context requires otherwise:

**Absolute Majority** means more than fifty percent;

**Candidate**, in relation to an Election, means a person who has been Nominated for that Election;

**Chairperson Voting Form** means a Voting Form referred to in **clause S2.7(b)**;

**Directors' Voting Form** means a Voting Form referred to in **clause S2.7(a)**;

**Election** means an election of a Director, or a Chairperson, at an Election Meeting in accordance with this Schedule;

**Election Meeting** means a meeting of Shareholders that is for the purpose of, or includes, the election of a Director or Directors and/or a Chairperson;

**First Choice Candidate**, in relation to a Voting Form completed by a Shareholder in an Election for a vacancy for a Director or Chairperson:

- (c) means the most preferred Candidate of that Shareholder for that vacancy as specified in the Voting Form, and "**Second Choice Candidate**" means the next most preferred Candidate, and so on; and

- (d) includes any other Candidate treated under this schedule as a First Choice Candidate;

**First Choice Vote** has the meaning given to that term by **clause S2.11** and includes any vote treated under this schedule as a First Choice Vote;

**Live Candidate**, in relation to an Election, means a Candidate for that Election who has not been eliminated from that Election under **paragraphs (b)(i) and (c)(ii) of clause S.12 or clause S.13**;

**Live Vote**, in relation to an Election, means a First Choice Vote of a Shareholder for a Candidate for that Election that:

- (a) has been given to a Candidate and has not been allocated to another Candidate under **paragraphs (b)(ii), (c)(ii)(bb) or (d)(ii) of clause S2.12**; or
- (b) has been allocated to another Candidate under **paragraphs (b)(ii), (c)(ii)(bb), or (d)(ii) of clause S2.12 or clause S2.13**;

**Nomination**, in relation to an Election, means a nomination for a Director or Directors, and/or a Chairperson, in accordance with **clauses S2.3 and S2.4**; and “**Nominated**” has a corresponding meaning;

**Scrutineer**, in relation to an Election, means a scrutineer for that Election appointed under **clause S2.6**; and

**Voting Form** means a Directors’ Voting Form or a Chairperson Voting Form.

### **Nomination of Candidates**

S2.3 Where a Director or Directors, and/or a Chairperson, is to be elected by Shareholders at an Election Meeting, each Shareholder may nominate:

- (a) in an Election of a Director or Directors:
  - (i) one Candidate, if there is one vacancy for a Director; or
  - (ii) as many Candidates as there are vacancies in Directors, if there is more than one vacancy; and
- (b) in an Election of a Chairperson, one Candidate.

S2.4 A Nomination for a Candidate or Candidates must be:

- (a) in writing;
- (b) signed by, or on behalf of, the relevant Shareholder; and
- (c) notified to the Company not less than 7 days before the date of the Election Meeting.

S2.5 A Nomination for a Candidate or Candidates that does not meet the requirements of **clause S2.4**:

- (a) is invalid; and
- (b) must not be taken into account in:
  - (i) an Election; and,
  - (ii) in particular, in preparing Voting Forms to be provided to Shareholders under **clause S2.7**.

### **Scrutineer**

S2.6 The Chairperson of an Election Meeting must ensure that the auditors of the Company appoint a scrutineer to count any votes in relation to the Election of a Director or Directors, and/or a Chairperson, at that Election Meeting.

## **Voting Forms**

S2.7 The Chairperson of an Election Meeting must ensure there is provided to each Shareholder attending at that Election Meeting:

- (e) where there is to be an Election of a Director or Directors, a Voting Form including in alphabetical order all the Candidates to be a Director or Directors; and/or
- (f) where there is to be an Election of a Chairperson, a Voting Form including in alphabetical order all the Candidates to be Chairperson.

## **Shareholder's order of preference for Candidates**

S2.8 Each Shareholder wishing to vote at an Election Meeting for the election of a Director or Directors, and/or a Chairperson, must:

- (a) indicate on the relevant Voting Form the Shareholder's preference for the relevant Candidates by entering on the Voting Form the names of all the Candidates in descending order of the Shareholder's preference; namely -
- (b) enter on the relevant Voting Form:
  - (i) the name of the Shareholder's most preferred Candidate at the top;
  - (ii) the name of the Shareholder's next most preferred Candidate after the Shareholder's most preferred Candidate; and
  - (iii) the names of the all the other Candidates in descending order of preference.

## **Voting Forms to be provided to Scrutineer**

S2.9 The Chairperson of an Election Meeting must, at that Election Meeting, provide the Scrutineer with the originals of:

- (a) all completed Directors' Voting Forms; and/or
- (b) all completed Chairperson Voting Forms.

## **Invalid Voting Forms**

S2.10 If a Shareholder does not complete a Voting Form in accordance with **clause S2.8**, that Voting Form:

- (a) is invalid; and
- (b) must not be taken into account:
  - (i) in the Election; and
  - (ii) in particular, by the Scrutineer.

## Determination of votes

S2.11 In an Election, a First Choice Candidate of a Shareholder is allocated one vote (a “**First Choice Vote**”) for each Ordinary Share held by the Shareholder. First Choice Votes may be allocated in accordance with this schedule to other Candidates in that Election.

S2.12 An Election to a vacancy for a Director, and/or a Chairperson, at an Election Meeting is to be determined by the Scrutineer as follows:

(a) if any Candidate receives an Absolute Majority of the First Choice Votes on the relevant Voting Forms, that Candidate is elected to the vacancy;

(b) if there is no Candidate that receives an Absolute Majority of the First Choice Votes:

(iii) the following Candidates are eliminated from the voting for that vacancy:

(aa) any Candidates who received no First Choice Votes;  
and

(bb) every Candidate who received the smallest number of First Choice Votes; and

(ii) every First Choice Vote of a Shareholder allocated to a Candidate eliminated under **paragraph (b)(i)** is allocated to the Candidate who is that Shareholder’s Second Choice Candidate (or, where that Candidate has been eliminated under **paragraph (b)(i)**, to that Shareholder’s next choice of Candidate who is still a Live Candidate);

(c) if, following an allocation of votes under **paragraph (b)(ii)**:

(iii) a Live Candidate has received, or has been allocated, an Absolute Majority of the Live Votes, that Live Candidate is elected to the vacancy; or

(iv) there is no Live Candidate that has received, or has been allocated, an Absolute Majority of the Live Votes:

(aa) the Live Candidate who has received, or has been allocated, the smallest number of Live Votes is eliminated from the voting for that vacancy; and

(bb) each Live Vote of a Shareholder received by, or allocated to, a candidate eliminated under **paragraph (c)(ii)(aa)** is allocated to the relevant Shareholder’s next choice of candidate who is still a Live Candidate;

(d) if, following an allocation of Live Votes under **paragraph (c)(ii)(bb)**:

(v) a Live Candidate has received, or has been allocated, an Absolute Majority of the Live Votes, that Live Candidate is elected to the vacancy; or

- (vi) if there is no Live Candidate that has received, or has been allocated, an Absolute Majority of Live Votes, the procedure in **paragraph (c)(ii)** is repeated (and as many times as are necessary) until there is a Live Candidate with an Absolute Majority of Live Votes.

#### **Where there is more than one vacancy for Director**

S2.13 The procedure in **clause S2.12** is to be repeated for each vacancy for a Director at an Election except that:

- (a) all successful Candidates at that Election are eliminated when repeating the procedure in **clause S2.12**;
- (b) all votes cast for successful Candidates are disregarded and, accordingly in particular, where a First Choice Vote has been cast by Shareholders for a successful Candidate, that vote will be treated as a First Choice Vote cast for that Shareholders' Second Choice Candidate and so on; and
- (c) all Candidates previously eliminated from the Election (except successful Candidates) re-enter the Election for the next vacancy.

#### **Determination of smallest number of votes**

S2.14 If, in carrying out an Election under **clause S2.12** or **clause S2.13**:

- (a) it is necessary to determine the Candidate who has the smallest number of First Choice Votes or Live Votes (as the case may be) in order to eliminate a Candidate and allocate votes received by, and allocated to, that Candidate; and
- (b) two or more Candidates have an equal number of First Choice Votes or Live Votes (as the case may be) and that is the smallest number of those votes;

the following Candidate of those two or more Candidates will be treated for the purposes of **clause S2.12** or **clause S2.13** (as the case may be) as having the smallest number of votes:

- (c) the Candidate with the smallest number of First Choice Votes as a result of being a First Choice Candidate (as distinct from votes allocated to that Candidate under **clause S2.12**); or
- (d) if the relevant Candidates have an equal number of First Choice Votes as a result of being a First Choice Candidate, the Candidate with the smallest number of First Choice Votes that would arise if all Second Choice Candidates in that Election were treated as if they were First Choice Candidates; and
- (e) if the relevant Candidates have an equal number of votes determined under **paragraph (d)**, the Candidate with the smallest number of First Choice Votes that would arise if all Third Choice Candidates in that Election were treated as if they were First Choice Candidates, and so on until a Candidate is eliminated.

#### **Where smallest number of votes incapable of determination**

S2.15 If, following the procedure in **clause S2.14**, no Candidate has been eliminated then:

- (c) any Candidate who has been successfully elected at that Election to a vacancy remains elected and that vacancy is filled;
- (d) a new Election must be held for the remaining vacancies in accordance with this Schedule and a new Voting Form (with any successful Candidate or Candidates eliminated) provided to each Shareholder attending at the Election Meeting.

**Default procedure to enable filling of vacancies**

S2.16 If no Candidate is successfully elected following a new Election under **clause S2.15**, the remaining vacancies are filled in accordance with the following:

- (e) the Candidate with the highest number of First Choice Votes in the new election under **clause S2.15** is elected to the first vacancy;
- (f) the candidate with the next highest number of First Choice Votes is elected to the next vacancy, and so on until all the vacancies are filled; and
- (g) in the event of any equality of votes, the Chairperson of the Annual Meeting has a casting vote.

### **SCHEDULE 3 POSTAL VOTING**

- S3.1 Directors and the Chairperson must be elected under this Schedule if the Board so decide pursuant to section 2.1A of the Second Schedule of the Shareholders' Agreement.
- S3.2 Where a decision is made under S3.1 the provisions of this Schedule 3 shall apply notwithstanding any provisions to the contrary.

#### **Postal Voting for Election of Director(s) and Chairperson**

##### S3.3 Interpretation

**Candidate**, in relation to a Postal Election means a person who has been nominated for that Postal Election;

**First Choice Candidate**, in relation to a Voting form completed by a Shareholder in a Postal Election for a vacancy for a Director or Chairperson:

- (a) means the most preferred candidate of that shareholder for that vacancy as specified in the Voting Form, and "**Second Choice Candidate**" means the next most preferred candidate, and so on; and
- (b) includes any other Candidate treated under this Schedule as a First Choice Candidate.

**Live Candidate**, in relation to a Postal Election means a Candidate for that Postal Election who has not been eliminated from that Election under paragraphs (b)(i) and (c)(ii) of S3.17;

**Live Vote**, in relation to a Postal Election, means a First Choice Vote of a Shareholder for a Candidate for that Postal Election that:

- a. has been given to a Candidate and has not been allocated to another Candidate under paragraphs (b)(ii), (c)(ii) of S3.17; or
- b. has been allocated to another Candidate under paragraphs (b)(ii), (c)(ii) of S3.17.

**Majority** means more than fifty percent of those votes received by the Scrutineer received for the Postal Election;

**Nomination**, in relation to a Postal Election, means a nomination for a Director or Directors and/or a Chairperson, in accordance with S3.8 and S3.9; and "**Nominated**" has a corresponding meaning;

**Postal Election** means an election of a Director or Directors, and/or a Chairperson by Postal Vote in accordance with this Schedule;

**Postal Vote**, in relation to a Postal Election, has the same meaning as a Live Vote which is made in accordance with S3.6 and S3.7;

**Scrutineer**, in relation to a Postal Election, means a Scrutineer for that Postal Election appointed under S3.5; and

**Voting Form** means that form used to vote in order to carry out the Postal Vote and may take a similar format to that set out in the appendix to this Schedule

### **Notice of Postal Election**

- S3.4 The Board shall notify all Shareholders of a Postal Election within [2] months of the date the Postal Election is to take place.
- S3.5 The notice must state the Scrutineer appointed by the auditors of the Company who is authorised to receive and count the Postal Votes.
- S3.6 The notice must state how the Shareholder shall cast their Postal Vote and the date by which their Postal Vote must reach the Scrutineer. For the purposes of this S3.6, the posting rules shall apply.
- S3.7 The notice must be accompanied by a Voting Form similar in form to that set out in the appendix to this schedule and the notice must be sent to every Shareholder of the Company.

## **Nomination of Candidates**

S3.8 Where a Director or Directors, and/or a Chairperson, is to be elected by Shareholders by Postal Election, each Shareholder may nominate:

- (c) in a Postal Election of a Director or Directors:
  - (i) one Candidate, if there is one vacancy for a Director; or
  - (ii) as many Candidates as there are vacancies in Directors, if there is more than one vacancy; and
- (d) in a Postal Election of a Chairperson, one Candidate.

S3.9 A Nomination for a Candidate or Candidates must be:

- (a) in writing;
- (b) signed by, or on behalf of, the relevant Shareholder; and
- (c) notified to the Company not less than [ 1 ] month before the date the Postal Election is to take place.

S3.10 A Nomination for a Candidate or Candidates that does not meet the requirements of S3.9 above:

- (a) is invalid; and
- (b) must not be taken into account in:
  - (i) a Postal Election; and
  - (ii) in particular, in preparing Voting Forms to be provided to Shareholders under S3.12.

## **Scrutineer**

S3.11 The Chairperson of a Postal Election must ensure that the auditors of the Company appoint a Scrutineer to count any votes in relation to the Postal Election of a Director or Directors, and/or a Chairperson for that Postal Election and the Scrutineer has a duty to:

- (c) Collect together all Postal Votes received by him or her or by the Company;
- (d) In relation to each Postal Vote, to count:
  - (i) Each Postal Vote in accordance with S3.17; and
  - (ii) The number of Shareholders who have submitted a Postal Vote; and

- (iii) The number of Shareholders who have not submitted a Postal Vote;
- (e) To sign a certificate that he or she has carried out the duties set out in S3.11 of this Schedule and which sets out the results of the count required by S3.17 of this Schedule; and
- (f) To ensure that the certificate required by S3.11c of this Schedule is presented to the auditors of the Company.

### **Voting Forms**

S3.12 The Board must ensure there is provided to each Shareholder entitled to cast a postal vote a Voting Form which sets out the matter to be decided in clear terms and sets out the date by which postal votes must be received by the Board.

### **Shareholder's order of preference for Candidates**

S3.13 Each Shareholder wishing to vote at a Postal Election for the election of a Director or Directors, and/or a Chairperson, must enter on the relevant Voting form:

- (a) the name of the Shareholder's most preferred Candidate at the top;
- (b) the name of the Shareholder's next most preferred Candidate after the Shareholder's most preferred Candidate; and
- (c) the names of all the other Candidates in descending order of preference.

### **Voting Forms to be provided to Scrutineer**

S3.14 The Board must provide the Scrutineer with the originals of all completed voting forms received by Shareholders within 2 days of the final date by which postal votes must be received by the Board.

### **Invalid Voting Forms**

S3.15 If a Shareholder does not complete a Voting Form in accordance with S3.12, that Voting Form:

- (a) is invalid; and
- (b) must not be taken into account in determining the matter and in particular by the Scrutineer.

### **Determination of Votes**

S3.16 In a Postal Election a First Choice Candidate of a Shareholder is allocated one vote (a "**First Choice Vote**") for each Ordinary Share held by the Shareholder. First

choice Votes may be allocated in accordance with this schedule to other Candidates in that Postal Election.

S3.17 A Postal Election to a vacancy for a Director, and/or a Chairperson, at a Postal election is to be determined by the Scrutineer as follows:

- (a) If any Candidate receives a Majority for the First Choice Votes on the relevant Voting Forms, that Candidate is elected to the vacancy;
- (b) If there is no Candidate that receives a Majority of the First Choice Votes:
  - (i) the following Candidates are eliminated from the voting for that vacancy:
    - (A) any Candidates who received no First Choice Votes; and
    - (B) every Candidate who received the smallest number of First Choice Votes; and
  - (ii) every First Choice Vote of a Shareholder allocated to a Candidate eliminated under **paragraph (b)(i)** is allocated to the Candidate who is that Shareholder's Second Choice Candidate (or, where that Candidate has been eliminated under **paragraph (b)(i)**, to that Shareholder's next choice of Candidate who is still a Live Candidate);
- (c) If, following an allocation of votes under **paragraph (b)(ii)**:
  - (i) A Live Candidate has received, or has been allocated, a Majority of the Live Votes, that Live Candidate is elected to the vacancy; or
  - (ii) There is no Live Candidate that has received, or has been allocated, a Majority of the Live Votes:
    - (A) the Live Candidate who has received, or has been allocated, the smallest number of Live Votes is eliminated from the voting for that vacancy; and
    - (B) each Live Vote of a Shareholder received by, or allocated to, a candidate eliminated under **paragraph (c)(ii)(A)** is allocated to the relevant Shareholder's next choice of candidate who is still a Live Candidate;

- (d) If, following an allocation of Live Votes under **paragraph (c)(ii)(B)**:
  - (i) a Live Candidate has received, or has been allocated, a Majority of the Live Votes, that Live Candidate is elected to the vacancy; or
  - (ii) if there is no Live Candidate that has received, or has been allocated, a Majority of Live Votes, the procedure in **paragraph (c)(ii)** is repeated (and as many times as are necessary) until there is a Live Candidate with a Majority of Live Votes.

### **Where There is More than one vacancy for Director**

S3.18 The procedure in **S3.17** is to be repeated for each vacancy for a Director at a Postal Election except that:

- (a) all successful Candidates at that Postal Election are eliminated when repeating the procedure in **S3.17**;
- (b) all votes cast for successful Candidates are disregarded and, accordingly in particular, where a First Choice Vote has been cast by Shareholders for a successful Candidate, that vote will be treated as a First Choice Vote cast for that Shareholders' Second Choice Candidate and so on; and
- (c) all Candidates previously eliminated from the Postal Election (except successful Candidates) re-enter the Postal Election for the next vacancy.

### **Determination of smallest number of Votes**

S3.19 If, in carrying out an Election under **S3.17** or **S3.18**

- (a) it is necessary to determine the Candidate who has the smallest number of First Choice Votes or Live Votes (as the case may be) in order to eliminate a Candidate and allocate votes received by, and allocated to, that Candidate; and
- (b) two or more Candidates have an equal number of First Choice Votes or Live Votes (as the case maybe) and that is the smallest number of those votes;

the following Candidate of those two or more Candidates will be treated for the purposes of **S3.17** or **S3.18** (as the case may be) as having the smallest number of votes:

- (a) the Candidate with the smallest number of First Choice Votes as a result of being a First Choice Candidate (as distinct from votes allocated to that Candidate under **S3.17**); or
- (b) if the relevant Candidates have an equal number of First Choice Votes as a result of being a First Choice Candidate, the Candidate with the smallest

number of First Choice Votes that would arise if all Second Choice Candidates in that Election were treated as if they were First Choice Candidates; and

- (c) if the relevant Candidates have an equal number of votes determined under **paragraph (d)**, the Candidate with the smallest number of First Choice Votes that would arise if all Third Choice Candidates in that Election were treated as if they were First Choice Candidates, and so on until a Candidate is eliminated.

#### **Where smallest number of votes incapable of determination**

S3.20 If, following the procedure in **S3.19**, no Candidate has been eliminated then:

- (a) any Candidate who has been successfully elected at that Election to a vacancy remains elected and that vacancy is filled;
- (b) a new Postal Election must be held for the remaining vacancies in accordance with this Schedule and a new Voting Form (with any successful Candidate or Candidates eliminated) provided to each Shareholder for the new Postal Election, in accordance with **S3.12**.

#### **Default procedure to enable filling of vacancies**

S3.21 If no Candidate is successfully elected following a new Postal Election under **S3.20**, the remaining vacancies are filled in accordance with the following:

- (a) The Candidate with the highest number of First Choice Votes in the new Postal Election under S3.20 is elected to the first vacancy;
- (b) the Candidate with the next highest number of First Choice Votes is elected to the next vacancy, and so on until all the vacancies are filled; and
- (c) in the event of any equality of votes, the Chairperson of the Annual Meeting has a casting vote.

## SCHEDULE 4 POSTAL VOTING FOR GENERAL PURPOSES

- S4.1 Any matter to be decided by the Shareholders' pursuant to either the Constitution or the Shareholders' Agreement may be determined by Postal Vote if the Board so determine. Where the Board is of the opinion that a matter be determined by Postal Vote, the provisions of this Schedule 4 shall apply.
- S4.2 The Board must advise the Shareholders in advance that they are proposing to have a matter determined by Postal Vote. It is intended that a brief outline of the matter be included in the notice to Shareholders advising them of the Board's intention use a postal vote to determine a matter. If appropriate Shareholders can provide input to the Board before the postal vote process is implemented.

### Interpretation

**Majority** means more than fifty percent of those votes received by the Scrutineer received for the Postal Vote;

**Scrutineer**, in relation to a Postal Vote, means a Scrutineer for that Postal Vote appointed under S4.6; and

**Voting Form** means that form sent to Shareholders' to be used to vote on a matter in order to carry out the postal vote.

### Notice

- S4.3 Following compliance with S4.2 the Board shall notify all Shareholders of a postal vote matter within [1 ] month of the date the postal vote is to take place. The notice must state the Scrutineer appointed [by the auditors of the Company/the Board] who is authorised to receive and count the Postal Votes.
- S4.4 The notice must state how the Shareholder shall cast their postal vote and the date by which their postal vote must reach the Scrutineer. For the purposes of this S4.4, the posting rules shall apply.

S4.5 The notice must be accompanied by a Voting Form and the notice must be sent to every Shareholder of the Company.

### **Scrutineer**

S4.6 The Board must ensure that the [auditors of the Company/the Board] appoint a Scrutineer to count any votes in relation to the postal vote and the Scrutineer has a duty to:

- (a) Collect together all postal votes received by him or her or by the Company;
- (b) In relation to each postal vote, to count:
  - (i) Each postal vote; and
  - (ii) The number of Shareholders who have submitted a postal vote; and
  - (iii) The number of Shareholders who have not submitted a postal vote;
- (c) To sign a certificate that he or she has carried out the duties set out in this S4.6 of this Schedule and which sets out the results of the count; and
- (d) To ensure that the certificate required by S4.6c of this Schedule is presented to the Board of the Company within [5] days of the final date for postal votes to be received.

### **Voting Forms**

S4.7 The Board must ensure there is provided to each Shareholder entitled to cast a postal vote a Voting Form which sets out the matter to be decided in clear terms and sets out the date by which postal votes must be received by the Board.

### **Voting Forms to be provided to Scrutineer**

S4.8 The Board must provide the Scrutineer with the originals of all completed voting forms received by Shareholders within [2] days of the final date by which postal votes must be received by the Board.

### **Invalid Voting Forms**

S4.9 If a Shareholder does not complete a Voting Form in accordance with S4.7, that Voting Form:

- (a) is invalid; and
- (b) must not be taken into account in determining the matter and in particular by the Scrutineer.

### **Determination of Votes**

- S4.10 In a postal vote, a Shareholder is allocated one vote for each Ordinary Share held by the Shareholder.
- S4.11 A matter voted on by way of postal vote is to be determined by a simple majority of those Shareholders who have submitted a postal vote, unless the Constitution or Shareholders' Agreement provides that the matter must be determined by a special resolution of Shareholders' in which case the matter shall be determined by such number as is required for a special resolution.

## Annexure

### Voting Form for Postal Vote

#### Sfrito Limited ("The Company")

I, \_\_\_\_\_ of \_\_\_\_\_ being a Shareholder of the Company nominate from the list below the following candidate(s) to be a director or directors and/or the Chairperson of the Board of the Company:

Alphabetical list of Director nominations:

- 1.
- 2.
- 3.
- 4.
- 5.

By order of preference I nominate the following to be a Director(s) of the Company:

- 1.
- 2.
- 3.
- 4.
- 5.

Alphabetical list of Chairperson nominations:

- 1.
- 2.
- 3.

I nominate the following person to be the Chairperson of the Company:

- 1.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_

Signature(s): \_\_\_\_\_  
\_\_\_\_\_

Notice:

1 You may cast a Postal Vote by completing and sending this form to \_\_\_\_\_  
\_\_\_\_\_ at \_\_\_\_\_ by \_\_\_\_\_ 200\_\_

2 This form must be signed by the shareholders or their attorney duly authorised in writing or if the shareholder is a company, by a signatory/ies or attorney duly authorised.

**SIGNED** as an agreement

*SPORT SECTOR:*

**SIGNED** by **DAVID KNOWLES:**

\_\_\_\_\_

**COACHING NEW ZEALAND TE MANA  
KAI WHAKAWAIWAI O AOTEAROA  
INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

**SPORT SCIENCE NEW ZEALAND  
INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

*FITNESS SECTOR:*

**FITNESS NEW ZEALAND  
INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

*COMMUNITY RECREATION SECTOR:*

**NEW ZEALAND RECREATION  
ASSOCIATION INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

**ARTMAKERS COMMUNITY ARTISTS  
TRUST** by:

\_\_\_\_\_  
Name and office of signatory

**NATIONAL COUNCIL OF YMCAS OF  
NEW ZEALAND INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

**WATERSAFETY NEW ZEALAND  
INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

*OUTDOOR RECREATION SECTOR:*

\_\_\_\_\_  
Name and office of signatory

**EDUCATION OUTDOORS NEW  
ZEALAND INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

**NEW ZEALAND OUTDOOR  
INSTRUCTORS ASSOCIATION  
INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

\_\_\_\_\_  
Name and office of signatory

**NEW ZEALAND TOURISM INDUSTRY  
ASSOCIATION INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

**OUTWARD BOUND TRUST OF NEW  
ZEALAND** by:

\_\_\_\_\_  
Name and office of signatory

**THE PROJECT K TRUST** by:

\_\_\_\_\_  
Name and office of signatory

**THE SIR EDMUND HILLARY OUTDOOR  
PURSUITS CENTRE OF NEW ZEALAND**  
by:

\_\_\_\_\_  
Name and office of signatory

**SIGNED** by **CHRIS KNOL:**

\_\_\_\_\_

**WOMEN'S OUTDOOR PURSUITS  
INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

**CHRISTIAN CAMPING NEW ZEALAND  
INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

**NEW ZEALAND SCHOOL OF OUTDOOR  
STUDIES INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

**WHENUA-ITI TRUST** by:

\_\_\_\_\_  
Name and office of signatory

**SIGNED** by **JAN DAVIDSON:**

\_\_\_\_\_

**SPORT NORTHLAND** by:

\_\_\_\_\_  
Name and office of signatory

**SPIRIT OF ADVENTURE TRUST BOARD**  
by:

\_\_\_\_\_  
Name and office of signatory

*SKI SECTOR:*

**NEW ZEALAND SKI COUNCIL  
INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

**SKI AREAS ASSOCIATION (NEW  
ZEALAND) INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

**NEW ZEALAND SNOW INDUSTRIES  
FEDERATION INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

**NEW ZEALAND SKI INSTRUCTORS  
ALLIANCE INC** by:

\_\_\_\_\_  
Name and office of signatory

**THE CANTERBURY SNOW SPORTS  
ASSOCIATION INCORPORATION** by:

\_\_\_\_\_  
Name and office of signatory

*NGA MAHI A TE REHIA SECTOR:*

**SIGNED** by **ALBERT DUDLEY:**

\_\_\_\_\_

**SIGNED** by **MARTIN STIRLING:**

\_\_\_\_\_

**TE HOTU MANAWA MAORI  
CHARITABLE TRUST** by:

\_\_\_\_\_  
Name and office of signatory

**SIGNED** by **ANARU PAENGA:**

\_\_\_\_\_

**MAORI WOMEN'S WELFARE LEAGUE  
INC** by:

\_\_\_\_\_  
Name and office of signatory

**SIGNED** by **GAIL PARATA:**

\_\_\_\_\_

**SIGNED** by **BOB TUKIRI:**

\_\_\_\_\_

**AOTEAROA MAORI TENNIS  
ASSOCIATION INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

**NGA KAIHOE O AOTEAROA NEW  
ZEALAND MAORI POLYNESIAN CANOE  
SPORTING FEDERATION  
INCORPORATED** by:

\_\_\_\_\_  
Name and office of signatory

**SIGNED by GEORGE SKUDDER:**

\_\_\_\_\_

**SIGNED by SAM KEREAMA:**

\_\_\_\_\_

**HAURAKI MAORI TRUST BOARD by:**

\_\_\_\_\_  
Name and office of signatory

**TAURANGA MOANA MAORI TRUST BOARD by:**

\_\_\_\_\_  
Name and office of signatory

**NATIONAL MAORI TOUCH TRUST by:**

\_\_\_\_\_  
Name and office of signatory

**SIGNED by DES RATAMA:**

\_\_\_\_\_

**SIGNED by HINE HORI:**

\_\_\_\_\_

**TE RUNANGANUI O TARANAKI WHANUI KI TE UPOKO O TE IKA A MAUI ASSOCIATION INCORPORATED by:**

\_\_\_\_\_  
Name and office of signatory

**TE PAPA TAKARO O TE ARAWA TRUST by:**

\_\_\_\_\_  
Name and office of signatory

**SIGNED by DONNA GRANT:**

\_\_\_\_\_

**SIGNED by MARIE WINITANA:**

\_\_\_\_\_

**TE TINI A MAUI MAORI RUGBY COUNCIL INCORPORATED by:**

\_\_\_\_\_  
Name and office of signatory

**SFRITO LIMITED** by:

\_\_\_\_\_  
Name and office of signatory  
\_\_\_\_\_