

CONSTITUTION

OF

SFRITO LIMITED

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CONSTITUTION OF SFRITO LIMITED

PART 1: PRELIMINARY

1. INTERPRETATION

Definitions and Guides to Interpretation

- 1.1 Definitions of terms used in this Constitution, and guides to its interpretation, are contained in **clause 19**.

Effect of Shareholders' Agreement

- 1.2 To the extent permitted by law:
- (a) the Constitution is subject to the provisions of the Shareholders' Agreement; and
 - (b) in the event of a conflict between the Constitution and the Shareholders' Agreement, the provisions of the Shareholders' Agreement will prevail over those of the Constitution.

2. CAPACITY AND POWERS

Rights, powers and duties

- 2.1 The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this Constitution.

Capacity only within New Zealand

- 2.2 The Company has, within New Zealand, full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction.
- 2.3 The Company will not carry on or undertake any business or activity outside New Zealand.

PART II: SHARES

3. ISSUE OF SHARES

Shares

3.1 There are 1,000 Ordinary Shares in the Company issued for no consideration. Shares have been issued in the following share categories (the **Share Categories**):

- (a) Sport Sector Shares;
- (b) Fitness Sector Shares;
- (c) Community Recreation Sector Shares;
- (d) Outdoor Recreation Sector Shares;
- (e) Ski Sector Shares; and
- (f) Nga Mahi a te Rehia Sector Shares.

Company may issue Shares

3.2 The Company may issue new Shares only in accordance with clause 5 of the Shareholders' Agreement.

4. TRANSFER OF SHARES

Transfer must be in accordance with Shareholders' Agreement

4.1 Shares may be transferred only in accordance with clause 7 of the Shareholders' Agreement.

Entry in Register

4.2 Subject to **clause 4.1**, Shares may be transferred by entry of the name of the transferee on the Register.

Signed transfer

4.3 For the purpose of transferring Shares, a form of transfer signed by the present holder of the Shares or the holder's personal representative must be delivered to the Company or to the agent of the Company who maintains the Register.

Form of transfer

4.4 The form of transfer may be in the form set out in the First Schedule to the Securities Transfer Act 1991 or in any usual or common form, or any other form approved by the Board.

4.5 The form of transfer must be signed by the transferee if registration as holder of the Shares would impose a liability to the Company on the transferee.

Board's right to refuse or delay registration of transfer

- 4.6 The Board, within 30 Business Days of the receipt of a form of transfer of Shares:
- (a) may refuse or delay the registration of the transfer if:
 - (i) the Board considers that to effect the transfer would result in a breach of the law; or
 - (ii) **clause 6.3** has not been complied with or the form of transfer has not been properly executed or does not comply with **clause 4.4**; and
 - (b) must refuse the registration of the transfer unless the transfer is in accordance with clause 7 of the Shareholders' Agreement.
- 4.7 A resolution of the Board to refuse or delay a transfer of Shares must set out in full the reason for doing so, and a copy of the resolution must be sent to the transferor and transferee within five Business Days of the date of the resolution being passed.

Registration of transfer

- 4.8 On receipt of a duly completed form of transfer, the Company must enter the name of the transferee on the Register as holder of the Shares, unless the Board has resolved in accordance with **clause 4.6** to refuse or delay the registration of the transfer of the Shares.

5. SHARE REGISTER

Maintain Register

- 5.1 The Company must maintain a Register which records all Shares issued by the Company and which states:
- (a) whether, under this Constitution or the terms of issue of any Shares, there are any restrictions or limitations on their transfer; and
 - (b) where any document that contains the restrictions or limitations may be inspected.
 - (c) The Company may appoint an agent to maintain the Register.

Contents of Register

- 5.2 The Register must state, with respect to each Share Category:
- (a) the names (alphabetically arranged) and the latest known address of each person who is, and each person who has been within the last 10 years, a Shareholder;
 - (b) the number of Shares held by each Shareholder within the last 10 years; and
 - (c) the date of any:
 - (i) issue of Shares to; or
 - (ii) repurchase or redemption of Shares from; or

- (iii) transfer of Shares by or to; -

each Shareholder within the last 10 years; and in relation to the transfer, the name of the person to or from whom the Shares were transferred.

Directors' duty to supervise Register

- 5.3 It is the duty of each Director to take reasonable steps to ensure that the Register is properly kept and that the transferees' names are promptly entered on it.

Register prima facie evidence

- 5.4 Subject to section 91 of the Act, the entry of the name of a person in the Register as holder of a Share is prima facie evidence that the legal title to the Share is vested in that person.

Register evidence of rights

- 5.5 The Company may treat the registered holder of a Share as the only person entitled to:
 - (a) exercise the right to vote attaching to the Share;
 - (b) receive notices in respect of the Share; and
 - (c) exercise the other rights and powers attaching to the Share.

6. SHARE CERTIFICATES

Application for Share certificate

- 6.1 A Shareholder may apply to the Company for a certificate relating to some or all of the Shareholder's Shares.

Issue of Share certificate

- 6.2 The Company must, within 20 Business Days after receiving an application for a Share certificate under **clause 6.1**, send to the Shareholder a certificate stating the name of the Company, and the Share Category and number of Shares to which the certificate relates.

Transfer to be accompanied by Share certificate

- 6.3 Despite **clause 4** and section 84 of the Act, where a Share certificate has been issued, a transfer of the Shares to which it relates must not be registered by the Company unless the form of transfer is accompanied by the Share certificate relating to the Shares (or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the Board).

Surrendered Share certificate

- 6.4 Where Shares to which a Share certificate relates are transferred, and the Share certificate has been sent to the Company to enable registration of the transfer, the Share certificate will be cancelled and no further Share certificate will be issued except at the request of the transferee.

PART III: DISTRIBUTION AND SHAREHOLDERS' RIGHTS

7. DISTRIBUTION

- 7.1 The Company must not make Distributions or Dividends in relation to Shares held by a Shareholder.

8. ISSUE OF STATEMENT OF RIGHTS TO SHAREHOLDERS

- 8.1 The Company must issue to any Shareholder, on request, a statement that sets out:
- (a) the Share Category of Shares held by the Shareholder, the total number of Shares of that Share Category issued by the Company, and the total number of Shares issued by the Company;
 - (b) the rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the Shares held by the Shareholder; and
 - (c) the relationship of the Shares held by the Shareholder to other Share Categories.
- 8.2 A statement issued under **clause 8.1** must state in a prominent place that it is not evidence of title to the Shares or of the matters set out in it.

9. EXERCISE OF POWERS RESERVED TO SHAREHOLDERS

Powers reserved to Shareholders

- 9.1 Powers reserved to Shareholders by the Act or by this Constitution may be exercised:
- (a) at an Annual Meeting or a Special Meeting; or
 - (b) by a resolution in lieu of a meeting under **clause 10.3**.
- 9.2 Unless otherwise specified in the Act, this Constitution or the Shareholders' Agreement, a power reserved to Shareholders may be exercised by an Ordinary Resolution.

Special Resolutions

- 9.3 When Shareholders exercise a power to approve any of the following, that power may be exercised only by a Special Resolution:
- (a) the approval of the issue of additional Shares;
 - (b) (subject to **clause 9.4**) an alteration to or revocation of this Constitution or the adoption of a new Constitution;
 - (c) a Major Transaction;
 - (d) an Amalgamation;
 - (e) the liquidation of the Company; or
 - (f) the amendment or termination of the Shareholders' Agreement.

Any decision made by Special Resolution under this clause may be rescinded only by a Special Resolution, provided that a resolution to put the Company into liquidation cannot be rescinded.

Changes to certain clauses must be approved by IRD

- 9.4 The Shareholders must not, without the prior written approval of the Inland Revenue Department, resolve to:
- (a) alter or delete this clause; or
 - (b) alter or delete **clauses 2.3, 7.1 or 18.2**; or
 - (c) revoke this Constitution and adopt a new constitution (unless clauses identical to this clause and to **clauses 2.3, 7.1 and 18.2** are included in the new constitution).
- 9.5 The Shareholders must not amend or delete clauses 15.9 or 18A 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.

Management review by Shareholders

- 9.6 A Shareholder may question, discuss, and comment on the management of the Company at a meeting of Shareholders.
- 9.7 A meeting of Shareholders may pass a resolution relating to the management of the Company.
- 9.8 Despite section 128 of the Act or any other clause of this Constitution, a resolution relating to the management of the Company passed at a meeting of Shareholders is not binding on the Board.

10. MEETINGS OF SHAREHOLDERS

Annual Meeting

- 10.1 The Board must, in accordance with section 120 of the Act, call an Annual Meeting of Shareholders to be held:
- (a) not later than 6 months after the Balance Date of the Company; and
 - (b) not later than 15 months after the previous Annual Meeting, or in respect of the first Annual Meeting not later than 18 months after the date of the Company's incorporation.
- 10.2 The Company must hold the Annual Meeting on the date on which it is called to be held.
- 10.3 It is not necessary for the Company to hold an Annual Meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with sections 122(2) and 122(3) of the Act.
- 10.4 If everything required to be done at an Annual Meeting is done by resolution in accordance with sections 122(2) and 122(3) of the Act, the Company must send a copy of that resolution to every Shareholder who did not sign the resolution, or on

whose behalf the resolution was signed, in accordance with and within the time limit specified by section 122(5) of the Act.

Special Meetings

10.5 A Special Meeting:

- (a) may be called at any time by the Board or a person who is authorised by the Board to call the meeting; and
- (b) must be called by the Board on the written request of Shareholders holding not less than 5% of the votes entitled to be cast on the issue.

Resolution in lieu of meeting

10.6 A resolution in writing signed by all the Shareholders is as valid as if it had been passed at a meeting of those Shareholders.

10.7 For the purposes of **clause 10.6**, any such resolution may consist of one or more documents in similar form (including letter, telegrams, cables, facsimiles, telex messages, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of one or more of the Shareholders entitled to vote on the resolution.

Chairperson of meetings of Shareholders

10.8 If the Chairperson of the Board of Directors is present at a meeting of Shareholders, he or she must chair the meeting.

10.9 If the Chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.

Shareholders entitled to notice of meeting

10.10 The Shareholders entitled to receive notice of a meeting of Shareholders are those Shareholders:

- (a) if the Board has fixed a date for the purpose of establishing an entitlement to receive notice of the meeting, whose names are registered in the Register on that date; or
- (b) if the Board does not fix a date for the purpose of establishing an entitlement to receive notice of the meeting, whose names are registered in the Register at the close of business on the day immediately preceding the day on which the notice is given.

10.11 A date fixed by the Board under **clause 10.10(a)** must not precede by more than 30 Business Days nor less than 15 Business Days the date on which the meeting is to be held.

Notice of meeting

10.12 Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting, and to every Director and the auditor of the Company, not less than 10 Business Days before the meeting.

10.13 Contents of notice

10.14 The notice referred to in **clause 10.12** must state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
- (b) the text of any special resolution to be submitted to the meeting.

Irregularities in notice

10.15 An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.

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

Giving of Notice

10.17 Notice of a meeting of Shareholders may be given in the manner provided for the giving of notices to Shareholders under clause 19 of the Shareholders' Agreement.

Method of holding meeting

10.18 A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

Minutes

10.19 The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of Shareholders.

10.20 Minutes which have been signed as correct by the chairperson of the meeting are prima facie evidence of the proceedings.

10.21 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 of the Shareholders' Agreement rather than by way of a meeting of Shareholders.

11. VOTING AT MEETINGS

Quorum

11.1 A quorum for a meeting of Shareholders is as provided in the Shareholders' Agreement.

11.2 Subject to **clause 11.3**, no business may be transacted at a meeting of Shareholders if a quorum is not present.

- 11.3 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)** 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).

Voting

- 11.4 Nothing in **clauses 11.5 to 11.12** applies to an election of Directors, or Chairperson, under **clauses 12.3 and 12.4**.
- 11.5 In the case of a meeting of Shareholders held under **clause 10.5(a)**, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:
- (a) voting by voice; or
 - (b) voting by show of hands.
- 11.6 In the case of a meeting of Shareholders held under **clause 10.5(b)**, unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- 11.7 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact, unless a poll is demanded in accordance with **clause 11.8**.
- 11.8 At a meeting of Shareholders, a poll may be demanded by:
- (a) a Shareholder having the right to vote at the meeting; or
 - (b) the chairperson of the meeting.
- 11.9 A poll may be demanded either before or after the vote is taken on a resolution.
- 11.10 If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present (in person or by proxy) and voting.
- 11.11 The chairperson of a Shareholders' meeting is not entitled to a casting vote.
- 11.12 For the purposes of this clause, the instrument appointing a proxy to vote at a meeting confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.

Proxies and representatives

- 11.13 A Shareholder may exercise the right to vote either by being present or by proxy.
- 11.14 A proxy for a Shareholder is entitled to attend, be heard, and vote at a meeting of Shareholders as if the proxy were the Shareholder.

- 11.15 A proxy must be appointed by notice in writing signed by the Shareholder, and the notice must state whether the appointment is for a particular meeting or a specified term.
- 11.16 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.
- 11.17 A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

Meetings of Interest Groups

- 11.18 The provisions of **clauses 10 and 11** shall, with such consequential amendments as may be necessary, govern the proceedings of any meeting of an Interest Group (namely, a meeting of Shareholders holding Shares of a particular Share Category).

Other proceedings

- 11.19 Except as provided in this Constitution the Shareholders may regulate their own procedure at meetings of Shareholders.

PART IV: THE BOARD

12. APPOINTMENT AND REMOVAL

Number of Directors

- 12.1 Subject to **clause 14.23** and the Shareholders' Agreement, the number of Directors (including the Chairperson of the Board) must not be less than 5 nor more than 10.

Initial Directors and Chairperson

- 12.2 Upon the adoption of this Constitution:
- (a) the persons referred to in **clause 9.2** of the Shareholders' Agreement are to be Directors; and
 - (b) the person referred to in **clause 9.3** of the Shareholders' Agreement is to be the Chairperson.

Appointment of subsequent Directors and Chairperson

- 12.3 Shareholders may elect, in accordance with the Shareholders' Agreement, a Director or Directors and/or a Chairperson if a vacancy or vacancies arise in those offices.
- 12.4 The procedure for the election of Directors, or a Chairperson, must be in accordance with schedule 2 to the Shareholders' Agreement.

Term of Office

- 12.5 A Director (including the Chairperson) holds office until:
- (a) the expiry of his or her term of office; or
 - (b) his or her resignation, disqualification or removal in accordance with this Constitution.
- 12.6 The term of office of Director and the Chairperson expires three years from the date of appointment unless the Shareholders decide otherwise by ordinary resolution.
- 12.7 The term of office of the initial Directors and the initial Chairperson expires at the Annual Meeting as provided in **clause 9.2** and **clause 9.3** respectively of the Shareholders' Agreement.
- 12.8 If a new Chairperson is not elected on the expiry of a Chairperson's term, the existing Chairperson may continue in office until a new Chairperson is elected.

Resignation

- 12.9 A Director (including the Chairperson) may resign office by signing a written notice of resignation and delivering it to the Company. The notice takes effect upon:
- (a) the receipt of it at the registered office of the Company (including receipt of a facsimile copy);
 - (b) where a later date is specified in the notice, the later date.

Disqualification

- 12.10 A person will be disqualified from holding the office of Director or Chairperson if he or she:
- (a) resigns in writing under **clause 12.11** and is not reappointed in accordance with this Constitution;
 - (b) becomes disqualified from being a director under section 151 of the Act;
 - (c) is prohibited from being a director or promoter of or being concerned with or taking part in the management of a company under sections 382, 383 or 385 of the Act;
 - (d) dies;
 - (e) becomes a protected person under the Protection of Personal and Property Rights Act 1988;
 - (f) is under 18 years of age;
 - (g) is an undischarged bankrupt; or
 - (h) is prohibited by the Companies Act 1955 from being a director or would be so prohibited but for the repeal of that statute.

Removal from Office

- 12.11 A Director (including the Chairperson) may be removed from office by Special Resolution.

Shareholding qualification

- 12.12 A Director (including the Chairperson) is not required to hold Shares.

Exclusion of Companies Act

- 12.13 Sections 155(1) and 156(1) of the Act (in relation to the appointment and removal of Directors of the Company) do not apply to the Company.

13. POWERS AND DUTIES OF THE BOARD

Powers of the Board

- 13.1 Subject to **clause 13.2** and any restrictions in the Act or this Constitution, the business and affairs of the Company must be managed by or under the direction or supervision of the Board.
- 13.2 The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the Company except to the extent that this Constitution, the Shareholders' Agreement or the Act expressly requires those powers to be exercised by the Shareholders or any other person.

Directors to act in good faith

- 13.3 Subject to section 131 of the Act, a Director, when exercising powers or performing duties, must act in good faith and in what the Director believes to be the best interests of the Company.
- 13.4 Nothing in **clause 13.3** limits the power of a Director to make provision for the benefit of employees of the Company in connection with the Company ceasing to carry on the whole or part of its business.

Major Transactions

- 13.5 The Board may not procure or permit the Company to enter into a Major Transaction unless the transaction is:
- (a) approved by a Special Resolution; or
 - (b) made contingent on approval by a Special Resolution.

14. PROCEEDINGS OF THE BOARD

Third Schedule

- 14.1 The provisions of the Third Schedule to the Act are deleted and replaced by this **clause 14**.

Chairperson

- 14.2 If a new Chairperson is not elected on the expiry of a Chairperson's term, the existing Chairperson may continue in office until a new Chairperson is elected.
- 14.3 If no Chairperson is elected, or if at a meeting of the Board the Chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

Notice of meeting

- 14.4 A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with **clauses 14.5 to 14.8**.
- 14.5 Not less than two Business Days' notice of a meeting of the Board must be given to every Director who is in New Zealand. The notice must include the date, time and place of the meeting and the matters to be discussed.
- 14.6 The giving of a notice of a meeting or an irregularity in the notice is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 14.7 Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a Director at his or her last known residential address will be deemed to have been given on the day following the day the letter is posted.
- 14.8 It is not necessary to give notice of a meeting of the Board to any Director for the time being absent from New Zealand.

Method of holding meetings

- 14.9 A meeting of the Board may be held either:
- (a) by a number of Directors sufficient to form a quorum, being assembled together at the place, date, and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual communication, by which all the Directors participating in the meeting and constituting a quorum, can simultaneously hear each other throughout the meeting.
- 14.10 Where a meeting of the Board is held under **clause 14.9(b)**, at the commencement of the meeting each Director participating must acknowledge his or her presence to all the Directors participating. A Director may not leave the meeting by disconnecting his or her means of communication unless he or she has previously obtained the express consent of the Chairperson.

Quorum

- 14.11 A quorum for a meeting of the Board is the number of Directors provided in the Shareholders' Agreement.
- 14.12 No business may be transacted at a meeting of Directors if a quorum is not present.

Voting

- 14.13 Each Director has one vote.
- 14.14 The Chairperson (in his or her capacity as a Director) has one vote and does not have a casting vote.
- 14.15 A resolution of the Board is passed if it is agreed to by all Directors present without dissent, or if a majority of the votes cast on it by the Directors appointed by the Shareholders are in favour of it.

Interested Directors

- 14.16 A Director may vote in respect of any transaction in which the Director is interested. The Director must disclose at the Directors' meeting discussing the transaction the nature of his or her interest in the transaction. If the Director votes in respect of a transaction in which he or she is interested, the Director's vote will be counted and the Director will be counted in the quorum present at the meeting.

Minutes

- 14.17 The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of the Board.
- 14.18 Minutes of proceedings of the Board which have been signed correct by the Chairperson are prima facie evidence of the proceedings.

Unanimous resolution

- 14.19 A resolution in writing, signed or assented to by all Directors, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

14.20 Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more Directors.

14.21 A copy of any such resolution must be entered in the minute book of Board proceedings.

Other proceedings

14.22 Except as provided in this **clause 14** the Board may regulate its own procedure.

Continuing Directors

14.23 The continuing Directors will continue to comprise the Board notwithstanding any vacancy in the number of Directors. If their number is reduced below the number fixed by this Constitution as the number of Directors, the continuing Directors will comprise the Board only for the purpose of summoning a Special Meeting.

15. INTERESTED DIRECTORS

Authority to remunerate Directors

15.1 The Board may (after first obtaining the approval of the Shareholders to do so) authorise the payment of remuneration (or the provision of other benefits) by the Company to a Director for his or her services as a Director (or in any other capacity).

15.2 The payment of remuneration (or the giving of any other benefit) to a Director in accordance with a contract authorised under **clause 15.1** need not be separately authorised by the Board.

15.3 The Board must ensure that immediately after authorising any payment or benefit under **clause 15.1**, particulars are entered in the Interests Register.

15.4 The Directors who vote in favour of authorising a payment or benefit under **clause 15.1** must sign a certificate stating that, in their opinion, the making of the payment or the provision of the benefit is fair to the Company. Grounds for that opinion must also be stated in the certificate.

Other offices with Company held by Director

15.5 Any Director may act by himself or herself, or by the Director's firm in a professional capacity for the Company; and the Director or the Director's firm will be entitled to remuneration for professional services as if the Director were not a Director. Nothing in this clause authorises a Director or the Director's firm to act as auditor for the Company.

15.6 A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the Director's office of Director, for such period and on such terms (as to remuneration and otherwise) as the Board may determine.

15.7 Other than as provided in **clause 15.8**, a Director is not disqualified by virtue of his or her office from entering into any transaction with the Company. Any such transaction will be valid and enforceable to the same extent as if he or she were not a Director and not in a fiduciary relationship with the Company. A Director is not liable to account to the Company for any profit realised by the transaction by reason of the Director holding the office of Director or of the fiduciary relationship established by that office.

Notice of interest to be given

- 15.8 A Director must, immediately after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the Interests Register, and, if the Company has more than one Director, disclose to the Board of the Company:
- (a) if the monetary value of the Director's interest is able to be quantified, the nature and monetary value of that interest; or
 - (b) if the monetary value of the Director's interest cannot be quantified, the nature and extent of that interest.
- 15.9 Notwithstanding any other provision to the contrary in this Constitution:
- i. any income, benefit or advantage must be used to advance the charitable purposes of the Company;
 - ii. no shareholder or director of the Company or person associated with a shareholder or a director of the Company is allowed to take part in or influence any decision made by the Company in respect of payments to, or on behalf of, the shareholder or director or any associated person of any income, benefit or advantage;
 - iii. any payments made to a shareholder or a director of the Company, or a person associated with a shareholder or a director of the Company, must be for goods or services that advance the charitable purposes of the Company and must be reasonable and relative to payments that would be made between unrelated parties, provided however that nothing in this clause shall prevent any income, benefit or advantage being paid to any person for any charitable purpose.

16. INDEMNITY AND INSURANCE

Indemnity of Directors and employees

- 16.1 The Board must cause the Company to indemnify a Director or employee of the Company or a related company for costs incurred by him or her in any proceeding:
- (a) that relates to liability for any act or omission in his or her capacity as a Director or employee; and
 - (b) in which judgment is given in his or her favour or in which he or she is acquitted, or which is discontinued.
- 16.2 The Board must cause the Company to indemnify a Director or an employee of the Company or a related company in respect of:
- (a) liability to any person other than the Company or a related company for any act or omission in his or her capacity as a Director or employee; or
 - (b) costs incurred by the Director or employee in defending or settling any claim or proceeding relating to any liability under paragraph (a) above;
- not being:
- (c) criminal liability; or

- (d) liability for the breach of section 131 of the Act; or
- (e) liability by an employee for breach of any fiduciary duty owed to the Company or a related company.

Insurance of Directors and employees

16.3 The Board may, subject to section 162 of the Act, cause the Company to effect insurance for Directors and employees of the Company or a related company in respect of:

- (a) liability, not being criminal liability, for any act or omission in his or her capacity as a Director or employee; or
- (b) costs incurred by such Directors or employees in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by a Director or employee in defending any criminal proceedings that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee and in which he or she is acquitted.

16.4 The Directors who vote in favour of authorising the effecting of insurance under **clause 16.3** must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

16.5 The Board must ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or related company are forthwith entered in the Interests Register.

Definitions

16.6 For the purpose of this **clause 16**, “Director” includes a former Director and “employee” includes a former employee.

PART V: ADMINISTRATION AND MISCELLANEOUS

17. AUTHORITY TO BIND

Method of Contracting

17.1 A contract or other enforceable obligation may be entered into by the Company as follows:

(a) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:

(i) two or more Directors of the Company;

(ii) one or more attorneys appointed by the Company in accordance with **clause 17.3**;

(b) an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and

(c) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

17.2 A copy of a resolution of the Board authorising a person to enter into a contract or other enforceable obligation on behalf of the Company shall be proof of such authority notwithstanding that the authority may have been subsequently revoked.

Attorneys

17.3 The Company may, by an instrument in writing executed in accordance with **clause 17.1(a)(i)**, appoint a person as its attorney either generally or in relation to a specified matter or matters.

17.4 An act of the attorney in accordance with the instrument binds the Company.

18. LIQUIDATION

Appointment of liquidator

18.1 A liquidator of the Company may be appointed by a Special Resolution of those Shareholders entitled to vote and voting on the question.

Distribution of surplus assets

18.2 Subject to the terms of issue of any Shares, upon the liquidation of the Company, any assets of the Company remaining after payment of the debts and liabilities of the Company and the costs of liquidation shall be distributed to some charitable organisation, or charitable body, operating in New Zealand and approved by resolution of the Shareholders.

Removal from New Zealand register

- 18.3 Subject to sections 318 and 320 of the Act, a Director, who has been authorised by the Board to do so, may request the Registrar to remove the Company from the New Zealand register on the grounds that:
- (a) the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or
 - (b) the Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of the Act for an order putting the Company into liquidation.
- 18.4 The Company shall be treated as having distributed its surplus assets in accordance with this Constitution if the Company does so in accordance with **clause 18.2** except that no liquidator needs to be appointed and references to the liquidator in that clause shall be construed as references to the Shareholders acting by an Ordinary Resolution.
- 18A. In the event that the Shareholders' Agreement is terminated for any reason, accumulated income must continue to be applied in a manner that preserves the Company's charitable status under New Zealand law and such that it is able to maintain its registration (if any) as a charitable entity under the Charities Act 2005.

19. DEFINITIONS AND INTERPRETATION

- 19.1 In this Constitution, unless the context otherwise requires, the following words and expressions have the meanings given to them in this clause:

Act means the Companies Act 1993;

Amalgamation means the completed act of the Company and one or more other companies amalgamating under Part XIII of the Act and continuing as one company, which may be one of the amalgamating companies or may be a new company;

Annual Meeting means a meeting of Shareholders held under **clause 10.1**;

Balance Date means the date adopted by the Company as the end of its financial year for the purpose of its annual financial statements;

Board means the Directors numbering not less than the required quorum acting as 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;

Class and **Class of Shares** means a class of Shares having attached to them identical rights, privileges, limitations, and conditions and includes a Share Category;

Chairperson means the chairperson of the Board appointed under this Constitution;

Company means SFRITO Limited;

Constitution means this constitution of the Company and all amendments to it from time to time;

Director means a person appointed under this Constitution as a director of the Company;

Distribution, in relation to Shares held by a Shareholder, means:

- (a) the direct or indirect transfer of money or property, other than Shares, by the Company to or for the benefit of the Shareholder; or
- (b) the incurring of a debt by the Company to or for the benefit of the Shareholder,

whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness, or by some other means;

Dividend means a Distribution by the Company other than a Distribution to which section 59 or section 76 of the Act applies;

Interest Group, in relation to any action or proposal affecting rights attached to Shares, means a group of Shareholders:

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) who comprise the holders of one or more Share Categories.

For the purposes of this definition:

- (a) one or more Interest Groups may exist in relation to any action or proposal; and
- (b) if :
 - (i) action is taken in relation to some holders of Shares in a Class and not others; or
 - (ii) a proposal expressly distinguishes between some holders of Shares in a Class and other holders of Shares of that Class,

holders of Shares in the same Class may fall into two or more Interest Groups;

Interests Register means a register kept by the Company at its registered office as required by section 189(1)(c) of the Act;

Major Transaction, in relation to the Company, means:

- (a) the acquisition of, or an agreement to acquire (whether contingent or not), assets the value of which is more than half the value of the Company's assets before the acquisition; or
- (b) the disposition of, or an agreement to dispose of (whether contingent or not), assets of the Company, the value of which is more than half the value of the Company's assets before the disposition; or
- (c) a transaction which has or is likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities, the value of which is more than half the value of the Company's assets before the transaction;

but does not include:

- (d) any transaction entered into by a receiver appointed under an instrument creating a charge over all or substantially all of the property of the Company.

Nothing in paragraph (c) of this definition applies by reason only of the Company giving, or entering into an agreement to give, a charge secured over assets of the Company the value of which is more than half the value of the Company's assets for the purpose of securing the repayment of money or the performance of an obligation;

month means calendar month;

Ordinary Resolution means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question;

Ordinary Share means a Share which confers on the holder the right to vote at meetings of Shareholders and on a poll to cast one vote for each Share held;

Register means the register of Shares required by **clause 5** and section 87 of the Act to be kept;

Registrar means the Registrar of Companies appointed under section 357(1) of the Act;

Share means a share in the Company;

Share Categories has the meaning set out in **clause 3.1**;

Shareholder means a person:

- (a) registered in the Register as the holder of one or more Shares; or
- (b) until the person's name is entered in the Register, a person named as a shareholder in the application for registration of the Company at the time of registration of the Company; or
- (c) until the person's name is entered in the Register, a person who is entitled to have that person's name entered in the Register under a registered Amalgamation proposal as a shareholder in an amalgamated company;

Shareholders' Agreement means an agreement entered into by the Shareholders and the Company on or about the same date this Constitution was adopted by the Company (as that may be amended from time to time);

Special Meeting means any meeting (other than an Annual Meeting) of Shareholders entitled to vote on an issue, called at any time by the Board or by any other person who is authorised by the Board to call meetings of Shareholders;

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 question.

19.2 In this Constitution, unless the context otherwise requires:

- (a) headings are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;

(c) one gender includes the other gender;

- (d) a reference to a person includes an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government department or agency, municipal or local authority and any other entity, whether or not incorporated and whether or not having separate legal personality;
- (e) **written** and **in writing** includes any means of reproducing words, figures or symbols in a tangible and visible form; and
- (f) a reference to a clause is to that clause in this Constitution unless stated otherwise; and
- (g) a reference to a clause of the Shareholders' Agreement includes a reference to any clause amending or replacing that clause if the Shareholders' Agreement is amended from time to time.

19.3 Subject to this **clause 19**, expressions contained in this Constitution bear the same meaning as specified in the Act as amended from time to time.

19.4 If the Act changes in a way that would, but for this clause, cause section 31 of the Act to apply to any clause then that clause shall be deemed to be amended in the same manner as the change in the Act so that the Constitution does not contravene or become inconsistent with the Act.

Dated 22 May 2003