Constitution of Tressel Limited

Under the *Companies Act 1993*

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Constitution of Tressel Limited

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Constitution of Tressel Limited

1. Defined terms and interpretation

1.1 Defined terms

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*.

Alternate Director means a Director appointed pursuant to clause 9.9.

Board means the board of directors of the Company from time to time.

CCLA means the *Contract and Commercial Law Act 2017*.

Company means Tressel Limited (company number 8410505).

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

Director means a person appointed and continuing in office for the time being, in accordance with this Constitution, as a director of the Company.

Drag Transaction means the actual or proposed transfer of Equity Securities to a bona fide third party under clause 5.

Equity Security means a share in the Company and any preference share, option, convertible note, warrant or other security convertible into shares in the Company and **Equity Securities** has the same meaning.

Managing Director means a Director who is appointed under clause 14 as an employee of the Company, with the responsibility for the management of the Company (together with any other employee).

Tag Transaction means an actual or proposed sale or transfer of Equity Securities to a bona fide third party in accordance with clause 6.

1.2 Clause references

A reference to a clause is to that clause in this Constitution.

1.3 Headings

Headings are inserted for convenience only and shall be ignored in construing this Constitution.

1.4 Interpretation

In this Constitution unless the context otherwise requires:

(a) "**written**" and "in **writing**" includes any means of reproducing words, figures or symbols:

(i) in a tangible and visible form in any medium; or

(ii) in a visible form in any medium by electronic means that enables them to be stored in permanent form and be retrieved and read;

(b) "**signature**" includes, in relation to a document in electronic form, an electronic signature created by a method which identifies the signatory and indicates the signatory's approval of the information contained in the document; and

(c) a reference to a "**statute**", "**act**", "**ordinance**", "**code**" or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this Constitution).

1.5 **Other definitions have meaning set out in the Act**

Words or phrases defined in the Act have the same meaning in this Constitution unless the context otherwise requires.

1.6 **Constitution subject to changes in the Act**

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.

1.7 **Use of electronic means**

Where a legal requirement under the Act is reproduced in this Constitution, that legal requirement may be met, for the purposes of this Constitution, by using electronic means in accordance with the CCLA in the same manner as is required by the CCLA to meet that legal requirement under the Act. In this clause, the term "legal requirement" has the meaning given to it by the CCLA.

1.8 **Receipt of electronic communications**

For the purposes of section 214 of the CCLA, a document under this Constitution which is sent in electronic form and via an electronic communication is taken to be received:

(a) if sent by the Company, on the working day it is sent or the next working day if sent outside normal business hours, provided that the electronic communication was correctly addressed to the address provided by the addressee for the receipt of electronic communications and no error message was received by the information systems used by the Company to send the electronic communication; and

(b) if sent to the Company, at the time the electronic communication comes to the attention of the addressee or such other time as the sender and the Company may agree.

To avoid doubt, any document so sent may be in any widely used electronic form.

2. Shares

2.1 **Pre-emptive rights**

Section 45 of the Act does not apply to the Company.

2.2 **Board may issue additional shares**

Subject to the Act and the terms of issue of any existing shares, the Board may issue additional shares (and rights or options to acquire shares) of any class (including redeemable shares) at any time, to any person and in such numbers and on such terms as the Board thinks fit.

2.3 **Power to issue shares otherwise than to existing shareholders**

Unless the terms of issue of any class of shares specifically otherwise provide, the Company may issue shares that rank or would rank as to voting or distribution rights, or both, equally with or prior to existing shares without any requirement that the shares be first offered to existing shareholders and

for the purposes of section 117 of the Act such an issue is not an action affecting the rights attached to the existing shares.

2.4 **Amount owing on issue of shares**

Where money or other consideration is due at a fixed time to the Company on shares in accordance with their terms of issue, that amount does not comprise a call and no notice is required to be given to the shareholder (or other person liable under the terms of issue) before the Company may enforce payment of the amount due.

3. Purchase of own shares

3.1 **Purchase by Company of its shares**

The Company may purchase or otherwise acquire shares issued by it in accordance with, but subject to, the Act.

3.2 **Offer to one or more shareholders only**

For the purposes of section 60(1)(b) of the Act, the Company may make such offer to one or more shareholders, without having to make such offer to all shareholders, in accordance with section 61 of the Act.

3.3 **Holding by Company of its shares**

The Company may acquire and hold shares issued by it in accordance with sections 67A to 67C of the Act.

4. Transfer of shares

4.1 **Entry in share register**

Subject to clause 4.3, shares may be transferred by entry of the name of the transferee in the share register.

4.2 **Form of transfer**

The form of transfer may be in the form set out in Schedule 18 of the Financial Markets Conduct Regulations 2014 or in any usual or common form, or any other form approved by the Board.

4.3 **Board's right to refuse registration of transfer**

The Board may, within 30 working days of the receipt of a transfer of shares, refuse or delay the registration of the transfer if the Board considers that it is not in the best interests of the Company to register the transfer.

4.4 **Permitted Transfer**

Notwithstanding any other provision of this constitution, a share in respect of which any person or entity has granted a mortgage, charge, security interest, lien, pledge, trust or power as, or in effect as, security for the payment of money or the performance of any other obligation (**Security Interest**) to any person, may be transferred to:

(a) a person entitled to the benefit of that Security Interest (**Secured Party**) or a person acting as agent, trustee or nominee for the Secured Party; or

(b) a person who purchases the share or shares from the existing shareholder or the Secured Party or a person acting as agent, trustee or nominee for the Secured Party as a result (in any such case) of the exercise of the Secured Party's rights under that Security Interest,

and the Board shall register such a transfer under this clause 4.4 as soon as possible after receiving a request to do so from the Secured Party.

4.5 Board resolutions refusing or delaying share transfers

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 working days of the date of the resolution being passed.

5. Drag along

5.1 Drag Along Notice

If one or more holders of Equity Securities (**Dragging Shareholder(s)**) propose to sell, in one transaction or a series of linked transactions, Equity Securities which (calculated on the basis and assumption that all Equity Securities that are convertible into Equity Securities with voting rights have been converted, as the Board considers appropriate) together comprise 75% or more of the voting rights attaching to Equity Securities in the Company (**Sale Equity Securities**) to a bona fide third party (**Third Party**), the Dragging Shareholder(s) may give a notice (**Drag Along Notice**) to each other holder of Equity Securities (**Dragged Shareholder(s)**) and the Company, which notice must specify:

(a) the name(s) of the Dragging Shareholder(s);

(b) the name of the Third Party; and

(c) all other terms and conditions on which the Sale Equity Securities are to be transferred.

5.2 Effect of Drag Along Notice

(a) If a Drag Along Notice is given, each Dragged Shareholder will be obliged to sell all of its Equity Securities to the Third Party on the terms set out in the Drag Along Notice.

(b) A Drag Along Notice, once given, is irrevocable but both the notice and all obligations under the notice will lapse if for any reason the Dragging Shareholder(s) do not transfer the Sale Equity Securities to the Third Party.

5.3 Co-operation

The Dragged Shareholder(s) must cooperate with the Company, the Dragging Shareholder(s) and the Third Party, and their respective representatives, to facilitate and effect any Drag Transaction, including by:

(a) facilitating and supporting any due diligence process required by the Third Party;

(b) assisting in connection with obtaining all government and third-party approvals and consents reasonably necessary or desirable to consummate the Drag Transaction; and

(c) executing the relevant sale and purchase agreement and any other documents reasonably requested by the Dragging Shareholder(s) to consummate the Drag Transaction.

5.4 No obligation to complete

Notwithstanding anything contained in this clause 5, neither a Dragging Shareholder nor the Company is liable to any Dragged Shareholder if any Drag Transaction is not consummated for any reason.

5.5 **Exclusions**

For the avoidance of doubt, this clause 5 shall not apply to any proposed issuance of new Equity Securities or to any transfer of Equity Securities to which clause 4.4 applies.

6. Tag along

6.1 **Sale Notice**

If one or more holders of Equity Securities (**Selling Shareholder(s)**) propose to sell, in one transaction or a series of linked transactions, Equity Securities which (calculated on the basis and assumption that all Equity Securities that are convertible into Equity Securities with voting rights have been converted, as the Board considers appropriate) together comprise more than 50% of the voting rights attaching to Equity Securities in the Company (the **Sale Equity Securities**) to a bona fide third party (**Third Party**), and provided a Drag Along Notice is not issued under clause 5, then the Selling Shareholder(s) will give notice (**Sale Notice**) to each other holder of Equity Securities (**Tagging Shareholder(s)**) and the Company, specifying:

(a) the name(s) of the Selling Shareholder(s);

(b) the name of the Third Party;

(c) all other terms and conditions on which the Sale Equity Securities are to be transferred; and

(d) that each Tagging Shareholder has an option (**Tag Along Option**) to participate in the Tag Transaction on the basis set out in this clause 6.

6.2 **Tag Along Notice**

(a) Within 15 working days of receipt of the Sale Notice, the Tagging Shareholder(s) may exercise the Tag Along Option by giving notice to that effect (**Tag Along Notice**) to the Selling Shareholder(s) specifying that the Selling Shareholder(s) are required to cause the Third Party or its nominee to purchase the same proportion of the Tagging Shareholder's Equity Securities as the Selling Shareholder(s) intend to sell (**Tag Equity Securities**) on the terms set out in the Sale Notice.

(b) A Sale Notice and a Tag Along Notice, once given, are irrevocable but, in each case, both the notice and all obligations under the notice will lapse if for any reason the Selling Shareholder(s) do not transfer the Sale Equity Securities to the Third Party.

(c) For the purposes of this clause 6, to the extent that a Tagging Shareholder is a nominee (**Nominee**) that holds Equity Securities as bare trustee on behalf of a person (a **Beneficiary**), a Tag Along Notice may be given to the Selling Shareholder(s) by the Nominee in respect of the Tag Equity Securities held by the Nominee for a given Beneficiary(ies) (as opposed to all of the Equity Securities held by the Nominee), provided that the Tag Along Notice otherwise complies with clause 6.2(a).

6.3 **Effect of Tag Along Notice**

If a Tagging Shareholder gives a Tag Along Notice in accordance with clause 6.2:

(a) the Tagging Shareholder must sell its Tag Equity Securities to the Third Party on the terms set out in the Sale Notice; and

(b) the Selling Shareholder(s) must not sell their Sale Equity Securities to the Third Party unless the Third Party has agreed to buy the Tag Equity Securities of each Tagging Shareholder on the terms set out in the Sale Notice.

6.4 **Co-operation**

The Tagging Shareholder(s) must cooperate with the Company, the Selling Shareholder(s) and the Third Party, and their respective representatives, to facilitate and effect any Tag Transaction, including by:

(a) facilitating and supporting any due diligence process required by the Third Party;

(b) assisting in connection with obtaining all government and third-party approvals and consents reasonably necessary or desirable to consummate the Tag Transaction; and

(c) executing the sale and purchase agreement and any other documents reasonably requested by the Selling Shareholder(s) to consummate the Tag Transaction.

6.5 **No obligation to complete**

Notwithstanding anything contained in this clause 6, neither a Selling Shareholder nor the Company is liable to any Tagging Shareholder if any Tag Transaction is not consummated for any reason.

6.6 **Exclusions**

For the avoidance of doubt, this clause 6 shall not apply to any proposed issuance of new Equity Securities or to any transfer of Equity Securities to which clause 4.4 applies.

7. Distributions

7.1 **Distributions must satisfy solvency test**

The Board may authorise a distribution by the Company to shareholders subject to compliance with the Act.

7.2 **Shares in lieu of dividends**

The Board may issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend or proposed future dividend provided such issue is made in accordance with the requirements of section 54(a) to (e) (inclusive) of the Act.

8. Proceedings at meeting of shareholders

8.1 **First schedule to Act applies**

Meetings of shareholders shall be conducted in accordance with Schedule 1 of the Act.

9. Directors

9.1 **Number of Directors**

The Company must have at least one director.

9.2 **Directors**

Upon registration of the Company under the Act, the Directors are the persons named as the directors in the application for registration of the Company.

9.3 **Appointment and removal by notice**

Subject to clauses 9.6 and 9.7, the Directors are the persons appointed from time to time as Directors by a notice in writing signed by the holders of the majority of the ordinary shares and who

have not been removed or resigned or disqualified from office under this Constitution. A Director may be removed from office at any time by a notice in writing signed by the holders of the majority of the ordinary shares. The notice may comprise one or more similar documents separately signed by the shareholders giving the notice.

9.4 **Time notice is effective**

A notice given under clause 9.3 takes effect upon receipt of it at the registered office of the Company (including the receipt of an electronic copy) unless the notice specifies a later time at which the notice will take effect.

9.5 **Period of office**

A Director holds office until his or her resignation, disqualification or removal in accordance with the Act and this Constitution.

9.6 **Appointment and removal of directors by resolution**

In addition to the appointment or removal of Directors under clause 9.3, a Director may be appointed or removed from office by an ordinary resolution. A resolution to appoint two or more Directors may be voted on as one resolution without each appointment being voted individually.

9.7 **Notice of removal**

A notice of meeting at which the removal of a Director will be considered must state that the purpose of the meeting is the removal of the Director.

9.8 **Disqualification and removal**

A person will be disqualified from holding the office of Director if he or she:

(a) is removed under clause 9.3 or 9.6; or

(b) resigns in writing and is not reappointed in accordance with this Constitution; or

(c) becomes disqualified from being a director pursuant to the Act.

9.9 **Appointment and removal of Alternate Directors**

Every Director may, by notice given in writing to the Company, appoint any person (including any other Director) to act as an Alternate Director in the Director's place, either generally, or in respect of a specified meeting or meetings during the Director's absence from a meeting. At the Director's discretion, by notice in writing to the Company, the appointing Director may remove the Director's Alternate Director.

9.10 **Powers of Alternate Director**

An Alternate Director may, while acting in the place of the appointing Director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as chairperson) of the appointing Director. The Alternate Director is subject in all respects to the same terms and provisions as the appointing Director, except as regards remuneration and the power to appoint an Alternate Director under this Constitution.

9.11 **Alternate Director counted in quorum**

For the purpose of establishing a quorum of the Board, an Alternate Director is deemed to be the Director appointing him or her, and if the Alternate Director is a Director he or she can count separately in both capacities.

9.12 **Address of Alternate Director required**

The notice of appointment of an Alternate Director must include an address for service of notice of meetings of the Board. Failure to give an address will not invalidate the appointment, but notice of meetings of the Board need not be given to the Alternate Director until an address is provided to the Company.

9.13 **Duties independent**

An Alternate Director shall not be the agent of his or her appointer and shall exercise his or her duties as a Director independently of his or her appointer.

9.14 **Notice required to absent Director**

Notice of a meeting of the Board must be given to every Director (whether or not that Director is in New Zealand) but if a Director is outside New Zealand, or to the knowledge of the Company is temporarily absent from New Zealand and the Director has appointed an Alternate Director under the provisions of this Constitution, notice must (subject to clause 9.12) also be given to the Alternate Director.

10. Indemnity and insurance

10.1 **Types of proceedings that may be indemnified against**

The Board shall 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.

10.2 **Types of liability that may be indemnified against**

The Board shall 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) in the case of a director, liability in respect of a breach of section 131 of the Act (which relates to the duty to act in good faith and in the best interests of the Company); or

(e) in the case of an employee, liability for breach of any fiduciary duty owed to the Company or a related company.

10.3 **Insurance of directors and employees**

The Board may cause the Company to effect insurance for Directors or 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.

10.4 **Directors to sign certificate**

The Directors who vote in favour of authorising the effecting of insurance under clause 10.3 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

10.5 **Entry in the interests register**

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

10.6 **Definitions**

For the purpose of this clause 10, “Director” includes a former Director and “employee” includes a former employee.

11. Powers and duties of the Board

11.1 **Management by Board**

Subject to 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.

11.2 **Power of Board**

Subject to any restrictions in the Act or this Constitution, 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.

11.3 **Delegation by Board**

The Board may delegate to a committee of Directors, a Director, or an employee of the Company or any other person any one or more of its powers, other than the powers referred to in the Schedule 2 of the Act.

12. Proceedings of the Board

12.1 **Third schedule to Act applies**

Subject to clause 9.14, the proceedings of the Board shall be conducted in accordance with the Schedule 3 to the Act.

13. Interested Directors

13.1 **Transactions with Company**

A Director, who is interested in a transaction entered into, or to be entered into by the Company, may:

(a) vote on a matter relating to the transaction;

(b) attend a meeting of the Directors at which the matter relating to the transaction arises and be included among the Directors present at the meeting for the purpose of a quorum;

(c) sign a document relating to the transaction on behalf of the Company; and

(d) do any other thing in his or her capacity as a Director in relation to the transaction,

as if the Director was not interested in the transaction.

14. Managing Director

14.1 **Appointment**

The Board may from time to time appoint one or more of their number to the office of Managing Director or Managing Directors of the Company, either for a fixed term or an indefinite term.

14.2 **Dismissal**

Every Managing Director is liable to be dismissed or removed by a resolution of the Board. The Board may enter into any agreement on behalf of the Company with any person who is or is about to become a Managing Director with regard to the length and conditions of the Managing Director's employment. The remedy of any such person for any breach of the agreement will be in damages only and the Managing Director will not have a right to continue in office as Managing Director contrary to the will of the Board.

14.3 **Termination of employment**

A Managing Director is, subject to the terms of any contract, subject to the same provisions as regards resignation, removal and disqualification as the other Directors. If the Managing Director ceases to hold the office of Director for any reason, the Managing Director will immediately cease to be a Managing Director.

15. Authority to bind

For the purposes of section 180(1)(a)(iii) of the Act, an obligation which, if entered into by a natural person would be required to be by deed, may (in addition to any other method of contracting permitted under the Act) be entered into on behalf of the Company by a director or other person or class of persons authorised by the Board, whose signature(s) must be witnessed.

16. Liquidation

16.1 **Distribution of surplus assets on liquidation**

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 among the holders of ordinary shares in proportion to their shareholding; provided however, that the holders of shares not fully paid up shall receive only a proportionate share of his or her entitlement being an amount which is in proportion to the amount

paid to the Company in satisfaction of the liability of the shareholder to the Company in respect of the shares.

16.2 **Distribution in specie**

Upon the liquidation of the Company the liquidator may, with the sanction of an ordinary resolution and any other sanction required by law, divide amongst the shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not). The liquidator may for that purpose set such value as the liquidator deems fair upon any assets to be divided as aforesaid and may determine how the division shall be carried out as between the shareholders holding different classes of shares. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the shareholders as the liquidator thinks fit (but so that no shareholders shall be compelled to accept any shares or other securities whereon there is any liability).