

Constitution of Being AI Limited

This document is the constitution to apply on completion of the reverse listing of the company.



CONSTITUTION OF BEING AI LIMITED

INTERPRETATION

1 **Defined terms**

1.1 In this constitution the following expressions have the following meanings:

Act means the Companies Act 1993;

Company means Being AI Limited (NZ Company number 1009777);

constitution means this constitution as it may be altered from time to time in accordance with the Act;

Director means a person appointed as a director of the Company in accordance with this constitution;

NZX means NZX Limited, its successors and assigns and, as the context permits, includes any duly authorised delegate of NZX;

Rules means the Listing Rules applying to the NZX Main Board (or any successor to that market) as altered from time to time by NZX;

Share means a share in the Company; and

written or in writing in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and visible form.

1.2 Subject to clause 1.1, expressions:

- (a) which are defined in the Rules (whether or not expressed with an initial capital letter) have the meanings given by the Rules.
- (b) which are defined in the Act (whether generally or for the purposes of one or more particular provisions) have the meanings given to them by the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning will be governed by the context in which it appears in this constitution.

2 **Construction**

In this constitution:

- 2.1 headings appear as a matter of convenience and do not affect the interpretation of this constitution;
- 2.2 the singular includes the plural and vice versa, and words importing one gender include the other genders;
- 2.3 a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;



- 2.4 a reference to a Rule or the Rules includes that Rule or the Rules as from time to time amended or substituted;
- 2.5 a reference to *permitted by the Act* or *permitted by the Rules* means not prohibited by the Act or not prohibited by the Rules;
- 2.6 the Schedules form part of this constitution.

RELATIONSHIP BETWEEN CONSTITUTION AND RULES

3 Incorporation of Rules while listed by NZX

For so long as the Company is listed by NZX:

- 3.1 this constitution is deemed to incorporate all provisions of the Rules required under the Rules to be contained or incorporated by reference in this constitution, as those provisions apply from time to time (and as modified by any waiver or ruling relevant to the Company);
- 3.2 shareholders must not cast a vote if prohibited from doing so by the Rules;
- 3.3 Directors must not cast a vote if prohibited from doing so by the Rules.

To the extent that any provision of this constitution is expressed as being subject to the Rules or requires compliance with the Rules, such provision will only be subject to, or require compliance with, the Rules for so long as the Company is listed.

4 NZX waivers or rulings

If NZX has granted a waiver or ruling in relation to the Company authorising any act or omission which in the absence of that waiver or ruling would be in contravention of the Rules or this constitution that act or omission will, unless a contrary intention appears in this constitution, be deemed to be authorised by the Rules and by this constitution.

5 Failure to comply with Rules has limited effect in some cases

Any failure to comply with:

- 5.1 the Rules, or
- 5.2 a clause of this constitution corresponding with a provision of the Rules (whether such provision is set out in full in this constitution or incorporated in it pursuant to clause 3),

by the Company or shareholders does not affect the validity or enforceability of any transaction, contract, action, decision or vote taken at a meeting of shareholders or other matter entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the non-compliance is not entitled to enforce that transaction or contract. This clause does not limit the rights of shareholders against the Company or the Directors.



6 Company must comply with Rules while listed

- 6.1 For so long as the Company is listed by NZX, the Company must comply with the Rules. Subject to clause 4, if this constitution contains any provision inconsistent with the Rules, then the Rules prevail.
- 6.2 To the extent that any provision of this constitution is expressed as being subject to the Rules or requires compliance with the Rules, such provision will only be subject to, or require compliance with, the Rules for so long as the Company is listed.

SHARES AND SHAREHOLDERS

7 Board need not comply with statutory pre-emptive rights

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

8 Further issues of Shares do not affect rights of existing shareholders

Subject to this constitution, the Board may issue Shares that rank as to voting or distribution rights, or both, equally with or in priority to any existing Shares. Any such issue will not be treated as an action affecting the rights attached to those existing Shares unless the terms of issue of those Shares expressly provide otherwise.

9 Consolidation and subdivision

The Board may:

- 9.1 consolidate and divide Shares or any class of Shares in proportion to those Shares or the Shares in that class; or
- 9.2 subdivide Shares or any class of Shares in proportion to those Shares or the Shares in that class.

10 Share register may be divided

The Share register may be divided into 2 or more registers kept in different places.

11 Record date for shareholder voting

The Board may determine in a notice of meeting for the purpose of voting at that meeting that those registered shareholders as at 5 p.m. on a day not more than 2 working days before the meeting will be the only persons entitled to exercise the right to vote at that meeting.

12 Registration of separate parcels

A shareholder or a transferee may request the Company to register the Shares held by that person in two or more separately identifiable parcels. Where the Company agrees to such a request, the Company may, so far as it considers convenient, communicate with the shareholder, pay dividends and otherwise act in respect of such parcel, as if the separately identifiable parcels belonged to different persons.

13 Board may refuse or delay transfer

The Board may in its absolute discretion refuse or delay the registration of any transfer of Shares (subject to their terms of issue) if permitted to do so by the Act or the Rules.



14 **Compulsory sale of less than Minimum Holdings**

- 14.1 The Company may at any time give notice to a shareholder holding less than a Minimum Holding (as defined in the Rules) that if, at the expiration of 3 months after the date the notice is given, Shares then registered in the name of the shareholder are less than a Minimum Holding the Company may sell those Shares on market (including through a broker acting on the Company's behalf).
- 14.2 The Board may authorise the transfer of the Shares sold by the Company under this clause 14 and the shareholder is deemed to have authorised the Company to act on behalf of the shareholder and to sign all necessary documents relating to the sale. The purchaser of Shares sold by the Company under this clause 14 shall have no obligation to ensure the proceeds of the sale of those Shares is applied in accordance with this clause 14, nor shall the title to the Shares be affected by any irregularity or invalidity in the procedures under this constitution relating to the sale. The remedy of any person aggrieved by the sale is in damages only and against the Company exclusively.
- 14.3 The proceeds of the sale of any Shares sold under this clause must be applied as follows:
- (a) first, in payment of any reasonable sale expenses.
 - (b) second, in satisfaction of any unpaid calls or any other amounts owing to the Company in respect of the Shares.
 - (c) the residue, if any, must be paid to the person who was the holder immediately before the sale or his or her executors, administrators or assigns.
- 14.4 A certificate, signed by a Director that records that a power of sale under this clause has arisen and is exercisable by the Company is conclusive evidence of the facts stated in that certificate.

15 **Company may acquire and hold Shares**

Subject to this constitution and the Rules, the Company may:

- 15.1 purchase or otherwise acquire Shares issued by the Company and may hold Shares as treasury stock; and
- 15.2 make an offer to one or more holders of Shares to acquire Shares issued by the Company in such number or proportions as it thinks fit,

in accordance with the Act and the Rules.

16 **Company may issue and redeem Shares**

Subject to this constitution and the Rules, the Company may:

- 16.1 issue or redeem redeemable Shares; and
- 16.2 exercise an option to redeem redeemable Shares issued by the Company in relation to one or more holders of redeemable Shares,

in accordance with the Act and the Rules.



17 **Board deductions from distribution**

The Board may, at its discretion, deduct from any dividend or other distribution payable to a shareholder any amount owed by the shareholder to the Company in respect of which the Company has a lien over the specific Shares on which the dividend or other distribution is payable. The Board must deduct from any dividend or other distribution payable to any shareholder any amount it is required by law to deduct, including withholding and other taxes.

18 **Distributions do not bear interest**

No dividend or other distribution shall bear interest against the Company unless the applicable terms of issue expressly provide otherwise.

19 **Unclaimed moneys**

All dividends and other distributions, and any other moneys payable to any shareholder or former shareholder in respect of Shares, unclaimed for one year after the due date for payment may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. The Company shall be entitled to mingle the distribution with other money of the Company and shall not be required to hold it or to regard it as being impressed with any trust but, subject to compliance with the solvency test, shall pay the distribution to the person producing evidence of entitlement.

20 **Proceedings at meetings of shareholders and interest groups**

The First Schedule governs the proceedings at meetings of shareholders. The First Schedule also governs the proceedings of meetings of any interest group required to be held by the Act, the Rules, or this constitution, with all necessary consequential modifications, except that the quorum shall be the members of the interest group holding 5% or more of the total number of Shares held by all members of that group having the right to vote at the meeting.

DIRECTORS

21 **Appointment of Directors**

21.1 Any natural person who is not disqualified under the Act and, if required under the Rules, who has been nominated within the time limits under the Rules, may be appointed as a Director by an ordinary resolution of shareholders.

21.2 The Board may appoint any person who is not disqualified under the Act to be a Director to fill a vacancy or as an addition to the existing Directors. Any Director appointed under this clause (including any person who subsequent to his or her appointment as a Director becomes an executive Director) may hold office only until the next annual meeting, and is then eligible for election.

21.3 The persons holding office as directors of the Company on adoption of this constitution continue in office and are deemed to have been appointed as Directors pursuant to this constitution. Similarly the chairperson of the Board continues in office and is deemed to have been appointed as chairperson pursuant to this constitution.



22 **Rotation of Directors**

22.1 Each Director shall retire from office when required to do so by the Rules, but, subject to the Rules, shall be eligible for re-election (including at any meeting at which the Director retires).

22.2 A Director retiring at a meeting of shareholders continues to hold office:

- (a) until he or she is re-elected; or
- (b) if he or she is not re-elected, until the end of the meeting of shareholders at which he or she retires (or any adjournment of that meeting).

23 **Election of chairperson of the Board and term of office**

23.1 The Directors may elect one of their number as chairperson and, if they so determine a deputy chairperson, of the Board.

23.2 The chairperson of the Board and, if one has been elected, the deputy chairperson of the Board holds that office until he or she vacates that office or the Directors elect a chairperson or deputy chairperson (as the case may be) in his or her place.

24 **Office of Director vacated in certain cases**

The office of Director is vacated if the person holding that office:

- 24.1 dies; or
- 24.2 is absent from 3 consecutive meetings of the Board without leave being granted by a resolution of the Board and the Board resolves that the Director has vacated office; or
- 24.3 becomes disqualified from being a director pursuant to the Act; or
- 24.4 retires from office and is not re-elected or deemed to have been re-elected under this constitution.

25 **Meetings of the Board**

The Second Schedule governs the proceedings at meetings of the Board, except where otherwise agreed by all Directors in relation to a particular meeting or meetings. The third schedule to the Act does not apply to proceedings of the Board.

26 **Written resolutions of Board permitted**

A written resolution signed or assented to by all of the Directors then entitled to receive notice of a meeting of the Board is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

27 **Written resolutions may be in counterparts**

Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the Directors. A copy of a written resolution, which has been signed and is sent by email or any similar means of communication (including PDF counterparts), will satisfy the requirements of this clause.



28 Board delegates to comply with regulations

In exercising the Board's delegated powers, any committee of Directors, Director, employee, or any other person must comply with any regulations that the Board may impose.

29 Committee proceedings

The provisions of this constitution relating to meetings and proceedings of the Board also apply to meetings and proceedings of any committee of Directors, except to the extent the Board determines otherwise.

30 Reimbursement of expenses

A Director may be reimbursed for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as a Director without requiring the prior approval of shareholders.

31 Directors may appoint and remove alternate Directors

Every Director may:

31.1 appoint any person who is not a Director and is not disqualified by the Act or this constitution from being a Director, and whose appointment has been approved in writing by a majority of the other Directors, to act as an alternate Director in his or her place either for a specified period, or generally during the absence or inability to act from time to time of such Director; and

31.2 remove his or her alternate Director from that office,

by giving written notice to that effect to the Company. A majority of the other Directors may similarly remove an alternate of a Director from that office.

32 Alternate Director has powers of appointer

While acting in the place of the Director who appointed him or her, an alternate Director:

32.1 has, and may exercise and discharge, all the powers, rights, duties and privileges of that Director (including the right to receive notice of, be counted as part of the quorum of, and participate in a meeting, of the Board, and to sign any document, including a written resolution, and to act as chairperson of the Board, but excluding the right to appoint an alternate Director);

32.2 is also subject to the same terms and conditions of appointment as that Director, except that he or she is not entitled to receive remuneration other than such proportion (if any) of the remuneration otherwise payable to his or her appointer as the appointer may direct by notice in writing to the Company.

33 Termination of appointment of alternate Director

The appointment of an alternate Director terminates automatically if the Director who appointed him or her ceases to be a Director or if an event occurs which would cause him or her to vacate office if he or she were a Director. A Director retiring by rotation and being re-elected is not to be treated as having ceased to be a Director for the purposes of this clause.



GENERAL

- 34 **Company indemnification of directors and employees for certain liabilities**
The Company shall indemnify a director of the Company, and may indemnify an employee of the Company or a director or employee of a related company, for any liability or costs for which a director or employee may be indemnified under the Act. The Board may determine the terms and conditions of such an indemnity.
- 35 **Company may effect insurance for directors and employees**
The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company for any liability or costs for which a company may effect insurance for a director or employee under the Act. The Board may determine the amounts and the terms and conditions of any such insurance.
- 36 **Manner of execution of deeds**
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 a Director, or any other person authorised by the Board, whose signature must be witnessed, or as otherwise permitted by the Act.



FIRST SCHEDULE: PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

INTERPRETATION

1 Construction

- 1.1 This Schedule is to be read together with Schedule 1 of the Act.
- 1.2 Unless stated otherwise, references to clauses are references to clauses in this Schedule.
- 1.3 A reference in this Schedule to a shareholder present at a meeting or entitled to vote at a meeting includes a reference to a proxy of a shareholder, a representative of a corporate shareholder, an attorney of a shareholder, and any person who may lawfully act on behalf of a shareholder.

QUORUM

2 Quorum for shareholders' meeting

A quorum for a meeting of shareholders is present if 2 or more shareholders are present having the right to vote at the meeting.

CHAIRPERSON

3 Chairperson of Board to be chairperson of meeting

The chairperson of the Board, if one has been elected by the Directors and is present at a meeting of shareholders, will chair the meeting.

4 Directors may elect chairperson if chairperson of Board not available

If no chairperson of the Board has been elected or, if at any meeting of shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting or is unwilling to act, the deputy chairperson of the Board (if any) shall be the chairperson, or failing him or her, the Directors present may elect one of their number to be chairperson of the meeting.

5 As a last resort shareholders may elect chairperson

If at any meeting of shareholders, no Director is willing to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may elect one of their number to be chairperson of the meeting.

6 Chairperson's power to adjourn meeting

The chairperson of a meeting at which a quorum is present:

- 6.1 may adjourn the meeting with the consent of the shareholders present who are entitled to attend and vote at that meeting; and
- 6.2 must adjourn the meeting if directed by the meeting to do so.

The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.



7 Chairperson may dissolve or adjourn unruly meetings

The chairperson may adjourn or dissolve the meeting if in his or her opinion the meeting has become so unruly, disorderly or inordinately protracted, that the business of the meeting cannot be conducted in a proper and orderly manner. The chairperson may exercise this power without the consent of the meeting and without giving reasons.

8 Dissolved meetings - unfinished business

If the chairperson proposes to dissolve a meeting pursuant to clause 7, and there is any item of unfinished business of the meeting which in his or her opinion requires to be voted upon, then that item shall be dealt with by the chairperson directing it to be put to the vote by a poll without further discussion.

VOTING

9 Chairperson not allowed casting vote

In the case of an equality of votes, whether on a show of hands, voice vote or on a poll, the chairperson does not have a casting vote.

POLLS

10 Voting at meetings to be by poll

As required by the Rules, all voting at meetings of shareholders must be conducted by a poll.

11 Time at which polls to be taken

A poll demanded on the election of a chairperson of a meeting or on a question of adjournment must be taken immediately. A poll demanded on any other question is to be taken at such time as the chairperson of the meeting directs. The meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.

12 Declaration of poll result

12.1 The chairperson of the meeting may declare the result of a poll either at or after the meeting, and when the outcome of the poll is known, may do so regardless of whether all votes have been counted.

12.2 The result of a poll declared by the chairperson of the meeting will be treated as the resolution of the meeting at which the poll was demanded on the issue for which the poll was taken.

PROXIES

13 Form of notice of proxy

A notice appointing a proxy shall be in such form as the Board may direct.

14 Vote by proxy valid where no notification before meeting of disqualified proxy

Where:

14.1 the shareholder has died or become incapacitated; or



14.2 the proxy, or the authority under which the proxy was executed, has been revoked; or

14.3 the Share in respect of which the notice of proxy is given has been transferred,

before a meeting at which a proxy exercises a vote in terms of a notice of proxy but the Company does not receive written notice of that death, incapacity, revocation, or transfer before the start of the meeting, the vote of the proxy is valid.

POSTAL VOTES

15 **Postal votes permitted at Board's option**

A shareholder may exercise the right to vote at a meeting by casting a postal vote only if the Board, prior to the giving of notice of a meeting, has so determined and, if the Board so determines, the provisions of clause 7 of the first schedule to the Act shall apply. To avoid doubt, a postal vote may be cast using electronic means permitted by the Board.

OTHER PROCEEDINGS

16 **Chairperson may regulate other proceedings**

Except as provided in Schedule 1 of the Act as modified by this Schedule, the chairperson of a meeting of shareholders may regulate the proceedings at the meeting.



SECOND SCHEDULE: PROCEEDINGS OF THE BOARD

NOTICE OF MEETING

1 **Director's power to convene meetings**

A Director, or any other person at the request of a Director, may convene a meeting of the Board by giving notice in accordance with this Schedule.

2 **Notice to be sent to Director's address**

The notice of meeting must be a written notice delivered by hand to the Director, or sent to the address, or an electronic mail message sent to the electronic mail address, which the Director provides to the Company for that purpose, or if an address or electronic mail address, is not provided, then a written notice to his or her last place of employment or residence known to the Company.

3 **Notice to contain certain details**

The notice of meeting must include the date, time and place of the meeting and the matters to be discussed.

4 **Period of notice required to be given to Directors**

At least two days' notice of a meeting of the Board must be given unless the chairperson (or, in the chairperson's absence from New Zealand, the deputy chairperson (if any), and in the deputy chairperson's absence, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least two hours' notice is given. Any such shorter notice may be given by telephone communication to each Director at the telephone number provided to the company by each Director provided that written notice shall be given to the Directors within the shorter notice period where it is practicable to do so.

5 **Absent Directors**

If a Director, who is ordinarily resident in New Zealand, is for the time being absent from New Zealand, supplies the Company with an electronic mail address to which notices are to be sent during his or her absence, then notice must be given to that Director. Otherwise notice need not be given to any Director for the time being absent from New Zealand. However, if he or she has an alternate Director who is in New Zealand, then notice must be given to that person.

6 **Directors may waive irregularities in notice**

Any irregularity in the notice of a meeting, or failure to comply with clauses 1 to 5 of this Schedule is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or failure, or if all Directors entitled to receive notice of the meeting agree to the waiver.

MEETING AND QUORUM

7 **Methods of holding meetings**

A meeting of the Board may be held:

- 7.1 by a number of Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting;



7.2 by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting; or

7.3 by a combination of the methods described in clauses 7.1 and 7.2 of this Schedule.

8 Quorum for Board meeting

Unless otherwise determined by the Board, the quorum necessary for the transaction of business at a meeting of the Board is 3 Directors. No business may be transacted at a meeting of the Board unless a quorum is present.

9 Meeting adjourned if no quorum

If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the meeting will be adjourned automatically until the following working day at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Directors present will constitute a quorum.

CHAIRPERSON

10 Chairperson to chair meetings

The chairperson or, in the absence of the chairperson, the deputy chairperson of the Board will chair all meetings of the Board. If no chairperson or deputy chairperson is elected, or if at a meeting of the Board the chairperson or deputy chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, then the Directors present may elect one of their number to be chairperson of the meeting.

VOTING

11 Voting on resolutions

Each Director has one vote. 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 are in favour of it. A Director must not vote where that Director is not permitted to vote by the Rules or this constitution. A Director present at a meeting of the Board may abstain from voting on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.

12 Chairperson does not have a casting vote

The chairperson of the Board has a casting vote, except in the case of an equality of votes where two Directors form a quorum, in which case the chairperson does not have a casting vote at a meeting at which only two Directors are present.

MINUTES

13 Board must keep minutes of proceedings

The Board must ensure that minutes are kept of all proceedings of meetings of the Board. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.



OTHER PROCEEDINGS

- 14 **Board may regulate other proceedings**
Except as set out in this Schedule, the Board may regulate its own procedure.