

# DILUTES AUSTRALIA Ltd

A.C.N. 081 316 994 / A.B.N. 17 081 316 994

# MEMORANDUM & CONSTITUTION

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## **TABLE OF CONTENTS**

|         |                                 |    |
|---------|---------------------------------|----|
| 1.....  | DEFINITIONS AND INTERPRETATION  | 3  |
| 2.....  | NAME OF COMPANY                 | 4  |
| 3.....  | OBJECTS OF COMPANY              | 4  |
| 4.....  | POWERS OF COMPANY               | 4  |
| 5.....  | INCOME AND PROPERTY             | 4  |
| 6.....  | LIABILITY OF MEMBERS            | 4  |
| 7.....  | WINDING UP                      | 4  |
| 8.....  | REGISTERED OFFICE OF COMPANY    | 5  |
| 9.....  | MEMBERS                         | 5  |
| 10..... | GENERAL MEETINGS                | 6  |
| 11..... | PROCEEDINGS AT GENERAL MEETINGS | 7  |
| 12..... | VOTES OF MEMBERS                | 7  |
| 13..... | DIRECTORS                       | 8  |
| 14..... | ELECTION OF DIRECTORS           | 8  |
| 15..... | PROCEEDINGS OF DIRECTORS        | 10 |
| 16..... | DISQUALIFICATION OF DIRECTORS   | 10 |
| 17..... | POWERS OF DIRECTORS             | 11 |
| 18..... | BORROWING POWERS                | 11 |
| 19..... | DELEGATION OF POWERS            | 11 |
| 20..... | MINUTES                         | 11 |
| 21..... | THE SEAL                        | 11 |
| 22..... | ACCOUNTS                        | 11 |
| 23..... | AUDITOR                         | 12 |
| 24..... | FUNDS - SOURCE                  | 12 |
| 25..... | COMPANY'S BANKING ACCOUNTS      | 12 |
| 26..... | BRANCH BANKING ACCOUNTS         | 12 |
| 27..... | FINANCIAL YEAR                  | 12 |
| 28..... | DOCUMENTS                       | 12 |
| 29..... | REGULATIONS                     | 12 |
| 30..... | NOTICES                         | 13 |
| 31..... | WINDING UP                      | 13 |
| 32..... | INDEMNITY                       | 13 |

*Dilutes Australia Ltd*  
**Memorandum & Constitution**

**CORPORATIONS ACT (CTH)**

A Company Limited by Guarantee and not having a Share Capital

**CONSTITUTION**

of

**DILUTES AUSTRALIA LIMITED**

(the "Company")

**1. DEFINITIONS AND INTERPRETATION**

1.1. In this Constitution, unless the context otherwise requires:-

- "Associate Member" means any person who is a member of a Branch in any State but who is not entitled to vote;
- "Auditor" means the Company's auditor from time to time;
- "Board" means the Directors for the time being of the Company or such one or more of them as has or have authority to act for the Company;
- "Branch membership committee" means a committee established by each Branch for the purpose of recruiting new members, assessing applications and other membership activities that arise or as required by this Constitution or any By-law made by the Company or the Board;
- "Branch Secretary" means the secretary who is a member of the Management Committee elected from amongst the members of each Branch at the Annual Meeting of the Branch to carry out the secretarial functions of the Branch;
- "Branch" means a State Promotional Branch created as a division of the Company in a State or Territory of the Commonwealth of Australia pursuant to the provisions hereinafter contained;
- "Broken coloured dilute" means a Cream (Palomino, Buckskin, Cremello, Perlino), Dun, Silver (Taffy), Champagne, Pearl and any other dilution gene as identified, horse or pony that is also broken coloured ie tobiano, overo, spotted, appaloosa etc. These horses & ponies are registered with the company for the purposes of showing only;
- "Committee" means a committee formed or appointed pursuant to article 13.2;
- "Company" means Dilutes Australia Limited;
- "Constitution" means this constitution for the Company as amended or replaced from time to time;
- "Corporations Act" means the Corporations Act 2001 (Cth);
- "Dilute" means Cream (Palomino, Buckskin, Cremello, Perlino), Dun, Silver (Taffy), Champagne, Pearl and any other dilution gene as identified;
- "Director" means a Member occupying the position of Director of the Company;
- "Dun" means a genetic dun horse or pony;
- "Founding Member" means each of the affiliated State based Incorporated Associations who have joined together and resolved to form this Company for the purpose of having one legal entity in Australia to operate and regulate the activities of all such affiliated Associations (registered in the various States and/or Territories under the common name of "Australian Palomino Horsebreeders Association") who shall forthwith transfer (and/or surrender) their rights, powers functions and assets to the Company ("the Transfer of Rights"). As soon as practicable after each such affiliated Association has completed the Transfer of Rights the management committee or members of each (as the case may be) shall take all available steps to have each such Association wound up;
- "Honorary Member" means any person elected as an Honorary Member under Article 3.9;
- "Junior Member" means any person under the age of eighteen (18) years whose application for membership of the Company as a Junior Member has been approved by the Board;
- "Management Committee" means the Branch Committee of any State or Territory of the Commonwealth of Australia;
- "Member" means:
  - a Founding Member; and
  - an Ordinary Member, Junior Member, Associate Member, Showing Only Member, Honorary Member or Life Member registered in the records of the Company as a financial Member of the Company (unless exempted from the payment of fees by this Constitution or the Company);
- "Ordinary Member" means any natural person who is eighteen (18) years or age or over, whose application for membership of the Company as an Ordinary Member has been approved by the Board.
- "Showing Only Member" means any natural person whose application for membership of the Company as a Showing Only Member for the purposes of registering and showing a broken coloured dilute horse or pony has been approved by the Board but who is not entitled to vote.

1.2. In this Constitution, unless the context otherwise requires:

- words importing the singular include the plural and vice versa;
- words importing any gender include other genders;
- a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- headings and marginal notes have no effect on construction or interpretation; and
- subject to this Constitution, words or expressions defined in the Corporations Act have, unless the contrary intention appears, the same meaning in this Constitution.

*Dilutes Australia Ltd*  
**Memorandum & Constitution**

- 1.3. This Constitution is to supplement the replaceable rules contained in the Corporations Act and the provisions of the Corporations Act relating to the operation of public companies.
- 1.4. The replaceable rules contained in the Corporations Act and the provisions of the Corporations Act relating to the operation of public companies shall only apply to the Company in relation to matters that have not been dealt with in this Constitution.

## **2. NAME OF COMPANY**

- 2.1 The name of the Company is "Dilutes Australia Limited".

## **3. OBJECTS OF COMPANY**

- 3.1 The Company is a non-profit company limited by guarantee.
- 3.2 The Company is established to represent, accredit and self-regulate owners and breeders of Dilute horses and ponies in Australia.
- 3.3 The objects for which the Company is established are:-
- 3.3.1 to expedite the resolution of the Annual General Meeting of the Federal Council of the Incorporated Associations held on the 22nd & 23rd of March 1997 who have resolved to form this Company for the purpose of having one legal entity in Australia to operate and regulate the activities of the affiliated State based Incorporated Associations (registered in the various states and territories under the common name of "Australian Palomino Horsebreeders Associate") that have agreed to transfer their rights, powers functions and assets to this Company with the following objects;
  - 3.3.2 to encourage and promote the use of Dilute horses and ponies in all areas of Equestrian Activity;
  - 3.3.3 to reward excellence in any Equestrian Activity by way of prizes and awards;
  - 3.3.4 to hold and promote shows for Dilute horses and ponies, either closed or open;
  - 3.3.5 to maintain a panel of judges approved by the Company as competent to act as judges of Dilute horses and ponies and a list of suitable classifiers, by way of judges schools and exams;
  - 3.3.6 to encourage and promote to members and interested persons a knowledge of Dilute horses and ponies and their uses in Equestrian Activity;
  - 3.3.7 to maintain the purity of colour and improvement of Dilute horses and ponies in Australia;
  - 3.3.8 to encourage and promote the breeding and showing of Dilute horses and ponies in Australia;
  - 3.3.9 to compile, print and publish at intervals a stud book for all horses and ponies registered with the Company;
  - 3.3.10 to advertise and publish such matters and in such newspapers, periodicals, books or leaflets as the Company may think fit;
  - 3.3.11 to establish harmonious relations and cooperate with Agricultural Societies and Club's and Associations involved in Equestrian Activities in Australia with a view to having Dilute horses and ponies fully represented in the schedule of prizes and shows and events conducted by such Societies, Clubs and Associations; and
  - 3.3.12 to establish harmonious relations and cooperate with breeders of Dilute horses and ponies overseas and to classify and register such horses not resident in Australia in a Stud Book in Australia.

## **4. POWERS OF COMPANY**

- 4.1 In order to carry out its objects the Company has the power and legal capacity of a natural person, without limitation, in accordance with Part 2B.1 of the Corporations Act.

## **5. INCOME AND PROPERTY**

- 5.1 The income and property of the Company however derived or obtained shall be applied solely towards the promotion of the objects of the Company as set out in this Constitution and except as to the provisions of the Constitution applying upon a winding up no part thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the Members.
- 5.2 Nothing contained in this clause shall prevent:
- 5.2.1 the payment of reasonable and proper remuneration to any officer or servant of the Company;
  - 5.2.2 the payment of interest, at a rate not exceeding the rate for the time being charged by bankers in Australia for overdrawn accounts, on any money loaned to the Company by any Member; or
  - 5.2.3 the payment of a reasonable rental for premises leased to the Company by any Member.

## **6. LIABILITY OF MEMBERS**

- 6.1 The liability of the Members is limited as provided in clause 6.2.
- 6.2 Each Member of the Company undertakes to contribute to the assets of the Company, in the event of it being wound up while the Member is a member or within one year after the Member ceases to be a member, for payment of the debts and liabilities of the Company contracted before the Member ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves such amount as may be required, not exceeding Ten Dollars (\$10.00).

## **7. WINDING UP**

- 7.1 If upon the winding-up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall only be paid to or distributed to some other entity or entities having objects similar to the objects of the Company and whose constitution shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as imposed on the Company under or by virtue of this Constitution, such entity or entities to be determined by the Members of the Company at or before the time of winding-up or dissolution and in default thereof by the Supreme Court in such State as the Directors determine.

## **8. REGISTERED OFFICE OF COMPANY**

8.1 The registered office of the Company will be situated in the State of Western Australia or such other State and at such place as the Directors may from time to time determine.

## **9. MEMBERS**

- Founding Members* 9.1 The Founding Members shall (subject to compliance with the Corporations Act) be deemed to be Members of the Company from the date of incorporation and shall forthwith transfer (and/or surrender) all of their rights, powers functions and assets (relevant to their former Palomino Horsebreeder activities) to the Company ("the Transfer of Rights"). As soon as practicable after each Founding Member has completed the Transfer of Rights the management committee or members of each (as the case may be) shall take all available steps to have each such Founding Member wound up.
- Class of members* 9.2 Apart from the Founding Members the Membership of the Company shall consist of any of the following classes of members: Ordinary Members; Junior Members, Associate Members; Honorary Members; and Life Members.
- Founding Members have company membership rights* 9.3 All members of what ever class of Founding Members shall be entitled to have the same membership class with the Company that they had with their founding Member upon the Branch Membership Committee supplying a Membership register to the Board with a certificate as to the membership and financial status of all persons from that Branch who are willing and able to become equivalent Members of the Company.(subject to compliance with the Corporations Act and requirements of the Board).
- Membership Qualifications* 9.4 Any other person may qualify to be a Member of the Company if upon application for membership of the Company as provided by Article 3.11 the application for membership is approved by the Board.
- Voting rights* 9.5 Only Ordinary Members and Honorary members shall have voting rights at meetings of the Company. Such voting rights and procedures are provided for hereinafter.
- Natural persons* 9.6 Only individual natural persons can be Junior Members, Associate Members, Honorary Members and Life Members.
- Companies etc* 9.7 Ordinary Members can include individual or joint membership, a partnership or a corporation. A company or a partnership admitted as an Ordinary Member shall nominate one person to vote on its behalf.
- Joint Membership* 9.8 Where two or more persons are registered as joint Ordinary Members only one such person may vote at any general meeting as if he/she alone were the Ordinary Member. If more than one of such persons is present at any meeting only the person present whose name is recorded first on the Register shall alone be entitled to vote.
- Honorary Membership* 9.9 An Honorary Membership may be conferred on a Branch member who has done significant service to the Branch. It is for the period of ONE (1) financial year and shall be decided by the Branch Committee by motion and vote. An Honorary Membership is not a FREE membership. The Branch agrees to pay to the Company the membership fee for that member, for that year. The fee will be due on the due date or a late fee will apply.
- Life Membership* 9.10 Any person who in the opinion of the Board, upon the recommendation of a Branch, has rendered special service to the Company or to any Branch may, by resolution of the Board, carried by a majority representing three fourths of the Members of the Board, be appointed a Life Member of the Company. A Life Membership is restricted to one Member per Branch per year and the recipient must have been a Member of the company (or of a State Association that has been taken over by the Company) for ten (10) years and given meritorious service to the Company for an appropriate period. The Board may grant a Life Membership in exceptional circumstances without the recommendation of a Branch. A citation of qualifications must be submitted with Branch nomination for Life Membership. Life Members shall be limited in number to ten (10) per Branch at any one time and a Life Member shall be entitled to voting rights at meetings.
- Application for membership* 9.11 An application for membership of the Company as an Ordinary Member, a Junior Member or an Associate Member shall be in such form as shall from time to time be prescribed by the Board and accompanied by the appropriate annual membership fee.
- Admission and Rejection of Member* 9.12 At the next meeting of the Board following the receipt of an application for membership of the Company as an Ordinary Member, Junior Member or Associate Member, and the fee applicable for such class of membership, the application shall be considered by the Board. Subject to these Rules the Board may accept or refuse any application for membership of the Company as an Ordinary Member, Junior Member or Associate Member without assigning any reason.
- Membership Fees* 9.13 Every member of the Company shall pay an annual subscription to the Company, with the exception of Life Members and Honorary Members. Honorary Members' membership shall be paid by the Branch. Membership fees for each class of membership of the Company shall be:
- 9.13.1 such sum as the Board decides at the first Board meeting and thereafter as the Members may decide to vary at any annual general meeting;
- 9.13.2 payable on the first day of January in each year or at such other time and in such manner as the Board may from time to time determine;
- 9.13.3 reduced to such lesser sum as the Board may decide for Junior Members except no reduction shall apply to Junior Members who own breeding stock unless the Board decides to apply a reduction at its discretion;
- 9.13.4 be set by the Board from year to year for Associate Members.
- Conduct of Members* 9.14 Each Member shall strictly observe all Rules, by-laws and Regulations of the Company. Any Member guilty of a breach of this Article may be called upon by the Branch Committee or the Board to remedy any breach. A breach that is incapable of being remedied or a failure to remedy same upon request, may result in the member becoming subject to the application of clauses 9.18 and 9.19.
- 9.15 No Member shall exhibit any registered dilute in any show or exhibition or advertise any dilute in any paper, periodical or pamphlet under any name but its registered name or as having any brand other than its registered brand or microchip.
- 9.16 No Member or their assistants shall so conduct himself or be guilty of any such conduct as to bring the Company into discredit or as to bring himself as a breeder or as a Member into discredit.

*Dilutes Australia Ltd*  
**Memorandum & Constitution**

- Termination of Membership*
- 9.17 A member may resign from the Company at any time by giving notice in writing to the Board. Such resignation shall take effect at the time such notice is received by the Board unless a later date is specified in the notice when it shall take effect on that later date.
- 9.18 If a member:
- 9.18.1 is convicted of an indictable offence; or
- 9.18.2 wilfully breaches or refuses to comply with any of this Constitution or any Rules by-law or regulation made by the Company; or
- 9.18.3 has membership fees in arrears for a period of two months or more; or
- 9.18.4 conducts him/her self in a manner considered by the Board to be prejudicial to the interests of the Company or inconsistent with the objects of the Company; or
- 9.18.5 is declared insane; or
- 9.18.6 dies or, being a company goes into liquidation or, being a partnership is dissolved,
- the Board on its own motion or on the recommendation of a Branch Committee shall consider whether his/her/its membership should be terminated
- 9.19 If the Board resolves there appear to be adequate grounds to terminate a person's membership the Board will:
- 9.19.1 provide details of the alleged grounds for termination to that person in writing and invite the person to promptly resign or respond to the allegations;
- 9.19.2 give a reasonable opportunity to that person to present his/her/its case before making a final decision which shall be fair and reasonable; and
- 9.19.3 terminate that person's membership if no resignation or reply is received within 30 days from the date written notice of the allegations was posted to that person.
- Appeal Rights*
- 9.20 A person whose application for membership has been rejected or whose membership has been terminated by the Board may, within one month of receiving written notification thereof, lodge with the Board written notice of appeal against that decision following which the Board will:
- 9.20.1 convene, within three months of the date of receipt of such notice, an extraordinary general meeting of members to determine the appeal;
- 9.20.2 ensure the appellant is given a reasonable opportunity to present his/her case to that general meeting; and
- 9.20.3 have the appeal determined by the vote of the members present at such meeting.
- Register of Members*
- 9.21 The Board shall appoint a membership officer for the Company who shall be responsible for maintaining an accurate and up to date register of members of the Company. A copy may be sent to each Branch from time to time as the Board shall decide.
- 9.22 Both registers shall contain the full name, address, date of joining as a member (of the Company and of any Founding Member joining the Company), registered prefix and registered brand (if applicable) of each Member.
- Members to notify changes*
- 9.23 Every Member shall promptly notify the Board in writing of any change of address or other relevant particulars and, in the case of a partnership, every change in the constitution of that firm. All such changes shall be promptly recorded in the Company register.
- 9.24 Particulars shall also be entered into the Register of Deaths, Resignations, Terminations and Reinstatement of Membership and any further particulars as the Board may require from time to time.
- 9.25 All Registers shall be open for inspection at all reasonable times by any member who applies to the Membership Officer for such inspection.

## 10. GENERAL MEETINGS

- Annual meeting*
- 10.1 Subject to the provisions of Part 2G.2 of the Corporations Act an annual general meeting shall be held once in every calendar year at such time and place as may be prescribed by the Board.
- Meetings specified*
- 10.2 All general meetings other than the annual general meeting shall be called extraordinary general meetings.
- Postponement of meetings*
- 10.3 Any general meeting (annual or extraordinary) convened by the Board, unless a time shall have been fixed by the Company in general meeting, or unless such meeting be convened at the request of members, may be postponed by the Board by notice in writing, and may be subject to any further postponement or adjournment held at the postponement date, for the purpose of transacting the business covered by the original notice.
- Calling of an extraordinary general meeting*
- 10.4 Any three Directors or any ten Members may by written notice to the Members convene an extraordinary general meeting.
- Notice convening meeting*
- 10.5 Subject to the provisions of Part 2G.2 of the Corporations Act regarding consent of members and relating to special resolutions and special notices, at least twenty one (21) days' notice, specifying the place and day and hour of the meeting, and in case of special business, the general nature of such business, shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting, to the members or such persons as are entitled under these Article to receive such notices.
- Non-receipt of notice not to invalidate proceedings*
- 10.6 The accidental omission to give any such notice to or the non-receipt of such notice by any member shall not invalidate any resolution passed at any such meeting or any of the proceedings thereat.

## **11. PROCEEDINGS AT GENERAL MEETINGS**

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|-----------------------|-------|---|
|                       | 11.1  | All business shall be deemed special that is transacted at any extraordinary general meeting, together with all that is transacted at an annual general meeting, with the exception of the consideration of accounts, balance sheets and the reports of the Board and Auditors, and the election, if and when such is the function of the general meeting, of Directors, and other officers, in place of those retiring.  |
| <i>Quorum</i>         | 11.2  | No business shall be transacted at any general meeting unless a quorum of members is present, personally or by proxy, at the commencement of such business and a quorum consist of ten or more members representing at least three quarters of the Branches.  |
|                       | 11.3. | The Chairman or acting Chairman of the Board shall preside as Chairman at every meeting of the Company. If there be no Chairman or acting Chairman, or if at any meeting she/he be not present within fifteen minutes after the time appointed for holding the same, or shall decline to take, or shall retire from the chair, the members present shall choose some one of their number to be Chairman at such meeting.  |
| <i>Want of quorum</i> | 11.4  | If within thirty minutes from the time appointed for the meeting a quorum be not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place or such other day as the Board shall think fit and at such time and place as they may appoint, and if at such adjourned meeting there shall be no quorum present within thirty minutes from the time appointed, the meeting shall be adjourned sine die and no business shall be transacted.   |
| <i>Adjournment</i>    | 11.5  | The Chairman presiding at such meeting may, with the consent of the meeting, adjourn such meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.   |
|                       | 11.6  | Every question submitted to a meeting shall be decided in the first instance by a majority in number of votes on a show of hands of those entitled to vote. The Chairman shall have a deliberative vote only.   |
|                       | 11.7  | At any general meeting, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the Chairman or by any member present in person or by proxy or Attorney and entitled to vote at the meeting, a declaration by a resolution has been carried, or has been carried by a particular majority, or lost, the book of the proceedings of the Company shall be conclusive evidence thereof without proof of the number or proportion of the votes recorded in favour of or against such resolution.   |
| <i>Poll</i>           | 11.8  | If a poll is demanded as aforesaid, it shall be taken in such manner and either by ballot papers forwarded to each member or otherwise and at such time and place as the Chairman of the meeting directs, and either at once, or after an interval or adjournment or otherwise, and the result of the poll shall be conclusive and shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chairman shall determine the same, and such determination, if made in good faith, shall be final and conclusive.  |
|                       | 11.9  | No poll shall be demanded on the election of a Chairman of a meeting, and a poll demanded on any question of adjournment shall be taken at the meeting and without adjournment. The demand for a poll shall not prevent the continuance of the meeting for the transaction of any business other than a question upon which a poll has been demanded.   |
|                       | 11.10 | Subject to the Corporations Act, a resolution signed by three quarters of the members of the Company for the time being shall be as valid and as effectual as if it had been passed at a meeting of the members duly called and constituted and the members may sign the resolution or document circulated by mail, in person, by facsimile or other means for that purpose.  |
| <i>Minutes</i>        | 11.11 | Minutes of all resolutions and of the proceedings at every meeting shall be entered and kept in a book, and the minute so entered shall be signed in the said book by the Chairman of the meeting or the Chairman of the next succeeding meeting, or in case of her/him refusing or neglecting or being unable to sign the same for fourteen days after the meeting, then such minutes may be signed by any two members entitled to vote and be present, and who were actually present at the meeting; and the said book when so signed shall until the contrary is proved be evidence that the proceedings minuted therein and purporting to be signed as aforesaid were regular and actually took place as minuted at a meeting duly convened and held, and shall be binding. |

## **12. VOTES OF MEMBERS**

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|-------------------------|------|--|
|                         | 12.1 | No member shall be entitled to take part in the proceedings or to vote at any meeting of the company unless all calls due or other sums presently payable by him/her/it in respect of membership of the Company have been paid.  |
| <i>Votes</i>            | 12.2 | On a show of hands, every member present in person or a Company present by a representative duly authorised under Part 2G.2 of the Corporations Act shall have one vote and in the case of a poll every member present in person, by proxy, Attorney or a Company present by a representative duly authorised under Part 2G.2 of the Corporations Act shall have one vote.   |
|                         | 12.3 | No member not present in person shall be entitled to vote on a show of hands, unless such member is a Company present by a representative duly authorised under Part 2G.2 of the Corporations Act, in which case such representative may vote on a show of hands as if she/he were a member of the Company.  |
|                         | 12.4 | No objection shall be made to the validity of any vote, excepting at the meeting or poll at which such vote shall be tendered, or at the meeting (if any) to which the proceedings of such meeting shall be reported in the regular course of business and every vote, whether given in person or by representative or proxy, not disallowed at any one of such meetings, shall be deemed valid for all purposes whatsoever. |
| <i>Voting on a poll</i> | 12.5 | On a poll, votes may be given personally or by proxy or Attorney, or in the case of a Company by a representative duly   |

*Dilutes Australia Ltd*  
**Memorandum & Constitution**

appointed under Part 2G.2 of the Corporations Act. the instrument appointing a proxy shall be in writing under the hand of the Appointor or his Attorney or if such Appointor is a corporation under its Common Seal, and shall be attested.

- Instrument of proxy* 12.6 The instrument appointing a proxy shall be in the following form, or in a form to the like effect or in such other form as the Board may approve:
- "[Name of Member] being a member of DILUTES AUSTRALIA LIMITED and entitled to vote hereby appoints
- [Name of Proxy] of
- as the proxy to vote for at the annual (or extraordinary, as the case may be) general meeting of the Company to be held on the day of next, and at any adjournment thereof (or at any general meeting of the Company that may be held in the year ).
- DATED this day of Signed by )
- [Name of Member] )
- in the presence of: .....
- 12.7 The instrument appointing a proxy shall be deposited at the registered office of the Company not less than twenty-four hours before the time of holding the meeting at which the person named in such instrument proposes to vote and shall be deemed to confer authority to demand or join in demanding a poll.
- 12.8 Any corporation or association which is a member of the Company may by resolution of its Directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation or association which she/he represents as that corporation or association could exercise if it were an individual member of the Company.

### 13. DIRECTORS

- Eligibility for director* 13.1 **Eligibility for election as a director** - unless otherwise approved by the Board as being in the interests of the Company all Directors of the Company shall be ordinary Members of the Company and unless otherwise resolved by the members shall be comprised of a maximum of two from each Branch.
- First Directors* 13.2 The first Directors of the Company shall be those persons elected to hold office at the Annual General meeting of the Federal Council of the Founding Members held on the 22nd and 23rd of March 1997 who shall hold office from the date the Company is incorporated (subject to each of them consenting to appointment and having such appointments ratified by the members of the Company).
- Number of Directors* 13.3 Until otherwise determined by a general meeting, the Board shall be comprised of two Directors from each Branch whose members nominate at least two qualified persons for appointment or election as Directors for that Branch.
- 13.4 No Director shall be disqualified by holding any office (other than that of Auditor) with the company.
- 13.5 A Director is not precluded from contracting or arranging with the Company either as Vendor, Purchaser, Broker, Solicitor, Accountant or otherwise, nor shall any such contract or any contract or arrangement entered into or to be entered into by or on behalf of the Company in which any Director shall be in any way interested be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit arising from such office or place of profit, or realised by any such contract or arrangement by reason only of such Director holding that office, or of the fiduciary relation thereby established, provided that the nature of her/his interest must be disclosed by her/him at or before the meeting of the Directors at which the contract or arrangement is under consideration, if his interest then exists, or in any other case at the first meeting of the Directors after the acquisition of his interest in accordance with the provisions of Part 2D.1 of the Corporations Act.
- 13.6 If a Director becomes interested in a contract or arrangement after it is made or entered into, the disclosure of her/his interest shall be made at the first meeting of the Directors held after she/he becomes so interested.
- 13.7 A Director shall not vote in respect of any contract or arrangement in which she/he is so interested as aforesaid.
- 13.8 A resolution in writing signed by all the Directors (voting for or against) shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted, and the Member Directors may sign separate copies of the resolution or document circulated for that purpose. A telegram, cablegram, telex or facsimile message exchanged between the Company and the Directors and returned addressed to and received by the Company and purporting to be signed by a Director shall, for the purpose of this clause, be deemed to be a writing signed by such Director.

### 14. ELECTION OF DIRECTORS

- 14.1 At the first annual general meeting of the Company held following the adoption of this Constitution and at every succeeding annual general meeting, one-third of the Directors, or if their number is not a multiple of three, then the number closest to but not exceeding one-third, shall retire from office. The Directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became Directors on the same day, those to retire shall (unless they otherwise agree amongst themselves) be determined by lot. A retiring Director shall act as a Director throughout the meeting at which she/he retires.
- Vacancies* 14.2 The Company at the general meeting at which any Directors retire in manner aforesaid may fill up the vacated offices by electing the same number and if not the retiring Directors shall, if offering themselves for re-election and not being disqualified under the Corporations Act from holding office as a Director, be deemed to have been re-elected unless at such meeting it is resolved not to fill up any such vacated office or offices or unless a resolution for the re-election of that Director is put to the meeting and lost.

*Dilutes Australia Ltd*  
**Memorandum & Constitution**

- 14.3 The Company may at any general meeting increase or reduce the number of Directors, and may also determine in what rotation such increased or reduced number is to go out of office.
- Casual vacancies*
- 14.4 Whenever a casual vacancy shall occur in the office of Director by any means whatsoever, the Board shall be empowered to elect a duly qualified person to fill the vacant office until the next annual general meeting of the Company, to be held in accordance with this Constitution, when such meeting shall elect a Director to fill the vacant office, and the Director so elected shall retire at the same time at which the Director whose place she/he has taken would have retired under the provisions of the preceding clause. Any member Director going out of office shall immediately or at any time afterwards be eligible for re-election.
- 14.5 The Company may by special resolution remove any Director before the expiration of his period of office, and may by an ordinary resolution appoint a qualified person in his stead; the person so appointed shall be subject to retirement at the same time as if she/he had become a Director on the day on which the Director in whose place she/he is appointed was last elected a Director.
- 14.6 If at any general meeting at which an election of Directors ought to take place the place of any Director retiring by rotation is not filled up, she/he shall, if willing, continue in office until the annual general meeting in the next year and so on from year to year until his place is filled up, unless it shall be determined at such meeting, on due notice, to reduce the number of Directors in office.
- 14.7 No person, other than a retiring Director or a Director appointed under clause 14.4 shall, unless recommended by the Board for election, be eligible for election to the office of Director at any general meeting except in accordance with 14.8 below.
- Appointment of directors*
- 14.8 **Appointment of directors**
- Subject to this constitution, the election of directors must be by ballot and be in accordance with 13.1 & 13.3 above and the following provisions and procedures:
- (a) Retiring directors are eligible for re-election
  - (b) Retiring directors must notify the Secretary of their intent to resign or stand for re-election at least 100 days prior to the annual general meeting at which they will be retiring.
  - (c) The Secretary shall notify in writing all members residing within a branches' jurisdiction of any vacancies on the board for that branch at least 90 days prior to the date set for the annual general meeting at which the vacancy is to be filled.
  - (b) Every member eligible to vote has the right to nominate any other member eligible to vote for any vacancy to be filled by ballot subject to the provisions of 13.1 & 13.3.
  - (c) The Secretary, or any other officer appointed by the board, shall keep a list and record on it full particulars of all nominations received
  - (d) Nominations must:
    - (i) Be lodged with the Secretary, or any other officer as appointed by the board, not less than 60 days prior to the date appointed for the holding of the annual general meeting;
    - (ii) Be made on the form prescribed by the directors for that purpose addressed to the Secretary, or any other officer as appointed by the board;
    - (iii) Be signed by the nominating Member; and
    - (iv) Contain such information as may from time to time be prescribed by the directors
  - (e) Each nomination must be seconded by another member eligible to vote and be consented to in writing by the member nominated
- Nominations  
For director*
- (f) The Secretary, or any other officer as appointed by the board, shall prepare a list of the names of members nominated in accordance with this clause 14.8 and shall indicate those retiring directors who are eligible for and have consented to re-election. This list shall constitute a voting paper and the Secretary, or any other officer as appointed by the board, will at least 50 days prior to the day appointed for the holding of the Annual general meeting send it by post to each member of the branch from which the nominations have been received.
  - (g) The Secretary, or any other officer as appointed by the board, is the "Returning Officer"
  - (h) If not more than the specified number of persons is nominated in accordance with this clause 14 for election to any of the respective vacancies on the Board, the persons nominated for such vacancies will be declared elected by the Returning Officer at the annual general meeting next following their nomination and if any vacancies remain, they may be filled in accordance with 14.2 & 14.4 above.
  - (i) If more nominations per branch are received than there are vacancies on the Board, such vacancies must be filled by ballot as follows:
    - (i) Each branch member wishing to participate in the ballot must indicate the name of the candidate for whom s/he wishes to vote by such means as indicated on the voting paper and return it to the Returning Officer no later than 28 clear days before the day appointed for the holding of the annual general meeting at which the result of the ballot is to be declared as set out in this constitution provided that.
      - (a) should there be any disruptions to community services that are beyond the control of the company, the time period within which the votes must be returned may, at the discretion of the board and with such determination being made by a resolution of directors as per the provisions of clause 15, be extended for a fixed period of time. At the expiration of this period of time, the ballot will close; and
      - (b) if the extended time period for the return of votes expires after the date appointed for the convening of the annual general meeting, the then current directors will continue to hold office
- Voting paper & ballots*

*Dilutes Australia Ltd*  
**Memorandum & Constitution**

until the ballot is closed.

*Results of ballots*

- (j) After the ballot closes the Returning Officer shall count, or have counted, the votes as recorded on the voting papers received at the Office in accordance with this clause.
- (k) The Returning Officer shall declare the result of the ballot at the annual general meeting next following their nomination provided that if the time period for the return of votes has been extended by the directors in accordance with clause I (i), the Returning Officer shall declare the results of the ballot at a duly constituted meeting of the directors to be held within 28 days of the expiration of the extended time period for the return of votes.
- (l) In the event of a tie in votes, the directors shall, at their first meeting immediately succeeding the annual general meeting at which the Returning Officer declares the results of the ballot, elect 1 of those candidates to fill the vacancy for which s/he was nominated.
- (m) Should any questions arise as to the validity or invalidity of any voting paper or whether any particular member has or has not been elected as a director, a statement by the Returning Officer that the voting paper is or is not valid and that a particular member has or has not been elected as a Director is conclusive.
- (n) Any vacancy occurring in the board after the closing of nominations and before the close of the annual general meeting, or the meeting of directors, at which the election of directors is to take place, is deemed to be a casual vacancy and to have occurred immediately after the close of the annual general meeting, or the meeting of directors, and shall be filled in accordance with clause 14.4.
- (o) If:
  - (i) There has not been any nomination lodged with the General Secretary, or any other officer as appointed by the board, as aforesaid
  - (ii) The number of nominations lodged was less than the number of vacancies to be filled; or
  - (ii) Any member nominated has withdrawn his/her nomination before the relevant vacancy has been filled,the directors shall fill the vacancies at a meeting convened for that purpose.

## **15. PROCEEDINGS OF DIRECTORS**

- 15.1 The Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of equality of votes, the Chairman shall have a second or casting vote. A Director may at any time and the Secretary shall on the requisition of a Director, convene a meeting of Directors.
- Quorum* 15.2 Until otherwise determined by the Company in general meeting, a quorum of Directors consist of not less than 50% of the Directors appointed at the time of the meeting. A quorum of Directors may exercise all the powers and authorities vested in the Board generally, provided that at a meeting of the Board where only two Directors are present the Chairman shall not have a casting vote.
- Power of Directors* 15.3 The continuing Directors may act notwithstanding any continuing vacancy in their body but if, and so long as their number is reduced below the number fixed by or pursuant to the Articles of the Company as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.
- Chairman* 15.4 The Chairman shall be that person so elected by the Members at the Annual General meeting but if she/he is not present within fifteen minutes after the time appointed for holding the same, the Directors present may choose one of their members to be Chairman for that meeting.
- Act of Member etc valid* 15.5 All acts done at any meeting of the Board, or of a Directors Committee of the Board, or by any person acting as a not withstanding Chairman or as a Director, shall, notwithstanding that it be defect in afterwards discovered that there was some defect in the appointment of appointment any member of such Board or Committee, or that they or any of them were disqualified, be as valid as if every such person or persons had been duly appointed, and was or were duly qualified to be a Director.

## **16. DISQUALIFICATION OF DIRECTORS**

- 16.1 The office of any Director shall be vacated if the Director: -
  - (a) ceases to be a Director by virtue of the Corporations Act; or
  - (b) becomes bankrupt or executes any assignment for the benefit of or compounds with her/his creditors; or
  - (c) becomes prohibited from being a Director by reason of any order made under the Corporations Act; or
  - (d) if she/he shall become mentally or physically incapable of performing the functions of a Director of the company and a certificate to that effect signed by two legally qualified medical practitioners who shall also certify that such incapacity is in their opinion likely to be permanent, shall be lodged at the registered office of the company; or
  - (e) resigns her/his office by notice in writing to the Company; or
  - (f) be absent from the meetings of the Board for the space of six calendar months continuously without the consent of the Board; or
  - (g) is removed from office pursuant to clause 8.5, provided always that all acts done by such person as Director, or by the Board, or by any Committee of which she/he was a member before the discovery of such disqualification or of any defect in his appointment shall be valid, effectual and binding as if every such person had been duly appointed and was qualified to be a Director.

## **17. POWERS OF DIRECTORS**

- General powers* 17.1 The management of the business and affairs of the Company shall be vested in the Board who in addition to vested in the powers and authorities, by these present or otherwise, Directors expressly conferred upon them, may, exercise all such powers and do all such acts and things as may be exercised or done by the Company and are not hereby or by Statute expressly directed or required to be exercised or done by the Company in general meeting, but subject nevertheless to the provisions of the Statutes and of these presents, and to any Articles not being inconsistent with these presents from time to time made by the Company in general meeting; provided that no such Article so made shall invalidate any prior act of the Directors which would have been valid if such Article had not been made.
- Negotiable instrument* 17.2 The Board shall have power to draw, accept, make and endorse any bills of exchange or promissory notes that may be necessary for the purposes of the business of the Company, which bills of exchange or promissory notes may be drawn, accepted, made and endorsed by the Directors, or may be under the Seal of the Company, but the Directors shall have power to determine that any one or more of the Directors or any other person or persons may sign on the Company's behalf bills, notes, receipts, acceptances, endorsements, cheques and other documents.

## **18. BORROWING POWERS**

- Directors' powers to borrow* 18.1 The Board may from time to time cause the Company to borrow such sums of money as the Board may reasonably think fit, and for the purpose of effecting or completing any such loan or security as aforesaid the Board may make and execute any mortgage over the undertaking, or all or any portion of the property or assets of the Company, and may give any debentures or other instrument or instruments in such form as may be agreed upon by them under the Common Seal of the Company or may deposit by way of equitable mortgage or otherwise any of the documents or muniments of title or property of the Company, and either with or without powers of sale or other special provisions as they may deem advisable.
- Register of mortgages to be kept* 18.2 A proper register of all mortgages and charges specifically affecting the property of the Company shall be kept in accordance with the provisions of the Corporations Act.

## **19. DELEGATION OF POWERS**

- 19.1 The Board may from time to time by any writing or by Power of Attorney under seal, appoint any corporation or person or persons jointly or severally to act for the Company in Western Australia, or elsewhere, and for that purpose may delegate to the Attorney or Attorneys so appointed, such of the powers hereby given to the Board as they, the Board, may think fit, and any such appointment may in like manner be revoked, superseded or suspended.
- 19.2 The Board may delegate any of their powers to committees consisting of such member or members of their body as they think fit, and may from time to time revoke such delegation. Any committee so formed shall, in the exercise of the powers so delegated, conform to any Articles that may from time to time be imposed upon it by the Board. The meetings and proceedings of any such committee consisting of two or more members shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Board including the appointment of a Chairman and his right to a casting vote), so far as the same are applicable thereto, and are not superseded by any Articles made by the Board under this clause.

## **20. MINUTES**

- 20.1 The Board in accordance with Part 2G.3 of the Corporations Act shall cause minutes to be made in books provided for the purpose of all proceedings of general meetings and meetings of the Directors and shall cause the said minutes to be signed by the Chairman of the meeting at which the proceedings were had or by the Chairman of the next succeeding meeting.

## **21. THE SEAL**

- Seal* 21.1 The Board shall provide a Common Seal with the name of the Company inscribed thereon and may change the same from time to time and shall provide for the safe custody thereof. The Seal shall not be affixed to any instrument except by authority of a resolution of the Board, and unless and until the Board shall otherwise determine, one Director shall sign and the Secretary or a second Director shall countersign every instrument to which the Seal shall be so affixed.
- Official Seal* 21.2 The Company may from time to time exercise the powers conferred by section 127 of the Corporations Act and such powers shall be vested in the Directors.

## **22. ACCOUNTS**

- Accounts* 22.1 The Board shall cause proper accounting and other records to be kept in accordance with the provisions of Chapter 2M of the Corporations Act and shall distribute copies of the financial statements and reports as required by Chapter 2M of the Corporations Act.
- 22.2 Each Branch shall cause proper accounting and other records to be kept in accordance with the provisions of Chapter 2M of the Corporations Act and in accordance with all directions of the Board.
- 22.3 Branch accounts and financial records are to be included as part of the Company accounts and records and a copy of all branch accounts and financial records shall be supplied to the Board at the end of each calendar month or such other frequency that the board may determine. The Company shall have rights at all times to demand copies of all Branch accounts and any other records and the right to take possession of the original and all copies of all such records.
- 22.4 The Board shall prepare the annual accounts of the company including all Branch income and expenditure. The Board may publish the branch accounts in addition to the Company accounts.
- Inspection of books* 22.5 The Board shall from time to time determine whether in any particular case, or class of cases, or generally, and at what time and places, and under what conditions and regulations, the accounts and books of the Company or any of them, shall be open to the inspection of members not being Directors but until otherwise determined all members shall have rights to inspect any account or book or document of the Company upon giving reasonable notice.

*Dilutes Australia Ltd*  
**Memorandum & Constitution**

*Profit and Loss Accounts etc* 22.6 The Board shall from time to time in accordance with Part 2M.3 of the Corporations Act cause to be prepared and to be laid before the Company in general meeting such Profit and Loss Accounts, Balance Sheets and other Financial Reports and Statements as are referred to in Part 2M.3 of the Corporations Act.

### **23. AUDITOR**

*Appointment of Auditor* 23.1 The Company shall comply with the provisions of Part 2M.4 of the Corporations Act regarding the appointment of an Auditor and the rights and duties and remuneration of any and every Auditor so appointed shall be regulated by the Corporations Act.

23.2 The records of each Branch shall be audited if so determined by the Board.

### **24. FUNDS - SOURCE**

*All funds are property of the Company* 24.1 The funds of the Company shall be derived from the membership fees and all manner of registration fees payable by Members, donations and, subject to any resolution passed by the Company in its annual meeting, such other sources as the Board determines.

24.2 All funds received or derived by the Company and/or any Branch from what ever source shall be the property of the Company and no Branch shall have any legal or other right to such funds except as determined by the Board from time to time.

24.3 The Founding Members (who shall become Branches) shall transfer to the Company forthwith after the Company is incorporated all funds held by each Founding Member and such funds transferred may be applied by that branch as that Branch may determine with the agreement of the Board.

### **25. COMPANY'S BANKING ACCOUNTS**

*Bank accounts* 25.1 The Company shall open a banking account or accounts with a recognised Bank or Banks in the name of the Company.

25.2 The Company's banking accounts shall be operated in the name of the Company by such Officer/s and/or Members of the Company as the Board may from time to time direct.

25.3 Cheques shall be endorsed for collection through the Company's banking account in the name of the Company by such officer/s and/or Members of the Company as the Board may from time to time direct.

25.4 Every sum paid on behalf of the Company shall be paid by cheque and shall be signed by two (2) or more persons as the Board may from time to time authorise.

25.5 All moneys, cheques and negotiable instruments received on behalf of the Company shall be paid without deduction to the credit of the Company's banking account and deposited as soon as practicable after receipt thereof.

25.6 The Company shall, as soon as practicable after receiving any money issue an appropriate receipt a copy of which shall be retained as part of the Company's records.

25.7 All income and property of the Company shall be used and applied solely in promotion of its objects and in the exercise of its powers as set out herein.

### **26. BRANCH BANKING ACCOUNTS**

*Branch bank accounts* 26.1 At the request of a Branch the Board may at its discretion open a separate Company banking account for each such Branch (which may be closed or altered at the Board's discretion). Each such banking account must be in the Company's name and may include a symbol identifying the Branch (eg. "Queensland Branch Account"). The signatories of every Branch account must comprise at least two Board members and such other persons determined by the Board. All funds received and held in any such Branch account will remain the property of the Company and can only be expended for purposes approved by the Board.

### **27. FINANCIAL YEAR**

27.1 Until otherwise determined by the Board each financial year shall commence on the first day of January of the relevant calendar year.

### **28. DOCUMENTS**

28.1 The books of accounts and all other records shall be kept at such place or places of security as the Board shall decide.

### **29. REGULATIONS**

29.1 The Board and the Company may make, amend and/or repeal By-laws not inconsistent with this Constitution or the Corporations Act to regulate any aspect of the activities of the Company and its Branches.

29.2 Until the Board or the Company pass new Regulations all, regulations, by-laws and/or Rules (all shall be called regulations for the purpose of this Article) not inconsistent with this Constitution or the Corporations Act and formally adopted by the Council of the Founding Members and in force at the date of incorporation of the Company will be deemed to have been passed or ratified by the Board as an interim measure.

29.3 The Company in general meeting may amend or repeal prospectively any Regulations made or approved by the Board.

29.4 A Branch may make regulations to regulate the activities of that Branch provided same are not inconsistent with this Constitution, the Corporations Act or any Regulation made by the Board or the Company and the Board has consented in writing. The Board shall have over-riding power to disallow, amend or repeal any Branch regulation or proposed regulation.

29.5 The Board and each Branch shall maintain a formal register of all Regulations in force, which shall be available for inspection by all Members.

**30. NOTICES**

|                          |      |  |
|--------------------------|------|--|
| <i>Manner of service</i> | 30.1 | Except as by this Constitution other-wise provided, any notice or document to be given or served by the Company or the Board, to or upon any member, shall be deemed to be duly given or served if given by advertisement in any a daily newspaper published in the city in which the member has its office or business address, or by service upon the member, or leaving the same at her/his last known or usual place of residence in Australia, or by sending it through the post addressed to such member at her/his address as appearing in the Register, or to such other address as she/he shall from time to time notify in writing to the Company. |
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**31. WINDING UP**

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| <i>Winding Up</i> | 31.1 | The provisions of clauses 6 and 7 relating to the winding-up or dissolution of the Company shall have the effect and be observed as if they were repeated in this Constitution. |
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**32. INDEMNITY**

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|--|------|---|
| <i>Indemnity to Members, Directors officers, etc</i> | 32.1 | Every Member, Director, agent, auditor, secretary and other for the time being of the company shall be fully indemnified by the Company to the maximum extent permitted by law (but not for the guarantee liability of \$10.00 per Member as set out in clause 6.1) against any liability incurred by her/him/ in acting with express or implied authority of the Company including (without limiting the extent of this indemnity) the costs of defending any proceedings, whether civil or criminal or in connection with any application under the Corporations Act, in respect of any negligence, default, breach of duty or breach of trust. |
|--|------|---|