

**CORPORATIONS ACT 2001
PUBLIC COMPANY LIMITED BY GUARANTEE**

**CONSTITUTION OF
FITNESS AUSTRALIA LIMITED**



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GOVERNANCE & CAPACITY

1. Name

The name of the Company is Fitness Australia Limited.

2. Liability of Members

The liability of Members is limited.

3. Constitution

3.1. This is the Company's Constitution and describes the way in which the Company is to be internally managed.

3.2. The Company may modify or repeal this Constitution or any provision of it by Special Resolution from time to time and, subject to clause 3.3, such modification, repeal or adoption takes effect on the date on which the resolution is passed or, if the resolution specifies a date which is later than the date on which the resolution is passed, on that date.

4. Powers of Board

4.1. Subject to the Act and to any provision of this Constitution, the business of the Company is to be under the direction of the Board.

4.2. The Board may exercise all of the powers of the Company except any powers that the Act or this Constitution requires the Company to exercise in general meeting.

5. Public Company

The Company is a public company limited by guarantee.

6. Guarantee of Members

Every Member undertakes to contribute a maximum of ten dollars (\$10.00) to the Company for payment of the debts and liabilities of the Company, the costs, charges and expenses of any winding up and the adjustment of the rights of Members amongst themselves, in the event the Company is wound up while the Member is a Member or within one year after the Member ceases to be a Member.

7. Prohibited Acts

7.1. The Company does not have the power to:

- (a) issue shares of any kind; or
- (b) pay, transfer, apply, directly or indirectly, any portion of the income and property of the Company, by way of dividend, bonus or otherwise howsoever by way of profit, to or for the benefit of a Member.

7.2. The Company must not be operated for the purpose of the profit or gain of any Member.

7.3. Nothing in this Constitution authorises the Company to do an act that is prohibited by law of a State or a Territory of Australia or gives the Company a right that the law of a State or Territory of Australia denies to the Company.

8. Income and Property

8.1. The income and property of the Company shall be applied solely towards the promotion of the purpose of the Company as described in clause 10 and shall not be applied in any manner which is prohibited by this Constitution.

8.2. Nothing in this clause 8 or this Constitution prevents the Company from paying for:

- (a) professional or technical services actually rendered by a Member to the Company;
- (b) goods supplied to the Company by a Member in the ordinary and usual course of business;
- (c) interest (at a rate not exceeding the lowest rate paid for the time being by the Company's bankers) on term deposits on money borrowed from any Member; or
- (d) reasonable and proper rent for premises demised or let by any Member.

8.3. Subject to Chapter 2E of the Act, the Directors may be paid the remuneration that the Company determines by resolution from time to time.

8.4. The Company may pay a Director for:

- (a) out of pocket expenses reasonably incurred by the Director in the performance of any duty as Director where the amount payable does not exceed an amount approved by the Board; and
- (b) any service rendered by him or her to the Company in a professional or technical capacity where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service.

9. Replaceable Rules

The Replaceable Rules do not apply to this Constitution.

PURPOSE

10. Objects

The purpose of the Company is to raise standards, support, promote and represent the fitness industry in pursuit of a fitter, healthier nation by:

- 10.1 Setting and maintaining standards of excellence for the fitness industry;
- 10.2 Building an industry profile, influence and reputation;

10.3 Building and focussing on member services.

11. Limitation

Even though section 124(1) of the Act may prescribe additional purposes and powers, the Company may only act in furtherance of the purposes described in clause 10.

MEMBERS

12. Members

12.1. There must be at least one Member.

12.2. Subject to clause 15 an individual or a corporation may be a Member.

12.3. The rights and privileges of every Member are personal to that Member and may not be transferable by any act of that Member or by operation of law.

13. Admission to Membership

13.1. The Board may admit any person as a Member on terms and conditions in this Constitution and as prescribed by the Board in rules and regulations from time to time.

13.2. Each Member shall execute an undertaking to be bound by this Constitution.

13.3. Each person that is admitted as a Member shall have his or her or its name and other particulars determined by the Board entered on the Register of Members.

13.4. The initial Members shall be the members of Fitness Australia Incorporated as shown in its register of members as at the date of adoption of this Constitution (the "Initial Members").

13.5. Subject to clause 13.6 nothing in this Constitution affects the validity of an Initial Member's membership or the duration and terms of such membership as shown in the register of members of Fitness Australia Incorporated as at the date of adoption of this Constitution.

13.6. An Initial Member ceases to be a Member pursuant to clause 13.4 on 30 June 2008.

14. Classes of Members

14.1. The classes of membership of the Company shall be:

- (a) Business Members as defined in clause 15.1; and
- (b) Associate Members as defined in clause 15.3.

14.2. The Board may approve sub-classes of membership within the classes listed under clause 14.1 but shall not delete classes from the list nor add new classes except as

approved by a Special Resolution of the Members of the Company in general meeting.

15. Qualifications and rights of membership

15.1. The Board may, at its discretion, admit as Business Members, companies, sole traders, independent contractors, partnerships, trusts and entities, who conduct, operate, provide or administer a business directly involved in delivering fitness services to the public and have an Australian Business Number.

15.2. Business Members are entitled to:

- (a) receive notices of, attend, speak and vote at a general meeting of the Company;
- (b) nominate a person to be elected as a Director in accordance with clause 41.4;
- (c) receive such membership benefits as are determined from time to time by the Board to apply to Business Members.

15.3. The Board may, at its discretion, admit as Associate Members, companies, sole traders, independent contractors, partnerships, trusts, entities and individuals who are interested in the fitness industry.

15.4. An Associate Member is:

- (a) not entitled to receive notices of, attend, speak at or vote at a general meeting of the Company;
- (b) not entitled to nominate a person to be a Director in accordance with clause 41.4;
- (c) entitled to receive such benefits as are determined from time to time by the Board to apply to the Associate Member category.

16. Subscription of Members

16.1. Members shall pay such Subscriptions as determined by the Board from time to time.

16.2. Subject to clause 16.3, the amount of any Subscription shall be fixed by the Board and shall be payable by Members at such times and in such manner as determined by the Board from time to time.

16.3. The Board may in its discretion:

- (a) determine that no Subscription is payable by a Member or Members (in whole or in part) for any given year; and
- (b) extend the time for payment of Subscriptions by any Member or class of Members.

16.4. No part of any subscription fee shall be refunded to a Member who ceases to be a Member in accordance with clause 20.

17. Register of Members

- 17.1. The Secretary shall keep a Register of Members, which shall contain the name of each Member, the date on which the Member's name was entered on the Register of Members, the date of expiry in accordance with the provisions of the Constitution of such membership and such other particulars as the Board from time to time may determine.
- 17.2. Each Member shall notify the Secretary of the details of an address in Australia where the Company can send notices and keep the Secretary notified of any change in such address from time to time.
- 17.3. If a Member fails to provide an address in accordance with clause 17.2, clause 78.3 shall apply.

18. Certificate of Membership

- 18.1. The Board may in its discretion issue a certificate of membership to Members in such form and upon payment of such fees as it may prescribe from time to time.
- 18.2. Certificates of membership remain the property of the Company and must be promptly returned to the Company if requested by the Board or if the holder of the certificate ceases to be a Member.
- 18.3. The Board may prescribe from time to time the manner in which certificates of membership of the Company can and cannot be used.
- 18.4. Without limiting clause 18.3, Members with a certificate of membership must not use the certificate to make false or misleading representations about the Company and their membership including representing that they are a Member when membership has ceased.

19. Conduct of Members

- 19.1. Members shall conduct themselves in accordance with:
- (a) this Constitution; and
 - (b) any rules and regulations prescribed by the Board,
- as amended from time to time.
- 19.2. Members shall indicate their membership of the Company only in such form and manner and subject to any conditions in any rules and regulations prescribed by the Board from time to time.
- 19.3. Each Member shall notify the Secretary of any change in the circumstances of the Member which may affect the Member's continued entitlement to membership or class of membership.

20. End & Suspension of Membership

20.1. A Member ceases to be a Member if they:

- (a) resign in writing;
- (b) are subject to an Insolvency Event;
- (c) die;
- (d) become of unsound mind or become liable to be dealt with in any way under a law relating to mental health;
- (e) are convicted of a criminal offence; or

their membership is cancelled in accordance with this clause 20.

20.2. If a Member is in arrears by at least two (2) months of the due date for payment of a Subscription or other monies due to the Company and fails to pay such arrears within one (1) month of a notice issued by the Secretary to do so, the Board may at any time in its discretion:

- (a) suspend the Member from all privileges of membership including attendance or voting at any meeting of Members, the Board or any Committee (as relevant); or
- (b) cancel the Member's membership.

20.3. The Board may resolve to censure, fine, suspend or expel a Member if the Member:

- (a) has engaged in conduct which in the opinion of the Board:
 - (i) is unbecoming of a Member;
 - (ii) is prejudicial to or not in the best interests of the Company; or
 - (iii) brings discredit on the Company;
- (b) in the opinion of the Board, has engaged in derogatory or discriminatory conduct or harassment;
- (c) has failed to observe a proper standard of professional care, skill or competence;
- (d) no longer meets the criteria for membership of the Company or class of membership of the Company;
- (e) has failed to comply with a written direction issued by the Board in accordance with the Constitution or any rules and regulations of the Company regarding good conduct or administration of the Company;

- (f) in any civil proceedings in a court in Australia or elsewhere, has been found to have acted dishonestly; or
 - (g) fails in the opinion of the Board (for any reason) to comply with this Constitution, or any rules or regulations of the Company.
- 20.4. Any Member whose membership has been suspended or cancelled is not entitled to enjoy any of the privileges of membership including receiving notice of, attendance and voting at, any meeting of Members.
- 20.5. Any Member whose membership has been suspended or cancelled continues to remain liable for:
- (a) all money owing by the Member to the Company as at the date of suspension or cancellation including any Subscription; and
 - (b) the Guarantee.
- 20.6. The Board may reinstate a Member whose membership has been suspended on the satisfaction of such terms and conditions as the Board thinks fit to apply from time to time, including the payment of all money owing by the Member to the Company as at the date their membership was suspended.
- 20.7. Before the Board makes a resolution referred to in clause 20.3, the Board must:
- (a) meet to consider the allegation being made;
 - (b) provide the Member against whom the allegation has been made with at least seven (7) days written notice of this meeting of the Board and details of:
 - (i) the time and place of the Board meeting;
 - (ii) what is alleged against him or her; and
 - (iii) the intended resolution,and confirmation that he or she has the right to give such oral or written explanation or defence as he or she may think fit at the Board meeting; and
 - (c) provide the Member with a reasonable opportunity to give such oral or written explanation or defence as the Member may reasonably think fit during the Board meeting and before the Board passes its resolution on the allegation.
- 20.8. Legal advisors are not permitted to attend the Board meeting referred to in clause 20.7.
- 20.9. Whenever any person ceases to be a Member, the Board shall direct that his or her name shall be removed from the Register of Members.

GENERAL MEETINGS

21. Calling of meetings of Members

Act, the Act prevails to the extent of such inconsistency.

- 21.1. A Director may call a meeting of Members.
- 21.2. Subject to clause 21.3, the Board may in its discretion call a meeting of Members from time to time.
- 21.3. The Board must call and arrange to hold a general meeting upon receipt of a request from the Members made in accordance with section 249D of the Act.
- 21.4. Members with more than 50% of the votes of all of the Members who make a request to call a general meeting under section 249D of the Act may call and arrange to hold a general meeting if the Board does not do so within 21 days after the request is given to the Company in which case section 249E of the Act shall apply.
- 21.5. Unless clauses 21.3 or 21.4 apply, Members with at least 5% of the votes that may be cast at a general meeting of the Company (or such greater percentage as may be prescribed pursuant to the Act from time to time) may call, and arrange to hold, a general meeting. The Members calling the meeting must pay the expenses of calling and holding the meeting.
- 21.6. A court may order a meeting of Members to be called in accordance with the Act if it is impracticable to call the meeting in any other way.

22. Annual general meetings

The Company must hold an annual general meeting at least once in each calendar year and within five (5) months after the end of its Financial Year (at a place and time determined by the Board) to:

- (a) receive the financial reports, statements and accounts of the Company and reports of the Board and the Auditor for the preceding Financial Year;
- (b) elect Directors as required;
- (c) appoint or confirm the appointment of the Auditor;
- (d) fix the Auditor's remuneration;
- (e) consider any matter which may be submitted by a Member to the meeting in accordance with the Act or this Constitution; and
- (f) transact any other business which:
 - (i) under this Constitution ought to be transacted at an annual general meeting of the Company; or
 - (ii) which the Board considers appropriate.

All other business transacted at an annual general meeting and all business transacted at a general meeting shall require an Ordinary Resolution to be carried.

23. Amount of notice of meetings

Subject to the Act, at least 21 days notice must be given of a meeting of Members.

24. Notice of meetings

- 24.1. Written notice of the meeting of Members must be given individually to each Member entitled to vote at the meeting and to each Director. No other person shall be entitled to receive notices of meetings of Members.
- 24.2. The Company shall give notice of meeting of Members in accordance with clause 78.
- 24.3. Except for resolutions of Members under section 203D of the Act, the Company may call:
- (a) an annual general meeting on shorter notice if all members entitled to attend and vote at the annual general meeting agree beforehand; and
 - (b) any other meeting of Members on shorter notice if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 24.4. Information included in a notice of meeting of Members shall be as prescribed by section 249L of the Act.
- 24.5. The accidental omission to give notice of a meeting to or the non receipt of notice of a meeting by any Member shall not invalidate the proceedings at any meeting.

25. Auditor entitled to notice and other communication

The Company must give the Auditor:

- (a) notice of a general meeting in the same way that a Member is entitled to receive notice; and
- (b) any other communication relating to the general meeting that a Member is entitled to receive.

26. Members' resolutions

The Members may propose a resolution to be moved at a general meeting only in accordance with the provisions of Division 4 of Part 2G.2 of the Act. Notice of such proposal must be given to the Secretary in accordance with the Act.

27. Time and place for meetings of Members

A meeting of Members must be held at a reasonable time and place.

28. Members' Meetings - Technology

The Company may hold a meeting of its Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

29. Quorum

- 29.1. The quorum for a meeting of Members is ten Members and the quorum must be present at all times during the meeting.
- 29.2. In determining whether a quorum is present:
- (a) individuals who attend as proxies or body corporate representatives are to be counted;
 - (b) if a Member has appointed more than one proxy or representative, only one of them is to be counted; and
 - (c) if an individual is attending both as a Member and as a proxy or representative, they are to be counted only once.
- 29.3. Subject to clause 29.5 a meeting of the Company's Members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date (not being more than fourteen days after such meeting), time and place the chair of the meeting (or in default of the chair a majority of Members) specifies. If the chair of the meeting (or in default of the chair a majority of Members) does not specify one or more of those requirements, the meeting is adjourned to:
- (a) if the date is not specified, the same day in the next week;
 - (b) if the time is not specified, the same time; or
 - (c) if the place is not specified, the same place.
- 29.4. Subject to clause 29.5, if no quorum is present at the resumed meeting of the Company's Members within 30 minutes after the time for the meeting, the Members present shall be a quorum.
- 29.5. If a meeting of the Company's Members called pursuant to clauses 21.3 to 21.5 inclusive does not have a quorum present within 30 minutes after the time set for the meeting, the meeting shall be dissolved.

30. Chairing meetings of Members

The Chair shall chair meetings of Members. If the Chair is not present within fifteen minutes after the time appointed for the holding of the meeting, is not able to chair the meeting or declines to act as chair of the meeting, the Members must elect a chair from the Members present.

31. Adjourned meetings

- 31.1. Any person appointed to chair a meeting of Members may adjourn the meeting if the Members present with a majority of votes at the meeting agree or direct that the chair may do so.
- 31.2. No business may be transacted at an adjourned meeting other than the business left unfinished from the earlier meeting from which the adjournment took place.

- 31.3. If a meeting is adjourned for more than 21 days, new notice of the adjourned meeting must be given.

32. Auditor's right to be heard at meetings of Members

The Auditor is entitled to attend and be heard at any general meetings of Members.

33. Proxies and body corporate representatives

- 33.1. A Member who is entitled to attend and cast a vote at meetings of Members may appoint a proxy or, if the Member is a body corporate, a representative, to attend and cast a vote at that meeting.
- 33.2. Any proxy or representative appointed under clause 33.1 must be appointed in accordance with Division 6 of Part 2G.2 of the Act and shall have the rights as set out in that Division.
- 33.3. The instrument appointing a proxy shall be in writing in the form prescribed in **Schedule One** or such other form as the Board may approve from time to time. The instrument appointing a proxy is deemed to confer authority on the proxy to demand or join in demanding a poll.
- 33.4. A person appointed as a proxy need not be a Member.
- 33.5. The instrument appointing a proxy and the Power of Attorney or other authority, if any, under which it is signed or a copy certified as a true copy by a person qualified to witness statutory declarations of that power or authority shall be deposited by hand, by mail or by fax at the Registered Office of the Company not less than twenty-four hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default thereof the instrument of proxy shall not be treated as valid.
- 33.6. A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid despite the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, provided that no intimation in writing of such death, unsoundness of mind or revocation has been received by the Company at the Registered Office before the commencement of the meeting or adjourned meeting at which the instrument is used.
- 33.7. If a Member appoints a proxy to attend and vote for the Member at a meeting and the Member is present at the meeting for which the proxy was appointed, the proxy's authority to speak and vote for the Member at the meeting is suspended while the Member is present at the meeting.

34. Voting at meetings of Members

- 34.1. Subject to any rights or restrictions attached to any class of membership, each Member has one vote, both on a show of hands and a poll.

- 34.2. The chair of a meeting has a casting vote and if the chair is also a Member, such casting vote shall be in addition to any vote the chair has in his or her capacity as a Member.
- 34.3. Only Members who have voting rights and have no outstanding monies due to the Company are entitled to vote at meetings of Members, either personally, by proxy or as proxy for another Member, or be reckoned in a quorum.
- 34.4. A Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote whether on a show of hands or on a poll by his or her trustee or by such other person that has or is responsible for the management of his or her estate and any such trustee or other person may vote by proxy or attorney.

35. Objections to right to vote

A challenge to a right to vote at a meeting of Members:

- (a) may only be made at the meeting; and
- (b) must be determined by the chair whose decision is final.

36. How voting is carried out

- 36.1. A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded by the chair or by at least five (5) Members present in person or by proxy and entitled to vote.
- 36.2. On a show of hands, a declaration by the chair is conclusive evidence of the result.
- 36.3. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

37. Matters on which a poll may be demanded

- 37.1. A poll may be demanded:
- (a) on any resolution including resolutions concerning the election of the chair of the meeting or the adjournment of the meeting; or
 - (b) in accordance with section 250L of the Act.
- 37.2. A demand for a poll may be withdrawn.
- 37.3. A demand for a poll shall not prevent the continuance of a meeting or the transaction of any business at the meeting other than the question on which the poll has been demanded.

38. When and how polls must be taken

- 38.1. Subject to clause 38.2, a poll must be taken when and in the manner the chair directs.

- 38.2. A poll on the election of a chair or on the question of an adjournment must be taken immediately without adjournment.

BOARD OF DIRECTORS

39. Directors

- 39.1. Subject to clauses 39.2 and 41.8, the Board shall consist of not more than nine (9) Directors, five (5) of whom shall be elected in accordance with clause 41 and up to four (4) of whom shall be appointed by the Board in accordance with clause 41.
- 39.2. Upon incorporation the Directors of the Company shall be the directors of Fitness Australia Incorporated as at the date of incorporation of the Company (the "Initial Directors"). The Initial Directors shall hold office until the first Annual General Meeting held after the Company is incorporated.
- 39.3. At least two Directors must ordinarily reside in Australia.
- 39.4. The Company may from time to time in general meeting increase or reduce the number of Directors.

40. Auditor not Eligible

The Auditor is not eligible to be elected or appointed as a Director.

41. Appointment & Term

- 41.1. Subject to clauses 41.6, 41.7 and 42.2:
- (a) an elected Director is elected for a term of two (2) years at the end of which he or she shall retire;
 - (b) an appointed Director is appointed for a term of two (2) years by the elected Directors at the end of which he or she shall retire.
- 41.2. Unless otherwise resolved by the Company in general meeting, a retiring elected Director is eligible to be re-elected for four (4) further consecutive terms of two (2) years.
- 41.3. Unless otherwise resolved by the Company in general meeting, an appointed Director is eligible to be reappointed by the elected Directors for one (1) further term of two (2) years.
- 41.4. The Company may call for nominations as Director in such manner as the Board determines from time to time. This clause 41.4 does not apply to persons appointed to the Board .
- 41.5. Subject to the provisions of this Constitution, any Business Member who owes no monies to the Company and is in good standing shall be eligible to be a candidate or to nominate a person to be a candidate for election to the office of elected Director.
- 41.6. (a) At the first annual general meeting of the Company all of the Initial Directors shall retire from office and, subject to clause 15, shall be eligible to be

elected as an elected Director or to be appointed by the Board as an appointed Director in accordance with clause 41.

- (b) The term of office of Directors elected at the first annual general meeting shall be for a one (1) or two (2) year term as agreed by the Board at its first meeting after the annual general meeting or in the event of failure to agree as determined by lot provided that at least three (3) directors can only hold office for one (1) year.
 - (c) The term of office of directors appointed by the Board after the first annual general meeting shall be for a one (1) or two (2) year term as agreed between the elected Directors or in the event of failure to agree as determined by lot.
- 41.7. (a) At the second annual general meeting of the Company the Directors who hold office in accordance with clause 41.6(b) for a one (1) year term must retire and shall be eligible for re-election subject to clause 41.2.
- (b) At the third and subsequent annual general meetings of the company, the Directors to retire in each year shall be those who have completed their term of office in accordance with clause 41.1(a).
- 41.8. Subject to the minimum number of Directors not being less than five (5), the Company may from time to time in general meeting resolve not to replace retiring Directors or Directors who have vacated office.
- 41.9. Nothing in this Constitution affects the validity of appointment or the term of office of any Director (howsoever described) in office as at the date of adoption of this Constitution.

42. Removal & Vacation of Office

- 42.1. A Director may at any time resign from the Board by giving written notice of resignation to the Secretary at the Registered Office.
- 42.2. Subject to section 203D of the Act, the Members in general meeting may resolve to remove any Director before the expiration of his or her period of office and may by an ordinary resolution appoint another person in his or her stead. A person appointed to replace a Director removed under this clause shall hold office until the annual general meeting next following his or her appointment.
- 42.3. The office of Director shall be vacated if he or she:
- (a) resigns or is removed from office pursuant to clauses 42.1 or 42.2;
 - (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
 - (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (d) ceases to be a director by virtue of the Act or becomes prohibited from being a director by reason of any order made under the Act;

- (e) is absent from three (3) consecutive meetings of the Board without permission of the Board; or
- (f) is convicted of felony or is declared by any Court of competent jurisdiction to have committed any fraud.

43. Casual Vacancies & Additional Directors

- 43.1. Subject to clause 43.2, the Board may appoint a Member to fill a vacancy occurring on the Board as a result of clause 42.3 and such replacement Director shall hold office for the balance of the term of the replaced Director.
- 43.2. If the number of Directors becomes less than five (5) as a result of vacancies on the Board, the Board must not act, except for the purposes of filling vacancies or convening a general meeting, while there are less than five (5) Directors.
- 43.3. The Board may from time to time resolve to appoint Members as additional Directors (as long as the maximum number of Directors is not exceeded). Additional Directors shall hold office until the end of the next annual general meeting following his or her appointment.

44. Material personal interest

- 44.1. Unless an exception in section 191(2) of the Act applies, a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the Board notice of the interest.
- 44.2. The notice required by clause 44.1 must:
 - (a) include details of:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company; and
 - (b) be given at a Board meeting as soon as practicable after the Director becomes aware of his or her interest in the matter, the details of which must be recorded in the minutes of the meeting.
- 44.3. A Director who has a material personal interest in a matter that is being considered at a Board meeting shall not be present while the matter is being considered at the meeting or vote on the matter unless:
 - (a) the interest does not need to be disclosed under section 191 of the Act; or
 - (b) the other Directors on the Board who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature of his or her interest in the matter and its relation to the affairs of the Company; and
 - (ii) states that the Board is satisfied that the interest should not disqualify the Director from voting or being present.

A Director who votes when not otherwise authorised to do so under this clause shall have his or her vote discounted.

45. Standing notice about an interest

A Director with an interest in a matter may give the Board standing notice of the nature and extent of this interest in accordance with the Act.

46. Negotiable instruments

46.1. The Board shall determine the mechanism for signing, drawing, accepting, endorsing or otherwise executing a negotiable instrument.

46.2. Receipts for money payable to or receivable by the Company may be signed by a Director or the Secretary or by any other person authorised by the Board to receive money either generally or any particular sum of money on behalf of the Company and such receipt shall be deemed to be valid.

47. Powers & Role

47.1. Subject to the Act, the Board shall control and supervise the business and affairs and have custody and control of the funds and property of the Company.

47.2. Without limiting clause 47.1, the role of the Board is to:

- (a) direct and guide the Company's strategic direction;
- (b) ensure that the Company's activities remain consistent with its principal purpose; and
- (c) monitor and maintain the financial integrity and viability of the Company.

47.3. The activities of the Board are subject to any regulation from time to time made, amended and removed by the Company in general meeting provided that no regulations so made shall invalidate any prior act of the Board which would have been valid if such regulation had not been made.

48. Board meetings

48.1. The Board shall meet at least once each year.

48.2. A Board meeting may be called at any time by a Director or the Secretary at the written request of a Director on not less than fourteen (14) days notice.

48.3. Notice of Board meetings shall specify the place, date and time of the meeting and the business to be conducted at the meeting.

48.4. The Board may meet, adjourn and otherwise regulate its meetings as it thinks fit.

49. Use of Technology

As long as a majority of Directors consent, a Board meeting may be called or held using any technology which allows all of the Directors participating in the meeting to hear each other at the same time. The consent may be a standing one. A Director may only withdraw his or her consent within a reasonable period before the meeting.

50. Chairing Board meetings

50.1. At the first meeting of the Board following each annual general meeting, the Board shall elect:

- (a) A Director to be the Chair;
- (b) A Director to be the Deputy Chair.

50.2. Subject to clause 42.3 the Chair and Deputy Chair shall hold office for a one (1) year term.

50.3. The Chair or in his or her absence the Deputy Chair shall be entitled to preside as chair at every meeting. If there is no Chair or Deputy Chair present at the time appointed for holding the meeting or if both decline to chair the meeting, the Directors present shall elect one of their number to be chair of that meeting.

51. Quorum at Board meetings

51.1. The quorum for a Board meeting shall be five (5) Directors (unless the Board determines otherwise) and the quorum must be present at all times during the meeting.

51.2. A meeting of the Board at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Board under the Constitution.

52. Passing of Board resolutions

A Board resolution must be passed as an Ordinary Resolution.

53. Circulating resolutions of Board

53.1. The Board may pass a resolution without a Board meeting being held if all of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

53.2. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

53.3. The resolution is passed when the last Director signs.

53.4. The requirement for a signature or for signing a document is taken to have been met in relation to an electronic communication if:

- (a) a method is used to identify the person and to indicate the person's approval of the information communicated; and
- (b) having regard to all the relevant circumstances at the time the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated.

54. Delegation

54.1. The Board may delegate any of its powers to any Committee, Director(s), employee of the Company or any other person.

54.2. The delegate must exercise the delegated powers in accordance with any directions of the Board.

54.3. The effect of the delegate exercising a delegated power is the same as if the Board exercised it.

54.4. The Board may withdraw any delegated power at any time.

55. Committees

The Board may from time to time establish Committees to advise it on matters affecting the operations of the Company. Terms of reference of all Committees shall be determined by the Board.

56. Validity of Actions

All acts done by any meeting of the Board or a Committee or by any Director or Alternate Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified.

57. Company's attorney

The Board may appoint a company, firm, person or body of persons to be the Company's attorney under a power of attorney for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Board under this Constitution.

CHIEF EXECUTIVE OFFICER

58. Chief Executive Officer

58.1. The Board may from time to time appoint a Chief Executive Officer for such periods and on such terms as they think fit and subject to the terms of any agreement entered into in any particular case and may revoke any such appointment subject to the provisions of the law.

58.2. The Chief Executive Officer shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration as the Board may determine.

58.3. The Board employs the Chief Executive Officer and may delegate to the Chief Executive Officer such of its powers and authorities as it deems fit from time to time including the delegation to employ and direct staff.

58.4. The Chief Executive Officer shall not be entitled to cast a vote at any meeting of the Board.

SECRETARY

59. Appointment of Secretary

59.1. The Company must have a Secretary or Secretaries. At least one of them must ordinarily reside in Australia.

- 59.2. The Secretary shall be appointed by the Board on such terms and conditions (including as to remuneration) as the Board thinks fit and may be the Chief Executive Officer.
- 59.3. A person ceases to be a Secretary of the Company if the person becomes disqualified from managing corporations under Part 2D.6 of the Act, unless ASIC or the Court allows them to take part in the management of the Company.

RULES & REGULATIONS

60. Rules & Regulations

- 60.1. The Board may from time to time prescribe rules and regulations of the Company on such matters considered necessary or expedient to carry out the purposes of the Company or for the regulation, management and control of the Company's affairs including in respect of its Members, Directors and Committees.
- 60.2. In the event of any inconsistency between this Constitution and any rule or regulation, this Constitution prevails.
- 60.3. The Board must publish rules and regulations adopted or amended pursuant to this clause as soon as practicable.

MINUTES

61. Minutes

- 61.1. The Company must keep minute books in which it records within one month:
- (a) proceedings and resolutions of Members' meetings;
 - (b) proceedings and resolutions of Board meetings, including meetings of Committees;
 - (c) resolutions passed by the Members without a meeting; and
 - (d) resolutions passed by the Board without a meeting.
- 61.2. The Company must ensure that minutes of a meeting are signed by the chair of the meeting or the chair of the next meeting within a reasonable time after the meeting.
- 61.3. The Company must ensure that resolutions passed without a meeting are signed by a Director within a reasonable time after the resolution is passed.

62. Members' access to minutes

Members are entitled to gain access to the minute book of meetings of Members in accordance with the Act.

FINANCIAL RECORDS

63. Obligation to Keep Financial Records

The Company must keep written financial records that:

- (a) correctly record and explain the transactions and financial position and performance of the Company;
- (b) enable true and fair financial statements to be prepared and audited; and
- (c) permit preparation of any other documents required by the Act or this Constitution.

64. Location of Financial Records

The financial records of the Company shall be kept:

- (a) in such manner as to enable them to be conveniently and properly audited;
- (b) for seven (7) years after the completion of the transactions or operations to which they relate; and
- (c) at the Registered Office or at such other place as the Board thinks fit.

65. Access

- 65.1. The financial records of the Company shall at all reasonable times be open to inspection by a Director.
- 65.2. The Board shall from time to time determine at what times and places and under what conditions and regulations the financial records of the Company may be open to inspection by Members.

66. Financial Reporting Obligations

- 66.1. A financial report in respect of the Company and a Board report must be prepared for each Financial Year.
- 66.2. The financial report for a Financial Year shall consist of:
 - (a) the Company's financial statements for the year;
 - (b) the notes to the financial statements; and
 - (c) the Board's declaration about the statements and notes.
- 66.3. The financial statements for the year are the financial statements that are required by and made up in accordance with the Accounting Standards, including those showing the Company's:
 - (a) profit and loss for the previous Financial Year of the Company;
 - (b) balance sheet at the date to which the profit and loss account is made up; and

(c) cash flows for the year.

66.4. The notes to the financial statements are:

- (a) disclosures required by the Act and its regulations;
- (b) notes required by the Accounting Standards; and
- (c) any other information necessary to give a true and fair view of the financial position and performance of the Company.

66.5. The Board's declaration is a declaration by the Board that, in its opinion:

- (a) there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable; and
- (b) the financial statement and notes are in accordance with the Act.

66.6. A Board report shall consist of the matters prescribed in section 298 of the Act.

66.7. The financial report in respect of the Company and the Board report for the Financial Year must be sent to all persons entitled to receive notice of general meetings of the Company not less than seven days before the meeting at which they are to be considered.

AUDIT

67. Appointment

67.1. A properly qualified auditor or auditors shall be appointed the Auditor and his, or her or their remuneration shall be fixed and duties regulated in accordance with the Act or other legislation.

67.2. Subject to Part 2M.4 of the Act, the Auditor may be:

- (a) an individual;
- (b) a firm; or
- (c) a company.

67.3. A person shall not be appointed or act as the Auditor if the person is:

- (a) an Officer of the Company;
- (b) a partner, an employer or employee of an Officer of the Company; or
- (c) a partner or employee of an employee of an Officer of the Company.

67.4. The Company may have more than one Auditor.

- 67.5. The Company must appoint an Auditor at an annual general meeting and appoint an Auditor to fill any vacancy in the office of auditor at each subsequent annual general meeting.
- 67.6. Except where the Auditor is removed from office at the annual general meeting, the Company may appoint an Auditor at an annual general meeting only if a Member gives the Company written notice of the nomination of the individual, firm or company for appointment as the Auditor:
- (a) before the meeting was convened; or
 - (b) not less than 21 days before the meeting.

68. Term of appointment

- 68.1. An Auditor holds office until the Auditor dies, is removed or resigns from office or ceases to be capable of acting as Auditor in accordance with the Act.
- 68.2. The Company may resolve in general meeting to remove the Auditor in accordance with section 329 of the Act.
- 68.3. Except where a vacancy has been caused by the removal of the Auditor from office by the Company, the Board must appoint an Auditor to fill a vacancy in the office of Auditor within one (1) month after the vacancy occurs if:
- (a) there is no surviving or continuing Auditor (where the Auditor is a company); and
 - (b) the Company has not appointed an Auditor to fill the vacancy at a general meeting.

69. Auditor's report

At least once each year, the Auditor shall provide its report to the Company.

LOGO AND MARKS

70. Logo & Marks of Company

The Board may permit or restrict the use of the Company's trade marks, devices, official logo and other intellectual property in such manner as prescribed by it from time to time.

WINDING UP

71. Distribution of Property

- 71.1. If upon the winding up or dissolution of the Company there remains after the satisfaction of all its debts and the liabilities any property whatsoever the same shall be given or transferred to some other institution or institutions in Australia:
- (a) having a purpose similar to the principal purpose of the Company as set out in clause 10; and

- (b) which prohibits the distribution of its or their income and property amongst its or their Members to an extent at least as great as is imposed on the Company under or by virtue of clause 8,

such institution or institutions to be determined by the Board at or before the time of dissolution and in default thereof by the Chief Judge in Equity of the Supreme Court of New South Wales or any Judge of that Court as may have or acquire jurisdiction in the matter.

71.2. If the Company is endorsed or otherwise duly authorised as a deductible gift recipient for the purposes of the Tax Act and the Company maintains a gift fund pursuant to such endorsement, the Company must on the earlier of the winding up of the gift fund or the Company having its said endorsement or authorisation revoked transfer any surplus assets of that gift fund to an institution or institutions in Australia:

- (a) having objects similar to the objects of the Company;
- (b) which prohibits the distribution of its or their income and property amongst its or their Members to an extent at least as great as is imposed on the Company under or by virtue of clause 8; and
- (c) which satisfies any specific requirements imposed by the Tax Act including the maintenance of a gift fund,

such institution or institutions to be determined by the Board.

72. Prohibition

The Members have no right to participate in any distribution or payment of the assets or property of the Company in the event of the winding up or dissolution of the Company.

INDEMNITY & INSURANCE

73. Indemnity of Directors

Every Director shall be indemnified by the Company against a liability incurred as a Director other than:

- (a) a liability owed to the Company or a related body corporate;
- (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
- (c) a liability that is owed to a person other than the Company or a related body corporate and did not arise out of conduct in good faith.

74. Indemnity of Auditors & Officers

Every Auditor and other Officer of the Company including the Secretary may by resolution of the Board be indemnified by the Company against a liability incurred as an Auditor or an Officer of the Company other than:

- (a) a liability owed to the Company or a related body corporate;
- (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
- (c) a liability that is owed to a person other than the Company or a related body corporate and did not arise out of conduct in good faith.

75. Indemnity for legal costs

Every Director, Auditor and other Officer of the Company including the Secretary may by resolution of the Board be indemnified out of the assets of the Company against a liability for legal costs incurred by that person as a Director, Auditor or other Officer of the Company in defending an action for liability incurred in that capacity unless the costs arise:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clauses 73 or 74;
- (b) in defending or resisting criminal proceedings in which the person is found guilty;
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (other than costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the person under the Act in which the court denies the relief.

For the purposes of this clause 75, "proceedings" includes the outcome of the proceedings and any appeal in relation to the proceedings.

76. Limit of indemnity

Subject to the provisions of the Act, a Director, Auditor and other Officer of the Company including the Secretary shall not be liable for:

- (a) the acts, receipts, neglect or defaults of any other Director, Auditor and other Officer of the Company;
- (b) joining in any receipt or other act of conformity or for any loss happening to the Company through:
 - (i) an insufficiency or deficiency of title to any property acquired by order of the Directors, Auditor or other Officer of the Company for or on behalf of the Company; or
 - (ii) an insufficiency or deficiency of any security in or upon which any of the moneys of the Company shall be invested;

- (c) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects shall be deposited;
- (d) any loss occasioned by any error of judgment or oversight on the part of a Director, Auditor and other Officer or employee of the Company; or
- (e) any other loss, damage or misfortune which occurs in the execution of the duties of the office of Director, Auditor or other Officer of the Company,

unless the liability was incurred against the Company or through the dishonesty of the Director, Auditor or other Officer of the Company.

77. Payment of insurance premiums

The Company may by resolution of the Board pay, or agree to pay, either directly or indirectly through one or more interposed entities, a premium in respect of a contract insuring a person who is or has been a Director, Auditor or other Officer of the Company including the Secretary against:

- (a) a liability for legal costs; and
- (b) any other liability except a liability incurred by the person as such a Director, Auditor or other Officer and arising out of conduct involving:
 - (i) conduct involving a wilful breach of duty in relation to the Company; or
 - (ii) a contravention of section 182 or section 183 of the Act.

NOTICES

78. Notices

78.1. Any notice required to be given under this Constitution or any rule or regulation of the Company must be:

- (a) in writing; and
- (b) given to the recipient:
 - (i) personally;
 - (ii) (if a Member) by sending it by post to the address for the Member in the Register of Members or the alternative address (if any) nominated by the Member, and otherwise to the recipient's last known place of residence or business; or
 - (iii) by sending it to the fax number or electronic address (if any) nominated by the recipient;

78.2. The non-receipt of a notice of meeting of Members shall not invalidate any meeting of Members held pursuant to such notice.

- 78.3. Members who have no place of address in Australia registered with the Company shall notify the Company of an alternative address in Australia for the purposes of this clause.
- 78.4. Any notice sent by:
- (a) post is taken to be given on the next business day after it is posted (if to an address within Australia) or seven business days after it is posted (if to an address outside Australia); and
 - (b) fax or electronic message is taken to be given on the same day if it is transmitted on a business day by 5:00pm AEST and otherwise on the next business day.
- 78.5. Unless it is otherwise provided, a given number of days' notice or notice extending over any period includes the day of service but does not include the day on which such notice is to expire. Where at least or not less than a given period is prescribed, then both the day of service and the day on which the period expires are excluded.
- 78.6. Subject to the Act, the signature to any notice given by the Company may be written, printed or typed.

DEFINITIONS & INTERPRETATION

79. Definitions

In this Constitution, unless the context otherwise requires:

Accounting Standards has the meaning ascribed to it in the Act;

Act means the Corporations Act 2001 and where any provision of the Act is referred to the reference is to such provision as amended, modified or re-enacted from time to time;

AEST means Australian Eastern Standard Time;

Alternate Director means a person appointed to this position pursuant to clause 44;

ASIC means the Australian Securities and Investments Commission;

Associate Members are Members as defined in clause 15.3;

Auditor means the Auditor for the time being of the Company;

Australian Business Number is the 10 digit number assigned by the Australian Business Register;

Board means the Board of Directors of the Company;

Business Members are Members as defined in clause 15.1;

Chair means the chairwoman or chairman of the Board elected in accordance with clause 50.1(a);

Chief Executive Officer means the person (not being a Director) who is appointed by the Board as the chief executive officer of the Company from time to time;

Committee means the committees described in clause 55 and such other committees established by the Board from time to time;

Company means the company named in clause 1;

Constitution means this Constitution as amended from time to time;

Deputy Chair means the Director elected in accordance with clause 50.1(b);

Director means a member of the Board;

Financial Year means the period of twelve months commencing from 1 July and ending on 30 June of that year;

Guarantee means the maximum amount each Member agrees to pay to the Company in accordance with clause 6;

Initial Directors means a Director as defined in clause 39.2;

Initial Member(s) means a Member as defined in clause 13.4;

Insolvency Event means:

- (a) a Member is or becomes:
 - (i) an externally-administered body corporate;
 - (ii) subject to control by a Controller; or
 - (iii) an insolvent company under administration, as those terms are defined in section 9 of the Act;
- (b) a resolution is passed or a court order made or analogous proceedings are taken for the winding up of the Member other than for the purposes of solvent amalgamation or reconstruction;
- (c) the Member, being a natural person, dies, commits an act of bankruptcy or is declared bankrupt or insolvent or the Member's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency or becomes incapable of managing the Member's own affairs by reason of any medical or mental condition;
- (d) the Member, being a partnership, is dissolved or threatens or resolves or is in jeopardy of dissolving;
- (e) the Member ceases or threatens to cease conducting business in the normal manner;
- (f) the Member has received a deregistration notice or applied for deregistration;
- (g) the Member has been issued with a writ of execution; or
- (h) the Member files a voluntary petition in bankruptcy, a petition seeking any re-organisation, arrangement, composition or similar relief under any law regarding insolvency or relief for debtors or makes an assignment for the benefit of the Member's creditors;

Member means a person admitted as a member of the Company in accordance with this Constitution;

Month means calendar month;

Officer means an Officer of the Company as defined in section 9 of the Act;

Ordinary Resolution means any resolution passed by a simple majority of persons entitled to vote;

Register of Members means the Register of Members to be kept as required under section 169 of the Act;

Registered Office means the registered office for the time being of the Company;

Replaceable Rules means the Replaceable Rules contained in the Act;

Schedule means a schedule to this Constitution;

Secretary means any person appointed in accordance with this Constitution and the Act as a Secretary of the Company and includes an Honorary, assistant or acting Secretary or any substitute for the time being for the Secretary;

Special Resolution means a resolution of which notice as set out in section 249L(c) of the Act has been given and has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution;

Subscription means the membership application fees, annual subscriptions and other membership levies payable by a Member, a class of Members or the Members as a whole as determined by the Board from time to time pursuant to clause 16; and

Tax Act means the Income Tax Assessment Act 1997 (Cth);

80. Interpretation

- (a) Reference to "Constitution" includes its Schedule.
- (b) Words and phrases which are given a special meaning by the Act have the same meaning in this Constitution, unless the contrary intention appears.
- (c) Words in the singular include the plural and vice versa and words importing a gender include all other genders.
- (d) Persons include companies and corporations and vice versa.
- (e) A reference to the Act or any other statute or regulation is to be read as though the words "as modified or substituted or re-enacted from time to time" were added to the reference.
- (f) Headings are inserted for convenience and do not affect the interpretation of this Constitution.
- (g) "Including" and other similar words are not words of limitation.
- (h) General words following words describing a particular class or category are not restricted to that class or category.
- (i) A duty, obligation, covenant or agreement on the part of two or more persons benefits and binds them jointly and severally.
- (j) If there is any inconsistency between a clause of this Constitution and the

SCHEDULE ONE

PROXY FORM

FITNESS AUSTRALIA LIMITED

I,of

being a Member of Fitness Australia Limited hereby appoint:

.....(name of proxy)

.....(address of proxy)

as my proxy to vote for me and on my behalf at the (Annual General/or Extraordinary General (as the case may be) Meeting of the Company to be held on:

.....(date of meeting) and at any adjournment thereof.

.....

Signature

Dated:

Unless otherwise instructed in this form, the proxy may vote as he or she thinks fit.

This instrument appointing a proxy confers authority to demand or join in demanding a poll.