

**ASSOCIATIONS INCORPORATION ACT 1985**

**RULES FOR**

**FLINDERS UNIVERSITY SPORT AND  
FITNESS INCORPORATED**

[DATE TO BE INSERTED]

THIS IS THE ANNEXURE MARKED 'A' REFERRED TO IN THE STATUTORY DECLARATION OF  
FLINDERS CAMPUS COMMUNITY SERVICES INCORPORATED

MADE ON ..... 22 May 2019 .....

BY ALAN DAVID BANKS

BEFORE ME: *Ann-Marie O'Connor*

Ann-Marie O'Connor JP 22055  
A Justice of the Peace  
in and for the state of South Australia

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## 1. DEFINITIONS

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In these Rules:

**"Act"** means the *Associations Incorporation Act 1985 (SA)* and includes Regulations made under the Act;

**"Association"** means the incorporated association known as "Flinders University Sport and Fitness Incorporated" and having registered number A39128;

**"Authorised Delegate"** means the 'authorised delegate' as defined in the External Entities Policy, as amended or replaced from time to time;

**"Board"** means the committee of the Association which has the power to administer the affairs of the Association under the Act;

**"Chairperson"** means the Director of the Board holding the position of chairperson and appointed pursuant to clause 8.1 (if any);

**"Director"** means a director of the Board appointed in accordance with clause 8;

**"External Entities Policy"** means the University's External Entities Policy, as may be amended or replaced from time to time;

**"Member"** means the University as the sole member of the Association;

**"Regulations"** means the regulations to the Act;

**"Student"** means any enrolled student of the University, whether that person is enrolled as a full time, part time or external student;

**"University"** means Flinders University;

**"University Community"** includes all Students and staff of the University and staff of the Association;

**"University Council"** means the peak governing body of the University, as defined by the *Flinders University Act, 1966 (SA)*

## 2. INTERPRETATION

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In these Rules:

2.1 neuter includes masculine and feminine;

2.2 singular includes plural and vice versa;

2.3 reference to a person includes a corporation and partnership and vice versa;

2.4 headings do not affect interpretation;

2.5 reference to parliamentary legislation or University policy includes:

2.5.1 the legislation or policy as amended;

2.5.2 any substituted legislation or policy; and

2.5.3 any regulations and instruments under the legislation or policy.

- 2.6 While the University is the sole Member of the Association, a reference in these Rules or the Act to:
- 2.6.1 a "meeting of members" (whether the "meeting" is an annual general meeting, a special general meeting or any other type of meeting) is a reference to the University as sole Member considering a proposed resolution of the Member; and
- 2.6.2 a "resolution of members" (whether the "resolution of members" is special or ordinary) is a reference to the University as sole Member deciding the outcome of a Member's resolution.

### 3. **NAME**

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The name of the Association is Flinders University Sport and Fitness Incorporated.

### 4. **OBJECTS**

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The objects of the Association are to provide a range of facilities and services to Students and the University Community, including in particular sport, fitness, health, wellbeing and related services.

### 5. **POWERS**

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The Association has all the powers conferred by section 25 of the Act.

### 6. **MEMBERSHIP**

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#### 6.1 **Sole Member**

The University is the sole Member of the Association.

#### 6.2 **Exercise of membership powers**

Without prejudice to any other valid means of exercising its authority or powers, any power of the University as the sole Member under these Rules or the Act, including a resolution in its capacity as a Member, shall be deemed validly exercised by the Authorised Delegate making the relevant decision, or exercising the relevant power, and recording that fact in writing.

#### 6.3 **Compliance with the University's policies**

- 6.3.1 The Association shall comply with, and cooperate with the University to facilitate the University's compliance with, the External Entities Policy and such other policies, rules and regulations as the University may notify to the Association in writing from time to time.
- 6.3.2 Any conflict between the Act, these Rules or any policy, rule or regulation of the University which is binding on the Association pursuant to clause 6.3.1, shall be resolved in the following order of priority:
- (a) firstly, the Act;
  - (b) secondly, the University's policy, rule or regulation; and
  - (c) lastly, these Rules.

## **7. GOVERNANCE STRUCTURE OF THE ASSOCIATION**

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Subject to these Rules, the Board is responsible for the overriding governance and day-to-day management of the Association.

## **8. COMPOSITION OF THE BOARD**

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### **8.1 Composition**

- 8.1.1 The Board shall comprise of between two (2) and seven (7) Directors.
- 8.1.2 The University may (but is not required to) appoint any one of the Directors to the position of Chairperson to provide leadership to the Board.

### **8.2 Term of office**

- 8.2.1 The Directors hold office until their resignation or removal as a Director under these Rules.
- 8.2.2 The Chairperson (if any) holds that position for the duration of their term of appointment as a Director subject to removal in accordance with these Rules.

### **8.3 Remuneration of Directors**

- 8.3.1 The Directors shall be paid such remuneration as is from time to time approved by the University.
- 8.3.2 The Directors shall be entitled to be reimbursed for travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Association or otherwise in connection with the business of the Association.

### **8.4 Removal of Directors**

A Director ceases to hold office if:

- 8.4.1 the Director is disqualified under section 30 of the Act;
- 8.4.2 the licensing authority under the Liquor Licensing Act 1977 (SA) refuses to give approval to the appointment of the Director to the Association or notifies the Association that the Director is not a fit and proper person to hold a position of authority in the Association;
- 8.4.3 the Director is permanently incapacitated by ill health;
- 8.4.4 the Director is removed by the University under clause 8.6;
- 8.4.5 the Director resigns by giving written notice to the Association and the University;  
or
- 8.4.6 where the Director is also an employee of the University or the Association, upon he or she ceasing to be employed by the University or the Association (unless the University otherwise consents).

### **8.5 Appointment of Directors**

- 8.5.1 Subject to clause 8.5.3, the power to approve and appoint the Directors, including to the position of Chairperson (if any), is reserved for the University.
- 8.5.2 The University shall exercise its powers to ensure that the minimum number of Directors specified under clause 8.1 are appointed at all times.
- 8.5.3 In the event that the number of Directors is less than the minimum specified under clause 8.1, the remaining Director(s) may act solely for the purposes of

appointing such number of additional directors as may be needed to comply with clause 8.1.

## **8.6 Removal by University**

8.6.1 The University may by resolution remove any Director (including the Chairperson if any) from office at any time and for any reason whatsoever.

8.6.2 Removal of a Director from office pursuant to this clause 8.5 shall not automatically have any impact on any position of employment of such person with the Association.

## **9. POWERS AND DUTIES OF THE BOARD**

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### **9.1 Powers of the Board**

9.1.1 The Board governs the business and affairs of the Association. The Board's role includes, but is not limited to:

- (a) approving the mission and strategic direction of the Association, as well as the annual budget and business plan;
- (b) overseeing and reviewing the management of the Association and its performance;
- (c) establishing policies, procedures and principles consistent with legal requirements and reasonable expectations of the University Community;
- (d) approving and monitoring systems of control and accountability;
- (e) overseeing and monitoring the assessment and management of risk across the Association; and
- (f) approving significant commercial activities of the Association.

9.1.2 Subject to clause 9.4, the Board may exercise all the powers of the Association (save those reserved for the Member) within the objects of the Association.

9.1.3 The Board has the authority to interpret the meaning of these Rules and any other matter relating to the affairs of the Association on which these Rules are silent.

9.1.4 The Board shall appoint a Public Officer as required by the Act.

9.1.5 The Board may appoint other officers and employees of the Association.

9.1.6 The Board may delegate any of its powers, except the powers of delegation, to officers and/or employees, or to any sub-committee comprising such persons as the Board thinks fit.

9.1.7 No such delegation by the Board shall prevent or otherwise limit the Board in the exercise of its powers, duties or functions.

### **9.2 Directors' Duties**

Subject to clause 9.3, each Director owes the following duties to the Association:

#### **9.2.1 Duty of Care and Diligence**

- (a) Directors must act responsibly, diligently and with due care;

- (b) Directors must keep themselves reasonably informed about the Association's business affairs;
- (c) Directors must be familiar with the Association's financial affairs; and
- (d) Directors must devote reasonable time and effort to the Association's affairs.

#### **9.2.2 Duty to Act in Good Faith**

- (a) Directors must act in good faith and for the benefit of the Association; and
- (b) Directors must exercise their powers for a proper purpose.

#### **9.2.3 Duty to Avoid Conflicts of Interest**

- (a) Directors must act honestly;
- (b) Directors must avoid a conflict of interest and address such conflicts in accordance with clause 10.8;
- (c) Directors must not make improper use of their position or information gained in the course of acting as Directors; and
- (d) Directors must invest Members' funds wisely and ensure that the Association remains solvent at all times.

### **9.3 University appointed Directors**

To the maximum extent permitted by under the Act and any other relevant law:

- 9.3.1 the Directors shall be entitled to share any information obtained by them in their capacity as a Director of the Association with the University and such of its employees, officers and agents who have a need to know;
- 9.3.2 the Directors shall be entitled to take into account the interests of the University as the sole Member when exercising their powers as Directors, which shall be deemed not to constitute a conflict of interest under these Rules, the Act or otherwise; and
- 9.3.3 a Director shall be deemed not to have a conflict of interests merely by virtue of being employed by, or holding another office with, the University.

### **9.4 Restrictions on powers of the Board**

No resolution or other decision of the Directors to do any of the following is valid or binding on the Association until the resolution or decision has been also approved by the University:

- 9.4.1 the creation of any charge, mortgage, lien or other security interest over the assets of the Association, save for a 'purchase money security interest' (as defined in the Personal Property Securities Act 2009) which is created in the ordinary course of business;
- 9.4.2 the purchase, acceptance or other acquisition (for consideration or otherwise) of any interest in another legal entity save in accordance with the External Entities Policy;
- 9.4.3 the borrowing of funds other than from the University;

- 9.4.4 the making of loans, or otherwise providing financial accommodation, to or for the benefit of any Director;
- 9.4.5 the provision of any benefit to a Director, as a Director, save as may be permitted under clause 8.3;
- 9.4.6 any recommendation that the Association be wound up;
- 9.4.7 the admission of any additional Members;
- 9.4.8 the disposal of any real or intangible asset of the Association having a value of \$100,000 or more; or
- 9.4.9 the acquisition of any real or intangible asset for a consideration of \$100,000 or more.

## 10. PROCEDURES OF BOARD

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### 10.1 Frequency of meetings

The Board shall meet as and when required as determined by the Board.

### 10.2 Mode of meeting

The Board may conduct its meetings in any manner and in any place as the Board sees fit including by tele or video-conferencing or any other technological means by which they are able to simultaneously hear each other and participate in discussion.

### 10.3 Quorum

A quorum for a meeting of the Board is two Directors who are entitled to have a deliberative vote with the Chairperson (if any) having a casting vote if required. The quorum must be present at all times when business is transacted.

### 10.4 Calling of meetings

Any Director may at any time call a meeting of the Board to be held at such time and place as specified in the notice.

### 10.5 Notice of meeting

Notice of each Board meeting:

10.5.1 may be given by such means as is convenient, including by electronic transmission;

10.5.2 must be given to all Directors of the Board; and

10.5.3 must be given at least five working days prior to the meeting.

This clause 10.5 may be waived upon the agreement of all Directors.

### 10.6 Chairperson of meeting

Where a meeting is held and the Chairperson (if any) is not present or is not able to chair the meeting, the Board may (but is not required to) elect one of the Directors present to be the chairperson for that meeting.



## 10.7 **Votes of Directors**

- 10.7.1 Each Director has one deliberative vote.
- 10.7.2 The Chairperson (if any) has a casting vote if there is an equality of deliberative votes.
- 10.7.3 An ordinary resolution of the Board is carried by a majority of votes cast, except where these Rules or the Act provides otherwise.
- 10.7.4 A resolution may also be passed in writing provided it is signed by all Directors entitled to vote on the resolution in question.

## 10.8 **Material personal interests of Directors**

Subject to sections 31 and 32 of the Act, a Director who has any direct or indirect interest (whether pecuniary or otherwise) in a contract, or proposed contract, with the Association:

- 10.8.1 must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of his or her interest to Board;
- 10.8.2 must disclose the nature and extent of his or her interest in the contract at the next Board meeting; and
- 10.8.3 must not take part in any decision of the Board with respect to that contract.

## 11. **SUB-COMMITTEES**

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- 11.1 The Board may, in order to pursue the objectives of the Association, establish sub-committees of the Board.
- 11.2 The Board may determine such rules as it sees fit for the activities and proceedings of any sub-committee.
- 11.3 A sub-committee to which any powers have been so delegated must exercise the powers delegated in accordance with the directions of the Board. A power so exercised is taken to be exercised by the Board.

## 12. **MEMBER'S RESOLUTIONS**

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### 12.1 **Board-Initiated Member's Resolutions**

12.1.1 Within 5 months after the end of each financial year of the Association, the Board must arrange for the Member to consider, for the purposes of a Member's resolution, the following matters:

- (a) the profit and loss account, the balance sheet and the reports of the auditor, the Board and other committees;
- (b) appointing an auditor; and
- (c) any other business which under the Act ought to be transacted at an annual general meeting.

12.1.2 The Board may arrange for the Member to consider any other proposed resolution at any other time.

### 12.2 **Member-Initiated Member's Resolutions**

This clause does not limit the Member's right to consider and decide, at any time and of the Member's own initiative, any other Member's resolution. Unless waived by the Directors, the Member must give the Board not less than 7 days' notice of its intention to do so and the notice must specify the general nature of the proposed resolution.

### **13. MINUTES AND RECORDS**

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- 13.1 The Association must:
- 13.1.1 cause minutes of all proceedings of Board meetings and records of the Member's resolutions to be entered in books kept for that purpose;
  - 13.1.2 cause:
    - (a) those Board minutes to be signed on behalf of the Board;
    - (b) those records of Member's resolutions to be confirmed and signed by the Member.
- 13.2 A minute or record that is entered, confirmed and signed in accordance with this clause is, in the absence of proof to the contrary, proof of the proceedings to which the minute or record relates.
- 13.3 Where minutes or records have been entered, confirmed and signed in accordance with this clause, it is to be taken, in the absence of proof to the contrary, that:
- 13.3.1 the meeting to which the minutes relate was held, or the resolution to which the record relates was made;
  - 13.3.2 the proceedings noted in the minutes occurred; and
  - 13.3.3 all appointments of Directors or auditors noted in the minutes or recorded in the resolution were validly made.

### **14. ACCOUNTS AND REPORTS**

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The Directors shall:

- 14.1 cause proper accounting and other records to be kept;
- 14.2 without limiting clause 14.1 above, ensure that the Association complies with its obligations regarding the preparation, auditing, approval and lodgment of financial reports under Division 2 of the Act;
- 14.3 ensure that the University and its representatives are provided with reasonable access to the Association's records and documents on request;
- 14.4 cooperate and provide all necessary assistance to the University's auditors;
- 14.5 allow its operations, records and activities to be audited as part of the University's internal or external audit program (if requested); and
- 14.6 ensure that the University is provided with such additional information and reports as the University may request or stipulate in its policies and procedures from time to time (including, for the avoidance of doubt, in the External Entities Policy).

### **15. INDEMNITY**

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Every Director shall be indemnified by the Association against a liability to another person (other than the Association or the University) arising in connection with the performance of his or her duties as a Director unless the liability arises out of conduct involving a lack of good faith.

## **16. ALTERATION OF RULES**

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- 16.1 These Rules may only be altered by a resolution of the Member.
- 16.2 Upon registration in accordance with section 24 of the Act, the Rules (as amended) bind the Association and the Member.

## **17. SEAL**

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- 17.1 The Association must have a common seal upon which its name appears in legible characters.
- 17.2 The common seal may be used only with the express authority of the Board.
- 17.3 The affixing of the seal must be:
  - 17.3.1 witnessed by any two Directors of the Board; and
  - 17.3.2 recorded in the minute book of the Association.
- 17.4 The seal must be kept in the custody of the Chairperson or any other person the Board thinks fit.

## **18. WINDING UP**

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- 18.1 The Association may be wound up in accordance with section 41 of the Act.
- 18.2 Subject to section 21 of the Act, the Member is not liable to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of a winding up of the Association.
- 18.3 On a winding up, any surplus assets (within the meaning of section 43(5) of the Act) must be distributed to another non-profit association with similar objects to the Association chosen by:
  - 18.3.1 the Board on or before the winding up; or
  - 18.3.2 if the Board does not make that decision, any Court with jurisdiction.

## **19. FINANCIAL YEAR**

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- 19.1 The financial year of the Association commences on 1 January and ends on 31 December.

## **20. FINANCIAL REPORTING**

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- 20.1 The Association must keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the Association in accordance with the Act.
- 20.2 The accounts, together with the auditor's report on the accounts, the Board's statement and the Board's report, must be presented to the Member for consideration by the Member pursuant to clause 12.1.1.
- 20.3 The annual (periodic) return must be lodged with the Office of Consumer and Business Affairs as required by the Act.

- 20.4 The Member must appoint a person to be the auditor of the Association. The auditor must hold office until the next annual Member's resolution pursuant to clause 12.1.1 and is eligible for re- appointment.
- 20.5 If an appointment is not made pursuant to an annual Member's resolution, the Board shall appoint an auditor for the current financial year.

**21. PROHIBITION AGAINST SECURING PROFITS FOR MEMBER**

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- 21.1 The income and capital of the Association shall be applied exclusively to the promotion of its objects.
- 21.2 No portion of the income and capital of the Association may be paid or distributed directly or indirectly to the Member, except as bona fide remuneration of the Member for services rendered or expenses incurred on behalf of the Association.