

RULES of AVON HEALTHCARE SERVICES LIMITED

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1. Definitions

In these Rules –

“Articles” means the articles of association of the body corporate.

“Board” means the board of directors of the body corporate.

“body corporate” means “ ” Limited (Company Number “ ”).7

“Clinical Commissioning Group” (“CCG”) means a clinical commissioning group established under the NHS Act.

“Commissioner” includes NHS England, CCGs, Local Authorities or any other organisation that may commission services from or through the body corporate. The services may include, but are not limited to NHS services.

“Local Pharmaceutical Committee” and “LPC” means a Local Pharmaceutical Committee recognised under the provisions of Section 167 of the National Health Service Act 2006 as representative of the persons providing pharmaceutical services in the area for which it is formed.

“LPC Member” means any LPC that is a member of the body corporate, in accordance with the provisions of the Articles.

“Manager” means the person employed or engaged by the Board to carry out administrative and other duties on behalf of the body corporate.

“Members” means the members of the body corporate (excluding any LPC Members).

“NHS England” means the NHS Commissioning Board, established under the NHS Act or any successor organisation with a similar function.

“The NHS Act” means the National Health Service Act 2006 as amended.

“Persons providing pharmaceutical services” means persons whose names are included in the pharmaceutical lists maintained by NHS England of persons providing pharmaceutical services, excluding suppliers of appliances only.

“Persons providing local pharmaceutical services” means persons who are providing local pharmaceutical services (LPS) under an LPS scheme or under a pilot scheme made with NHS England.

“Pharmaceutical List” means the lists of pharmacy contractors in the area of one or more Health and Wellbeing Boards of a Local Authority.

“Pharmaceutical Needs Assessment” (“PNA”) means the pharmaceutical needs assessment required to be published by the Health and Wellbeing Board of the Local Authority in accordance with Part 2 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

“Pharmacy contractor” means a person providing pharmaceutical services or a person providing local pharmaceutical services.

2. Purpose

2.1. The body corporate is formed to provide a framework under which its Members can collectively provide or offer to provide services to NHS England, CCGs and other Commissioners.

2.2. The body corporate may propose to potential Commissioners services which may be commissioned, or respond on behalf of its Members, to invitations to tender to provide services.

3. Competition

- 3.1. Membership of the body corporate shall not remove the right of any Member to provide or offer to provide services independently of the body corporate.

4. Governance

- 4.1. No person may be a Member of the body corporate unless he agrees to comply with the Articles and these Rules.
- 4.2. The Manager shall maintain a list of the services provided by the body corporate during the previous 12 months; a list of those services that are contracted to be provided by or through the body corporate (including as agent) during the following 12 months; and a list of those services which are being considered by the body corporate as potential services.
- 4.3. The Manager shall send these lists to each Member as soon as practicable after the start of the calendar year, and at other times, to any Member on request.
- 4.4. Members must within one month of receipt of the lists produced under paragraph 4.2, submit a return to the Manager, declaring any services on any of those lists that he has provided independently of the body corporate in the area of the body corporate, during the previous 12 months; and of those services that he is contracted to provide independently of the body corporate in the area of the body corporate; and any of those services which he is in negotiations with a commissioner with a view to providing independently of the body corporate in the area of the body corporate.
- 4.5. The return submitted under the preceding paragraph shall be treated as the declaration of interest of the Member, and the Member shall not seek the support of the body corporate in the provision of those services that are provided independently of the body corporate. The return shall be available for examination by any Member of the body corporate.
- 4.6. A Member who is providing services or is negotiating to provide services independently of the body corporate shall not be prevented from providing other services on behalf of the body corporate and shall be entitled to the support of the body corporate in relation to those services.
- 4.7. A member who is providing or is considering providing independently of the body corporate services of a kind included in the lists prepared under paragraph 4.2 shall not use for that purpose any information which is not in the public domain, obtained through his membership of the body corporate.

5. Confidentiality

- 5.1. The Manager shall not disclose confidential or commercially sensitive information about a Member or about the body corporate to a non Member, without the consent of the Member, or the body corporate as the case may be. The Manager may be authorised by Members or by the body corporate to disclose limited information when negotiating in good faith, with Commissioners or potential Commissioners.
- 5.2. On termination, withdrawal or suspension of any Member, that Member (the 'Outgoing Member') shall destroy any confidential or commercially sensitive information about any other Members or about the body corporate that they hold by virtue of having been a Member, and shall, upon request by the body corporate, certify that they have done so. This obligation will not apply in cases where the Outgoing Member is required by law or any legal

or regulatory authority to hold such confidential or commercially sensitive information or where such information is its own clinical records.

5.3. Each Member and Outgoing Member undertakes that he shall not at any time use, divulge or communicate to any person, except to his professional representatives or advisers or as may be required by law or any legal or regulatory authority, any confidential information concerning the Business or affairs of the body corporate or (except in cases where the relevant other Member or Members have given their written consent) the other Members which may have or may in future come to his knowledge and each of the Members and Outgoing Members shall use his reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

5.4. For the purposes of this clause 5, confidential information does not include information which:

5.4.1. is or becomes generally available to the public other than as a result of disclosure by a Member, an Outgoing Member or their representatives or advisers contrary to their respective obligations of confidentiality; or

5.4.2. is or becomes available to a Member or an Outgoing Member otherwise than by reason of being a Member of the body corporate and free of any restriction as to its use or disclosure.

6. Relationship with Commissioners

6.1. The Manager shall seek to establish on behalf of the body corporate a working relationship with appropriate members of staff, officers and Board members of Commissioners in the area of the body corporate. The Manager may do this by himself or through Members or jointly with Members, in the most appropriate way that will build relationships with such Commissioners.

6.2. In the event of complaint from any Commissioner about any aspect of services commissioned from the body corporate, the Manager shall send a copy to any relevant Member who is contracted to provide those services and seek comments with a view to addressing the concerns of the Commissioner. If the concern of the Commissioner is not resolved to the satisfaction of the Commissioner within 21 days of receipt of the complaint, the complaint shall be sent to the Board.

6.3. Where requested by a Commissioner, the Manager shall provide satisfactory evidence of compliance with the service specification. The evidence which may be requested shall have been specified in the contract or service level agreement.

7. Relationship with LPC

7.1. The Manager shall foster good relations with the Chief Officer of the LPC.

7.2. In the event of complaint from the LPC, about the conduct of a Member, which may have an adverse impact on the reputation of the corporate body or, without limitation, the ability of the LPC to carry out its representative function, the Manager shall send details to the relevant Member and seek comments with a view to addressing the concerns expressed by the LPC. If the concern is not resolved within 21 days of receipt of the complaint, the complaint shall be sent to the Board. This process is without prejudice to the provisions of Article 18 [*Expulsion or Suspension of a Member*].

8. Initial Funds

- 8.1. An LPC may make a loan to establish or support the establishment of the body corporate.
- 8.2. Where such a loan is made, the Board shall make all reasonable efforts to repay that loan in a timely manner.
- 8.3. Where, by a majority of the votes cast by pharmacy contractors in the area of the LPC, the pharmacy contractors have requested that the LPC no longer support the body corporate, the LPC will request repayment of any loan, and subject to the fiduciary obligations of the Board, the loan shall be repaid promptly.
- 8.4. All Members joining the body corporate shall contribute -such sum that is set out in rule 15.3 towards the costs of establishment and operating the body corporate in accordance with rule 15.3.

9. Expenses

- 9.1. Expenses of the body corporate which are attributable to:-

- 9.1.1. Initial set up costs of the body corporate, including, without limitation, professional advisers' fees and disbursements;

- 9.1.2. General running costs of the body corporate, including, without limitation:

- 9.1.2.1. costs associated with the body corporate's premises;
 - 9.1.2.2. costs associated with the body corporate's equipment, including, without limitation, office furniture, stationery and IT systems;
 - 9.1.2.3. costs associated with employing or engaging the Manager and any other staff;
 - 9.1.2.4. costs associated with submissions to the Companies Registrar, HM Revenue and Customs and other similar bodies or institutions; and
 - 9.1.2.5. professional advisers' fees and disbursements; and
 - 9.1.2.6. costs associated with the development of bids and co-ordination of responses to investigations to tender received from commissioners

shall, in accordance with rules 15.6 and 15.7, be met equally by the Members by a subscription from each member, the level and frequency of such subscription to be determined by the Manager.

- 9.2. Expenses of the body corporate related to the provision of a particular service or services by one or more Members on behalf of the body corporate, shall be met by those Members from the income derived from that service or services, or otherwise within 14 days of a written demand from the Manager to that Member or Members.

10. Proposing or responding to tenders to provide services

- 10.1. The Manager shall identify any services which may be commissioned from Members.
- 10.2. This will include:

- 10.2.1. any services for which a Commissioner or potential Commissioner has issued an invitation to tender document or otherwise invited expressions of interest;
- 10.2.2. any services that are not provided by the body corporate , but which are commissioned from other providers;
- 10.2.3. services mentioned in the Pharmaceutical Needs Assessments or similar documents which are not currently commissioned; and
- 10.2.4. any other service that a Member or Members suggests should be investigated.
- 10.3. The Manager shall prepare a summary of the likely requirements for the provision of such services and if possible, establish the anticipated level of remuneration. He shall circulate the summary to all Members and seek provisional expressions of interest.
- 10.4. If any expression of interest is notified to the Manager within 21 days of despatch of the summary, the Manager shall be authorised to discuss provision of the service by the body corporate with a potential Commissioner.
- 10.5. The Manager may, subject to the directions of the Board, notify the Chief Officer of the LPC that the body corporate wishes to consider providing the service and seek the support of the LPC in negotiations with the potential Commissioner.
- 10.6. The Manager shall prepare monthly, a summary of developments which will be sent to each Member.
- 10.7. When a Commissioner is willing to commission a service from the body corporate or one or more of its Members, the Manager shall send details to each Member, and seek agreement to enter into a contract with the body corporate as sub-contractor or with the Commissioner as appropriate. The Manager will be authorised to enter into a contract on behalf of the body corporate only if satisfied that the body corporate will be able to provide the services specified (whether itself or through sub-contracting Members) in accordance with any service specification.
- 10.8. If required, the Manager may also invite non-members to provide services on behalf of the body corporate, where the requirements of the contract cannot be met in full by the Members, provided that the terms for the provision of such services by any such non-members are no more beneficial than the terms for the Members who are carrying out the contract.
- 10.9. Members may provide on behalf of the body corporate, any service from:
 - 10.9.1. their pharmacy premises which are included in a pharmaceutical list;
 - 10.9.2. other pharmacy premises (whether on a pharmaceutical list or not); and
 - 10.9.3. other premises approved by the body corporate.
- 10.10. In providing services, Members shall ensure that the service is provided using appropriately qualified and where appropriate, by accredited persons. This may include:
 - 10.10.1. as an individual if the Member is a pharmacist;

- 10.10.2. employee pharmacists;
- 10.10.3. locum pharmacists;
- 10.10.4. other pharmacists, subject to a formal contract with the Member or the body corporate engaging them to provide the service on behalf of the body corporate; and
- 10.10.5. other persons who have the required qualifications to provide the service, who are either employed or engaged by a Member to provide services in the Member's pharmacy business, or who are employed or engaged by the body corporate to provide the service.

11. Training, accreditation and Disclosure and Barring checks

- 11.1. The Manager shall identify appropriate sources of training for any training required to be undertaken as a condition for any commissioned service. The availability of such training shall be notified to any Members on request.
- 11.2. A Member may notify the Manager of any person employed or engaged by the Member in his pharmacy business, who has satisfactorily undertaken such training, and the Manager shall keep a record of all persons so notified.
- 11.3. The Manager shall identify appropriate sources of accreditation required as a condition for any commissioned service. The accreditation requirements shall be notified to any Members on request.
- 11.4. A Member may notify the Manager of any person employed or engaged by the Member in his pharmacy business, who has obtained accreditation and the Manager shall keep a record of all persons so notified.
- 11.5. The Manager shall retain copies of certificates of completion of training or accreditation certificates.
- 11.6. Records of training or accreditation may be disclosed to any Commissioner, if related to a service which is or is to be commissioned.
- 11.7. The body corporate may arrange such training or accreditation but in any event, Members will be responsible for the costs of training or accreditation undertaken by their staff, except in the case where such costs are funded by the relevant Commissioner or another third party.
- 11.8. Where required by a Commissioner, the Manager shall arrange appropriate checks under the Disclosure and Barring Service and shall keep on-going records for those persons who are engaged in the provisions of service at annual intervals

12. Records

- 12.1. The Manager shall maintain a record of all current contracts, including details of which Members are providing the services.

13. Submission of claims

- 13.1. Each Member providing services shall submit to the Manager, not later than 7 days before the month end, details of amounts to be claimed, together with any documentary evidence required by the Contract or Service Level Agreement.

- 13.2. The Manager shall check the validity of the claim, and collate all claims for each service, and submit one claim to the Commissioner in respect of each service provided. The documentary evidence shall be retained securely by the Manager or sent to the Commissioner as required by the terms of the contract or service level agreement.

14. Funding

- 14.1. The funding of the body corporate shall arise from:
- 14.1.1. Initial funds received from the LPC
 - 14.1.2. Administrative funding – contributions (which may be regular or ad hoc) from Members of the body corporate, payable towards the general expenses of the body corporate
 - 14.1.3. Payments from Commissioners – including for services provided directly by the body corporate or by parties sub-contracted by the body corporate, and payments for acting as agent of the Commissioner in managing the contracts
 - 14.1.4. Funding from Commissioners to pump prime or otherwise assist with establishing a service.
- 14.2. The Manager shall, on receipt of item of service payments, verify that the appropriate payment has been made, having regard to the claims made, and shall distribute the payments due directly to the Members on whose behalf he submitted consolidated claims.
- 14.3. The Manager may reclaim from any Member, any over-payment that has been made to that Member, and the Member shall repay the over-payment within 30 days of receipt of a notice from the Manager of the amount of the over-payment. A Member may appeal to the Board if the notice of the overpayment is disputed. The Board may revoke, vary or confirm the notice of overpayment.
- 14.4. The Manager shall, on receipt of any income not related to items of service, notify the Board, and subject to the approval of the Board, set out how the funds are to be distributed (for example, to subsidise training costs).
- 14.5. The Manager is authorised to distribute income not related to items of service, in accordance with clause 14.4.
- 14.6. At the end of each financial year, the Board shall decide how much undistributed income shall be retained, and the remainder shall be distributed to the Members in the proportions determined by the Board.

15. Admission of Members and Ongoing Fees

- 15.1. The Board may resolve to admit as a Member to the body corporate any pharmacy contractor who wishes to become a Member provided:
- 15.1.1. that pharmacy contractor is not currently suspended as a Member.
- 15.2. No pharmacy contractor may become a Member until he has agreed in writing, in a form provided by the Board, to be bound by the Articles and these Rules.
- 15.3. Once the Board has agreed to the pharmacy contractor becoming a Member, a non-returnable payment by the Member of initial funding of [£250] (irrespective of the number of

premises that that prospective Member may notify pursuant to rule 15.4) shall be paid [in the event that the prospective Member becomes a Member within [6] months of the date of the incorporation of the body corporate or in the event that the Member becomes a Member later than [6] months after such date, the sum involved shall be [£]], and membership shall only take effect 60 days after payment has been made.

15.4. A Member that operates out of more than one premises may specify (by written notification to the body corporate [on an annual basis, or more frequently at the board of directors' discretion]) which premises that Member wishes to be involved in contracts awarded through or via the body corporate. Only those premises which have been notified to the body corporate under this rule can provide services for and / or participate in contracts through or via the body corporate, (Members who have premises which are not notified to the body corporate under this Rule may be invited to provide services from those premises under Rule 10.8 as if they were a non-member).

15.5. The body corporate may levy an administration fee on the relevant Member for changing the premises involved with the body corporate under clause 15.4. The change in premises involved in the body corporate shall take effect 60 days after the later of (i) notification to the body corporate under clause 15.4 above and (ii) payment of the administration fee payable under this clause. [The amount of the administration fee for a change of premises shall be fixed by the Board from time to time.]

15.6. A Member shall, for the period that he is a Member, be responsible for meeting the administrative costs of the body corporate which have not been met from external income, the call for any such funding shall be issued by the Manager.

15.7. Ongoing admin fees levied in accordance with rules 15.4 and 15.6 above shall be payable based on the number of premises (if that Member operates multiple premises) that each Member has notified to the body corporate under clause 15.4 above. The annual fees in respect of such premises will be set on an annual basis prior to or at the beginning of each year and shall be payable in equal monthly instalments by each Member by direct debit to the corporate body without discount or set off. Where a Member joins during a year he shall be liable for the full annual amount of the ongoing admin fees for the whole of the year in which he joins (and not just pro-rata for the remainder of the year in question), paying a catch up amount for all months of the year to the date of membership) (as well as the joining fee (pursuant to rule 15.3)) at the outset followed by the standard monthly instalments. The same principle shall apply where a Member notifies any additional premises during the course of a year.

15.8. For the purpose of paragraph 15.7, the year shall run from [day / month]

16. Members' Duties, Restrictions, Entitlements and Indemnity

16.1. Each Member shall at all times:

16.1.1. diligently employ himself in the business of the body corporate and conduct himself in a proper and responsible manner and use his best skill and endeavour to promote the Business to the greatest advantage of the body corporate;

16.1.2. comply with all legislation, regulations, professional standards and other provisions as may govern the conduct of the business, or be determined by the Manager as standards to be voluntarily applied by the body corporate to the business;

- 16.1.3. at its own expense maintain an appropriate insurance policy or appropriate insurance policies in respect its professional indemnity;
 - 16.1.4. comply with the Articles and these Rules;
 - 16.1.5. show the utmost good faith to the body corporate and the other Members in all transactions relating to the business and affairs of the body corporate and give the body corporate a true account of all such dealings;
 - 16.1.6. inform the Manager without delay on becoming party to any legal proceedings;
 - 16.1.7. indemnify and keep indemnified the body corporate, other Members, their estates and successors from and against all losses, liabilities, expenses and payments resulting from his material breach of the Articles or these Rules or of any contracts on behalf of the body corporate to which he is a party, without prejudice to any other right or remedy of other Members; and
- 16.2. Any Member may:
- 16.2.1. engage or be concerned directly or indirectly in any business in competition with the body corporate; and
 - 16.2.2. accept any office or appointment in direct or indirect competition with the body corporate.
- 16.3. Any Member contracting with the body corporate to provide, on the body corporate's behalf, services to or on behalf of Commissioners shall indemnify and hold the body corporate harmless from all claims and all direct, indirect or consequential liabilities, costs, proceedings, damages and expenses awarded against, or incurred, or paid by the body corporate in connection with that Member's provision or non-provision of those services.

17. Performance Management

- 17.1. The Manager may, if requested to do so by the Board or a Commissioner, carry out any inspection or other investigation intended to verify the provision of the services by any Member which has undertaken to provide those services.
- 17.2. Where the Member has failed or is failing to provide the services and remedy is possible, the Manager may issue a notice to the Member, requiring that the failure is remedied within an appropriate period specified by the Manager.
- 17.3. Where the Member has failed or is failing to provide the services and remedy is not possible, the Manager may issue a notice to the Member, requiring that the failure is not repeated.
- 17.4. The body corporate may withhold payment as appropriate for any service where the provision of the service fails to meet the contract or service level agreement.

18. Insurance

- 18.1. The board members of the body corporate shall (at the expense of the body corporate) maintain insurance policies (for the benefit of the Members or the body corporate as appropriate) in such amounts as the Board determine in respect of:
 - 18.1.1. property of the body corporate;

- 18.1.2. employer's liability;
 - 18.1.3. professional indemnity;
 - 18.1.4. directors and officers' liability; and
 - 18.1.5. public liability.
- 18.2. The Members shall co-operate with the body corporate in obtaining the insurance policies in this clause 18.

Meetings

19. Business meetings

- 19.1. Where the Manager or one or more Member wishes to discuss a matter he believes to be important, the Manager shall send a notice to all Members, giving not less than 14 days notice of a meeting, and shall indicate in that notice, the nature of the business to be discussed.
- 19.2. The Board or the Members (as the case may be) of the body corporate may invite any pharmacy contractor who is not a Member or other person to attend a meeting of the Members.

20. Annual General Meetings

- 20.1. An Annual General meeting of Members shall be called by the Board each year.
- 20.2. The Board shall produce at the Annual General Meeting a statement of accounts of the body corporate, to include the number of Members, a summary of the services that have been provided during the year, the total payments made to pharmacy contractors and other sub-contractors, the administrative costs of the body corporate, and a statement of the undistributed profits.
- 20.3. The Board shall also provide at the Annual general meeting, an explanation as to whether and if so how undistributed profits will be distributed.
- 20.4. The Board will give notice at the AGM of the annual payment required from each Member to meet any administrative costs of the body corporate which are not to be met from external sources.
- 20.5. The quorum for a meeting of the Members is as specified in the Articles.
- 20.6. Minutes shall be prepared of all meetings and shall be approved and signed by the chairman of the meeting as evidence of the proceedings.

21. Board Meetings

- 21.1. A meeting of the Board may be called at the request of the Manager or of 2 of the Directors.
- 21.2. Minutes shall be prepared of all meetings and shall be approved and signed by the chairman of the meeting as evidence of the proceedings.

- 21.3. A notice to a Member under Article 18 to suspend or expel that Member shall be given by the Board, subject to the agreement of three of the Directors of which at least one shall be a Director appointed by the LPC (if any appointed).
- 21.4. The Board may delegate (or revoke the delegation of) any of its powers of managing or conducting the affairs of the body corporate to a committee or committees consisting of such Directors, Members and employees of the body corporate or self employed consultants engaged by the body corporate (including, without limitation, the Manager) as are appointed in the appropriate resolution.

22. Obligations of Outgoing Members

- 22.1. On or within a reasonable time of his Leaving Date, the Outgoing Member or his personal representatives shall sign and execute all documents and perform all acts that the body corporate reasonably requires for the purpose of enabling the body corporate to recover any outstanding interest or right of the body corporate in or for the purpose of transferring to the body corporate, or as it may direct, any property of the body corporate which on his Leaving Date is held by the Outgoing Member on behalf of the body corporate.

23. Entitlements of Outgoing Members

- 23.1. An Outgoing Member is not entitled to any share or interest in the property of the body corporate arising after his Leaving Date.
- 23.2. After his Leaving Date, and subject to rule 23.5, the body corporate shall pay the Outgoing Member-
- 23.2.1. any outstanding fees for services already provided, and
- 23.2.2. any sums due to him in respect of loans, and loan interest.
- 23.3. The Member shall not be entitled to any other payment.
- 23.4. The body corporate may set off any sums due by the Outgoing Member to the body corporate against any sums due to the Member under clause 23.2.
- 23.5. The Board shall have the absolute discretion as to when, how and in what amounts and instalments the body corporate shall make the payments referred to in rule 23.2, having regard to the law (and in particular but without limitation the Companies Act 2006 and the Insolvency Acts), the fiduciary and statutory duties of directors, the financial health of the body corporate, and any other relevant factors.