

## **Ontario Family Health Team - Template By-Law #1**

### **Caution:**

This template by-law has been prepared by the Association of Family Health Teams of Ontario to assist its member family health teams. This template has been updated to comply with the Not-for-Profit Corporations Act (Ontario) (also known as “ONCA”), which came into force on October 19, 2021. This document does not constitute legal advice.

The footnotes and annotations point out optional language and where rules may vary between FHTs that are non-profit and FHTs that are registered charities.

Anything highlighted in **yellow** requires insertion of customized content by the FHT.

Each FHT should seek legal advice prior to adopting any by-law or by-law changes.

INQ Law (Toronto) assisted with the preparation of this template.

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## TABLE OF CONTENTS

<b>ARTICLE 1. DEFINITIONS .....</b>	<b>1</b>
1.01 DEFINITIONS.....	1
<b>ARTICLE 2. INTERPRETATION.....</b>	<b>4</b>
2.01 RULES FOR INTERPRETING THIS BY-LAW .....	4
<b>ARTICLE 3. MEETING RULES OF THE BOARD AND MEMBERS.....</b>	<b>5</b>
3.01 ELECTRONIC PARTICIPATION IN MEETINGS .....	5
3.02 VOTING RULES.....	5
3.03 WRITTEN RESOLUTION EQUALLY VALID .....	6
3.04 MINUTES.....	6
<b>ARTICLE 4. PURPOSES OF THE CORPORATION.....</b>	<b>6</b>
4.01 PURPOSES .....	6
<b>ARTICLE 5. MEMBERSHIP IN THE CORPORATION.....</b>	<b>6</b>
5.01 VOTING MEMBERS.....	6
5.02 NON-TRANSFERABLE .....	7
5.03 NO FEES.....	7
<b>ARTICLE 6. ANNUAL AND SPECIAL MEETINGS OF THE MEMBERS OF THE CORPORATION.....</b>	<b>7</b>
6.01 ANNUAL MEETING – TIMING .....	7
6.02 ANNUAL MEETING – NOTICE .....	7
6.03 ANNUAL MEETING – BUSINESS.....	8
6.04 LOCATION OF ANNUAL MEETING .....	8
6.05 SPECIAL MEETINGS OF THE MEMBERS .....	8
6.06 ADJOURNED MEETING .....	9
6.07 QUORUM .....	9
6.08 CHAIR .....	9
6.09 GUESTS .....	9
<b>ARTICLE 7. BOARD OF DIRECTORS .....</b>	<b>10</b>
7.01 NUMBER .....	10
7.02 COMPOSITION .....	10
7.03 NOMINATIONS TO THE BOARD .....	12
7.04 QUALIFICATIONS OF DIRECTORS.....	13
7.05 TERM OF OFFICE .....	13
7.06 TERMINATION OF OFFICE.....	14
7.07 VACANCIES.....	14
<b>ARTICLE 8. RESPONSIBILITIES OF INDIVIDUAL DIRECTORS .....</b>	<b>15</b>
8.01 STANDARDS OF CARE .....	15

8.02	CONFLICT OF INTEREST - SELF-DECLARATION AND PROCEDURES .....	15
8.03	CONFLICT OF INTEREST – OTHER DIRECTORS.....	15
8.04	CONFLICT OF INTEREST - CONSEQUENCES.....	16
8.05	CONFLICT OF INTEREST – ANNUAL DECLARATION .....	17
8.06	CONFIDENTIALITY .....	17
8.07	PUBLIC STATEMENTS .....	17
8.08	PERFORMANCE EXPECTATIONS OF EACH DIRECTOR .....	17
8.09	ROLES OF THE BOARD .....	18
8.10	RESPONSIBILITIES OF THE BOARD .....	18
8.11	NO REMUNERATION .....	22
<b>ARTICLE 9.</b>	<b>REGULAR AND SPECIAL MEETINGS OF THE BOARD.....</b>	<b>22</b>
9.01	REGULAR MEETINGS.....	22
9.02	SPECIAL MEETINGS.....	23
9.03	NOTICE OF REGULAR AND SPECIAL MEETINGS.....	23
9.04	QUORUM .....	23
9.05	CHAIR OF BOARD MEETINGS.....	23
9.06	ADJOURNED BOARD MEETING .....	24
9.07	GUESTS .....	24
9.08	RIGHT OF DISSENT.....	24
<b>ARTICLE 10.</b>	<b>COMMITTEES OF THE BOARD .....</b>	<b>25</b>
10.01	COMMITTEES .....	25
10.02	DELEGATION OF DECISION-MAKING TO COMMITTEES .....	25
10.03	EXECUTIVE COMMITTEE .....	25
10.04	GOVERNANCE & NOMINATING COMMITTEE TERMS OF REFERENCE.....	26
10.05	NON-DIRECTORS ON COMMITTEES .....	27
<b>ARTICLE 11.</b>	<b>OFFICERS .....</b>	<b>27</b>
11.01	OFFICERS .....	27
11.02	DUTIES OF THE CHAIR OF THE BOARD .....	28
11.03	DUTIES OF THE VICE-CHAIR.....	29
11.04	DUTIES OF THE SECRETARY.....	29
11.05	DUTIES OF THE TREASURER .....	29
11.06	DUTIES OF THE PAST-CHAIR .....	30
11.07	OTHER OFFICERS.....	30
<b>ARTICLE 12.</b>	<b>EXECUTIVE DIRECTOR .....</b>	<b>30</b>
12.01	APPOINTMENT.....	30
12.02	DUTIES AND PERFORMANCE.....	31
<b>ARTICLE 13.</b>	<b>INDEMNIFICATION OF DIRECTORS, OFFICERS AND COMMITTEE MEMBERS .....</b>	<b>31</b>
13.01	INDEMNIFICATION OF DIRECTORS, OFFICERS, AND COMMITTEE MEMBERS .....	31
13.02	INSURANCE .....	31

<b>ARTICLE 14. FINANCIAL MATTERS.....</b>	<b>31</b>
14.01 FINANCIAL YEAR END.....	31
14.02 AUTHORIZED SIGNING OFFICERS.....	32
14.03 BANKING AND BORROWING.....	32
14.04 SEAL .....	33
14.05 INVESTMENTS.....	33
14.06 AUDITOR .....	33
14.07 TRUST FUNDS (RESTRICTED PURPOSE FUNDS) .....	33
14.08 BOOKS AND RECORDS .....	34
<b>ARTICLE 15. NOTICES UNDER THIS BY-LAW.....</b>	<b>34</b>
15.01 SERVICE .....	34
15.02 COMPUTATION OF TIME.....	34
15.03 PROOF OF SERVICE .....	35
15.04 SIGNATURES TO NOTICES.....	35
15.05 ERROR OR OMISSION.....	35
<b>ARTICLE 16. ADOPTION AND AMENDMENT OF BY-LAWS .....</b>	<b>35</b>
16.01 AMENDMENTS TO BY-LAWS.....	35
<b>APPENDIX A – LIST OF SPECIAL RESOLUTIONS REQUIRED BY THE ACT .....</b>	<b>37</b>

[INSERT NAME OF FHT]

(the "Corporation")

BY-LAW NUMBER 1

## ARTICLE 1. DEFINITIONS

### 1.01 DEFINITIONS

In this By-law, unless the context otherwise requires, the following capitalized terms have the following meanings:

- (a) "Act" means the *Not-for-Profit Corporations Act* (Ontario) and, where the context requires, includes the regulations made under it;
- (b) "Affiliated Physician Group" or "AFG" means the unincorporated association of physicians providing family medicine to the community that is affiliated with the Corporation, that is funded by the Ministry of Health or Ontario Health through a funding agreement (such as a physician service agreement) and that is the subject of a governance agreement amongst the physicians;
- (c) "Articles" means the articles of amendment of the Corporation dated [insert] and any subsequent articles of amendment, amalgamation, continuance, reorganization, arrangement, restated articles or revival of the Corporation from time to time in force and effect, as well as any letters patent or supplementary letters patent under the *Corporations Act* (Ontario);
- (d) "Auditor" means a person permitted to conduct an audit under the *Public Accounting Act, 2004*;
- (e) "Board" means the board of directors of the Corporation;
- (f) "Board Exclusive Responsibility" means each specific decision identified by section 36(2) of the Act that cannot be delegated by the Board to a committee or to management, being:
  - (i) To submit to the Members any question or matter requiring the approval of the Members.
  - (ii) To fill a vacancy among the Directors or in the position of Auditor.
  - (iii) To appoint additional Directors under section 24(7) of the Act.
  - (iv) To issue debt obligations except as authorized by the Board.

- (v) To approve any financial statements under section 83 of the Act.
- (vi) To adopt, amend or repeal by-laws.
- (vii) To establish contributions to be made, or dues to be paid, by Members under section 86 of the Act;

(g) **“By-laws”**, unless otherwise specified, means the by-laws of the Corporation;

(h) **“Chair of the Board”** means the Director elected as such;

(i) **“Committee”** means any committee created by the Board or pursuant to the By-laws;

(j) **“Conflict of Interest”** includes any situation that impairs or interferes with (or appears to impair or interfere with) a Director’s ability to vote objectively and in the best interests of the Corporation including, without limitation, the following types of circumstances that may give rise to a conflict of interest for any Director of the Corporation:

- (i) Financial interest – a Director has a financial interest in a decision when the Director, through a family or business relationship, stands to gain by that decision, either in the form of money, gifts, favours, gratuities or other special considerations that have value;
- (ii) Competing interest – a Director has a competing interest with the Corporation when the Director has an affiliation with another entity that could be impacted by a decision before the Corporation; or
- (iii) Adverse interest – a Director has an adverse interest to the Corporation when the Director is a party to a claim, application or proceeding that is adverse in interest to the Corporation or its interests; or
- (iv) Material Interest – pursuant to the Act, a Director has a material interest if they are a director or officer of, or have a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the Corporation;

(k) **“Corporation”** means the incorporated family health team named at the top of this page;

(l) **“Director”** means a member of the Board;

(m) **“Excluded Person”** means:<sup>1</sup>

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<sup>1</sup> Excluded Persons are not eligible to serve on the Board.

- (i) Any employee of the Corporation;<sup>2</sup>
- (ii) Any individual who has been within the preceding • year period an employee of the Corporation<sup>3</sup>; and
- (iii) Any person who is an immediate family member of an employee of the Corporation, including a spouse, parent, child, sibling or other person who has an economic dependence on the employee.<sup>4</sup>

- (n) **“Executive Director”** means the person engaged by the Board to manage and administer the day-to-day affairs of the Corporation;<sup>5</sup>
- (o) **“FHT Funding Agreement”** means the funding agreement entered into by the Corporation and the Ministry of Health or Ontario Health;
- (p) **“Hospital”** means [enter if applicable];<sup>6</sup>
- (q) **“Lead Physician”** means the physician appointed or elected by the physicians as such under the AFG governance agreement;
- (r) **“Majority”** means a number or percentage equaling more than half of the total;
- (s) **“Member”** means a member of the Corporation;
- (t) **“Officer”** means those officers of the Corporation set out in section 11.01;
- (u) **“Ordinary Resolution”** means a resolution passed by a Majority of the votes cast on that resolution;

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<sup>2</sup> Note – Under ONCA, not more than 1/3<sup>rd</sup> of the Directors of a FHT that is a public benefit corporation may be employees of the Corporation [s.23(3)]. All FHTs meet the definition of public benefit corporation under the Act due to the level of government funding they receive, and therefore are subject to this restriction. It is good practice, generally, to exclude employees from eligibility for the Board, because employees have a self-interest in the Corporation which creates an inherent conflict of interest. If the FHT is a registered charity, all employees are by law ineligible to serve on the Board.

<sup>3</sup> This can be removed if the Corporation would like to have ex-employees as Directors (for their experience). If the Board wants to exclude previous employees, it can choose a time period (such as 3 or 5 years) that the employee must have ceased the employment relationship with the FHT.

<sup>4</sup> If the FHT is a registered charity, seek legal advice before electing a family member of an employee to the Board.

<sup>5</sup> The role of Executive Director may also be titled “Chief Executive Officer”. If the Corporation uses CEO instead of Executive Director, please change the definition name from “Executive Director” to “CEO”, and replace any reference in this by-law to the Executive Director with a reference to the CEO. The Executive Director (or CEO) is an integral part of the FHT; the Board requires the input of the Executive Director to carry out its duties.

<sup>6</sup> An academic FHT affiliated with a hospital will need to incorporate the hospital into its by-law. This may also apply to FHTs co-located with a hospital.

- (v) **“Registered Office”** means the civic address of the head office of the FHT as set out in the Articles<sup>7</sup>;
- (w) **“Service Plan”** has the meaning given to it in the FHT Funding Agreement; and
- (x) **“Special Resolution”** means a resolution that is submitted to a special meeting of the Members duly called for the purpose of considering the resolution and passed at the meeting, with or without amendment by at least two thirds (2/3) of the votes cast, or consented to by each Member entitled to vote at a meeting of the Members. A complete list of Special Resolutions required by the Act is set out at Appendix A.

## ARTICLE 2. INTERPRETATION

### 2.01 RULES FOR INTERPRETING THIS BY-LAW

- (a) Words importing the singular number include the plural and vice versa, and words importing persons include individuals, corporations, partnerships, trusts and unincorporated organizations.
- (b) The term “ex-officio” means “by virtue of an office/position held” and carries with it all of the same rights and privileges unless this By-law expressly says otherwise.
- (c) The headings used in this By-law are inserted for reference purposes only and are not to be considered or taken into account in construing the terms or provisions thereof or to be deemed in any way to clarify, modify or explain the effect of any such terms or provisions.
- (d) Any references in this By-law to any law, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.
- (e) Except where specifically stated otherwise, references to actions being taken “in writing” or similar terms shall include electronic communications and references to “address” or similar terms shall include electronic mail addresses. It is the intent of the Corporation to use electronic communications whenever possible so long as the recipient has expressly consented to receiving notices in such manner.

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<sup>7</sup> The Articles must specify the municipality or geographic township of the Registered Office but the Board may change the location of the Registered Office within such specified municipality or township by a resolution of the Board. However, if the FHT wants to move the location of the Registered Office to a place outside of the specified municipality or township, it must do so by Special Resolution of the Members (i.e. approval of more than 2/3 of the Members who cast votes).

## **ARTICLE 3. MEETING RULES OF THE BOARD AND MEMBERS**

### **3.01 ELECTRONIC PARTICIPATION IN MEETINGS**

- (a) Participation in meetings of Members by telephonic or electronic means is addressed in section 6.04.
- (b) Participation in meetings of the Board by telephonic or electronic means is addressed in section 9.01(c). These same rules apply to meetings of Committees.

### **3.02 VOTING RULES**

- (a) Business arising at any meeting of the Members, the Board or any Committee shall be decided by a Majority of votes unless otherwise required by the Act.
- (b) Except as provided in this By-law, each Member, each Director and each Committee member shall be entitled to one (1) vote at any meeting of the Members, Board or Committee, respectively.
- (c) Members shall be entitled to appoint a proxy to attend and vote at a meeting of the Members, and the proxy does not need to be a Member. A proxy, in the form approved by the Board and included with the annual meeting notice, must be submitted to the Secretary by a deadline fixed by the Board, which deadline (in accordance with the Act) shall not exceed forty-eight (48) hours (excluding Saturdays, Sundays and holidays) in advance of the Members' meeting.
- (d) No individual Director or Committee member may vote by proxy at a meeting of the Board or a Committee, respectively.
- (e) Votes shall be by show of hands, except any Member or proxyholder entitled to vote at a meeting of the Members may demand a ballot either before or after a vote by show of hands. In the event of a tie, the motion is lost<sup>8</sup>. Meetings held in whole or in part through telephonic or electronic means will have votes taken in a way that the method of voting and the result of the voting is clearly communicated to all participants.
- (f) An abstention shall not be considered a vote cast.
- (g) Unless a ballot is demanded, an entry in the minutes of a meeting to the effect that the chair of the meeting declared a resolution to be carried or defeated is, in the absence of evidence to the contrary, proof of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

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<sup>8</sup> Each Director has one vote, including the Chair.. Alternatively, the By-law may provide that, in the event of a tie, the chair of the meeting may exercise a second, tie-breaking vote; however, this must be specified in the Articles. This may be especially advisable for the chair at a meeting of Members, where the membership is broader than simply the Directors.

### **3.03 WRITTEN RESOLUTION EQUALLY VALID**

A by-law or resolution in writing signed by all the Members, Directors, or Committee members entitled to vote on that by-law or resolution at a meeting of Members, Board, or Committee, respectively, is as valid as if it had been passed at a meeting of Members, Board or Committee, respectively.

### **3.04 MINUTES**

Minutes shall be kept for all meetings of the Members, the Board or any Committee, and shall be approved at the next meeting of the Members, the Board or the Committee, as the case may be.

## **ARTICLE 4. PURPOSES OF THE CORPORATION**

### **4.01 PURPOSES**

The purposes for which the Corporation is incorporated are set out in its incorporating documents and are reproduced here as a reference for the Members and the Board:

- (a) [insert purposes of the Corporation, word-for-word from the incorporating documents].

## **ARTICLE 5. MEMBERSHIP IN THE CORPORATION**

### **5.01 VOTING MEMBERS**

#### **<Option 1: Directors and all Physician Group members>:**

The Members of the Corporation shall consist of the following:

- (a) the Directors of the Corporation, who shall be Members of the Corporation for so long as they serve as Directors of the Corporation; and
- (b) each physician who is either a signatory to the AFG governance agreement or a voting shareholder of a medicine professional corporation that is a signatory to the AFG governance agreement.<sup>9</sup>

#### **<Option 2: Only the Directors>:**

The Members of the Corporation shall be the Directors of the Corporation, who shall be Members for so long as they serve as Directors of the Corporation.

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<sup>9</sup> Note that the FHT Funding Agreement does not require the AFG physicians to be members of the FHT. Most FHTs do give the physicians voting rights as members. The FHT Funding Agreement does require that the AFG physicians be “affiliated” with the FHT, so if they are not members of the FHT, they must have another form of written affiliation with the FHT.

**5.02 NON-TRANSFERABLE**

A membership may be transferred only to the Corporation. The interest of a Member is deemed transferred to the Corporation if the Member ceases to be a Director of the Corporation or a signatory to the AFG governance agreement.

**5.03 NO FEES**

No fees are payable by the Members.

**ARTICLE 6. ANNUAL AND SPECIAL MEETINGS OF THE MEMBERS OF THE CORPORATION**

**6.01 ANNUAL MEETING – TIMING**

The Corporation shall hold an annual meeting of its Members not later than eighteen (18) months after its incorporation and subsequently not more than fifteen (15) months after holding the preceding annual meeting and within six (6) months of fiscal year end.

**6.02 ANNUAL MEETING – NOTICE**

- (a) Notice of the annual meeting of the Members shall be given to each Member and to the Auditor not less than ten (10) days and not more than fifty (50) days in advance of the meeting, by one of the following methods:
  - (i) by prepaid mail by sending it to the last address shown on the records of the Corporation; or
  - (ii) by electronic communication by sending it to the last electronic communication address on record.
- (b) The notice of meeting shall specify the time and place of the annual meeting. The notice need not specify a place of meeting if the meeting is to be held entirely by one or more telephonic or electronic means. If the Member may attend a meeting by telephonic or electronic means, the notice of meeting must include instructions for attending and participating in the meeting and, if applicable, instructions for voting by such means at the meeting.
- (c) Attendance of any Member at a meeting of Members shall constitute a waiver of notice of the meeting, except where such Member attends such meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.
- (d) The notice of an annual meeting shall contain sufficient information concerning any special business (see section 6.03(b)) to permit the Member to form a reasoned judgement on the decision to be taken as well as the text of any Special Resolution to be submitted to the meeting.

(e) A form of proxy shall accompany the notice of annual meeting.<sup>10</sup>

**6.03 ANNUAL MEETING – BUSINESS**

- (a) The business transacted at the annual meeting shall include (and need not be highlighted in the annual meeting notice):
  - (i) the minutes of the previous meeting of Members;
  - (ii) reports from the Chair of the Board and the Executive Director;
  - (iii) report of the Auditor and presentation of the annual financial statements;
  - (iv) election of Directors; and
  - (v) appointment of the incumbent Auditor.
- (b) Special business transacted at an annual meeting requires specific advance notice and includes any business not included in section 6.03(a), such as:
  - (i) approval of By-law amendments;
  - (ii) Special Resolutions (see Appendix A); or
  - (iii) appointment of a new Auditor.

**6.04 LOCATION OF ANNUAL MEETING**

The annual meeting of the Members shall be held at the Registered Office, or such other place and at such time as the Board may determine. Alternatively, the annual meeting may be held entirely by one or more telephonic or electronic means or by any combination of in-person attendance and by one or more telephonic or electronic means. A meeting of the Members held entirely or in part by telephonic or electronic means must enable all persons entitled to attend the meeting to reasonably participate. Any person who attends through telephonic or electronic means is deemed to be present in person at the meeting. A meeting held by telephonic or electronic means is deemed to be held at the Registered Office of the Corporation.

**6.05 SPECIAL MEETINGS OF THE MEMBERS**

- (a) The Board may call a special meeting of the Members.
- (b) Members who hold at least ten percent (10%) of the votes that may be cast at a meeting of the Members may, in writing, requisition the Board to call a special meeting of the Members for the purposes stated in the requisition.

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<sup>10</sup> The form of proxy must comply with the regulations under the Act [s.64(3)]. See O. Reg. 395/21 for the details needed for a proxy form or seek legal advice <https://www.ontario.ca/laws/regulation/210395>.

- (c) The requisition must state the business to be transacted at the meeting and must be sent to each Director and to the Registered Office.
- (d) The Board shall call and hold a meeting of the Members within twenty-one (21) days from receiving the requisition.
- (e) Notice of a special meeting shall be given in the same manner as provided in section 6.02 and shall state the purpose for which it is called. A special meeting of the Members may be held in the same manner as annual meetings, as contemplated in section 6.04.
- (f) A special meeting of the Members shall be held at the Registered Office or such other place as the Board may determine. Alternatively, a special meeting may be held entirely by telephonic or electronic means.

**6.06 ADJOURNED MEETING**

If, within one-half (1/2) hour after the time appointed for a meeting of the Members, a quorum is not present, the meeting shall stand adjourned until a day within two (2) weeks to be determined by the chair. At least three (3) days' notice of the adjourned meeting shall be given. If the meeting is adjourned until more than thirty(30) days after the date of the original meeting, notice shall be given in accordance with section 6.02 of this By-law.

**6.07 QUORUM**

A quorum for the transaction of business at an annual or special meeting of the Members shall consist of a Majority of the Members entitled to vote at the meeting.<sup>11</sup> If a quorum is present at the opening of a meeting of the Members, the Members present may proceed with the business of the meeting, even if a quorum is not present throughout the meeting.

**6.08 CHAIR**

The chair of a meeting of the Corporation shall be:

- (a) the Chair of the Board;
- (b) the Vice-Chair of the Board<sup>12</sup>, if the Chair is absent; or
- (c) a chair elected by the Members present if the Chair and Vice-Chair of the Board are absent.

**6.09 GUESTS**

- (a) The Auditor is entitled to notice of and to attend meetings of the Members.
- (b) Other guests may attend a meeting of the Members at the invitation of the Board.

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<sup>11</sup> Alternatively quorum may be a fixed number. Quorum may also require certain stakeholder representatives to be in attendance.

<sup>12</sup> The Vice-Chair role is optional.

## ARTICLE 7. BOARD OF DIRECTORS

### 7.01 NUMBER

*[The Articles must identify either a fixed number of Directors or a minimum/maximum. A range is recommended for flexibility. If there is a minimum/maximum in the Articles, there must always be a fixed number of Directors identified by Special Resolution or in the By-laws at any time. A Board size of 7 to 13 is recommended.]*

*<Option 1: fixed number of Directors in Articles>: The affairs of the Corporation shall be governed by a Board of [insert number] Directors as established in the Articles.*

*<Option 2: minimum/maximum range in Articles>: The affairs of the Corporation shall be governed by a Board of seven (7) – thirteen (13) Directors as set out in the Articles. The Board size shall be fixed at [insert number within the range] until changed by Special Resolution.*

### 7.02 COMPOSITION

*[Board composition will depend on the constitution and identity of the particular FHT e.g., academic; community members; physician-led. There may be “ex-officio” Directors who are on the Board because of a position/office they hold – e.g., Executive Director and Lead Physician – except for FHTs that are charities.*

*The Lead Physician may be a Director (except for FHTs that are charities, where the Lead Physician cannot be paid by the FHT and be on the Board). The Executive Director is integral to the functioning of the Board. It is strongly recommended that the Executive Director contribute to the Board as the Secretary (i.e. an officer of the Corporation) rather than as a non-voting director, for two reasons: 1. The Executive Director, as an employee of the corporation, has an inherent conflict of interest acting as a director of the corporation; and 2. a non-voting director may not be able to meet the required standard of directors, and mitigate their liabilities, unless he or she has an opportunity to vote.]*

- (a) The Board will strive to ensure that the Directors, collectively, possess the skills necessary to fulfill its governance responsibilities and oversee the management of the Corporation, including any skills required in the FHT Funding Agreement, all as may be further specified in Board policy. The Board is aware that the Corporation’s location and size of catchment area may be limiting in as far as recruiting the expertise required for the Board. If the Board identifies gaps in skills, particularly skills required by the government, it shall make every effort to address the gaps through recruitment of new Directors, education of the Board and/or by retaining external expertise when needed. The Board shall encourage AFG physicians to consider standing for election.
- (b) *[Please choose one of the following options for Board composition, as appropriate.]*

**<Option 1: Generic composition – composition can be prescribed in a separate Board policy outside of the By-laws><sup>13</sup>**

The Board shall be skills-based and composed of individuals as specified in the Board composition policy.

**<Option 2: Physician-led Board>**

The Board shall be composed of AFG physicians elected by the Members as well as the Lead Physician, ex-officio. Where the AFG consists of multiple sites, the nominations process shall try to ensure that each of the sites is represented on the Board.

**<Option 3: Physician-led Board with community members to round out skill sets>**

The Board shall be composed as follows:

- (a) the Lead Physician, ex-officio;
- (b) at least [insert number] AFG physicians who are elected by the Members; and
- (c) one (1) or two (2)<sup>14</sup> community representatives from the [insert geographic area if applicable] who demonstrate skills identified as required by the Board and who are elected by the Members.

**<Option 4: Community-led Board>**

The Board shall be composed of at least [insert number] community representatives from the [insert geographic area if applicable] who demonstrate skills identified as required by the Board and who are elected by the Members.<sup>15</sup>

**<Option 5: Academic FHT or FHT co-located with hospital>**

The Board shall be composed as follows:

- (a) the Lead Physician, ex-officio;
- (b) [insert number] AFG physicians elected by the Members;

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<sup>13</sup> Various types of FHTs may have different governance structures. The FHT Funding Agreement no longer dictates “physician-led” or “community-led” governance models. The composition of the Board for each type is set out as an example and not a requirement. The FHT can be flexible with its composition to suit its own needs. FHTs should seek legal advice regarding Board composition.

<sup>14</sup> The number of community representatives is flexible but should be in the minority.

<sup>15</sup> This Board model does not include FHT physicians, who tend to be employees of the FHT under this structure. Instead, the FHT may seek candidates who have health care expertise (physicians, etc.) but are unaffiliated with the FHT.

- (c) one member of the senior management team of the Hospital<sup>16</sup>, as designated by the Hospital's Chief Executive Officer;
- (d) one (1) Director representing the academic sector; and
- (e) [insert number] community representatives from the [insert geographic area if applicable] who demonstrate skills identified as required by the Board and who are elected by the Members.

### **7.03 NOMINATIONS TO THE BOARD**

***<Option 1: Generic, provided for in a flexible Board policy>***

Nominees for Directors may be made only by the Board in accordance with the nominating policy developed by the Board.

***<Option 2: Set out a nominations process that involves relevant stakeholders' submitted candidates. If the FHT is physician-led, the only relevant stakeholder is the AFG.>***

Nominations for election as Director at the annual meeting of the Corporation may be made only in accordance with the following process:

- (a) The Board will annually establish a Governance & Nominating Committee to assist with recruiting and recommending candidates to fill vacancies on the Board.
- (b) The Board will identify the number of vacancies for the year's annual meeting of Members and shall conduct a skill-set and gap analysis each year as part of the nominations process. The Board shall endeavour to ensure that the candidates reflect the geographic areas represented by the Corporation.
- (c) Directors shall be evaluated based on their past performance. Renewal of their term shall not be automatic.
- (d) Throughout the year, the Governance & Nominating Committee shall identify through consultation with the Board, the Executive Director, the AFG and external stakeholders, potential candidates for the Board and determine the willingness of such candidates to serve.
- (e) An open call for nominations shall be made in a manner to be determined by the Board, and interested parties will be encouraged to submit written applications. The call for nominations shall be directed to the AFG and other relevant stakeholders at least sixty (60) days in advance of the annual meeting of Members.

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<sup>16</sup> Keep in the definition of "Hospital" in section 1.01 if the FHT will have one or more Hospital representatives on the Board.

- (f) Applications shall be submitted to and reviewed by the Governance & Nominating Committee. The Governance & Nominating Committee will ensure that the nominees meet the skills requirements of the FHT Funding Agreement and will prepare a list of recommended nominees who best meet the criteria for Board approval. The Governance & Nominating Committee shall provide such list to the Board.
- (g) The Board shall review the list of recommended nominees from the Governance & Nominating Committee and prepare a list of candidates who meet the criteria identified by the Board.
- (h) The Board shall ensure that the Board's list of recommended candidates, together with their qualifications, are made available to the Members at least ten (10) days prior to the annual meeting of Members.

#### **7.04 QUALIFICATIONS OF DIRECTORS**

- (a) Every Director shall:
  - (i) be eighteen (18) or more years of age;
  - (ii) not have the status of bankrupt;<sup>17</sup>
  - (iii) not be a person who has been found under the *Substitute Decisions Act, 1992* or under the *Mental Health Act*, to be incapable of managing property;
  - (iv) not be a person who has been found to be incapable by any court in Canada or elsewhere; and
  - (v) not be an Excluded Person.
- (b) Every Director who is a AFG physician shall be in good standing under the AFG's governance agreement.<sup>18</sup>
- (c) Every Director, when first elected to the Board, shall sign and submit to the Secretary a form of consent to act as Director within ten (10) days of being elected, which form must be maintained within the Corporation's registers.

#### **7.05 TERM OF OFFICE**

##### ***<Option 1: Annual elections>***

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<sup>17</sup> For FHTs that are a charity, the *Income Tax Act (Canada)* also provides that there are certain "ineligible individuals" who cannot serve on a charitable Board. This definition includes individuals who have been convicted of financial offences or who have been on the board of a charity when that charity's status was revoked.

<sup>18</sup> There may be other qualifications for an AFG physician to be a Director, e.g., holding privileges at an affiliated hospital.

(a) Directors shall be elected annually by the Members at the annual meeting of Members.<sup>19</sup>

***<Option 2: Rotating Board with multiple-year terms>***

- (a) Directors are elected to a three (3) year term, with at least three (3) Directors required to retire or be up for re-election in one given year to ensure adequate Board succession planning.<sup>20</sup>
- (b) A Director may serve for successive terms up to a total of nine (9) consecutive years. After the maximum number of years served is reached, a Director may be re-elected to the Board for a new term after taking one year off.<sup>21</sup>

**7.06 TERMINATION OF OFFICE**

The office of a Director shall automatically be vacated if:

- (a) the Director, by notice in writing to the Secretary of the Corporation, resigns their office, which resignation shall be effective at the time it is received by the Secretary of the Corporation or at the time specified in the notice, whichever is later;
- (b) the Director ceases to have the qualifications set out in section 7.04;
- (c) the Director dies;
- (d) the Members, at a special meeting called for the purpose, vote by at least a Majority of the votes cast to remove a Director before the expiration of the Director's term of office.

**7.07 VACANCIES**

- (a) If a vacancy occurs at any time at the Board, such vacancy shall be filled by the Board for the remainder of the unexpired portion of the term of the vacating Director.
- (b) If the vacancy was caused by a AFG physician or other applicable stakeholder group that is entitled under section 7.02 to a representative on the Board, the vacancy shall be filled by a candidate from the same stakeholder group.

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<sup>19</sup> Directors may be elected annually, for 1-year terms.

<sup>20</sup> If this By-law is establishing the first rotating Board, add language that the first Board elected pursuant to this By-law will be given 1, 2 and 3 year terms in order to ensure 3 Directors retire from the Board each year. Thereafter they shall be replaced by a Director serving a 3-year term. The Act does not allow a Director to be elected for a single term that is longer than 4 years. The By-law may also provide that Directors can serve for varying terms.

<sup>21</sup> It is optional to impose a maximum term limit. This encourages Director turnover and new perspectives; it may also be an impediment in areas where it is difficult to recruit new Directors.

- (c) If there is not a quorum of Directors or there has been a failure to elect the minimum number of Directors set out in the Articles, the Directors in office shall, without delay, call a special meeting of the Members to fill the vacancy or vacancies and, if they fail to call such a meeting or if there are no Directors in office, the meeting may be called by any Member.

## **ARTICLE 8. RESPONSIBILITIES OF INDIVIDUAL DIRECTORS**

### **8.01 STANDARDS OF CARE**

Every Director and Officer of the Corporation, in exercising their powers and discharging their duties to the Corporation, shall:

- (a) act honestly and in good faith with a view to the best interests of the Corporation; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

### **8.02 CONFLICT OF INTEREST - SELF-DECLARATION AND PROCEDURES**

- (a) Every Director who, either directly or indirectly, has or thinks they may potentially have a Conflict of Interest with respect to a proposed or current contract, transaction, matter or decision of the Corporation shall disclose the nature and extent of the Conflict of Interest at a meeting of the Board. The declaration of Conflict of Interest shall be disclosed at the meeting of the Board at which the contract, transaction, matter or decision is first raised or at which the Director is first aware of the potential or actual Conflict of Interest.
- (b) Every declaration of a Conflict of Interest and the general nature thereof shall be recorded in the minutes of the Board.
- (c) Where the number of Directors who, by reason of this section are prohibited from participating in a meeting is such that at the meeting, the remaining Directors are not of sufficient number to constitute a quorum, then, notwithstanding any other provision in this By-law, the remaining number of Directors shall be deemed to constitute a quorum.

### **8.03 CONFLICT OF INTEREST – OTHER DIRECTORS**

- (a) If a Director believes that any other Director is in a Conflict of Interest position with respect to any contract, transaction, matter or decision, the Director shall have their concern recorded in the minutes, and the Director with the alleged Conflict of Interest shall have the right to address the Board with respect to the allegation.

- (b) Thereafter, at the request of the Director who recorded the initial concern, the Board, after the Director alleged to have a Conflict of Interest has left the discussion, shall vote on whether the Director alleged to have a Conflict of Interest is, in the opinion of the Board, in a Conflict of Interest. If the Board finds the person in a Conflict of Interest, that interested Director shall leave during any subsequent discussion or voting process relating to or pertaining to the conflict. The question of whether a Director has a Conflict of Interest shall be determined by a Majority of the Board and shall be final.
- (c) The procedures set out in section 8.02 apply where, in accordance with this section, the Board has determined a Director has a conflict of interest.

**8.04 CONFLICT OF INTEREST - CONSEQUENCES**

- (a) No Director with a Conflict of Interest, as determined under section 8.02 or section 8.03, shall attend any part of a Board meeting, during which the contract, transaction, matter or decision is discussed and shall not vote on any resolution to approve the contract, transaction, matter or decision, or otherwise attempt to influence the voting on a contract, transaction, matter or decision.<sup>22</sup>
- (b) After making a declaration of Conflict of Interest in accordance with this By-law, the Director is not accountable to the Corporation for any profits they may realize from the contract, transaction, matter or decision as of the date of the declaration, provided the contract, transaction, matter or decision was reasonable and fair to the Corporation when it was approved.<sup>23</sup>
- (c) If the Director fails to make a Declaration of their Conflict of Interest in a contract, transaction, matter or decision, as required by this By-law, this failure may be considered grounds for termination of their position as a Director.
- (d) The failure of any Director to comply with the Conflict of Interest provisions of this By-law does not, in or of itself, invalidate any contract, transaction, matter or decision undertaken by the Board or the Corporation.
- (e) Despite any other provision in this By-law, the fact that a Director is affiliated with the AFG or with any other applicable stakeholder group does not in itself create a Conflict of Interest.

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<sup>22</sup> This rule does not apply if the matter to be voted on is (a) one relating primarily to their remuneration as a Director; or (b) for indemnity or insurance under this By-Law.

<sup>23</sup> For FHTs that are charities, add to this section the following: "and provided that the Board complies with the rules under the regulations of the *Charities Accounting Act (Ontario)* for Directors receiving financial benefit from the Corporation."

**8.05 CONFLICT OF INTEREST – ANNUAL DECLARATION**

Every Director shall complete and submit to the Secretary of the Board an annual Conflict of Interest declaration in the form approved by the Board from time to time.

**8.06 CONFIDENTIALITY**

- (a) Every Director and Officer of the Corporation and every member of a Committee shall respect the confidentiality of matters brought before the Board or any such Committee or coming to their attention in the course of their duties, keeping in mind that unauthorized statements may adversely affect the interests of the Corporation.
- (b) Guests permitted to attend any meeting of the Board or any meeting of a Committee shall be advised that they are required to respect the confidentiality of all matters coming to their attention during any such meeting and shall undertake accordingly.

**8.07 PUBLIC STATEMENTS**

The Chair is responsible for Board communications and may delegate authority to one or more Directors, Officers or the Executive Director to make statements to the news media or public about matters that the Chair determines appropriate for disclosure.

**8.08 PERFORMANCE EXPECTATIONS OF EACH DIRECTOR<sup>24</sup>**

- (a) Accountability
  - (i) In making decisions at the Board, the Director represents the interests of the Corporation as a whole, taking into account the needs of all stakeholders, and does not represent the specific interests of any constituency, stakeholder or Member.
  - (ii) The Director complies with the Act, the By-laws, and the Board's policies and procedures.
- (b) Exercise of Authority
  - A Director carries out the powers of the office only during a duly constituted meeting of the Board or one of its appointed committees.
- (c) Team Work
  - A Director works positively, cooperatively and respectfully with other Directors, the Officers, and the Executive Director.
- (d) Attendance

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<sup>24</sup> This section can be customized for your FHT, especially regarding specific skills in clause (f). Alternatively this section may be moved to a Board policy.

The Director attends Board meetings, in accordance with the minimum expectations established by the Board.

(e) Participation

(i) The Director comes prepared to Board meetings, asks informed questions, and makes a positive contribution to discussions.

(ii) The Director treats others with respect.

(f) Competencies/Skills

Where appropriate, the Director actively contributes specific expertise, skills and other attributes that are needed on the Board.

(g) Public Support

The Director supports the decisions and policies of the Board in discussions with outsiders, even if the Director voiced or holds other views or voted otherwise at the Board.

(h) Education

The Director takes advantage of opportunities to be educated and informed about the Board and the Corporation's marketplace and industry.

(i) Evaluation

The Director participates in the evaluation of the Board and individual Directors as may be conducted by the Board from time to time.

**8.09 ROLES OF THE BOARD**

The Board shall have three key roles:

(a) Policy Formulation. The Board shall establish policies to provide guidance to the Executive Director in the operations of the Corporation.

(b) Decision-Making. The Board shall choose from alternatives that are consistent with Board policies and that advance the goals of the Corporation.

(c) Oversight. The Board shall monitor and assess organizational processes and outcomes.

**8.10 RESPONSIBILITIES OF THE BOARD<sup>25</sup>**

The Board shall be responsible for governing and overseeing the management of the affairs of the Corporation. In particular, the Board shall:

(a) Define Ends

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<sup>25</sup> This level of detail may be customized and moved into a separate Board policy.

- (i) Formulate the vision, mission and values of the Corporation.
- (ii) Contribute to the development of and approve the strategic plan of the Corporation.
- (iii) Ensure that key goals are formulated that help the Corporation accomplish its mission and actualize its vision.
- (iv) Recommend and/or review the development and implementation of targeted programs for patients based on defined needs.
- (v) Monitor and measure corporate performance against the strategic and operating plans.
- (vi) Regularly review the functioning of the Corporation in relation to the purposes of the Corporation as stated in the By-Laws, and demonstrate accountability for its responsibilities to the annual meeting of the Corporation.
- (vii) Retain overall accountability for the performance of the Corporation.
- (viii) Decide, by Special Resolution, whether to terminate the FHT Funding Agreement. For the purposes of this subsection, a Director may cast a vote irrespective of any Conflict of Interest.
- (ix) Develop and approve effective policies and procedures to govern the Corporation.
- (x) Develop and maintain effective working relationships with other health care providers, and organizations in the community and surrounding areas.

(b) Provide for Leadership and Management in the Executive Director Position

- (i) Appoint the Executive Director.
- (ii) Establish a job description for the Executive Director.
- (iii) Establish a Board policy for the performance evaluation of the Executive Director.
- (iv) Establish the compensation of the Executive Director.
- (v) Specify measurable performance expectations in cooperation with the Executive Director and appraise/assess the Executive Director's performance.
- (vi) Delegate responsibility and authority to the Executive Director and require accountability to the Board.

- (c) Provide for Leadership in the Lead Physician Position
  - (i) Appoint the Lead Physician.
  - (ii) Establish a job description for the Lead Physician.
  - (iii) Establish a Board policy for the performance evaluation of the Lead Physician.
  - (iv) Establish the compensation of the Lead Physician.
  - (v) Specify measurable performance expectations in cooperation with the Lead Physician and appraise/assess the Lead Physician's performance.
- (d) Ensure Succession Planning
  - (i) Provide for Executive Director and Lead Physician succession.
  - (ii) Ensure that the Executive Director establishes an appropriate succession plan for executive management of the Corporation.
  - (iii) Using best efforts, ensure that the Board has the skills required pursuant to the FHT Funding Agreement, including strategic planning, clinical skills, program development, finance, risk management, human resources, and planning.
- (e) Ensure Effective Communication
  - (i) Ensure the Corporation has a policy to enable the Corporation to communicate effectively with its stakeholders (which include Members, residents of the community, and staff providing services to the Corporation, health care providers to the Corporation, Ontario Health and the Ministry of Health). This policy addresses how feedback from stakeholders will be factored into the Board's decisions, including solicitation of feedback with respect to Board processes and policies and demonstrates the commitment of the Corporation's engagement with its stakeholders and residents of the community.
  - (ii) Ensure the Board is accountable to the Members by providing them on a regular basis with balanced and understandable information about the Corporation and its proposed activities.
  - (iii) Define and monitor stakeholder satisfaction.
- (f) Ensure Financial Viability
  - (i) Establish key financial objectives that support the Corporation's goals and mission (including capital allocations and expenditures).
  - (ii) Approve the annual operational budget of the Corporation.

- (iii) Encourage the reduction of costs relating to the services provided by the Corporation, together with the maintenance and improvement of service levels.
- (iv) Ensure that the Corporation undertakes the necessary financial planning activities so that resources are allocated effectively.

(g) Ensure Board Effectiveness

- (i) Measure the Board's own effectiveness and efficiency, including monitoring the effectiveness of individual Directors and Officers and employ a process for Board renewal that embraces evaluation and continuous improvement.
- (ii) Ensure ethical behaviour and compliance with laws and regulations, audit and accounting principles, and the By-laws.
- (iii) Ensure the decision-making processes are transparent and that appropriate representation and input are achieved.

(h) Ensure Compliance with the FHT Funding Agreement by establishing a process or policy for:

- (i) The hiring and termination of staff providing services to the Corporation.
- (ii) The admission, withdrawal and expulsion of members of the Corporation which is consistent with the FHT Funding Agreement.
- (iii) Identifying and managing actual, potential, or perceived conflicts of interest (as such term is used in the FHT Funding Agreement).
- (iv) Conducting a monthly review and assessment of the Service Plan to determine compliance with the FHT Funding Agreement and to develop an action plan for improvement where necessary.
- (v) Engaging the community of diverse persons and entities served by the Corporation on an ongoing basis, including about the Service Plan and during the development of the annual plan, and to consider the results of this community engagement when making decisions in respect of the Corporation.
- (vi) Requiring that goods, equipment, and services that are acquired with funds under the FHT Funding Agreement are disposed, sold or leased in accordance with the requirements of the FHT Funding Agreement.
- (vii) Developing and submitting to the Ministry of Health (and/or Ontario Health) all mandatory reports required by the FHT Funding Agreement.

- (viii) Receiving and resolving complaints and dispute resolutions.
- (ix) Ensuring service delivery systems and administrative operations are otherwise in compliance with the terms of the FHT Funding Agreement.

#### **8.11 NO REMUNERATION**

The Directors of the Corporation shall serve as such without remuneration, provided that a Director may be reimbursed for reasonable expenses incurred in the performance of their duties as a Director, all in accordance with the policies of the Corporation and necessary approvals<sup>26</sup>.

### **ARTICLE 9. REGULAR AND SPECIAL MEETINGS OF THE BOARD**

#### **9.01 REGULAR MEETINGS**

- (a) There shall be at least [insert number]<sup>27</sup> regular Board meetings per year. The schedule of regular Board meeting shall be established by the Chair each year no later than January 10<sup>th</sup><sup>28</sup> and provided in writing to the Board.
- (b) The Chair may cancel any regular Board meeting (excluding the Board meeting that follows the annual meeting of the Corporation), in their discretion if there is insufficient business to merit a meeting, on twenty-four (24) hours' written notice.
- (c) The Board shall meet at the Registered Office or another place determined by the Board, at such time as the Board may from time to time determine.. Alternatively, a Board meeting may be held entirely by one or more telephonic or electronic means or by any combination of in-person attendance and by one or more telephonic or electronic means. A Board meeting held entirely or in part by telephonic or electronic means must provide that all persons attending the meeting are able to communicate with each other simultaneously and instantaneously. Any person who attends through telephonic or electronic means is deemed to be present in person at the meeting. A meeting held by telephonic or electronic means is deemed to be held at the Registered Office of the Corporation.
- (d) All Board meetings are closed to the public unless the Board determines otherwise for any specific Board meeting or part thereof.

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<sup>26</sup> This is default language. If a non-profit Board wants to pay a stipend to Directors, along with reimbursement of expenses, the Board may do so in accordance with any policy it creates. A FHT that is a charity may not pay a stipend, honorarium or per diem to its Directors.

<sup>27</sup> Meetings should be held at least quarterly to carry out the Board's obligations.

<sup>28</sup> Or insert other month and day as fits the Board's schedule.

## **9.02 SPECIAL MEETINGS**

Special meetings of the Board shall be called by the Secretary of the Corporation on the written request of any of the following:

- (a) the Chair of the Board; or
- (b) any two (2) Directors.

## **9.03 NOTICE OF REGULAR AND SPECIAL MEETINGS**

- (a) The Secretary will give at least seven (7) days<sup>29</sup> written notice of a regular meeting of the Board, which notice may be given electronically (for example, via e-mail).
- (b) The notice of meeting need not specify a place of meeting if the meeting is to be held entirely by one or more telephonic or electronic means. If the Directors may attend a meeting by telephonic or electronic means, the notice of meeting must include instructions for attending and participating in the meeting and if applicable, voting by such means at the meeting.
- (c) The notice of meeting shall specify any matter that constitutes a Board Exclusive Responsibility if any such matter is to be included on the meeting agenda.
- (d) Notice of a special meeting of the Board shall be given by telephone and/or email at least twenty-four (24) hours in advance of the meeting. The notice of a special meeting shall state the purpose for which it is called.
- (e) Provided a quorum is present, each newly appointed Board may, without notice, hold its first meeting immediately following the annual meeting of Members, provided the agenda does not include any matter that is a Board Exclusive Responsibility.

## **9.04 QUORUM**

- (a) A quorum for the transaction of business at any meeting of the Board shall consist of a Majority of the Directors.<sup>30</sup>
- (b) No meeting of the Board shall be duly constituted for the transaction of business unless a quorum is present. There will be no representation by proxy at any Board meeting.

## **9.05 CHAIR OF BOARD MEETINGS**

The chair of a Board meeting shall be:

- (a) the Chair of the Board;

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<sup>29</sup> Or insert other time period

<sup>30</sup> Quorum may also include a requirement that certain stakeholder representatives be present – e.g., AFG or Hospital representatives, if those representatives are Directors.

- (b) the Vice-Chair of the Board;<sup>31</sup> or
- (c) a chair elected by the Directors present if the Chair and Vice-Chair of the Board are absent.

**9.06 ADJOURNED BOARD MEETING**

If within one-half (1/2) hour after the time appointed for a meeting of the Board, a quorum is not present, the meeting shall stand adjourned until the same day in the following week at the same hour and place, or if such day shall be a Saturday, Sunday or holiday, on the next day following such date. The Secretary shall send notice of such adjourned meeting to each of the Directors at least forty-eight (48) hours prior to the meeting.

**9.07 GUESTS**

- (a) The Executive Director shall be invited to and attend at all meetings of the Board as a resource to the Board. The Executive Director may be asked to leave during an *in camera* session of the Board. The Executive Director is not entitled to vote at any meeting of the Board.
- (b) Any guest must be invited to a Board meeting by the Chair or by a resolution of a Majority of the Board.

**9.08 RIGHT OF DISSENT**

- (a) A Director who is present at a meeting of the Board or of a committee is deemed to have consented to any resolution passed or action taken at the meeting unless:
  - (i) the Director requests a dissent to be entered in the minutes of the meeting;
  - (ii) the Director sends a written dissent to the secretary of the meeting before the meeting is terminated; or
  - (iii) the Director submits to the Corporation a written dissent immediately after the meeting is terminated.
- (b) A Director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented to the resolution or action unless, within seven (7) days after becoming aware of the resolution or action, the Director:
  - (i) causes a dissent to be placed with the minutes of the meeting; or
  - (ii) submits a written dissent to the Corporation.

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<sup>31</sup> The Vice-Chair position is optional.

## **ARTICLE 10. COMMITTEES OF THE BOARD**

### **10.01 COMMITTEES<sup>32</sup>**

- (a) The Board may establish Committees from time to time, including an Executive Committee and a Governance & Nominating Committee.<sup>33</sup>
- (b) The functions, duties, responsibilities and powers of Committees shall be provided in the By-laws, in the resolution of the Board by which such Committee is established, or in terms of reference adopted by the Board.
- (c) Directors shall chair all Committees.
- (d) A quorum for any meeting of any Committee shall be a Majority of the voting members of the Committee.
- (e) The Act requires that an audit committee consist of at least one Director and that a majority of its members cannot be either Officers or employees of the Corporation. The Auditor is entitled to attend audit committee meetings at the expense of the Corporation.
- (f) Procedures at Committee meetings shall be consistent with the procedures outlined in this By-law, unless otherwise established by a Board policy.

### **10.02 DELEGATION OF DECISION-MAKING TO COMMITTEES**

The Board may delegate decision-making authority to a Committee on the following conditions:

- (a) the Board may not delegate any Board Exclusive Responsibility to a Committee; and
- (b) only Directors may be voting members of that Committee.

### **10.03 EXECUTIVE COMMITTEE**

- (a) The Executive Committee shall consist of:<sup>34</sup>
  - (i) the Chair of the Board, who shall be ex-officio chair of the Committee;
  - (ii) the Vice-Chair of the Board;
  - (iii) at least one (1) other Director selected by the Governance & Nominating Committee;

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<sup>32</sup> If a specific Committee is added to this By-law (such as a governance committee, executive committee, finance/audit committee, etc.), include terms of reference (who it consists of, its mandate, how often it meets, etc.). If there is an audit committee, the Act has rules regarding the composition of that committee

<sup>33</sup> Note: No Committees are required by law.

<sup>34</sup> Because the Executive Committee has delegated decision-making authority under these terms of reference, the Committee cannot include any non-Directors in a voting capacity.

- (iv) one (1) Director who is a member of the community; and
- (v) the Executive Director as a non-voting member.

(b) In respect of matters that are not Board Exclusive Responsibilities and which the Board delegates to the Executive Committee, the Executive Committee shall:

- (i) exercise the full powers of the Board in all matters of administrative urgency between regular meetings of the Board, reporting every action at the next meeting of the Board; and
- (ii) perform such other duties as assigned from time to time by the Board by By-law, resolution or policy.

#### **10.04 GOVERNANCE & NOMINATING COMMITTEE TERMS OF REFERENCE**

- (a) The Governance & Nominating Committee shall consist of at least three (3) persons selected by the Board, together with the Executive Director, who shall serve on the Committee for a duration determined by the Board.
- (b) The Governance & Nominating Committee shall:
  - (i) recommend to the Board candidates for election as Directors to the Board, after identifying competencies needed by the Board annually;
  - (ii) nominate Directors for consideration by the Board for appointment as Officers of the Corporation; and
  - (iii) nominate Directors to serve as chair and members of the Committees on the Board.
- (c) The Governance & Nominating Committee shall advise the Board with respect to processes for:
  - (i) the establishment and review of the Corporation's mission, vision and values;
  - (ii) an effective Board orientation program and the continuing education of the Board;
  - (iii) identifying competencies for Directors and Officers and conducting annual performance and effectiveness evaluation of Directors;
  - (iv) make recommendations to the board on improved Board effectiveness;
  - (v) conduct Committee performance and effectiveness evaluations annually;

- (vi) establish a whistleblower policy and oversight of the receipt, retention and treatment of complaints received regarding questionable matters;
- (vii) periodic review and revision of the Corporation's governance policies, processes and structures as appropriate; and
- (viii) a regular review of the Corporation's By-laws.

#### **10.05 NON-DIRECTORS ON COMMITTEES**

- (a) In this section, "non-Director" means a person who is not a Director of the Corporation, who has been appointed to a Committee in accordance with this section, and who has the same rights and obligations of other members of the Committee who are Directors (unless expressly stated by this By-law or the terms of reference of that Committee).
- (b) On the recommendation of the Governance & Nominating Committee, non-Directors may be appointed by the Board as voting members of any advisory Committee and as non-voting members of any Committee that has delegated decision-making authority.
- (c) Any non-Director appointed under this section is not eligible to serve as the chair of a Committee.
- (d) Non-Directors serving on Committees shall have one (1) year renewable terms.
- (e) Participation by a non-Director is conditional on the non-Director signing an acknowledgement that they:
  - (i) are a fiduciary of the Corporation and must place the best interests of the Corporation above their own best interests;
  - (ii) have read and understood the Conflict of Interest and confidentiality requirements of this By-law, which apply to all non-Directors; and
  - (iii) agree to participate in the Board's orientation program if requested.

#### **ARTICLE 11. OFFICERS**

##### **11.01 OFFICERS**

- (a) The Board, taking into consideration the recommendations of the Governance & Nominating Committee, shall elect from among the Directors, at its first meeting following the annual meeting of the Members, the Chair of the Board, and may elect a Vice-Chair from amongst the Directors and a Treasurer.<sup>35</sup>

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<sup>35</sup> The Treasurer is often replaced by the Chair of Finance/Audit Committee, if the FHT has such a standing Committee. Under the Act, no Officers other than the Chair are required.

- (b) The Executive Director shall also serve as the Secretary of the Board<sup>36</sup>, unless otherwise determined by resolution of the Board.
- (c) Any Officer of the Board shall cease to hold office upon resolution of the Board.
- (d) **[Optional]** The Chair of the Board shall serve for no longer than three (3) consecutive years.<sup>37</sup>
- (e) An individual may hold more than one office.

#### **11.02 DUTIES OF THE CHAIR OF THE BOARD**

The Chair shall be selected from among the Directors. The duties of the Chair of the Board shall include, without limitation, the following:

- (a) preside at all meetings of the Members and the Board and act as chair of such meetings;
- (b) report to the Board at regular meetings and to the Members at the annual meeting of the Members, and at all such other times as the Chair of the Board may consider advisable or necessary, concerning the operations of the Corporation;
- (c) report regularly and promptly to the Board issues that are relevant to their governance responsibilities;
- (d) be responsible for addressing issues associated with under-performance of individual Directors including, if applicable, their removal from the Board;
- (e) ensure that the annual review of the Executive Director's performance and compensation is done;
- (f) stay up-to-date about the Corporation and determine when an issue needs to be brought to the attention of the Board;
- (g) intervene when necessary in instances involving Conflict of Interest, confidentiality and other Board policies;
- (h) represent the Corporation and the Board as may be required or appropriate; and
- (i) assume and perform such other duties as may from time to time be assigned to them by the Board.
- (j) In the event of a tie at a meeting of the Board or the Members, the chair shall have a second, tie-breaking vote, as provided in the Articles.

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<sup>36</sup> The Secretary is an Officer of the Corporation; the Board may in its discretion appoint a Secretary. The Board need not appoint a Director to act as Secretary or Treasurer.

<sup>37</sup> There is no requirement for a maximum term for Officers – but a maximum term for the Chair is recommended.

### **11.03 DUTIES OF THE VICE-CHAIR**

The Vice-Chair, if any, shall be elected by the Board from among the Directors. The Vice-Chair works collaboratively with the Chair. The Vice-Chair supports the Chair in fulfilling their responsibilities. In addition, the Vice Chair assumes the duties of the Chair in the Chair's absence, as requested by the Chair or the Board, including representing the Board and the Corporation as may be required or appropriate. The Vice-Chair will perform such other duties as may be delegated by the Chair.

### **11.04 DUTIES OF THE SECRETARY**

- (a) The Secretary of the Corporation shall:
  - (i) attend or cause a recording secretary to attend all meetings of the Members, Board and Committees to act as clerk thereof and to record all votes and minutes of all proceedings in the books to be kept for that purpose;
  - (ii) maintain the minutes of all meetings of the Board, the Members and the Committees of the Board;
  - (iii) ensure that appropriate notice of meetings of the Board, the Members and Committees is given;
  - (iv) where possible, ensure that appropriate information and supporting materials are provided to the Board at least seven (7) days prior to a meeting and to the Members at least ten (10) days prior to a meeting;
  - (v) have custody of all minute books, documents and registers of the Corporation and ensure that the same are maintained as required by law;
  - (vi) keep a roll of the names and addresses of the Directors and the Members;
  - (vii) ensure that all reports are prepared and filed as are required to be filed by law or requested by the Board; and
  - (viii) perform such other duties as may from time to time be assigned to the Secretary by the Board.
- (b) The Secretary may delegate the performance of their duties, but the Secretary shall remain responsible for ensuring the proper performance of such duties.

### **11.05 DUTIES OF THE TREASURER**

- (a) The Treasurer shall oversee the management of the finances of the Corporation, and ensure that appropriate reporting mechanisms and control systems as established by the Board, are in place, and monitor such mechanisms and systems for compliance.

- (b) The Treasurer shall ensure that systems for the care and custody of the funds and other financial assets of the corporation, and for making payments for all approved expenses incurred by the Corporation, are in place, are functional and adequate and shall monitor for compliance with such systems.
- (c) The Treasurer shall report to the Board no less than quarterly on the financial position of the Corporation.
- (d) The Treasurer shall cause the accounts of the Corporation to be audited, and cause to be prepared financial statements and an auditors' report as prescribed by the Act.
- (e) The Treasurer shall report to the Board at least semi-annually regarding any trust funds held by the Corporation.
- (f) The Treasurer may delegate the performance of their duties, but the Treasurer shall remain responsible for ensuring the proper performance of such duties.
- (g) If the Board establishes a Finance & Audit Committee, the chair of that committee shall serve as the Treasurer, if the Corporation appoints a Treasurer.

#### **11.06 DUTIES OF THE PAST-CHAIR**

- (a) Any Chair, at the completion of their term of Chair, may assume the role of Past-Chair, ex-officio, if that Director is re-elected to the Board. The Past Chair shall serve as such for one (1) year.
- (b) The Past-Chair shall:
  - (i) ensure continuity of Corporation knowledge among the Officers;
  - (ii) assist the Chair to become oriented to their new role, as requested by the Chair; and
  - (iii) provide support to the Chair, as requested by the Chair or the Board.

#### **11.07 OTHER OFFICERS**

The powers and duties of all other Officers shall be such as the Board may from time to time determine. Any of the powers and duties of an Officer to whom an assistant has been appointed may be exercised and performed by such an assistant unless the Board otherwise directs.

### **ARTICLE 12. EXECUTIVE DIRECTOR**

#### **12.01 APPOINTMENT**

The Executive Director may be appointed by the Board according to the selection process defined in Board policy from time to time.

## **12.02 DUTIES AND PERFORMANCE**

The duties of the Executive Director shall be defined in a job description approved by the Board. The Board shall undertake an annual performance review of the Executive Director in accordance with a process and policy approved by the Board from time to time.

## **ARTICLE 13. INDEMNIFICATION OF DIRECTORS, OFFICERS AND COMMITTEE MEMBERS**

### **13.01 INDEMNIFICATION OF DIRECTORS, OFFICERS, AND COMMITTEE MEMBERS**

- (a) Every Director, Officer, and Committee member, their heirs, executors, administrators and estate, respectively, shall from time to time and at all times be indemnified and saved harmless out of the funds of the Corporation from and against all costs, charges and expenses including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other action or proceeding in which the individual is involved due to association with the Corporation.
- (b) The Corporation may advance money to a Director, Officer or other individual referred to in section 13.01(a) for the costs, charges and expenses of an action or proceeding referred to in that section, but the individual shall repay the money if the individual does not fulfil the conditions set out in section 13.01(c).
- (c) The indemnity provided for in this section shall be applicable only if the Director, Officer or Committee member acted honestly and in good faith with a view to the best interests of the Corporation and, in the case of criminal or administrative action or proceeding that is enforceable by a monetary penalty, had reasonable grounds for believing that their conduct was lawful.

### **13.02 INSURANCE**

The Board will cause to be purchased such insurance as it considers advisable and necessary to ensure that Directors, Officers, and Committee members will be indemnified and saved harmless in accordance with this By-law; the premiums for such insurance coverage shall be paid from the funds of the Corporation.<sup>38</sup>

## **ARTICLE 14. FINANCIAL MATTERS**

### **14.01 FINANCIAL YEAR END**

The financial year of the Corporation shall end on the 31<sup>st</sup> day of March in each year.

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<sup>38</sup> Note that if the FHT is a charity, the *Charities Accounting Act* (Ontario) does not allow for insurance to be purchased unless the test in the Act is met. This test includes that the purchasing of the insurance cannot render the Corporation insolvent.

#### **14.02 AUTHORIZED SIGNING OFFICERS<sup>39</sup>**

- (a) Two (2) Directors or Officers shall sign on behalf of the Corporation all contracts, agreements, cheques, conveyances, mortgages, or other documents, unless otherwise stipulated in a signing authority policy approved by the Board from time to time.
- (b) The Executive Director may be permitted to sign on behalf of the Corporation all contracts, cheques, conveyances, mortgages or other documents, having such financial thresholds as stipulated in the signing authority policy approved by the Board from time to time.
- (c) The Board may direct, by resolution or policy, the manner in which, and the person or persons by whom, any particular instrument or class of instruments may or shall be signed an any such policy shall prevail over the rules in paragraphs (a) and (b).

#### **14.03 BANKING AND BORROWING**

- (a) Bank accounts of the Corporation shall be kept at such banks and in such places and shall be operated in such manner and by such person or persons as the Board shall from time to time determine by by-law.
- (b) The Board may from time to time:<sup>40</sup>
  - (i) borrow money on the credit of the Corporation;
  - (ii) issue, sell or pledge debt obligations (including bonds, debentures, debenture stock, notes or other like liabilities whether secured or unsecured) of the Corporation;
  - (iii) charge, mortgage, hypothecate or pledge all or any currently owned or subsequently acquired real or personal, movable or immovable property of the Corporation, including book debts, rights, powers, franchises and undertakings, to secure any debt obligations or any money borrowed, or other debt or liability of the Corporation; and
  - (iv) delegate the powers conferred on the Board under this paragraph to such Officer or Offices of the Corporation and to such extent and in such manner as the Directors shall determine.

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<sup>39</sup> Most corporations will have a signing authority policy. By-laws set out the minimum or default rules. If a signing authority policy is made by the Board, the policy governs over the default provisions in this by-law.

<sup>40</sup> This section is optional. Some FHTs do not want to give the Board the authority to borrow, given the limits on funding available to the FHT.

**14.04 SEAL**

The corporate seal of the Corporation shall be such as the Board may by resolution from time to time adopt, and shall be entrusted to the Secretary of the Corporation (or delegate) for safekeeping.

**14.05 INVESTMENTS<sup>41</sup>**

The Board may invest in any investments that are authorized by the Corporation's investment policy. The Corporation's investment policy shall be developed by the Board.

**14.06 AUDITOR**

- (a) The Corporation shall at its annual meeting appoint an Auditor who shall not be a Director or an Officer or employee of the Corporation or a partner or employee of any such person, and who is duly licensed under the provisions of the *Public Accountancy Act* (Ontario), to hold office until the next annual meeting of the Members.
- (b) Subject to the Articles, the Board shall fill any vacancy in the office of Auditor that occurs between annual meetings.
- (c) The Auditor shall have all the rights and privileges as set out in the Act and shall perform the audit function as prescribed therein<sup>42</sup>. The Auditor shall also meet the test of independence set out in the Act<sup>43</sup>.
- (d) The Auditor shall receive notice of the annual meeting in accordance with section 6.02 of this By-law.

**14.07 TRUST FUNDS (RESTRICTED PURPOSE FUNDS)**

The Corporation shall apply any trust funds or restricted purpose funds of the Corporation only to the designated purpose(s) for which such funds were intended. Under no circumstances shall the Corporation transfer any funds held in trust by the Corporation to any other individual or entity, unless such transfer complies with all applicable law, including without limitation, the *Income Tax Act*, the *Charities Accounting Act* (Ontario) and the *Trustee Act* (Ontario).

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<sup>41</sup> This section is optional. Given the limits on FHT funding, it may not be realistic for the FHT to have additional funds to invest.

<sup>42</sup> The Act permits review engagements instead of audits in certain circumstances. However, the FHT Funding Agreement requires audits. Accordingly, review engagements are not included as an option for FHTs.

<sup>43</sup> The Auditor must meet the three prongs of the test for independence: 1. The Auditor cannot be a Member, Director, Officer or employee of the FHT or its affiliates; 2. The Auditor cannot be in business with a Director, Officer or employee of the FHT or its affiliates; and 3. The Auditor cannot be a lender to (or related to a lender to) the FHT or its affiliates.

#### **14.08 BOOKS AND RECORDS**

- (a) All necessary books and records of the Corporation required by the Act shall be regularly and properly kept at the Registered Office or at another place determined by the Board. Without limiting the generality of the foregoing, the following records shall be prepared and regularly maintained:
  - (i) the Articles and By-laws, and amendments to them;
  - (ii) minutes of meetings of the Members, the Board, and any Committee;
  - (iii) resolutions of the Members, the Board, and any Committee;
  - (iv) register of Directors and their consents to serve as such;
  - (v) register of Officers;
  - (vi) register of Members; and
  - (vii) accounting records adequate to enable the Board to ascertain the financial position of the Corporation with reasonable accuracy on a quarterly basis.
- (b) A record of the Corporation's ownership interests in land, if any, shall be kept at the Registered Office and in accordance with section 92.1 of the Act.
- (c) All records required by the Act to be kept by the Corporation may be in any form, provided that the records are capable of being reproduced in an accurate and intelligible form within a reasonable time.

### **ARTICLE 15. NOTICES UNDER THIS BY-LAW**

#### **15.01 SERVICE**

Any notice or other document required by the Act, the Articles or the By-laws of the Corporation to be sent to any Member or Director or to the Auditor shall be delivered personally or sent by prepaid mail or electronically to any such Member or Director at their latest addresses shown in the records of the Corporation and to the Auditor at its business address, or if no address be given therein then to the last address of such Member or Director known to the Secretary; provided always that notice may be waived or the time for the notice may be waived or abridged at any time with the consent in writing of the person entitled thereto.

#### **15.02 COMPUTATION OF TIME**

Where a given number of days' notice or notice extending over any period is required to be given, the day of service or posting of the notice shall, unless it is otherwise provided herein, be counted in such number of days or other period.

#### **15.03 PROOF OF SERVICE**

A certificate of any Officer of the Corporation in office at the time of the making of the certificate as to facts in relation to the mailing or delivery of any notice to any Member, Director, Officer or Auditor or publication of any notice shall be conclusive evidence thereof and shall be binding on every Member, Director, Officer or Auditor of the Corporation, as the case may be.

#### **15.04 SIGNATURES TO NOTICES**

The signature to any notice may be written, stamped, typewritten, printed or partly written, stamped, typewritten or printed and any such signature shall be as effective as an original manual signature.

#### **15.05 ERROR OR OMISSION**

The accidental omission to give any notice to any Member, Director, Officer, or Auditor, or the non-receipt of any notice by any such person where the Corporation has provided notice in accordance with the By-laws or any error in any notice not affecting its substance shall not invalidate any action taken at any meeting to which the notice pertained or otherwise founded on such notice.

### **ARTICLE 16. ADOPTION AND AMENDMENT OF BY-LAWS**

#### **16.01 AMENDMENTS TO BY-LAWS**

- (a) Subject to the Articles, the Board may, by resolution, make, amend or repeal any By-laws of that regulate the activities or affairs of the Corporation.
- (b) Subject to the Act (which requires a Special Resolution for changes to the transfer of a membership; changes to giving notice to Members entitled to vote at meetings of Members; and changes to the method of voting by Members not in attendance at meetings of Members), any such By-law, amendment or repeal shall be effective from the date of the resolution of the Board until the next meeting of the Members where it may be confirmed, rejected or amended by the Members by Ordinary Resolution. If the By-law, amendment or repeal is confirmed or confirmed as amended by the Members it remains effective in the form in which it was confirmed. The By-law, amendment or repeal ceases to have effect if it is not submitted to the Members at the next meeting of the Members or if it is rejected by the Members at the meeting.
- (c) A By-law or an amendment to a By-law passed by the Board that require only Board approval are effective once made by the Board until confirmed by the Members at the next meeting of Members.
- (d) A By-law or an amendment to a By-law that requires a Special Resolution of the Members is effective only when confirmed by Members.

**ENACTED** as By-law No. 1 this • day of •, 202•.

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Chair

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Secretary

**CONFIRMED** by the Members this • day of •, 202•.

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Chair

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Secretary

## **APPENDIX A – LIST OF SPECIAL RESOLUTIONS REQUIRED BY THE ACT**

The following decisions require the approval of the Board and then 2/3 of the votes cast by Members who attend a duly called meeting of the Members before taking effect (unless the authority is granted to the Board in the By-laws, which By-law has been approved by Special Resolution or consented to by each member entitled to vote at a meeting of the members:

- To change the municipality or geographic township in which its Registered Office is located to another place in Ontario – section 14(4)
- To set or change a fixed number of directors between the minimum and maximum number of directors in the Articles – section 22(2)
- to empower the Board to set a fixed number of directors between the minimum and maximum number of Directors in the Articles section 22(2)
- To confirm or approve a contract or transaction of a director or officer that is the subject of a conflict of interest - a director or officer, acting honestly and in good faith, is not accountable to the corporation or to its members for any profit or gain realized from any contract or transaction by reason only of his or her holding the office of director or officer, and the contract or transaction, if it was reasonable and fair to the corporation at the time it was approved, is not by reason only of the director's or officer's interest in it void or voidable if,
  - the contract or transaction is confirmed or approved by special resolution at a meeting of the members duly called for that purpose; and
  - the nature and extent of the director's or officer's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting – section 41(10)
- To make any amendment to the Articles – section 103(1)
- To approve an amalgamation agreement – section 111(5)
- To approve a continuance under this Act – section 115(2)
- To approve a continuance under the Co-operative Corporations Act – section 117(1)
- To approve the sale, lease or exchange of all or substantially all of the property of the corporation other than in the ordinary course of its activities – section 118(6)
- To approve an arrangement as defined in section 120
- To require the corporation to be wound up voluntarily under section 123
- To authorize an application to be made to the court to wind up the corporation – section 136

- To authorize the corporation to be dissolved – section 166
- 1382-3523-4570, v. 4