



Torbay and South Devon
NHS Foundation Trust

Torbay and South Devon NHS Foundation Trust

Constitution

Approved by Council of Governors 5 August 2020

Torbay and South Devon NHS Foundation Trust Constitution

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1. **Interpretation and definitions**

Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.

Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.

the 2006 Act is the National Health Service Act 2006.

the 2012 Act is the Health and Social Care Act 2012.

Annual Members Meeting is defined in paragraph 11 of the constitution.

constitution means this constitution and all annexes to it.

Monitor is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.

the **Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.

2. **Name**

The name of the foundation trust is Torbay and South Devon NHS Foundation Trust (the Trust).

3. **Principal purpose**

3.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England¹.

3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

3.3 The Trust may provide goods and services for any purposes related to:

¹ The principal purpose is as set out in sub-section 43(1) of the 2006 Act and must be included in the constitution by virtue of paragraph 2(2). The paragraphs which follow reflect other provisions in section 43.

3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and

3.3.2 the promotion and protection of public health.

3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

4. Powers

4.1 The powers of the Trust are set out in the 2006 Act.

4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

4.3 Any of these powers may be delegated to a committee of directors or to an executive director.

4.4 Where the Trust is exercising functions of the managers pursuant to Section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised by the Board of Directors, each of whom must be neither an executive director of the Trust nor an employee of the Trust.

5. Membership and constituencies

The Trust shall have members, each of whom shall be a member of one of the following constituencies:

5.1 a public constituency; and

5.2 a staff constituency.

6. Application for membership

An individual who is eligible to become a member of the Trust may do so on application to the Trust.

7. Public Constituency

7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.

7.2 Those individuals who live in an area specified for a public constituency are referred to collectively as a Public Constituency.

7.3 The minimum number of members in each Public Constituency is specified in Annex 1.

8. **Staff Constituency**

8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:

8.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.

8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.

8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

8.4 The Staff Constituency shall be divided into six (6) descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

8.6 The Secretary shall make a final decision about the class of which an individual is eligible to be a member.

9. **Automatic membership by default – staff**

9.1 An individual who is:

9.1.1 eligible to become a member of the Staff Constituency; and

9.1.2 invited by the Trust to become a member of the Staff Constituency;

shall become a member of the Trust as a member of the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.

9.2 The Secretary shall make the final decision about the Constituency an individual shall be eligible to be a member.

10. Restriction on membership

10.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.

10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.

10.3 An individual must be at least fourteen (14) years old to become a member of the Trust.

10.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 9 – Further Provisions.

11. Annual Members' Meeting

11.1 The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.

11.2 Further provisions about the Annual Members' Meeting are set out in Annex 8 – Annual Members' Meeting.

12. Council of Governors – composition

12.1 The Trust is to have a Council of Governors which shall comprise both elected and appointed governors.

12.2 The composition of the Council of Governors is specified in Annex 3.

12.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

13. Council of Governors – election of governors

- 13.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules on the basis of single transferable vote (STV) polling and the Model Election Rules shall be construed accordingly.
- 13.2** The Model Election Rules as published from time to time NHS Providers form part of this constitution. The Model Election Rules current at the time of their adoption under this constitution are attached at Annex 4.
- 13.3** A subsequent variation of the Model Election Rules by NHS Providers, or any other subsequent body with the authority to do so, shall not constitute a variation of the terms of this constitution for the purposes of paragraph 48 of the constitution (amendment of the constitution).
- 13.4** An election, if contested, shall be by secret ballot.

14. Council of Governors - tenure

- 14.1** An elected governor may hold office for three (3) consecutive terms up to a maximum period of nine (9) years.
- 14.2** An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 14.3** An elected governor shall be eligible for re-election at the end of his term.
- 14.4** An appointed governor may hold office for a period of up to nine (9) years.
- 14.5** An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 14.6** An appointed governor shall be eligible for re-appointment at the end of his term.

15. Council of Governors – disqualification and removal

- 15.1** The following may not become or continue as a member of the Council of Governors:
- 15.1.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

- 15.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 15.1.3 a person who within the preceding five years has been convicted of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
- 15.1.4 a person is the subject of a sex offenders order;
- 15.1.5 a person in relation to whom a moratorium period under debt relief order applies (under Part 7A of the Insolvency Act 1986);
- 15.1.6 a person whose tenure as a governor has been terminated in accordance with paragraph 4.4 and/or 4.5 of Annex 5; or
- 15.1.7 a person whose tenure as a governor of another foundation trust has been terminated for cause.

15.1A Further provisions about eligibility are set out in Annex 6.

15.2 Governors must be at least sixteen (16) years of age at the date they are nominated for election or appointment.

15.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.

16. **Council of Governors – vacancies**

16.1 Where membership of the Council of Governors ceases for reasons of removal or resignation, public and staff governors shall be replaced in accordance with the following procedure:

16.2 Replacement will be by selecting the person with the next highest allocation of votes in the previous election for the constituency or class represented. The replacement governor shall serve the remainder of the term of office vacated by the previous governor. If there is no such person, then the seat shall remain vacant until the next annual election is held.

17. **Council of Governors – duties of governors**

17.1 The general duties of the Council of Governors are:

17.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors; and

17.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

17.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

17.3 The remuneration of governors by their respective employer.

18. Council of Governors – meetings of governors

18.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 27 below) or, in his absence, the Vice Chairman (appointed in accordance with the provisions of paragraph 29 below), shall preside at meetings of the Council of Governors.

18.2 In the absence of either the Chairman or Vice Chairman at a meeting of the Council of Governors, the governors present shall nominate another non-executive director to preside at that meeting.

18.3 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

18.4 For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

19. Council of Governors – standing orders

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 6.

20. Council of Governors – referral to the Panel

Not used

21. Council of Governors – conflicts of interest of governors

If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Council of Governors

shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

22. Council of Governors – travel expenses and remuneration

The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust. Governors shall not be entitled to receive remuneration.

23. Council of Governors – further provisions

Further provisions with respect to the Council of Governors are set out in Annex 5.

24. Board of Directors – composition

24.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

24.2 The Board of Directors is to comprise:

24.2.1 a non-executive Chairman;

24.2.2 not less than five (5) and no greater than eight (8) other non-executive directors; and

24.2.3 not less than four (4) and no more than seven (7) executive directors.

24.3 One of the executive directors shall be the Chief Executive.

24.4 The Chief Executive shall be the Accounting Officer.

24.5 One of the executive directors shall be the chief finance officer.

24.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

24.7 One of the executive directors is to be a registered nurse or a registered midwife.

24.8 The non-executive directors and Chairman together shall be greater than the total number of executive directors.

24.9 The validity of any act of the Trust is not affected by any vacancy among

the directors of by any defect in the appointment of any director.

25. Board of Directors – general duty

The general duty of the Board of Directors and of each director individually, is to act with a view to promoting the success of the Trust so as to maximise the benefits for the members of the Trust as a whole and for the public.

26. Board of Directors – qualification for appointment as a non-executive director

26.1 A person may be appointed as a non-executive director only if:

26.1.1 he is a member of a Public Constituency; or

26.1.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university; and

26.1.3 he is not disqualified by virtue of paragraph 32 below.

26.2 The Chairman and non-executive directors must on appointment and for each and every term of office, meet the Independence Criteria. In the event a non-executive director or the Chairman has served on the Board for more than nine (9) years, he shall be replaced and the Council of Governors shall appoint a non-executive director in his place.

26.3 The Independence Criteria means that the Chairman and non-executive directors on appointment and throughout their term of office must not:

26.3.1 have been an employee of the Trust within the last five (5) years;

26.3.2 receive or have received additional remuneration from the Trust (apart from a director's fee), participate in the Trust's performance related pay scheme (if any) or be, or have been a member of the Trust's pension scheme;

26.3.3 have any close family tie with any director, senior employee or professional advisor to the Trust;

26.3.4 not have any significant business link with any director of the Trust, including through involvement in any company or body; or

26.3.5 have served on the Trust Board of Directors for more than nine years from the date of their first appointment.

26.4 The Chairman may not previously have been the Chief Executive of the Trust.

27. Board of Directors – appointment and removal of chairman and other non-executive directors

27.1 A nominations committee shall be established to make recommendations to the Council of Governors on the appointment of the Chairman and Council of Governors.

27.2 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chairman of the Trust and the other non-executive directors.

27.3 Appointment of the Chairman or a non-executive director shall require the approval of a majority of the members of the Council of Governors.

27.4 Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

28. Not used

29. Board of Directors – appointment of Vice Chairman

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a Vice Chairman. If the Chairman is unable to discharge his duties as Chairman of the Trust, the Vice Chairman shall be Acting Chairman of the Trust.

30. Board of Directors - appointment and removal of the Chief Executive and other executive directors

30.1 The non-executive directors shall appoint or remove the Chief Executive.

30.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.

30.3 Not used

30.4 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors. The Chairman shall act as the chair of such committee.

31. Not used

32. Board of Directors – disqualification

The following may not become or continue as a member of the Board of Directors:

- 32.1** a person who falls within the definition of an “unfit person” as defined by the Trust’s Provider Licence, the Health and Social Care Act (2012) (Regulated Activities) Regulations and the Trust’s Constitution;
- 32.2** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 32.3** a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 32.4** a person who within the preceding five years has been convicted of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
- 32.5** a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 32.6** a person who has had their name removed, by a direction under section 151 of the 2006 Act from any relevant list, and has not subsequently had his name included on such a list;
- 32.7** a person who is the subject of a sex offender’s order;
- 32.8** a person who on the basis of disclosure obtained through a DBS check, he is not considered suitable by the Chairman on the advice of the Trust’s director responsible for human resources;
- 32.9** a person whose tenure of office as an officer or director of a health service body has been terminated on the grounds that his appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of pecuniary interests;
- 32.10** a person who within the preceding five years been dismissed, otherwise than by reason of redundancy or ill health from any paid employment with a health service body;
- 32.11** in the case of a non-executive director, he no longer satisfies paragraph 26;
- 32.12** a person who has been removed from trusteeship of a charity;
- 32.13** a person who is the spouse, partner, or child of a member of the Board of Directors;
- 32.14** in the case of a non-executive director, a person who has refused without reasonable cause to fulfill any training requirement established by the Board of Directors or refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for directors;
- 32.15** on the basis of disclosures obtained through an application by the Disclosure Barring Service, they are not considered suitable by the

Chairman on the advice of the Trust's director responsible for human resources; or

32.16 in the case of a non-executive director, a person who has refused without reasonable cause to fulfil any training requirement established by the Board of Directors, or refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for directors.

33. Board of Directors – meetings

33.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

33.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting (and prior to the next meeting), the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors. A meeting held in private shall not be covered by this clause.

34. Board of Directors – standing orders

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 7.

35. Board of Directors - conflicts of interest of directors

35.1 The duties that a director of the Trust has by virtue of being a director include in particular:

35.1.1 a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust; or

35.1.2 a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.

35.2 The duty referred to in sub-paragraph 35.1.1 is not infringed if:

35.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

35.2.2 the matter has been authorised in accordance with the constitution.

35.3 The duty referred to in sub-paragraph 35.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a

conflict of interest.

35.4 In sub-paragraph 35.1.2, “third party” means a person other than:

35.4.1 the Trust; or

35.4.2 a person acting on its behalf.

35.5 If a director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the director must declare the nature and extent of that interest to the other directors.

35.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.

35.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.

35.8 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

35.9 A director need not declare an interest:

35.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

35.9.2 if, or to the extent that, the directors are already aware of it; or

35.9.3 if, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered:

35.9.3.1 by a meeting of the Board of Directors; or

35.9.3.2 by a committee of the directors appointed for the purpose under the constitution.

35.10 A matter shall have been authorised for the purposes of paragraph 35.2.2 if:

35.10.1 the Board of Directors by majority disapplies the provision of the Constitution which would otherwise prevent a director from being counted as participating in the decision-making process;

35.10.2 the director’s interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

35.10.3 the director’s conflict of interest arises from a permitted clause (as determined by the Board of Directors) from time to time.

36. Board of Directors – remuneration and terms of office

36.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.

36.2 The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive, other executive directors, and other senior staff.

37. Registers

The Trust shall have:

37.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;

37.2 a register of members of the Council of Governors, the class of constituency of which they are a member and an address through which they may be contacted (which may be the Secretary);

37.3 a register of interests of governors;

37.4 a register of directors, their capacity on the board and an address through which they be contacted (which may be the Secretary); and

37.5 a register of interests of the directors.

38. Admission to and removal from the registers

38.1 The Secretary (or their nominee) shall add to the register of members the name of an individual who is accepted as a member of the Trust under the provisions of this Constitution as soon as is reasonably practicable.

38.2 The Secretary (or their nominee) shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of the Constitution as soon as is reasonably practicable.

39. Registers – inspection and copies

39.1 The Trust shall make the registers specified in paragraph 38 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

39.2 The Trust shall not make any part of its registers available for inspection by

members of the public which shows details of any member of the Trust, if the member so requests.

39.3 So far as the registers are required to be made available:

39.3.1 they are to be available for inspection free of charge at all reasonable times; and

39.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

39.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

40. Documents available for public inspection

40.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:

40.1.1 a copy of the current Constitution;

40.1.2 a copy of the latest annual accounts and of any report of the auditor on them;

40.1.3 a copy of the latest annual report; and

40.1.4 a copy of the latest information as to its forward planning.

40.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:

40.2.1 a copy of any order made under section 65D (appointment of Trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (Trusts coming out of administration) or 65LA (Trusts to be dissolved) of the 2006 Act;

40.2.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act;

40.2.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act;

40.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;

40.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;

40.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of

State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;

- 40.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- 40.2.8** a copy of any final report published under section 65I (administrator's final report);
- 40.2.9** a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
- 40.2.10** a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.

- 40.3** Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 40.4** If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

41. Auditor

- 41.1** The Trust shall have an auditor.
- 41.2** The Council of Governors shall appoint or remove the auditor, on the recommendation of the Audit Committee, at a general meeting of the Council of Governors.

42. Audit Committee

The Trust shall establish a committee of non-executive directors (comprising of at least three (3) independent non-executive directors) as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

43. Accounts

- 43.1** The Trust must keep proper accounts and proper records in relation to the accounts.
- 43.2** Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 43.3** The accounts are to be audited by the Trust's auditor.

43.4 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.

43.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

44. Annual report, forward plans and non-NHS work

44.1 The Trust shall prepare an Annual Report and send it to Monitor.

44.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.

44.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.

44.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.

44.5 Each forward plan must include information about:

44.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on; and

44.5.2 the income it expects to receive from doing so.

44.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 45.5.1 the Council of Governors must:

44.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions; and

44.6.2 notify the directors of the Trust of its determination.

44.7 A Trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

45. Presentation of the annual accounts and reports to the governors and members

45.1 The following documents are to be presented to the Council of Governors

at a general meeting of the Council of Governors:

- 45.1.1 the annual accounts;
 - 45.1.2 any report of the auditor on them;
 - 45.1.3 the annual report;
 - 45.1.4 membership information, and any report on progress of the membership strategy; and
 - 45.1.5 register of governors' interest.
- 45.2 The documents listed in 45.1.1, 45.1.2, and 45.1.3 shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 45.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 45.1 with the Annual Members' Meeting.

46. Instruments

- 46.1 The Trust shall have a seal.
- 46.2 The seal shall not be affixed except under the authority of the Board of Directors.

47. Amendment of the constitution

- 47.1 The Trust may make amendments of its Constitution only if:
- 47.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments; and
 - 47.1.2 more than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 47.2 Amendments made under paragraph 47.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 47.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 47.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
 - 47.3.2 the Trust must give the members an opportunity to vote on whether they

approve the amendment.

If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

47.4 Amendments by the Trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

48. Mergers etc. and significant transactions

48.1 The Trust may only apply for a merger, acquisition, separation or dissolution (any of which is a statutory transaction) with the approval of more than half of the members of the Council of Governors.

48.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.

48.3 "Significant transaction" means a transaction which is not a statutory transaction but meets any one (1) of the following criteria:

48.3.1 the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 25% of the value of the Trust's annual turnover before acquisition;

48.3.2 the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 25% of the Trust's annual turnover before the disposition; or

48.3.3 the transaction has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 25% of the value of the Trust's annual turnover before the transaction.

48.4 For the purpose of this paragraph, in assessing the value of any contingent liability for the purposes of paragraph 48.3 the directors:

48.4.1 must have regard to all circumstances that the directors know, or ought to know, affect, or may affect, the value of the contingent liability;

48.4.2 may rely on estimates of the contingent liability that are reasonable in the circumstances; and

48.4.3 may take account of the likelihood of the contingency occurring.

48.5 The views of the Council of Governors will be taken into account before the Trust enters into any proposed transaction which would exceed the threshold of 10% for any of the criteria set out in paragraph 48 above.

48.6 A transaction excludes:

48.6.1 a transaction in the ordinary course of business, including the renewal, extension, or entering into an agreement in respect of healthcare services carried out by the Trust; and

48.6.2 any agreement or changes to healthcare services carried out by the Trust following a reconfiguration of services led by the commissioners of such services.

49. Indemnity

49.1 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, the Council of Governors, the Board of Directors, and the Secretary.

ANNEX 1 – THE PUBLIC CONSTITUENCIES

The Public Constituency is divided in to three (3) classes as follows:

Areas comprising the Public Constituency	Local Authority areas/or local authority electoral areas falling within the following Electoral Wards	Minimum number of Members	Number of elected Governors
South Hams and Plymouth	South Hams Local Authority City of Plymouth Unitary Authority Electoral wards: Plympton Chaddlewood, Plympton St Mary, Plympton Erle, Plympton Dunstock and Plymstock Radford	Five hundred (500)	Three (3)
Torbay	Torbay Unitary Authority	Five hundred (500)	Seven (7)
Teignbridge	Teignbridge District Council	Five hundred (500)	Seven (7)

ANNEX 2 – THE STAFF CONSTITUENCY

The Staff Constituency is divided in to six (6) classes as follows:

Classes comprising the Staff Constituency	Minimum number of Members	Number of elected Governors
Coastal Integrated Service Unit	One hundred (100)	One (1)
Moor to Sea Integrated Service Unit	One hundred (100)	One (1)
Newton Abbot Integrated Service Unit	One hundred (100)	One (1)
Paignton and Brixham Integrated Service Unit	One hundred (100)	One (1)
Torquay Integrated Service Unit	One hundred (100)	One (1)
Trustwide Operations and Corporate Services Integrated Service Unit	One hundred (100)	One (1)

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors shall comprise **32** Governors comprised as set out below and illustrated in the following table:

- Seventeen (17) Governors elected by members of the Trust from the Public Constituency with each area appointing the number of Governors as set out in the table below:
- Six (6) Governors selected by the Staff Constituency, with the following number of Governors elected from each class within the Staff Constituency by that class:

Coastal Integrated Service Unit	1
Moor to Sea Integrated Service Unit	1
Newton Abbot Integrated Service Unit	1
Paignton and Brixham Integrated Service Unit	1
Torquay Integrated Service Unit	1
Trustwide Operations and Corporate Services Integrated Service Unit	1

- One (1) Governor appointed by each of the following local authorities or any successor local authority for an area which includes the whole or part of an area forming part of the Public Constituency set out at Appendix 1:

South Hams District Council
Teignbridge District Council
Torbay Unitary Authority

- One (1) Governor appointed by Devon County Council
- One (1) Governor appointed by NHS Devon Clinical Commissioning Group
- One (1) Governor appointed by Devon Partnership NHS Trust
- One (1) Governor appointed by each of the following universities:

University of Exeter Medical School
Plymouth University Peninsula School of Medicine and Dentistry

- One (1) Governor appointed by Devon Carers Strategy Board and/or Torbay Carers Strategy Steering Group

Table:

Public Constituency	Number of Public Governor seats	
South Hams and Plymouth		3
Teignbridge		7
Torbay		7
	Sub Total	17
Staff Constituency		
Staff Constituency	Number of Staff Governor seats	
Coastal Integrated Service Unit		1
Moor to Sea Integrated Service Unit		1
Newton Abbot Integrated Service Unit		1
Paignton and Brixham Integrated Service Unit		1
Torquay Integrated Service Unit		1
Trustwide Operations and Corporate Services Integrated Service Unit		1
	Sub Total	6
Appointed Governors' Constituency		
Devon County Council		1
South Hams District Council		1
Teignbridge District Council		1
Torbay District Council		1
NHS Devon Clinical Commissioning Group		1
Devon Partnership NHS Trust		1
University of Exeter Medical School		1
Plymouth University Peninsula School of Medicine and Dentistry		1
Voluntary Sector: Devon Carers		1
	Sub Total	9
	Total	32

ANNEX 4 –THE MODEL ELECTION RULES

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1. Interpretation

1.1 In these rules, unless the context otherwise requires:

“*2006 Act*” means the National Health Service Act 2006;

“*corporation*” means the public benefit corporation subject to this constitution;

“*council of governors*” means the council of governors of the corporation;

“*declaration of identity*” has the meaning set out in rule 21.1;

“*election*” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the council of governors;

“*e-voting*” means voting using either the internet, telephone or text message;

“*e-voting information*” has the meaning set out in rule 24.2;

“*ID declaration form*” has the meaning set out in Rule 21.1; “*internet voting record*” has the meaning set out in rule 26.4(d);

“*internet voting system*” means such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet;

“*lead governor*” means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (Monitor, December 2013) or any later version of such code;

“*list of eligible voters*” means the list referred to in rule 22.1, containing the information in rule 22.2;

“*method of polling*” means a method of casting a vote in a poll, which may be by post, internet, text message or telephone;

“*Monitor*” means the corporate body known as Monitor as provided by section 61 of the 2012 Act;

“*numerical voting code*” has the meaning set out in rule 64.2(b);

“*polling website*” has the meaning set out in rule 26.1;

“*postal voting information*” has the meaning set out in rule 24.1;

“telephone short code” means a short telephone number used for the purposes of submitting a vote by text message;

“telephone voting facility” has the meaning set out in rule 26.2;

“telephone voting record” has the meaning set out in rule 26.5 (d);

“text message voting facility” has the meaning set out in rule 26.3;

“text voting record” has the meaning set out in rule 26.6 (d);

“the telephone voting system” means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;

“the text message voting system” means such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message;

“voter ID number” means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting; and

“voting information” means postal voting information and/or e-voting information.

1.2 Other expressions used in these rules and in Schedule 7 to the NHS Act 2006 have the same meaning in these rules as in that Schedule.

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

2.1 The proceedings at an election shall be conducted in accordance with the following timetable:

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination forms to returning officer	Not later than the twenty eighth day before the day of the close of the poll.
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election	Not later than twenty fifth day before the day of the close of the poll.
Notice of the poll	Not later than the fifteenth day before the day of the close of the poll.
Close of the poll	By 5.00pm on the final day of the election.

3. Computation of time

3.1 In computing any period of time for the purposes of the timetable:

- (a) a Saturday or Sunday;
- (b) Christmas day, Good Friday, or a bank holiday; or
- (c) a day appointed for public thanksgiving or mourning,

shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll, nor shall the returning officer be obliged to proceed with the counting of votes on such a day.

3.2 In this rule, “bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

PART 3: RETURNING OFFICER

4. Returning Officer

- 4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

- 5.1 Subject to rule 69, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

6. Expenditure

- 6.1 The corporation is to pay the returning officer:
- (a) any expenses incurred by that officer in the exercise of his or her functions under these rules; and
 - (b) such remuneration and other expenses as the corporation may determine.

7. Duty of co-operation

- 7.1 The corporation is to co-operate with the returning officer in the exercise of his or her functions under these rules.

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

8.1 The returning officer is to publish a notice of the election stating:

- (a) the constituency, or class within a constituency, for which the election is being held;
- (b) the number of members of the council of governors to be elected from that constituency, or class within that constituency;
- (c) the details of any nomination committee that has been established by the corporation;
- (d) the address and times at which nomination forms may be obtained;
- (e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer;
- (f) the date and time by which any notice of withdrawal must be received by the returning officer;
- (g) the contact details of the returning officer; and
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

9.1 Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.

9.2 The returning officer:

- (a) is to supply any member of the corporation with a nomination form; and
- (b) is to prepare a nomination form for signature at the request of any member of the corporation,

but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

- (a) full name;

- (b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication); and
- (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

11.1 The nomination form must state:

- (a) any financial interest that the candidate has in the corporation; and
- (b) whether the candidate is a member of a political party, and if so, which party,

and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility

12.1 The nomination form must include a declaration made by the candidate:

- (a) that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and
- (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate

13.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:

- (a) they wish to stand as a candidate;
- (b) their declaration of interests as required under rule 11, is true and correct; and
- (c) their declaration of eligibility, as required under rule 12, is true and correct.

13.2 Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will need to be complied with by the candidate.

14. Decisions as to the validity of nomination

14.1 Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:

- (a) decides that the candidate is not eligible to stand;
- (b) decides that the nomination form is invalid;
- (c) receives satisfactory proof that the candidate has died; or
- (d) receives a written request by the candidate of their withdrawal from candidacy.

14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:

- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election;
- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11;
- (d) that the paper does not include a declaration of eligibility as required by rule 12; or
- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

14.3 The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.

14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.

14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

15.1 The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

- 15.2 The statement must show:
- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing; and
 - (b) the declared interests of each candidate standing,
- as given in their nomination form.
- 15.3 The statement must list the candidates standing for election in alphabetical order by surname.
- 15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.
- 16. Inspection of statement of nominated candidates and nomination forms**
- 16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.
- 16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.
- 17. Withdrawal of candidates**
- 17.1 A candidate may withdraw from election on or before the date and time for withdrawal by candidates, by providing to the returning officer a written notice of withdrawal which is signed by the candidate and attested by a witness.
- 18. Method of election**
- 18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- 18.3 If the number of candidates remaining validly nominated for an

election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:

- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules; and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

- 19.1 The votes at the poll must be given by secret ballot.
- 19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- 19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.
- 19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:
- (a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
 - (b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
 - (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

20.2 Every ballot paper must specify:

- (a) the name of the corporation;
- (b) the constituency, or class within a constituency, for which the election is being held;
- (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency;
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;
- (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available;
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll; and
- (g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21. The declaration of identity (public and patient constituencies)

21.1 The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:

- (a) that the voter is the person:
 - (i) to whom the ballot paper was addressed; and/or
 - (ii) to whom the voter ID number contained within the e-voting information was allocated;
- (b) that he or she has not marked or returned any other voting information in the election; and
- (c) the particulars of his or her qualification to vote as a member

of the constituency or class within the constituency for which the election is being held,

(“declaration of identity”)

and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form (“ID declaration form”) or the use of an electronic method.

21.2 The voter must be required to return his or her declaration of identity with his or her ballot.

21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

22.2 The list is to include, for each member:

- (a) a postal address; and
- (b) the member’s e-mail address, if this has been provided,

to which his or her voting information may, subject to rule 22.3, be sent.

22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

23. Notice of poll

23.1 The returning officer is to publish a notice of the poll stating:

- (a) the name of the corporation;
- (b) the constituency, or class within a constituency, for which the election is being held;
- (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency;

- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post;
- (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3;
- (g) the address for return of the ballot papers;
- (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located;
- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located;
- (k) the date and time of the close of the poll;
- (l) the address and final dates for applications for replacement voting information; and
- (m) the contact details of the returning officer.

24. Issue of voting information by returning officer

24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:

- (a) a ballot paper and ballot paper envelope;
- (b) the ID declaration form (if required);
- (c) information about each candidate standing for election, pursuant to rule 61 of these rules; and
- (d) a covering envelope.

("postal voting information")

24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:

- (a) instructions on how to vote and how to make a declaration of identity (if required);

- (b) the voter's voter ID number;
- (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate; and
- (d) contact details of the returning officer.

("e-voting information")

24.3 The corporation may determine that any member of the corporation shall:

- (a) only be sent postal voting information; or
 - (b) only be sent e-voting information; or
 - (c) be sent both postal voting information and e-voting information,
- for the purposes of the poll.

24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.

24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

25.2 The covering envelope is to have:

- (a) the address for return of the ballot paper printed on it; and
- (b) pre-paid postage for return to that address.

25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer:

- (a) the completed ID declaration form if required; and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

26. E-voting systems

26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").

26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").

26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").

26.4 The returning officer shall ensure that the polling website and internet voting system provided will:

- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
- (b) specify:
 - (i) the name of the corporation;
 - (ii) the constituency, or class within a constituency, for which the election is being held;
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency;
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;
 - (v) instructions on how to vote and how to make a declaration of identity;
 - (vi) the date and time of the close of the poll; and
 - (vii) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter

using the internet that comprises of:

- (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted;
and
 - (iv) the date and time of the voter's vote;
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- (f) prevent any voter from voting after the close of poll.

26.5

The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:

- (a) require a voter to:
 - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
 - (i) the name of the corporation;
 - (ii) the constituency, or class within a constituency, for which the election is being held;
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency;
 - (iv) instructions on how to vote and how to make a declaration of identity;
 - (v) the date and time of the close of the poll; and
 - (vi) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted;
and

- (iv) the date and time of the voter's vote;
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- (f) prevent any voter from voting after the close of poll.

26.6 The returning officer shall ensure that the text message voting facility and text messaging voting system provided will:

- (a) require a voter to:
 - (i) provide his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
 in order to be able to cast his or her vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (ii) the candidate or candidates for whom the voter has voted; and
 - (iii) the date and time of the voter's vote;
- (d) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- (e) prevent any voter from voting after the close of poll.

The poll

27. Eligibility to vote

27.1 An individual who becomes a member of the corporation on or before the closing date for the receipt of nominations by candidates for the election, is eligible to vote in that election.

28. Voting by persons who require assistance

28.1 The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter

to vote.

29. Spoilt ballot papers and spoilt text message votes

29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.

29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:

- (a) is satisfied as to the voter’s identity; and
- (b) has ensured that the completed ID declaration form, if required, has not been returned.

29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):

- (a) the name of the voter;
- (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it); and
- (c) the details of the unique identifier of the replacement ballot paper.

29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.

29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.

29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.

29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):

- (a) the name of the voter;

- (b) the details of the voter ID number on the spoiled text message vote (if that officer was able to obtain it); and
- (c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.

30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:

- (a) is satisfied as to the voter's identity;
- (b) has no reason to doubt that the voter did not receive the original voting information; and
- (c) has ensured that no declaration of identity, if required, has been returned.

30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):

- (a) the name of the voter;
- (b) the details of the unique identifier of the replacement ballot paper, if applicable; and
- (c) the voter ID number of the voter.

31. Issue of replacement voting information

31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):

- (a) the name of the voter;
- (b) the unique identifier of any replacement ballot paper issued under this rule; and

(c) the voter ID number of the voter.

32. ID declaration form for replacement ballot papers (public and patient constituencies)

32.1 In respect of an election for a public or patient constituency an ID declaration form must be issued with each replacement ballot paper requiring the voter to make a declaration of identity.

Polling by internet, telephone or text

33. Procedure for remote voting by internet

33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.

33.2 When prompted to do so, the voter will need to enter his or her voter ID number.

33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.

33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.

33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

34. Voting procedure for remote voting by telephone

34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.

34.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.

34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.

34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.

34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

35. Voting procedure for remote voting by text message

- 35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.
- 35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.
- 35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

Procedure for receipt of envelopes, internet votes, telephone votes and text message votes

36. Receipt of voting documents

- 36.1 Where the returning officer receives:
- (a) a covering envelope; or
 - (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,
- before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.
- 36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:
- (a) the candidate for whom a voter has voted; or
 - (b) the unique identifier on a ballot paper.
- 36.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

37. Validity of votes

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:

- (a) put the ID declaration form if required in a separate packet; and
- (b) put the ballot paper aside for counting after the close of the poll.

37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:

- (a) mark the ballot paper “disqualified”;
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper;
- (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
- (d) place the document or documents in a separate packet.

37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.

37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.

37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
- (c) place the document or documents in a separate packet.

38. Declaration of identity but no ballot paper (public and patient constituency) ¹

38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:

- (a) mark the ID declaration form “disqualified”;
- (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received

¹ It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

- from the voter without a ballot paper; and
- (c) place the ID declaration form in a separate packet.

39. De-duplication of votes

39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.

39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:

- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
- (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number.

39.3 Where a ballot paper is disqualified under this rule the returning officer shall:

- (a) mark the ballot paper “disqualified”;
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper;
- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”;
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
- (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet; and
- (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:

- (a) the disqualified documents, together with the list of disqualified documents inside it;
- (b) the ID declaration forms, if required;
- (c) the list of spoiled ballot papers and the list of spoiled text message votes;
- (d) the list of lost ballot documents;
- (e) the list of eligible voters; and
- (f) the list of tendered voting information,

and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

“ballot document” means a ballot paper, internet voting record, telephone voting record or text voting record;

“continuing candidate” means any candidate not deemed to be elected, and not excluded;

“count” means all the operations involved in counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of the excluded candidates;

“deemed to be elected” means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll;

“mark” means a figure, an identifiable written word, or a mark such as “X”;

“non-transferable vote” means a ballot document:

(a) on which no second or subsequent preference is recorded for a continuing candidate

or

(b) which is excluded by the returning officer under rule STV49;

“preference” as used in the following contexts has the meaning assigned below:

(a) *“first preference”* means the figure “1” or any mark or word which clearly indicates a first (or only) preference;

(b) *“next available preference”* means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and

(c) in this context, a *“second preference”* is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on;

“quota” means the number calculated in accordance with rule STV46;

“*surplus*” means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a combination of both) exceeds the quota; but references in these rules to the transfer of the surplus means the transfer (at a transfer value) of all transferable ballot documents from the candidate who has the surplus;

“*stage of the count*” means:

- (a) the determination of the first preference vote of each candidate;
- (b) the transfer of a surplus of a candidate deemed to be elected; or
- (c) the exclusion of one or more candidates at any given time;

“*transferable vote*” means a ballot document on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate;

“*transferred vote*” means a vote derived from a ballot document on which a second or subsequent preference is recorded for the candidate to whom that ballot document has been transferred; and

“*transfer value*” means the value of a transferred vote calculated in accordance with rules STV47.4 or STV47.7.

42. Arrangements for counting of the votes

42.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.

42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:

- (a) the board of directors and the council of governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election; and
 - (ii) a policy governing the use of such software; and
- (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

43.1 The returning officer is to:

- (a) count and record the number of:
 - (iii) ballot papers that have been returned; and

(iv) the number of internet voting records, telephone voting records and/or text voting records that have been created; and

(b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.

43.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced;
- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate;
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier; or
- (d) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

STV44.2 The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

STV44.3 Any text voting record:

- (a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate;
- (b) on which anything is written or marked by which the voter can be identified except the unique identifier; or
- (c) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the text voting record shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

STV44.4 The returning officer is to endorse the word “rejected” on any text voting record which under this rule is not to be counted.

STV44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule STV44.3.

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced;
- (b) on which votes are given for more candidates than the voter is entitled to vote;
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier; or
- (d) which is unmarked or rejected because of uncertainty,

shall, subject to rules FPP44.2 and FPP44.3, be rejected and not counted.

FPP44.2 Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

FPP44.3 A ballot paper on which a vote is marked:

- (a) elsewhere than in the proper place;
- (b) otherwise than by means of a clear mark; or
- (c) by more than one mark,

is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the paper is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

- FPP44.4 The returning officer is to:
- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted; and
 - (b) in the case of a ballot paper on which any vote is counted under rules FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

FPP44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:

- (a) does not bear proper features that have been incorporated into the ballot paper;
- (b) voting for more candidates than the voter is entitled to;
- (c) writing or mark by which voter could be identified; and
- (d) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of ballot papers rejected in part.

FPP44.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,
- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty,

shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.

FPP44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

FPP44.8 A text voting record on which a vote is marked:

- (a) otherwise than by means of a clear mark; or
- (b) by more than one mark,

is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the text voting record is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

- FPP44.9 The returning officer is to:
- (a) endorse the word “rejected” on any text voting record which under this rule is not to be counted; and
 - (b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

FPP44.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:

- (a) voting for more candidates than the voter is entitled to;
- (b) writing or mark by which voter could be identified; and
- (c) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of text voting records rejected in part.

STV45. First stage

STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.

STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.

STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

STV46. The quota

STV46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.

STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.

STV47. Transfer of votes

- STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub-parcels so that they are grouped:
- (a) according to next available preference given on those ballot documents for any continuing candidate; or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:
- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus; and
 - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate; or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:

- (a) a transfer value calculated as set out in rule STV47.4(b); or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

STV47.8 Each transfer of a surplus constitutes a stage in the count.

STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:

- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote; or
- (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.

STV47.11 This rule does not apply at an election where there is only one vacancy.

STV48. Supplementary provisions on transfer

STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first; and
- (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.

STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:

- (a) record the total value of the votes transferred to each candidate;

- (b) add that value to the previous total of votes recorded for each candidate and record the new total;
- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes; and
- (d) compare:
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes; with
 - (ii) the recorded total of valid first preference votes.

STV48.3 All ballot documents transferred under rule STV47 or STV49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

STV49. Exclusion of candidates

STV49.1 If:

- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred; and
- (b) subject to rule STV50, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).

STV49.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

- (a) ballot documents on which a next available preference is given; and

- (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).
- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV49.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
 - (a) record:
 - (i) the total value of votes; or
 - (ii) the total transfer value of votes transferred to each candidate;
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total;
 - (c) record the value of non-transferable votes and add that value to

the previous non-transferable votes total; and

- (d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes; with
 - (ii) the recorded total of valid first preference votes.

STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.

STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.

STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded; and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

STV50. Filling of last vacancies

STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

STV51. Order of election of candidates

STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.

STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP51. Equality of votes

FPP51.1 Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected;
- (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust; or
 - (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

FPP52.2 The returning officer is to make:

- (a) the total number of votes given for each candidate (whether elected or not);
- (b) the number of rejected ballot papers under each of the headings in rule FPP44.5; and
- (c) the number of rejected text voting records under each of the headings in rule FPP44.10,

available on request.

STV52. Declaration of result for contested elections

STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected;
- (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution

pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust; or

- (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2 The returning officer is to make:

- (a) the number of first preference votes for each candidate whether elected or not;
- (b) any transfer of votes;
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place;
- (d) the order in which the successful candidates were elected;
- (e) the number of rejected ballot papers under each of the headings in rule STV44.1; and
- (f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

53. Declaration of result for uncontested elections

53.1 In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:

- (a) declare the candidate or candidates remaining validly nominated to be elected;
- (b) give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation; and
- (c) give public notice of the name of each candidate who he or she has declared elected.

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

54.1 On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:

- (a) the counted ballot papers, internet voting records, telephone voting records and text voting records;
- (b) the ballot papers and text voting records endorsed with “rejected in part”;
- (c) the rejected ballot papers and text voting records; and
- (d) the statement of rejected ballot papers and the statement of rejected text voting records,

and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

54.2 The returning officer must not open the sealed packets of:

- (a) the disqualified documents, with the list of disqualified documents inside it;
- (b) the list of spoilt ballot papers and the list of spoilt text message votes;
- (c) the list of lost ballot documents; and
- (d) the list of eligible voters,

or access the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage.

54.3 The returning officer must endorse on each packet a description of:

- (a) its contents;
- (b) the date of the publication of notice of the election;
- (c) the name of the corporation to which the election relates; and
- (d) the constituency, or class within a constituency, to which the election relates.

55. Delivery of documents

55.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 56, the returning officer is to forward them to the chair of the corporation.

56. Forwarding of documents received after close of the poll

56.1 Where:

- (a) any voting documents are received by the returning officer after the close of the poll;
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent; or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued,

the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chairman of the corporation.

57. Retention and public inspection of documents

57.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.

57.2 With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

57.3 A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

58. Application for inspection of certain documents relating to an election

58.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing:
 - (i) any rejected ballot papers, including ballot papers rejected in part;
 - (ii) any rejected text voting records, including text voting records rejected in part;
 - (iii) any disqualified documents, or the list of disqualified

documents;

(iv) any counted ballot papers, internet voting records, telephone voting records or text voting records; or

(v) the list of eligible voters; or

(b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,

by any person without the consent of the board of directors of the corporation.

58.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

58.3 The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to:

(a) persons;

(b) time;

(c) place and mode of inspection; and

(d) production or opening,

and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

58.4 On an application to inspect any of the documents listed in rule 58.1 the board of directors of the corporation must:

(a) in giving its consent; and

(b) in making the documents available for inspection,

ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established:

(i) that his or her vote was given; and

(ii) that Monitor has declared that the vote was invalid.

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class; and
- (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.

FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.

FPP59.5 The returning officer is to:

- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received;
- (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records; and
- (c) ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

FPP59.6 The returning officer is to endorse on each packet a description of:

- (a) its contents;
- (b) the date of the publication of notice of the election;
- (c) the name of the corporation to which the election relates; and
- (d) the constituency, or class within a constituency, to which the election relates.

FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate

STV59.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

- (a) publish a notice stating that the candidate has died; and
- (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that:
 - (i) ballot documents which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted; and
 - (ii) ballot documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

STV59.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1(a).

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

60.1 Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application made to Monitor under Part 11 of these rules.

61. Expenses and payments by candidates

61.1 A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:

- (a) personal expenses;
- (b) travelling expenses, and expenses incurred while living away from home; and
- (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

62. Election expenses incurred by other persons

62.1 No person may:

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise; or
- (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

62.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

- (a) compile and distribute such information about the candidates;

and

- (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:

- (a) objective, balanced and fair;
- (b) equivalent in size and content for all candidates;
- (c) compiled and distributed in consultation with all of the candidates standing for election; and
- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

63.3 Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

64. Information about candidates for inclusion with voting information

64.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

64.2 The information must consist of:

- (a) a statement submitted by the candidate of no more than 250 words;
- (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”); and
- (c) a photograph of the candidate.

65. Meaning of “for the purposes of an election”

65.1 In this Part, the phrase “for the purposes of an election” means with a

view to, or otherwise in connection with, promoting or procuring a candidate's election, including the prejudicing of another candidate's electoral prospects; and the phrase "for the purposes of a candidate's election" is to be construed accordingly.

65.2 The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

**PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF
IRREGULARITIES**

66. Application to question an election

- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel (IEAP).
- 66.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 66.3 An application may only be made to Monitor by:
- (a) a person who voted at the election or who claimed to have had the right to vote; or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 66.4 The application must:
- (a) describe the alleged breach of the rules or electoral irregularity; and
 - (b) be in such a form as the independent panel may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

67. Secrecy

67.1 The following persons:

- (a) the returning officer; and
- (b) the returning officer's staff,

must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to:

- (i) the name of any member of the corporation who has or has not been given voting information or who has or has not voted;
- (ii) the unique identifier on any ballot paper;
- (iii) the voter ID number allocated to any voter; or
- (iv) the candidate(s) for whom any member has voted.

67.2 No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter or the voter ID number allocated to a voter.

67.3 The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

68. Prohibition of disclosure of vote

68.1 No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state for whom he or she has voted.

69. Disqualification

69.1 A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is:

- (a) a member of the corporation;
- (b) an employee of the corporation;
- (c) a director of the corporation; or
- (d) employed by or on behalf of a person who has been nominated for election.

70. Delay in postal service through industrial action or unforeseen event

70.1 If industrial action, or some other unforeseen event, results in a delay in:

- (a) the delivery of the documents in rule 24; or
- (b) the return of the ballot papers,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll by such period as he or she considers appropriate.

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

1. Roles and responsibilities of the Council of Governors

1.1 The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with the Constitution:

- 1.1.1. to appoint, and if appropriate, to remove the Chair;
- 1.1.2. to appoint, and if appropriate, remove the other non-executive directors;
- 1.1.3. to decide the remuneration and allowances and conditions of office of the Chairman and other non-executive directors;
- 1.1.4. to approve the appointment of the Chief Executive;
- 1.1.5. to appoint, and if appropriate, remove the auditor;
- 1.1.6. receive the Trust's annual accounts, and any report of the auditor on them, and the annual report;
- 1.1.7. in preparing the Trust's annual plan, the Board of Directors must have regard to the views of the Council of Governors;
- 1.1.8. to decide whether the Trust's private patient work would significantly interfere with the Foundation Trust's principal purpose, which is to provide goods and services for the health service in England, or performing the Foundation Trust's other functions;
- 1.1.9. to approve any proposed increase in non-NHS income of 5% of the Trust's total income in any one financial year;
- 1.1.10. to hold the non-executive directors, individually and collectively, to account for the performance of the Board of Directors;
- 1.1.11. to represent the interests of the members of the Trust as a whole and the interests of the public;
- 1.1.12. to act in the best interests of the Trust and to adhere to its values and code of conduct;
- 1.1.13. to regularly feedback information about the Trust, its vision and its performance to the constituencies and stakeholder organisations that either elected them or appointed them;
- 1.1.14. to prepare and review on an annual basis the Trust's membership strategy and its policy for the composition of the Council of Governors and of the non-executive directors; and
- 1.1.15. when appropriate, to make recommendations for the revision of this Constitution.

2. Appointed Governors

Local Authority Governors

2.1 The Chairman, having consulted with Devon County Council, South Hams District Council, Teignbridge District Council and Torbay Unitary Authority,

or any successor local authority for an area which includes the whole or part of an area forming part of the Public Constituency, is to adopt a process for agreeing the appointment of one (1) Local Authority Governor from each of those local authorities.

Partnership Governors

- 2.2** The Partnership Governors are to be appointed by the partnership organisations, in accordance with a process agreed with the Chairman.

General Provisions

- 2.3** Appointed Governors:

- 2.3.1** appointed Governors shall normally hold office for a period of three (3) years commencing on the date such appointment is to have effect;
- 2.3.2** appointed Governors are eligible for re-appointment at the end of that period; and
- 2.3.3** appointed Governors may not where re-appointed hold office for longer than nine (9) consecutive years, and shall not be eligible for re-appointment if they have already held office for more than six (6) consecutive years. One year is consecutive with another unless there is a period of not less than one year between them.

- 2.4** Additional Roles and Responsibilities of Appointed Governors Subject always to the overriding principle that the Governors' first responsibility is to the Council of Governors and the Trust:

- 2.4.1** the roles and responsibilities of the Appointed Governors which are to be carried out in accordance with the Constitution include:
- 2.4.1.1** to further the relationship between the organisation that the Appointed Governors represent and the Trust;
- 2.4.1.2** to bring to the Council of Governors a greater understanding of the organisation that the Appointed Governors represents;
- 2.4.1.3** to speak with authority for the organisation they represent and be able to explain its policies; and
- 2.4.1.4** to represent the Trust to the organisation they represent.

3. Eligibility to be a Governor

- 3.1** A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so, if:
- 3.1.1** they are a director of the Trust, or a Governor or director of a NHS body as defined in section 28(6) of the 2006 Act (unless they are an appointed Governor appointed by the NHS body for which they are a Governor or director);
- 3.1.2** they are the spouse, partner, parent or child of a member of the Board of Directors (including the Chair) of the Trust;
- 3.1.3** being a member of the Public Constituency they refuse to sign a declaration in the form specified by the Secretary, of particulars of their

- qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors;
- 3.1.4** they are a vexatious complainant within the meaning of paragraph 1.1.2 in Appendix 9;
 - 3.1.5** on the basis of disclosures obtained through an application to the Disclosure Barring Service, they are not considered suitable by the Chairman on the basis of advice from the Trusts' director responsible for human resources;
 - 3.1.6** They have not within the preceding two (2) years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment within a NHS Body;
 - 3.1.7** they are a person whose tenure of office as the Chair or as a member or director of a NHS Body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of pecuniary interests;
 - 3.1.8** they are a person who has had his or her name removed or been suspended from any list (including any performers list maintained by a clinical commissioning group) prepared under the 2006 Act or under any related subordinate legislation or who has otherwise been suspended or disqualified from any healthcare profession, and has not had subsequently had his or her name included in such list or had his or her suspension lifted or qualification reinstated;
 - 3.1.9** they are incapable by reason of mental disorder, illness or injury of carrying out their functions as a Governor and it is anticipated that such incapacity will continue for a period of six (6) months or the remainder of the Governor's tenure of office;
 - 3.1.10** they have within the preceding five (5) years been:
 - 3.1.10.1** made subject to a Hospital Order under section 37 of the Mental Health Act (MHA) whether or not subject to restriction under section 41;
 - 3.1.10.2** made subject to restrictions under section 41;
 - 3.1.10.3** made subject to a transfer direction under the Criminal Procedure (insanity) Act 1964 as amended; and/or
 - 3.1.11** they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirement to register under current legislation; or
 - 3.1.12** they have been excluded from the Trust's premises on the grounds of having been violent and/or abusive towards staff, patients and/or visitors or are subject to an anti-social behaviour order.

4. Termination of office and removal of Governors

- 4.1** A person holding office as a Governor shall immediately cease to do so if:
 - 4.1.1** they resign by notice in writing to the Secretary;
 - 4.1.2** they are under sixteen (16) years of age;
 - 4.1.3** they fail to attend two (2) consecutive meetings, unless the Chairman, in consultation with the Council of Governors, is satisfied that:
 - 4.1.3.1** the absences are due to reasonable causes; and

- 4.1.3.2** they will be able to start attending meetings of the Council of Governors again within such a period as is considered reasonable.
- 4.1.4** in the case of an elected Governor, they cease to be a member of the Constituency or class or area of the Constituency by which they were elected, which for the avoidance of doubt, includes in respect of a Public Governor a Governor moving their principal residence from one area within the Public Constituency to another or they are an elected member of a Devon County Council, South Hams District Council, Teignbridge District Council of Torbay Unitary Authority;
- 4.1.5** in the case of an Appointed Governor, the appointing organisation terminates the appointment;
- 4.1.6** they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;
- 4.1.7** they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for Governors;
- 4.1.8** they have failed to sign and deliver a letter of acceptance in the form required by the Secretary, and/or it becomes apparent that any information provided by the person in respect of their eligibility to be a Governor or such letter of acceptance is or becomes inaccurate;
- 4.1.9** they are removed from the Council of Governors under the following provision:
- 4.1.9.1** a Governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting on the grounds that he or she has committed a serious breach of the code of conduct for Governors, or he or she has acted in a manner detrimental to the interests of the Trust, and the Council of Governors consider that it is not in the best interests of the Trust for him or her to continue as a Governor. The Governor concerned may make representation on his or her own behalf to the Council of Governors.
- 4.1.10** a declaration is made pursuant to paragraph 4.4.5 below.
- 4.2** Each Governor shall be responsible for ensuring that they are eligible to become or continue as a Governor of the Trust.
- 4.3** If a Governor has been disqualified pursuant to paragraphs 4.1.2, 4.1.5 or 4.1.6 they shall only be eligible for re-election after a period of three (3) years.
- 4.4** Without prejudice to paragraph 4.2 of this Appendix 5:
- 4.4.1** where the Trust is on notice that a Governor may be disqualified from membership in accordance with this Constitution, the Secretary shall carry out all reasonable enquiries to determine whether or not the Governor in question is so eligible;
- 4.4.2** the Secretary, following their enquiries pursuant to paragraph 4.4.1 above, if, satisfied that the person may be so disqualified, shall give notice in writing to that person that the Trust proposes to declare the person disqualified;

- 4.4.3** in the notice sent by the Secretary pursuant to paragraphs 4.4.2 above, the Secretary shall specify the grounds on which it appears to them that the person is disqualified and give that person a period of at least 14 but no more than 28 days in which to make representations, orally or in writing, on the proposed disqualification;
- 4.4.4** Any representations pursuant to paragraph 4.4.3 above shall be made to, and considered by, a committee of the Directors, which in this case shall determine the proposal; and
- 4.4.5** if no representations pursuant to paragraph 4.4.4 above are received within the specified time or the committee of Directors upholds the proposal to disqualify the Governor having heard representations, the Secretary shall immediately declare that the person in question is disqualified and notify him or her in writing to that effect. On such declaration that person's tenure of office shall be terminated and he or she shall cease to act as a Governor.
- 4.5** If a Governor is aggrieved at his or her disqualification under paragraph 4.4, then s/he may apply in writing within 7 days (time of the essence) to the Secretary for the decision to be referred to an independent assessor. The independent assessor will then consider the evidence and conclude whether the proposed removal is reasonable or otherwise. On receipt of an application the Secretary and the applicant Governor will co-operate in good faith to agree on the appointment of the independent assessor. If they fail to agree on an independent assessor within 21 days of the date upon which the application is received, then the Trust Secretary shall request the Centre for Effective Dispute Resolution to nominate the independent assessor. The independent assessor's decision will be binding and conclusive on the parties.
- 4.6** Pending a final decision to be made in accordance with the provisions in paragraphs 4.4 and/or 4.5, the Chair or (following its appointment) the committee of Directors may in his, her or their absolute discretion suspend a Governor.
- 4.7** Pending a final decision to be made in accordance with the provisions in paragraphs 4.4 and/or 4.5, a Governor may not resign without the agreement of the Chair or (following its appointment) the committee of Directors if the Secretary has given notice in writing to that Governor under paragraph 4.4.2 that the Trust proposes to declare the Governor disqualified.

5. Vacancies amongst Governors

- 5.1** Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions apply:
- 5.1.1** where the vacancy arises amongst the Appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of that term of office of the Governor who is being replaced; or

- 5.1.2 where the vacancy arises amongst the Elected Governors, the Council of Governors shall be at liberty either:
- 5.1.2.1 to call an election to fill the seat at the next annual election for the remainder of the terms of office of the Governor who is being replaced; or
- 5.1.2.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and be subject to election.

6. Expenses and Remuneration of Governors

- 6.1 The Trust may reimburse Governors for travelling and other costs and expenses incurred in carrying out their duties as the Board of Directors decides.
- 6.2 The Trust may at their discretion decide to reimburse the cost and expense of a Governor's carer arrangements necessarily and reasonably incurred in such Governor carrying out their duties as the Board of Directors decides.
- 6.3 In respect of a Staff Governor who is an employee of the Trust, the Board of Directors shall seek to facilitate such employee's reasonable participation as a Staff Governor during normal working hours to the extent reasonably necessary for the performance of their duties as a Staff Governor (including reasonable time off from his or her contracted duties) and shall not make any corresponding deduction from salary.
- 6.4 Governors are not to receive remuneration from the Trust otherwise than as set out in paragraphs 6.1 and/or 6.2 and/or 6.3 above of this Appendix 5.

7. Governors' Code of Conduct

- 7.1 The Trust from time to time publish a Governors' code of conduct and each Governor shall be required to follow and observe such code of conduct's provisions.

**ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF
THE COUNCIL OF GOVERNORS**

1. Meetings of the Council of Governors

- 1.1 The Council of Governors is to meet a minimum of four (4) times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen (14) days' written notice of the date and place of every meeting of the Council of Governor to all Governors. Notice of the Council of Governor's meetings will be made public by whatever communications method the Trust determines.
- 1.2 Meetings of the Council of Governors may be called by the Secretary, or by the Chair.
- 1.3 Meetings of the Council of Governors may be called by ten (10) Governors, which shall include at least one (1) elected Governor and one (1) appointed Governor, who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request.
- 1.4 The Secretary shall call a meeting on at least seven (7) but no more than twenty-eight (28) days' notice.
- 1.5 If the Secretary fails to call such a meeting following notice pursuant to paragraph 1.3 above then the Chair of ten (10) Governors, which ever is the case, shall call such a meeting.
- 1.6 At least one-third of Governors shall form quorum for the Council of Governors.
- 1.7 Meetings of the Council of Governors' shall be chaired by the Trust Chair. On matters concerning the succession of the Chair, the Senior Independent Director will preside.
- 1.8 The Council of Governors may invite the Chief Executive or any other member or members of the Board of Directors, or a representative of the auditor or other advisers to attend a meeting of the Council of Governors.
- 1.9 Any Governor who is unable to attend the Council of Governors meeting should advise the Secretary in advance of the meeting.
- 1.10 Any Governor who is not able to be present in person may participate in a

Council of Governor's meeting by means of conference telephone or any other such electronic means, which allows all participating in the meeting to hear each other. A Governor so participating shall be deemed to be present in person at such meeting and shall be entitled to vote and counted in the quorum. Such a Council of Governor's meeting shall be deemed to take place where the largest group of those participating is assembled, or, if there is no such group, where the Chair is located.

1.11 Subject to the Constitution and the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.

1.12 Not used

1.13 The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions. The Council of Governors may appoint Governors and may invite directors and other persons to serve on such committees. The Council of Governors may, through the Secretary, request that external advisors assist them to any committee they appoint in carrying out its duties.

1.14 All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid notwithstanding any vacancy or any defect in the calling of the meeting, or the election or appointment of the Governors attending the meeting.

1.15 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for the whole or part of such meeting in the following circumstances:

1.15.1 where the Council of Governors by resolution decides for reasons of commercial confidentiality for other special reasons arising from the business of the meeting; or

1.15.2 wherever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted.

1.16 The Chairman may exclude a member of the public if they are interfering with or preventing the proper conduct of the meeting.

Proposing Council of Governors' motions

1.17 Questions on notice are defined as questions from Governors about matters which are directly in relation to matters over which the Council of Governors had powers or duties, or which affect the services provided by

the Trust.

- 1.18** A Governor may ask a question which is not related to items on the forthcoming Council of Governors' agenda.
- 1.19** An answer may take the form of: a direct oral answer; where the information is in a publication of the Trust or other published work by reference to that publication; where the reply cannot be conveniently be given orally in the form of a written answer circulated later to the questioner and the Council of Governors; or by brief oral answer supplemented by a written answer circulated later to the questioner and the Council of Governors.
- 1.20** Approval to speak at Council of Governors' meetings will be given by the Chair. Unless in the opinion of the Chair it would not be desirable or appropriate to time limit speeches on any topic to be discussed having regard to its nature, complexity and importance, no proposal speech, nor any reply, may exceed three minutes. in the interests of time, the Chair may limit the number of replies which are heard.
- 1.21** A person who has spoken on a motion may not speak again whilst it is the subject of debate, except in exercise of right of reply, on a point of order, or, at the discretion of the Chair.
- 1.22** Supplementary questions for clarification may be asked at the discretion of the Chair.
- 1.23** Motions may only be submitted by Governors and must be received by the Secretary in writing at least fourteen (14) days before the meeting date, together with any relevant supporting paper. Except for motions which can be moved without notice under 1.23, written notice of every motion signed or transmitted by at least two (2) Governors, is required. The Secretary shall acknowledge such motions.
- 1.24** Urgent motions may be submitted before the commencement of meetings of the Council of Governors, provided that the motions are signed or transmitted by at least two (2) Governors. Consideration of urgent motions shall be at the discretion of the Chair.
- 1.25** The following motions may be moved without notice: accuracy of the minutes; change the order of business in the agenda; refer something to an appropriate body or individual; appoint a working group arising from an item on the agenda; receive reports or adopt recommendations made by the Board of Directors; withdraw a motion; amend a motion (without

substantially altering the intention of the motion); proceed to the next business; that the question now be put; adjourn a debate; adjourn a meeting; suspend a Council of Governors procedure rule (for the duration of the meeting); exclude the public and press; give the consent of the Council of Governors where its consent is required by the Constitution; or, not hear further a Governor or to exclude them from the meeting.

Proposing Council of Governors' Written Resolutions

- 1.26** The Secretary, the Chair, or ten (10) Governors, including one Elected Governor and one Appointed Governor, who give written notice to the Secretary specifying the business to be carried out may propose a Council of Governors' written resolution.
- 1.27** The following may not be passed as a written resolution: the removal of a Non-Executive Director or Chair; removal of the auditor; or, approval of a significant transaction.
- 1.28** A Council of Governors' written resolution is proposed by giving written notice of the proposed resolution to each Governor. Notice by post, delivery in person, fax or email shall constitute written notice.
- 1.29** Notice of a proposed Council of Governors written resolution must indicate:
 - 1.29.1** the proposed resolution;
 - 1.29.2** how to signify agreement to the resolution; and
 - 1.29.3** the date by which it is proposed that the Council of Governors should adopt it. A proposed written resolution shall lapse if not adopted by the 28th day from circulation.
- 1.30** References in this paragraph to eligible Governors are to members of the Council of Governors who would have been entitled to vote on the matter had it been proposed at a meeting of the Council of Governors.
- 1.31** A decision may not be taken in accordance with this paragraph if the eligible governors would not have formed a quorum at such a meeting.
- 1.32** The resolution is deemed to have been passed when the required majority (simple majority, or 75% majority if a special resolution) as appropriate of eligible Governors have signed their agreement to it.
- 1.33** Where decisions of the Council of Governors are taken by means other than at a face-to-face meeting or by written resolution, such decisions shall be recorded by the Secretary in permanent written form.

2. Disclosure of interests

- 2.1** Members of the Council of Governor's shall disclose to the Council of Governor's any material interests as defined below held by a Governor, and shall withdraw from the meeting and play no part in the relevant discussion or decision and shall not vote on the issue (and if advertently they do remain and vote, their vote shall not be counted).
- 2.2** Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Governors.
- 2.3** Subject to the exceptions below, a material interest in a matter is where a Governor:
- 2.3.1** holds any directorship, including non-executive directorship, (with the exception of dormant companies) of a company;
 - 2.3.2** holds any interest or position in any firm or company or business;
 - 2.3.3** has any interest in an organisation providing health and social care services to the National Health Service; or
 - 2.3.4** holds any position of authority in a charity or voluntary organisation in the field of health and social care;

and such organisation is, in connection with the matter, trading with the Trust or entering into a financial arrangement with the Trust, or is likely to be considered as a potential contractor to the Trust.

- 2.4** The exceptions which shall not be treated as material interests are as follows:
- 2.4.1** shares held in any company where the value of those securities does not exceed £25,000 or the number of shares held does not exceed 5% of the total number of issued shares in a company whose shares are listed on any public exchange;
 - 2.4.2** an employment contract with the Trust held by a Staff Governor;
 - 2.4.3** an employment contract with a local authority held by a Local Authority Governor;
 - 2.4.4** an employment contract with a partnership organisation held by a Partnership Governor; or
 - 2.4.5** any travelling or other expenses or allowances payable to a Governor.

3. Declaration

An Elected Governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Secretary of the particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a member of the Council of Governors. An Elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors.

4. Council of Governors Committees, Sub-Committees and Groups

4.1 The Council of Governors shall establish a nominations committee for the purpose of discharging its duties in accordance with the 2006 Act and the NHS Foundation Trust Code of Governance. The nominations committee will decide the remuneration and allowances and other terms and conditions of office of the Chairman and other non-executive directors.

4.2 The Council of Governors may appoint additional committees consisting of its members to assist it in carrying out its functions. A committee appointed under this paragraph may also appoint a sub-committee.

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

The Standing Orders for the Board of Directors must provide for:

- 1.1** Provision for the composition, membership, tenure and role of members of the Board of Directors.
- 1.2** Provision for the conduct of meetings including:
 - 1.2.1** Notices of motions, petitions, the withdrawal of motions and motions to rescind resolutions;
 - 1.2.2** Voting, which may not provide for voting otherwise than on the basis of one vote for each Director apart from the Chair of the meeting;
 - 1.2.3** Provision for proxies;
 - 1.2.4** Chairing the meeting in the absence of the Trust Chair;
 - 1.2.5** Powers of the Chair to determine the conduct of the meeting;
 - 1.2.6** Circumstances where persons other than Directors may be allowed to speak at meetings;
 - 1.2.7** Quorum;
 - 1.2.8** Provision for a record of attendance and the requirement for minutes of the meetings to be kept;
 - 1.2.9** Provision for the approval of decisions without meetings;
 - 1.2.10** Provision for meetings to be held using telephone or electronic means;
 - 1.2.11** Provision for the establishment of committees, sub-committees and working groups which must include; an Audit Committee comprising Non-Executive Directors, an Executive Nominations and Remuneration Committee, comprising Non-Executive Directors and the Chief Executive; and a Charitable Funds Committee;
 - 1.2.12** Provision for the appointment of Chair, Non-Executive Directors, Executive Directors and Secretary, and the appointment of Vice-Chair and Senior Independent Director;
 - 1.2.13** Provision for requiring the declarations of interests and providing for the conduct of Directors when an interest is material;
 - 1.2.14** Provision requiring the adherence to the Nolan Principles and NHS Standard of Business Conduct as published from time to time;
 - 1.2.15** Provisions governing the procurement of works, goods and services, and tendering and contract procedures;
 - 1.2.16** Provision regarding the use of the seal of the Foundation Trust and the execution of documents; and
 - 1.2.17** Provision for the exercise of functions by delegation, including financial instructions.

1.3 This appendix 7 is to be read in conjunction with the Foundation Trust's standing orders which contain additional provisions.

ANNEX 8 – ANNUAL MEMBERS MEETING

- 1.1** The Trust shall hold a members' meeting for all members (called the Annual Members Meeting) within six months of the end of the financial year of the Trust.
- 1.2** Any members' meeting other than the Annual Members' Meeting shall be called a 'Special Members Meeting'.
- 1.3** Both Annual Members' Meetings and Special Members' Meetings shall be open to all members of the Trust, members of the Council of Governors and members of the Board of Directors, together with representatives of the Trust's Auditors, and to members of the public. The Trust may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend any such meeting.
- 1.4** The Board of Directors may convene an Annual Members' Meeting or a Special Members' meeting when it thinks fit. The Council of Governors may request the Board of Directors to convene a members' meeting.
- 1.5** The agenda shall set out the business to be conducted at the meeting. No business other than that set out in the Agenda shall be considered at any members' meeting.
- 1.6** The Board of Directors (or at least one (1) member of the Board of Directors) shall present to the members of the Annual Members' Meeting:
 - 1.6.1** the annual accounts;
 - 1.6.2** any report of the auditor on them;
 - 1.6.3** the annual report;
 - 1.6.4** a report on steps taken to secure that (taken as a whole) the actual membership of the Trust is representative of those eligible for such membership;
 - 1.6.5** the progress of the membership plan; and
 - 1.6.6** the results of any election and appointments to the Council of Governors, and any other reports or documentation it considers necessary or otherwise required.
- 1.7** The Trust shall give notice of all members' meetings:
 - 1.7.1** by notice prominently displayed at the Trust's headquarters;
 - 1.7.2** by notice on the Trust's website;

- 1.7.3** by notice communicated by email to the Trust members; and
- 1.7.4** to the Council of Governors, Board of Directors and the Trust's Auditors, stating whether the meeting is an Annual Members' Meeting or a Special Members' Meeting including the time, date, place of the meeting, and the business to be dealt with at the meeting at least 14 working days before the date of the relevant members' meeting (or, in the case of an Annual Members' Meeting, at least 21 working days before the date of the relevant meeting).
- 1.8** Accidental omission to give notice of a members' meeting or to send, supply or make available any document or information relating to the meeting, or the non-receipt of any such notice, document or information by a person entitled to receive any such notice, document or information shall not invalidate the proceedings at that meeting.
- 1.9** The Chair or in his or her absence, the Deputy Chair, shall preside at all members' meetings of the Trust. If neither the Chair nor the Deputy Chair is present, the Governors present shall elect one of the Non-Executive Directors to act as Chair. If no Non-Executive Director is present, the Governors present shall elect one of their number to act as the meeting Chair. In no Governor is willing to act as Chair or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to act as Chair.
- 1.10** The quorum for a members' meeting shall be twenty (20) members present and entitled to vote. If a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the meeting shall stand adjourned for a minimum of seven (7) days until such time as the Board of Directors determine.
- 1.11** No such meeting shall become incompetent to transact business by lack of a quorum arising after the chair has been taken.
- 1.12** The Chair may, with the consent of a members' meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn a members' meeting from time to time and from place to place or for an indefinite period.
- 1.13** A resolution put to the vote at a members' meeting shall be decided on a show of hands, including without limitation a vote on an amendment to the Constitution in relation to the powers and duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust).

- 1.14** Every member registered who is present shall have one vote. No proxies will be admissible.
- 1.15** The Trust's Auditor shall act as scrutineers in event of any voting.
- 1.16** No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.
- 1.17** If the Board of Directors, in its absolute discretion, considers that it is impractical or unreasonable for any reason to hold a members' meeting at the time, date or place specified in the notice calling that meeting, it may move and/or postpone the general meeting to another time, date, and/or place.
- 1.18** In the case of a members' meeting is adjourned or postponed for fourteen (14) days or more, at least seven (7) working days' notice shall be given, specifying the time and place of the adjourned members' meeting and the general nature of the business to be transacted. Otherwise, it shall not be necessary to give any such notice.
- 1.19** The Board of Directors may make any such arrangement and impose any restriction it considers appropriate to ensure the security of a members' meeting.
- 1.20** Any approval to speak at a members' meeting must be given by the Chair. Speeches must be directed to the matter, motion or question under discussion or to a point of order. No proposal, speech or any reply may exceed three (3) minutes unless the Chair directs otherwise. In the interests of time, the Chair may, in his or her absolute discretion, limit the number of replies, questions or speeches which are heard at any one members' meeting.
- 1.21** A person who has already spoken on a matter at a members' meeting may not speak again at that meeting in respect of the same matter except (i) in exercise of a right of reply or (ii) on a point of order, or (iii) at the Chair's discretion.
- 1.22** The ruling of the chair on any matter of procedure or a point of order shall be final.
- 1.23** The proceeding of members' meetings shall not be recorded and no person present shall make a recording of the meetings, other than in written

format.

- 1.24** The Board of Directors shall cause minutes to be made and kept, in writing, of all proceedings at members' meetings.
- 1.25** The minutes of members' meetings shall be presented to the next meeting of the Council of Governors.
- 1.26** The Board of Directors may make any arrangements and impose any restriction it considers necessary and/or appropriate to ensure the security of a members' meeting.
- 1.27** Any member who is not able to be present in person may participate in an members' meeting by means of conference telephone or any other such electronic means, which allows all participating in the meeting to hear each other. A member so participating shall be deemed to be present in person at such meeting and shall be entitled to vote and be counted in the quorum. Such a members' meeting shall be deemed to take place where the largest group of those participating is assembled, or if there is no such group, where the Chair is located.

ANNEX 9 – FURTHER PROVISIONS

1. Restriction on Membership

1.1 An individual who:

1.1.1 has threatened, harassed, harmed or abused staff, patients and/or visitors of the Trust; or

1.1.2 has been a vexatious complainant. For the purposes of this paragraph a vexatious complainant is an individual who is found by the Trust (applying the relevant policy), to have abused or used inappropriately the Trust's complaints procedure.

2. Termination of Membership

2.1 A member shall cease to be a member if:

2.1.1 they resign by notice to the Secretary;

2.1.2 they die;

2.1.3 they are expelled from membership under this constitution;

2.1.4 they cease to be entitled under this constitution to be a member of the Public Constituency (if a member of the Public Constituency) or of any of the classes of the Staff Constituency (if a member of the Staff Constituency); and/or

2.1.5 it appears to the Secretary that they no longer wish to be a member of the Trust, and after enquiries made in accordance with a process approved by the Council of Governors they fail to demonstrate that they wish to continue as a member of the Trust.

2.2 A member may be expelled by a resolution approved by not less than two thirds of the Governors present and voting at the meeting of the Council of Governors. The following procedure is to be adopted:

2.2.1 Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Trust.

2.2.2 If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:

2.2.2.1 subject to the disputes procedure set out in paragraph 3 dismiss the complaint and take no further action;

2.2.2.2 for a period not exceeding twelve (12) months suspend the rights of the member complained of to attend members meetings and vote under this constitution; or

2.2.2.3 arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.

- 2.2.3 If a resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the company must be sent to the member complained of not less than one (1) month before the meeting with an invitation to answer the complaint and attend the meeting.
- 2.2.4 At a meeting of the Council of Governors, the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- 2.2.5 If the member complained of fails to attend the meeting of the Council of Governors without due cause the meeting may proceed in their absence.
- 2.2.6 A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting of the Council of Governors that the resolution to expel them is carried.
- 2.2.7 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governor present and voting at a meeting of the Council of Governors.
- 2.2.8 Pending a final decision to terminate membership in accordance with the provisions in this paragraph 2.2, the Chair may in his, her or their absolute discretion suspend a member.

3. Dispute Resolution Procedure

- 3.1 Every unresolved dispute which arises out of this Constitution between the Trust and:
 - 3.1.1 a member;
 - 3.1.2 any aggrieved person who has ceased to be a member within the six (6) months prior to the date of the dispute;
 - 3.1.3 any person bringing a claim under this Constitution; or
 - 3.1.4 an office-holder of the Trust;

shall first be referred to the Secretary who shall decide on the point in issue.

- 3.2 If the member or applicant (as the case may be) is aggrieved at the decision of the Secretary he or she may appeal in writing within 14 Clear Days of the Secretary's decision to the Council of Governor whose decision shall be final.
- 3.3 In the event of a dispute between the Council of Governors and the Board of Directors:
 - 3.3.1 In the first instance, the Chair, on the advice of the Secretary, and such

other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;

3.3.2 If the Chair is unable to resolve the dispute, the Chair shall refer the dispute to the Secretary who shall appoint a joint special committee of the Board of Directors and the Council of Governors, comprising equal numbers of Directors and Governors, to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute; and

3.3.3 If the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

3.4 In the event of any dispute in relation to this Constitution that concerns anything other than membership, or disputes between the Council of Governors and the Board of Directors, the dispute shall be referred to the Chair who shall decide on the point of issue.

3.5 If the member or complainant (as the case may be) is aggrieved at the decision of the Chair he or she may appeal in writing 14 Clear Days of the Chair's decision to the Board of Directors, whose decision shall be final.

4. Indemnity

4.1 Members of the Council of Governors, the Board of Directors and the Secretary, who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution, or purported execution, of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Foundation Trust.

4.2 The Foundation Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors, the Board of Directors and the Secretary.

4.3 The Foundation Trust may take out insurance, either through the NHS Litigation Authority or otherwise, in respect of directors and officers liability arising by reason of the Foundation Trust acting as a corporate trustee of an NHS charity.

5 Appointment of Lead Governor

The Council of Governors may appoint annually one of its' Public Governors to be Lead Governor. The Governor appointed shall undertake

the duties as stated in the NHS Foundation Trust Code of Governance, and such other duties as may be assigned from time to time.