

Lancashire & South Cumbria NHS Foundation Trust

Constitution

(Updated as per the Health and Social Care Act 2012)

October 2019
Version 14

LANCASHIRE & SOUTH CUMBRIA NHS FOUNDATION TRUST

CONSTITUTION

TABLE OF CONTENTS

<i>Paragraph</i>	<i>Page</i>
1. Name	4
2. Principal purpose.....	4
3. Powers	4
4. Membership and constituencies.....	4
5. Application for membership.....	5
6. Public constituency.....	5
7. Staff constituency	5
8. Restriction on membership	6
9. Annual Members Meeting	7
10. Council of Governors - composition	7
11. Council of Governors - election of governors	7
12. Council of Governors - tenure	8
13. Council of Governors - disqualification and removal.....	8
14. Council of Governors – duties of Governors	9
15. Council of Governors - meeting of governors.....	9
16. Council of Governors - standing orders	10
17. Council of Governors – referral to the panel	10
18. Council of Governors - conflicts of interest of governors	10
19. Council of Governors - travel expenses	10
20. Council of Governors - further provisions	10
21. Board of Directors - composition	10
22. Board of Directors – general duty	11
23. Board of Directors - qualification for appointment as non-executive.....	11
24. Board of Directors - appointment and removal	11
25. Board of Directors - appointment of deputy chair.....	11
26. Board of Directors - appointment and removal	12
27. Board of Directors - disqualification	12
28. Board of Directors – meetings.....	13
29. Board of Directors - standing orders	13
30. Board of Directors - conflicts of interest of directors	13
31. Board of Directors - remuneration and terms of office	14
32. Registers	14
33. Admission to and removal from the registers.....	15
34. Registers - inspection and copies	15
35. Documents available for public inspection	15
36. Auditor	17
37. Audit committee.....	17
38. Accounts.....	17
39. Annual report, forward plans and non NHS work.....	18
40. Presentation of the annual accounts and reports to Governors.....	19
41. Instruments.....	19

42.	Amendment of the constitution.....	19
43.	Indemnity.....	20
44.	Mergers etc and significant transactions.....	20
45.	Transitional provisions	21
46.	Notices	21
47.	Interpretation and definitions.....	22

Paragraph	Page
ANNEX 1 - THE PUBLIC CONSTITUENCIES.....	24
ANNEX 2 - THE STAFF CONSTITUENCY.....	25
ANNEX 3 - COMPOSITION OF COUNCIL OF GOVERNORS	26
ANNEX 4 - THE MODEL RULES FOR ELECTIONS.....	28
ANNEX 5 - ADDITIONAL PROVISIONS - COUNCIL OF GOVERNORS.....	57
ANNEX 6 - STANDING ORDERS - COUNCIL OF GOVERNORS.....	61
ANNEX 7 - STANDING ORDERS - BOARD OF DIRECTORS	76
ANNEX 8 - MEMBERSHIP AND MEMBERS MEETINGS.....	94
ANNEX 9 - FURTHER PROVISIONS	98

1. Name

The name of the foundation trust is Lancashire & South Cumbria NHS Foundation Trust (the trust).

2. Principal purpose

- 2.1 The principal purpose of the trust is the provision of goods and services for the purposes of the health service in England.
- 2.2 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.
- 2.3 The trust may provide goods and services for any purposes related to –
 - 2.3.1 The provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - 2.3.2 The promotion and protection of public health.
- 2.4 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 to better carry on its principal purpose.

3. Powers

- 3.1 The powers of the trust are set out in the 2006 Act.
- 3.2 All the powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 3.3 Any of these powers may be delegated to a committee of directors or to an executive director.

4. Membership and constituencies

- 4.1 The trust shall have members, each of whom shall be a member of one of the following constituencies:
 - 4.1.1 a Public Constituency; or
 - 4.1.2 the Staff Constituency
- 4.2 The members of the trust are those individuals whose names are entered in the register of members.
- 4.3 Members may attend and participate at members meetings, vote in elections to, and stand for election to the Council of Governors, and take such other part in the affairs of the trust as is provided in this constitution.
- 4.4 The trust shall hold members meetings in accordance with the provisions of Annex 8

5. Application for membership

- 5.1** An individual who is eligible to become a member of the trust may do so on application to the trust
- 5.2** Subject to this constitution, membership is open to any individual who is entitled under this constitution to be a member of a Public Constituency or one of the classes of the Staff Constituency, and who (unless they are eligible to be a member of one of the classes of the Staff Constituency) completes a membership application form in whatever form the Secretary specifies.

6. Public Constituency

- 6.1** 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.
- 6.2** Those individuals who live in an area specified as an area for a public constituency are referred to collectively as a Public Constituency.
- 6.3** The minimum number of members in each Public Constituency is specified in Annex 1.

7. Staff Constituency

- 7.1** Subject to paragraph 7.3 below, 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:
- 7.1.1** 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
- 7.1.2** he has been continuously employed by the trust and/or the Predecessor Trust under a contract of employment for at least 12 months.
- 7.2** Subject to paragraph 7.3 below, 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.
- 7.3** An individual who:
- 7.3.1** is under a period of notice (whether under his employment with the trust, or where such individual qualifies for membership by virtue of paragraph 7.2, under such individual's contract of or for service with any other body); or
- 7.3.2** whose fixed term employment contract with the trust is due to expire within the next 3 months;

shall not be eligible to become a member of the trust's Staff Constituency and may not be invited pursuant to paragraph 7.8 below to be a member of the trust's Staff Constituency. For the avoidance of doubt;

- 7.3.3** when the conditions set out at paragraph 7.3.1 or 7.3.2 apply to an existing member of the Staff Constituency then such individual's membership shall continue for so long as the conditions set out at paragraphs 7.1 and/or 7.2 remain satisfied; and
- 7.3.4** an individual who fails to qualify as a member of the Staff Constituency by virtue of this paragraph 7.3 may, subject to paragraph 6 above, still be eligible to become a member of the Public Constituency.
- 7.4** For the avoidance of doubt, the eligibility to be a member of the Staff Constituency described at paragraph 7.2 above does not include those who assist or provide services to the trust on a voluntary basis.
- 7.5** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 7.6** The Staff Constituency shall be divided into four (4) 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.
- 7.7** The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

Automatic membership by default - staff

- 7.8** An individual who is:
 - 7.8.1** eligible to become a member of the Staff Constituency, and
 - 7.8.2** invited by the trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

Shall become a member of the trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the trust that he does not wish to do so.

8. Restriction on membership

- 8.1** 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 of the trust.
- 8.2** 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.
- 8.3** An individual must be at least fourteen (14) years of age to become a member of the trust.
- 8.4** An individual who, in the opinion of the Chair, having regard to any relevant policy of the Trust:

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

8.4.2 has abused or used inappropriately the trust's or the Predecessor Trust's complaints procedure;

May be refused membership of the trust or may have his membership of the trust withdrawn if the Council of Governors considers that it is not in the best interests of the trust for them to become or remain a member.

8.5 Further provisions including as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 8 – Membership and Members' Meeting and Annex 9 - Further Provisions.

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

9. Annual Members' Meeting

9.1 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.

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

10. Council of Governors - composition

10.1 The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.

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

10.3 The members of the Council of Governors, other than the appointed members, shall be chosen, in respect of the Public Constituency, by election by the members of the relevant Public Constituency and, in respect of the Staff Constituency, by election by the members of the relevant class within the Staff 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.

11. Council of Governors - election of governors

11.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.

11.2 The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at Annex 4.

11.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 42.

11.4 An election, if contested, shall be by secret ballot.

12. Council of Governors – tenure

12.1 Subject to the provisions of paragraph 12.2, an elected governor may hold office for a period of up to three (3) years following their election as a governor, commencing from the anniversary of the date on which the trust was authorised in the year in which their election became effective.

12.2 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class of the constituency by which he was elected. For the avoidance of doubt, this includes, in respect of a Public Governor, a governor moving their principal residence from one Public Constituency as set out in Annex 1 to another.

12.3 Subject to paragraphs 12.4, an elected governor shall be eligible for re-election at the end of his term of office.

12.4 An elected governor may not hold office for more than six (6) consecutive years in total and shall not be eligible for re-election if they have already held office for more than three (3) consecutive years.

12.5 The trust shall conduct annual elections for elected governors, during each year (being a period of 12 months commencing on an anniversary of the date the trust was authorised) in respect of each elected governor whose term of office shall expire at the end of that year.

12.6 Subject to the provisions of paragraph 12.7, an appointed governor may hold office for a period of up to three (3) years commencing on the date such appointment is to have effect.

12.7 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.

12.8 Subject to paragraph 12.9, an appointed governor is eligible for re-appointment at the end of that period.

12.9 An appointed governor may not hold office for longer than six (6) consecutive years, and shall not be eligible for re-appointment if they have already held office for more than three (3) consecutive years.

13. Council of Governors - disqualification and removal

13.1 The following may not become or continue as a member of the Council of Governors:

13.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

13.1.2 a person in relation to whom a moratorium period under a debt relief order applies under Part 7A of the Insolvency Act 1986;

13.1.3 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;

13.1.4 a person who within the preceding five years has been convicted in the British Islands 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.

13.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.

13.3 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.

14. Council of Governors – duties of governors

14.1 The general duties of the Council of Governors are –

14.1.1 To hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and

14.1.2 To represent the interests of the members of the trust as a whole and the interests of the public.

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

15. Council of Governors - meetings of governors

15.1 The Chair of the trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 24 below) or, in his absence the Deputy Chair (appointed in accordance with the provisions of paragraph 25 below), shall preside at meetings of the Council of Governors.

15.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from all or part of any meeting whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons arising from the nature of that business following appropriate resolution by the Council of Governors.

15.3 The Chair may exclude any member of the public from a meeting of the Council of Governors if he is interfering with or preventing the proper conduct of the meeting.

15.4 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.

16. Council of Governors - standing orders

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

17. Council of Governors – referral to the Panel.

17.1 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing –

17.1.1 To act in accordance with its constitution, or

17.1.2 To act in accordance with provision made by or under Chapter 5 of the 2006 Act.

17.2 A governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

18. 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.

19. Council of Governors - travel expenses

The trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the trust.

20. Council of Governors - further provisions

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

21. Board of Directors - composition

21.1 The trust is to have a Board of Directors to manage the business of the trust and to exercise all powers of the trust (subject to any contrary provisions in the 2006 Act and/or this constitution), which shall comprise both executive and non-executive directors.

21.2 The Board of Directors is to comprise:

21.2.1 a non-executive Chair;

21.2.2 a minimum of five (5) , but no more than six (6) other non-executive directors; and

21.2.3 a minimum of five (5), but no more than six (6) executive directors.

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

21.4 The Chief Executive shall be the Accounting Officer.

21.5 One of the executive directors shall be the finance director.

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

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

22. 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.

23. Board of Directors - qualification for appointment as Chair or another non-executive director

23.1 A person may be appointed as the Chair or another non-executive director only if -

23.1.1 he is a member of a Public Constituency, or

23.1.2 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

23.1.3 he is not disqualified by virtue of paragraph 27 below.

24. Board of Directors - appointment and removal of chair and/or other non-executive directors

24.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chair of the trust and/or the other non-executive directors.

24.2 Appointment of the Chair or of a non-executive director shall require the approval of a majority of the members of the Council of Governors voting.

24.3 Removal of the Chair or a non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

25. Board of Directors - appointment of deputy chair

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a Deputy Chair. If the Chair is unable

to discharge their office as Chair of the trust, the Deputy Chair shall be acting chair of the trust.

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

- 26.1** The non-executive directors shall appoint or remove the Chief Executive.
- 26.2** The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 26.3** A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors. The Chair shall act as Chair of such committee.

27. Board of Directors - disqualification

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

- 27.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 27.2** a person in relation to whom a moratorium period under a debt relief order applies under Part 7A of the Insolvency Act 1986;
- 27.3** 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;
- 27.4** a person who within the preceding five years has been convicted in the British Islands 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;
- 27.5** a person who is a member of the Council of Governors;
- 27.6** a person who is the spouse, partner, parent or child of a member of the Board of Directors (including the Chair) of the trust;
- 27.7** a person who is a member of a committee which has any role on behalf of a local authority to scrutinise health matters;
- 27.8** a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 27.9** a person whose tenure of office as a chair or as a member or director of a health service 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 nondisclosure of a pecuniary interest;
- 27.10** a person who has within the preceding five (5) years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;

27.11 in the case of a non-executive director, a person who has

27.11.1 refused without reasonable cause to fulfil any training requirement established by the Board of Directors; or

27.11.2 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.

28. Board of Directors – meetings

28.1 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.

28.2 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, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

29. Board of Directors - standing orders

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

30. Board of Directors - conflicts of interest of directors

30.1 The duties that a director of the trust has by virtue of being a director include in particular –

30.1.1 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.

30.1.2 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.

30.2 The duty referred to in sub-paragraph 30.1.1 is not infringed if –

30.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

30.2.2 The matter has been authorised in accordance with the constitution.

30.3 The duty referred to in sub-paragraph 30.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

30.4 In sub-paragraph 30.1.2 “third party” means a person other than –

30.4.1 The trust, or

30.4.2 A person acting on its behalf.

- 30.5** 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.
- 30.6** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 30.7** Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 30.8** 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.
- 30.9** A director need not declare an interest –
- 30.9.1** If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 30.9.2** If, or to the extent that, the directors are already aware of it;
- 30.9.3** If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –
- 30.9.3.1** By a meeting of the Board of Directors, or
- 30.9.3.2** By a committee of the directors appointed for the purpose under the constitution

31. Board of Directors - remuneration and terms of office

- 31.1** 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 Chair and the other non-executive directors.
- 31.2** 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 and other executive directors.
- 31.3** The trust may reimburse executive directors' travelling and other costs and expenses incurred in carrying out their duties at such rates as the remuneration committee of non-executive directors decides. These are to be disclosed in the annual report.
- 31.4** The remuneration and allowances for directors are to be disclosed in bands in the annual report.

32. Registers

The trust shall have:

- 32.1 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;
- 32.2 a register of members of the Council of Governors;
- 32.3 a register of interests of governors;
- 32.4 a register of directors; and
- 32.5 a register of interests of the directors.

33. Admission to and removal from the registers

- 33.1 The Secretary shall add to the register of members the name of any member who is accepted under the provisions of this constitution.
- 33.2 The Secretary 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 this constitution.

34. Registers - inspection and copies

- 34.1 The trust shall make the registers specified in paragraph 32 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 34.2 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.
- 34.3 So far as the registers are required to be made available:
 - 34.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 34.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 34.4 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.

35. Documents available for public inspection

- 35.1 The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
 - 35.1.1 a copy of the current constitution;
 - 35.1.2 a copy of the latest annual accounts and of any report of the auditor on them, and
 - 35.1.3 a copy of the latest annual report

- 35.2** 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:
- 35.2.1** 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.
 - 35.2.2** a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 35.2.3** a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 35.2.4** a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 35.2.5** a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
 - 35.2.6** 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.
 - 35.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 35.2.8** a copy of any final report published under section 65I (administrator's final report)
 - 35.2.9** 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.
 - 35.2.10** a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 35.3** Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 35.4** 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.

36. Auditor

- 36.1** The trust shall have an auditor and is to provide the auditor with every facility and all information, which he may reasonably require for the purposes of his functions under Schedule 10 of the 2006 Act.
- 36.2** A person may only be appointed as the auditor if they (or in the case of a firm, each of its members) are a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 7 to the 2006 Act.
- 36.3** An officer of the Audit Commission may be appointed as auditor with the agreement of the Audit Commission. Where an officer of the Audit Commission is appointed as auditor, the Commission is to charge the trust such fees for his services as will cover the full cost of providing them.
- 36.4** The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.
- 36.5** The auditor shall be required to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.

37. Audit committee

The trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

38. Accounts

- 38.1** The trust must keep proper accounts and proper records in relation to the accounts
- 38.2** Monitor may with the approval of the Secretary of State give directions to the trust as to the content and form of its accounts.
- 38.3** The accounts are to be audited by the trust's auditor.
- 38.4** The following documents will be made available to the Comptroller and Auditor General for examination at his request:
 - 38.4.1** the accounts;
 - 38.4.2** any records relating to them; and
 - 38.4.3** any report of the auditor on them.
- 38.5** 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.
- 38.6** The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

38.7 In preparing its annual accounts, the Accounting Officer shall require the trust to comply with any directions given by Monitor with the approval of the Treasury as to:

38.7.1 the methods and principles according to which the accounts are to be prepared;

38.7.2 the information to be given in the accounts;

And shall be responsible for the functions of the trust as set out in paragraph 25 of Schedule 7 to the 2006 Act. The trust shall comply with any such requirements of the Accounting Officer.

38.8 The trust shall lay a copy of the annual accounts, and any report of the auditor on them, before Parliament and once it has done so, send copies of those documents to Monitor.

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

39.1 The trust shall prepare an Annual Report and send it to Monitor. Each Annual Report is to give:

39.1.1 information on any steps taken by the trust to secure that (taken as a whole) the actual membership of its Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership; and

39.1.2 any other information Monitor requires including, but not limited to, information required by 'the NHS Foundation Trust Code of Governance' as summarised at Schedule A of that Code.

39.2 The trust is to comply with any decision Monitor makes as to:

39.2.1 the form of Annual Reports;

39.2.2 when the reports are to be sent to them;

39.2.3 the periods to which the Annual Reports are to relate.

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

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

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

39.6 Each forward plan must include information about -

39.6.1 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

39.6.2 the income it expects to receive from doing so.

39.7 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 39.6.1 the Council of Governors must–

39.7.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the trust of its principal purpose or the performance of its other functions, and

39.7.2 notify the directors of the trust and its determination.

39.8 If the trust 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 health service in England, it may implement the proposal only if more than half of the members of Council of Governors of the trust voting approve its implementation.

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

40.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:

40.1.1 the annual accounts;

40.1.2 any report of the auditor on them; and

40.1.3 the annual report.

40.2 The documents 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.

40.3 The trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 40.1 with the Annual Members Meeting.

41 Instruments

41.1 The trust shall have a seal.

41.2 The seal shall not be affixed except under the authority of the Board of Directors.

41.3 A document purporting to be duly executed under the trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

42 Amendment of the constitution

42.1 The trust may make amendments of its constitution only if –

42.1.1 More than half of the members of the Council of Governors of the trust voting approve the amendments, and

42.1.2 More than half of the members of the Board of Directors of the trust voting approve the amendments.

42.2 Amendments made under paragraph 42.1 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.

42.3 Where an amendment is made to the constitution in relation 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) –

42.3.1 At least one member of the Council of Governors must attend the next Annual Members Meeting and present the amendment, and

42.3.2 The trust must give the members an opportunity to vote on whether they approve the amendment.

42.4 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

42.5 Amendments by the trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitors 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.

43 Indemnity

The trust may provide an indemnity to any member of the Council of Governors, the Board of Directors or the Secretary that if any such person acts honestly and in good faith, such person 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 trust. The trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Council of Governors and the Board of Directors and the Secretary.

44 Mergers etc and significant transactions

44.1 The trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the council of governors.

44.2 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.

44.3 ‘Significant transactions’ are defined as transactions exceeding 25% of gross assets or 25% of income in the following areas:

44.3.1 Projects funded by Private Finance Initiative;

44.3.2 Contracts to provide services, other than a contract with a commissioning organisation for the provision of services for the purposes of the health service in England;

44.3.3 Investments and divestments; or

44.3.4 Changes to indemnity arrangements.

45 Transitional provisions relating to amendments to this constitution made in 2013

45.1 For the purposes of this paragraph 45, the "Date of Approval" shall mean the date on which the amendments to this constitution in relation to the public constituencies and Council of Governors made in 2013 take effect.

45.2 From the Date of Approval, and without prejudice to the eligibility criteria to become or continue as a member of the trust set out elsewhere in this constitution, members of the Central Lancashire public constituency will be transferred to the newly formed NHS Central Lancashire public constituency, save for those members who reside within the local government electoral wards of the county of West Lancashire, who shall be transferred to the newly formed NHS Lancashire West public constituency.

45.3 Subject to paragraph 45.4, all Public Governors currently in office at the Date of Approval shall remain in such office for the remainder of their term, subject to any prior termination or removal from office in accordance with this constitution.

45.4 From the Date of Approval, and without prejudice to the eligibility criteria to become or continue as a Governor of the trust set out elsewhere in this constitution, Governors representing the Central Lancashire public constituency will be transferred to the newly formed NHS Central Lancashire public constituency.

45.5 Following the Date of Approval, an election shall be held to elect a Public Governor to represent the newly formed NHS Lancashire West public constituency.

45.6 Following the Date of Approval, elections for a new Public Governor to represent any of the Public Constituencies specified within Annex 1 of the Constitution shall not take place until such time as all of the Governors representing that respective constituency by virtue of the transitional provisions in this paragraph 45 have either:

45.6.1 reached the end of their term in office;

45.6.2 are removed from office; or

45.6.3 had their office terminated in accordance with this constitution, whichever is the earlier.

46 Notices

46.1 Any notice required by this constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.

- 46.2** A notice shall be treated as delivered forty eight (48) hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication immediately after it was sent provided it was sent between the hours of 09.00 and 17.00 on a working day, and at 09.00 on the next working day if such notice was sent on a non-working day or outside the hours of 09.00 to 17.00 hours.

47 Interpretation and definitions

Unless a contrary intention is evident or the context requires otherwise, 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 9 of the constitution

Financial Year means: (a) the period beginning with the date on which the trust is authorised as a Foundation Trust and ending with the next 31 March; and (b) each successive period of twelve (12) months beginning with 1 April.

Local Authority Governor means a governor appointed by one or more local authorities.

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

Partnership Governor means a governor appointed by a partnership organisation.

Partnership Organisation means the Partnership organisations listed in Annex 3 and/or any other partnership organisation as identified by the trust as specified by Annex 3 from time to time.

Predecessor Trust means Lancashire Care NHS Foundation Trust

Public Constituency means all those individuals who live in the areas specified in Annex 1.

Public Governor means a governor elected by the members of one of the Public Constituencies.

Secretary means the secretary of the trust or any other person appointed by the trust to perform the duties of the secretary, including a joint, assistant or deputy secretary.

Staff Constituency means all those individuals who are eligible for membership of the trust as set out at paragraphs 7.1 to 7.3 (inclusive)

Staff Governor means a governor elected by the members of one of the classes of the Staff Constituency.

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.

the **MHA** means the Mental Health Act 1983.

voluntary organisation is a body, other than a public or local authority, the activities of which are not carried on for profit.

ANNEX 1 - THE PUBLIC CONSTITUENCIES

The Public Constituencies (aligned to Local Development Plan areas as defined by the Lancashire and South Cumbria Sustainability and Transformation Partnership)	Areas covered by each Public Constituency (comprising the local government electoral wards within the following areas):	Minimum Number of Members
Pennine Lancashire	Hyndburn, Ribble Valley, Burnley, Pendle and Rossendale, Blackburn with Darwen	105
Fylde Coast	Blackpool, Fylde and Wyre	30
Central Lancashire	Preston, Chorley, South Ribble	75
West Lancashire	West Lancashire, Southport and Formby, St Helens	30
North Lancs & South Cumbria	North Lancashire, South Cumbria	60
Out of Area	North of England	15

ANNEX 2 - THE STAFF CONSTITUENCY

The Staff Constituency is divided into five (5) classes as follows:

Staff Constituency	Population (example disciplines/roles)
<u>Class 1</u> Medical Staff	Consultants, Locums, SHO's Dentists, Associate Specialists, others
<u>Class 2</u> Other Clinical and Social Care Professionals and Clinical Support Staff	OTs, Psychologists, Pharmacists, Podiatrists, Speech and Language Therapists, Physiotherapists, Healthcare Scientists, Social care professionals, others
<u>Class 3</u> Nursing Professions and Support Staff	All registered and unregistered nursing staff including health visitors and midwives
<u>Class 4</u> Corporate Staff	Senior managers, clerical staff, estates and ancillary staff and non-clinical support workers
<u>Class 5</u> Administrative and clerical staff	Administrative and clerical staff at pay band 4 or below

The minimum number of members in each class is to be 20% of the total number of employees who are eligible for membership of that class.

ANNEX 3 - COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors shall comprise thirty governors (29) composed as set out below and as illustrated in the following table:

- Sixteen (16) governors elected by members of the trust from the Public Constituency as set out in Annex 1 appointing the following number of governors:
 - Pennine Lancashire 4
 - North Lancs & South Cumbria 3
 - Fylde Coast 2
 - Central Lancashire 4
 - West Lancashire 2
 - Out of Area 1

- Seven (7) governors elected by the Staff Constituency, with the following numbers of governors elected from each class within the Staff Constituency by that class.

Class of Staff Constituency	Expected population (example Disciplines / roles)	Number of elected governors
<u>Class 1</u> Medical Staff	Consultants, Locums, SHO's Dentists, Associate Specialists, others	1
<u>Class 2</u> Other Clinical and Social Care Professionals and Clinical Support Staff	OT's, Psychologists, Pharmacists, Podiatrists, Speech and Language Therapists, Physiotherapists, Healthcare Scientists, Social care professionals, others	1
<u>Class 3</u> Nursing Professions and Support Staff	All registered and unregistered nursing staff including health visitors and midwives	3
<u>Class 4</u> Corporate Staff	Senior managers, clerical staff, estates and ancillary staff and non-clinical support workers	1
<u>Class 5</u> Administrative and Clerical Staff	Administrative and Clerical Staff at Pay Bands 4 or below	1
Total Staff Governors		7

- One (1) governor appointed by Lancashire Health and Wellbeing Board to represent Public Health and Wellbeing
- Partnership Governors to be appointed by the following Partnership Organisations:
 - One (1) governor appointed by a *Higher Education* establishment
 - The Council of Governors may invite up to three third sector organisations to appoint four (4) further governors in accordance with the provisions set out in Annex 5. One of the third sector organisations should focus on either mental health or learning disability issues.

Public Constituency	Number of Public Governor seats	
Pennine Lancashire		4
North Lancs & South Cumbria		3
Fylde Coast		2
Central Lancashire		4
West Lancashire		2
Out of Area – North of England All electoral divisions within the boundaries of the following Sustainability and Transformation Partnership (STP) areas:		1
<ul style="list-style-type: none"> - West, North and East Cumbria - Durham, Darlington, Tees, Hambleton, Richmondshire and Whitby - West Yorkshire - Greater Manchester - Cheshire and Merseyside exc the Alliance Local Development Plan (LDP) area 		
	Sub Total	16
Staff Constituency	Number of Staff Governor Seats	
Medical Staff		1
Nursing Professions and Support Staff		3
Other Clinical and Social Care Professionals and Clinical Support Staff		1
Corporate Staff		1
Administrative and clerical staff		1
	Sub Total	7
Appointed Governors Constituency	Number of Appointed Governor Seats	
Public Health & Wellbeing		1
Higher Education		1
Partnership Organisations		4
	Sub Total	6
	TOTAL	Minimum 29

ANNEX 4 -THE MODEL RULES FOR ELECTIONS

Part 1 - Interpretation

1. Interpretation

Part 2 - Timetable for Election

2. Timetable
3. Computation of time

Part 3 - Returning Officer

4. Returning officer
5. Staff
6. Expenditure
7. Duty of co-operation

Part 4 - Stages Common to Contested and Uncontested Elections

8. Notice of election
9. Nomination of candidates
10. Candidate's consent and particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination papers
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination papers
17. Withdrawal of candidates
18. Method of election

Part 5 - Contested Elections

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity

Action to be taken before the Poll

22. List of eligible voters
23. Notice of poll
24. Issue of voting documents
25. Ballot paper envelope and covering envelope

The Poll

26. E-voting
27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers

- 30. Lost ballot papers
- 31. Issue of replacement ballot paper
- 32. Declaration of identity for replacement ballot papers

Procedure for Receipt of Envelopes

- 33. Receipt of voting documents
- 34. Validity of ballot paper
- 35. Declaration of identity but no ballot paper
- 36. Sealing of packets

Part 6 - Counting the Votes

- 37. Interpretation of Part 6
- 38. Arrangements for counting of the votes
- 39. The count
- 40. Rejected ballot papers
- 41. First stage
- 42. The quota
- 43. Transfer of votes
- 44. Supplementary provisions on transfer
- 45. Exclusion of candidates
- 46. Filling of last vacancies
- 47. Order of election of candidates

Part 7 - Final Proceedings in Contested and Uncontested Elections

- 48. Declaration of result for contested elections
- 49. Declaration of result for uncontested elections

Part 8 - Disposal of Documents

- 50. Sealing up of documents relating to the poll
- 51. Delivery of documents
- 52. Forwarding of documents received after close of the poll
- 53. Retention and public inspection of documents
- 54. Application for inspection of certain documents relating to election

Part 9 - Death of a Candidate during a Contested Election

- 55. Countermand or abandonment of poll on death of candidate

Part 10 - Election Expenses and Publicity

Expenses

- 56. Expenses incurred by candidates
- 57. Expenses incurred by other persons
- 58. Personal, traveling, and administrative expenses

Publicity

- 59. Publicity about election by the corporation
- 60. Information about candidates for inclusion with voting documents
- 61. Meaning of "for the purposes of an election"

Part 11 - Questioning Elections and Irregularities

62. Application to question an election

Part 12 - Miscellaneous

63. Secrecy
64. Prohibition of disclosure of vote
64 Disqualification
65 Delay in postal service through industrial action or unforeseen event

Part 1 - Interpretation

1. Interpretation

(1) In these rules, unless the context otherwise requires - "corporation"

means the public benefit corporation subject to this constitution;

"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;

"the regulator" means the Independent Regulator for NHS foundation trusts; and "the 2006 Act"

means the National Health Service Act 2006.

(2) Other expressions used in these rules and in Schedule 7 to the 2006 Act have the same meaning in these rules as in that Schedule.

Part 2 - Timetable for Election

2. Timetable

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 papers 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

(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.

(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

(1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.

(2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

Subject to rule 64, 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

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,
- (b) such remuneration and other expenses as the corporation may determine.

7. Duty of co-operation

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

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 Governors' Assembly 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 papers may be obtained;
- (e) the address for return of nomination papers 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

(1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

- (a) is to supply any member of the corporation with a nomination paper, and
- (b) is to prepare a nomination paper 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.

10. Candidate's particulars

(1) The nomination paper must state the candidate's-

- (a) full name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

The nomination paper 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

The nomination paper 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

The nomination paper must be signed and dated by the candidate, 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.

14. Decisions as to the validity of nomination

(1) Where a nomination paper 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 paper 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.

(2) The returning officer is entitled to decide that a nomination paper 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 papers, 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, as required by rule 13.

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

(4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.

(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 paper.

15. Publication of statement of candidates

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

(2) The statement must show -

- (a) the name, contact 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 paper.

(3) The statement must list the candidates standing for election in alphabetical order by surname.

(4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing

the statement.

16. Inspection of statement of nominated candidates and nomination papers

(1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.

(2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

17. Withdrawal of candidates

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

(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.

(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.

(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

(1) The votes at the poll must be given by secret ballot.

(2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

20. The ballot paper

(1) The ballot of each voter 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.

(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 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,
- (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.

(3) Each ballot paper must have a unique identifier.

(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)

(1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.

(2) The declaration of identity is to include a declaration -

- (a) that the voter is the person to whom the ballot paper was addressed,
- (b) that the voter has not marked or returned any other voting paper in the election, and
- (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

(3) The declaration of identity is to include space for -

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the Poll

22. List of eligible voters

(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 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

(2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll - 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 address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

24. Issue of voting documents by returning officer

(1) 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 documents to each member of the corporation named in the list of eligible voters-

- (a) a ballot paper and ballot paper envelope,
- (b) a declaration of identity (if required),
- (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
- (d) a covering envelope.

(2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

(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.

(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.

(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 declaration of identity if required, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

26. E-voting systems

(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").

(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").

(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").

(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.

(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;

(f) prevent any voter from voting after the close of poll.

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

The Poll

27. Eligibility to vote

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

- (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made
- (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

- (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 a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- (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.

(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 declaration of identity, if required, has not been returned.

(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, and
- (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.

30. Lost ballot papers

(1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper 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 ballot paper, and
- (c) has ensured that the declaration of identity if required has not been returned.

(3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list ("the list of lost ballot papers") -

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper.

31. Issue of replacement ballot paper

(1) If a person applies for a replacement ballot paper under rule 28 or 29 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 a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(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.

(2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list ("the list of tendered ballot papers") -

- (a) the name of the voter, and

- (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

32. Declaration of identity for replacement ballot papers (public and patient constituencies)

(1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.

(2) The declaration of identity is to include a declaration -

- (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
- (b) of the particulars of that member's qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.

(3) The declaration of identity is to include space for -

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for Receipt of Envelopes

33. Receipt of voting documents

(1) Where the returning officer receives a -

- (a) covering envelope, or
- (b) any other envelope containing a declaration of identity 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 33 and 34 are to apply.

(2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, 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.

(3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

34. Validity of ballot paper

(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 a declaration of identity if required that has been correctly completed, signed, and dated.

(2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to -

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

(3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to -

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

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

Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to -

- (a) mark the declaration of identity "disqualified",
- (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper; and
- (d) place the declaration of identity in a separate packet.

36. Sealing of packets

As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing-

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the declarations of identity if required,
- (c) the list of spoilt ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

Part 6 - Counting the Votes

37. Interpretation of Part 6

In Part 6 of these rules –

"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 paper -

- (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 44(4) below,

"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 41 below, "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 papers 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
- (e) the exclusion of one or more candidates at any given time,

"transferable paper" means a ballot paper 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 paper on which a second or subsequent preference is recorded for the candidate to whom that paper has been transferred, and

"transfer value" means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule 42 below.

38. Arrangements for counting of the votes

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

39. The count

(1) The returning officer is to -

- (a) count and record the number of ballot papers that have been returned, and
- (b) count the votes according to the provisions in this Part of the rules.

(2) The returning officer, while counting and recording the number of ballot papers 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.

(3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

40. Rejected ballot papers

(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.

(2) The returning officer is to endorse the word "rejected" on any ballot paper which under this rule is not to be counted.

(3) 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 paragraph (1).

41. First stage

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

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

(3) The returning officer is to also ascertain and record the number of valid ballot papers.

42. The quota

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

(2) The result, increased by one, of the division under paragraph (1) above (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").

(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 paragraphs (1) to (3) of rule 44 has been complied with.

43. Transfer of votes

(1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers 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 papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

(2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

(3) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above 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 papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

(5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers 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 papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

(6) The returning officer is, in accordance with this rule and rule 43 below, to transfer

each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

(7) The vote on each ballot paper transferred under paragraph (6) shall be at -

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

which ever is the less.

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

(9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

(10) Transferable papers 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.

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

44. Supplementary provisions on transfer

(1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers 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 papers 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 papers of the candidate on whom the lot falls shall be transferred first.

(2) The returning officer shall, on each transfer of transferable papers under rule 42 above -

- (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.

(3) All ballot papers transferred under rule 42 or 44 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 paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule 42 or 44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper 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.

45. Exclusion of candidates

(1) If—

(a) all transferable papers which under the provisions of rule 42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and

(b) subject to rule 45 below, 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 paragraph (12) below applies, the candidates with the then lowest votes).

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—

(a) ballot papers on which a next available preference is given, and

(b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).

(3) The returning officer shall, in accordance with this rule and rule 43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

(4) The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

(5) If, subject to rule 45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

(6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).

(7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

(8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

(9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.

(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.

(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 paragraphs (5) to (10) of rule 42 and rule 43.

(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.

(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.

46. Filling of last vacancies

(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.

(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.

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

47. Order of election of candidates

(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 42(10) above.

(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.

(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.

(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.

Part 7 - Final Proceedings in Contested and Uncontested Elections

48. Declaration of result for contested elections

(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 Lancashire & South Cumbria NHS Foundation Trust by section 33(4) of the 2006 Act, to the chair of the NHS Trust, or
 - (ii) in any other case, to the chair of the corporation, and

- (c) give public notice of the name of each candidate who he or she has declared elected.

(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, and
- (b) the number of rejected ballot papers under each of the headings in rule 39(1), available on request.

49. Declaration of result for uncontested elections

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 chair 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

50. Sealing up of documents relating to the poll

(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,
- (b) the ballot papers endorsed with "rejected in part",
- (c) the rejected ballot papers, and
- (d) the statement of rejected ballot papers.

(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 declarations of identity,
- (c) the list of spoilt ballot papers,
- (d) the list of lost ballot papers,

- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

(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.

51. Delivery of documents

Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49, the returning officer is to forward them to the chair of the corporation.

52. Forwarding of documents received after close of the poll

Where -

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

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

53. Retention and public inspection of documents

(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 regulator, cause them to be destroyed

(2) With the exception of the documents listed in rule 53(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.

(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.

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

(1) The corporation may not allow the inspection of, or the opening of any sealed packet containing -

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,

- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters,

by any person without the consent of the Regulator.

(2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator 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.

(3) The Regulator'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,
- (d) production or opening,

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

(4) On an application to inspect any of the documents listed in paragraph (1), -

- (a) in giving its consent, the regulator, and
- (b) and making the documents available for inspection, the corporation,

must 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 the regulator has declared that the vote was invalid.

Part 9 - Death of a Candidate during a Contested Election

55. Countermand or abandonment of poll on death of candidate

(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 papers 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 papers 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.

(2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 - Election Expenses and Publicity Election Expenses

56. Election expenses

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 to the regulator under Part 11 of these rules.

57. Expenses and payments by candidates

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

58. Election expenses incurred by other persons

(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.

(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 58 and

Publicity

59. Publicity about election by the corporation

(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.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, 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.

(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.

60. Information about candidates for inclusion with voting documents

(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.

(2) The information must consist of -

- (a) a statement submitted by the candidate of no more than 250 words, and
- (b) a photograph of the candidate.

61. Meaning of "for the purposes of an election"

(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.

(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

62. Application to question an election

(1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

(2) An application may only be made once the outcome of the election has been declared by the returning officer.

(3) An application may only be made to the Regulator 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.

(4) The application must -

- (a) describe the alleged breach of the rules or electoral irregularity, and
- (b) be in such a form as the Regulator may require.

- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.
- (6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- a. The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
- b. The determination by the person or persons nominated in accordance with Rule 61 (7) 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.
- c. The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 - Miscellaneous

63. Secrecy

(1) The following persons –

- (a) the returning officer
(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 a ballot paper or who has or has not voted,
(ii) the unique identifier on any ballot paper,
(iii) the candidate(s) for whom any member has voted.

(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.

(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.

64. Prohibition of disclosure of vote

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.

65. Disqualification

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.

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

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 and declarations of identity,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

ANNEX 5 - ADDITIONAL PROVISIONS - COUNCIL OF GOVERNORS

1. Appointed Governors

Local Authority Health & Wellbeing Governors

- 1.1** The Chair, having consulted with the Local Authority is to adopt a process for agreeing the appointment of a Public Health & Wellbeing Governor.

Higher Education Governor

- 1.2** The Chair, having consulted with the local Higher Education providers, is to adopt a process for agreeing the appointment of the Higher Education Governor with the Higher Education provider.

Partnership Governors

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

2. Eligibility to be a Governor

- 2.1** A person may not become a governor of the trust, and if already holding such office will immediately cease to do so, if:

- 2.1.1** they are a person who within the preceding five years has been :

2.1.1.1 made subject to a Hospital Order under section 37 of the MHA whether or not subject to restrictions under section 41;

2.1.1.2 made subject to an Interim Hospital Order under section 38 of the MHA;

2.1.1.3 made subject to a transfer direction under section 48 of the MHA; and/or

2.1.1.4 found unfit to plead under the Criminal Procedure (Insanity) Act 1964 as amended.

- 2.1.2** they are a person who has previously been or is currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or committed a sexual offence prior to the requirement to register under current legislation.

- 2.1.3** they are a director of the trust, or a governor or director of a health service organisation (unless they are an appointed governor appointed by the health service organisation for which they are a governor or director);

- 2.1.4** they are the spouse, partner, parent or child of a member of the Board of Directors (including the Chair) of the trust;

- 2.1.5** they are a member of a committee which has any role on behalf of a

local authority to scrutinise health matters;

- 2.1.6** 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;
- 2.1.7** on the basis of disclosures obtained through an application to the Disclosure and Barring Service, they are not considered suitable by the trust's executive director responsible for Human Resources;
- 2.1.8** they have within the preceding five (5) years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service organisation;
- 2.1.9** they are a person whose tenure of office as the Chair or as a member or director of a health service organisation 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 a pecuniary interest;
- 2.1.10** they are a person who has had his name removed or been suspended from any list (including any performers list maintained by the NHS Commissioning Board) 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 subsequently had his name included in such a list or had his suspension lifted or qualification reinstated.

3. Termination of office and removal of Governors

3.1 A person holding office as a governor shall immediately cease to do so if:

- 3.1.1** they resign by notice in writing to the Secretary;
- 3.1.2** they fail to attend two (2) consecutive meetings, unless the other governors are satisfied that:
 - 3.1.2.1** the absences were due to reasonable causes; and
 - 3.1.2.2** they will be able to start attending meetings of the Council of Governors again within such a period as the other governors consider reasonable.
- 3.1.3** they have refused without reasonable cause to undertake any training which the Council of Governors requires all governors to undertake;
- 3.1.4** 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;
- 3.1.5** they are removed from the Council of Governors under the following provisions;

- 3.1.5.1 a governor may be removed from the Council of Governors by a resolution approved by not less than two-thirds of the remaining governors present and voting on the grounds that they have committed a serious breach of the code of conduct for governors, or they have 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 them to continue as a governor.

4. Vacancies amongst Governors

- 4.1 Subject to paragraph 4.2 below, where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply:

- 4.1.1 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 the term of office of the governor who is being replaced.

- 4.1.2 where the vacancy arises amongst the elected governors, the Council of Governors shall be at liberty either:

- 4.1.2.1 to call an election to fill the seat for the remainder of that term of office of the governor who is being replaced:

- 4.1.2.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, or, should that candidate decline, each of the remaining next highest polling candidates in order until the seat is filled, to fill the seat until the next annual election, at which time the seat will fall vacant and be subject to election for any unexpired period of the term of office of the governor who is being replaced; or

- 4.1.2.3 to leave the seat vacant until the next annual elections are held.

- 4.2 Where the result of any vacancy on the Council of Governors under paragraph 4.1 above is that

- 4.2.1 the Council of Governors will no longer fulfil the requirements of paragraphs 9(1) and 9(2) of Schedule 7 to the 2006 Act; or

- 4.2.2 meetings of the Council of Governors can no longer be quorate in accordance with Annex 6 below

then the Council of Governors shall ensure that such vacancy is filled as soon as reasonably practicable.

5. Expenses and Remuneration of Governors

- 5.1 The trust may reimburse governors for travelling and other costs and expenses incurred in carrying out their duties at such rates as the Board of Directors decides.

- 5.2 The trust may at its discretion decide to reimburse the cost and expense of a

governor's childcare/carer arrangements necessarily and reasonably incurred in such governor carrying out their duties at such rates as the Board of Directors decide.

- 5.3** 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/her contracted duties) and shall not make any corresponding deduction from salary.
- 5.4** Governors are not to receive any remuneration other than as set out in this paragraph.

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

1. INTERPRETATION

- 1.1 Save as permitted by law, the Chair of the Foundation Trust shall be the final authority on the interpretation of Standing Orders (on which he shall be advised by the Secretary).
- 1.2 If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.
- 1.3 Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

“Board of Directors” shall mean the Chair and Non-Executive Directors and the Executive Directors.

“Chair” is the person appointed as Chairman by the Council of Governors in accordance with this Constitution. The expression “the Chair” shall be deemed to include the Deputy Chairman or otherwise the person presiding for the time being over its meetings.

“Chief Executive” shall mean the chief officer of the Trust.

“Constitution” means the constitution of the Trust and all annexes to it, as may be amended from time to time.

“Council of Governors” means the Council of Governors of the Trust from time to time;

“Director” shall mean a person appointed to the Board of Directors in accordance with the Trust’s Constitution and includes the Chair.

“Governor” means a Governor on the Council of Governors

“Meeting”	means a duly convened meeting of the Council of Governors;
“Motion”	Means a formal proposition to be discussed and voted on during the course of a meeting.
“Nominated Officer”	means an Officer charged with the responsibility for discharging specific tasks within Standing Orders.
“Officer”	means an employee of the Trust.
“Question on Notice”	means a question from a Governor (notice of which has been given pursuant to Standing Order 4.7) about a matter over which the Council has powers or duties or which affects the services provided by the Trust;
“Secretary”	means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including a joint assistant or deputy secretary.
“SOs”	means Standing Orders.

2. GENERAL INFORMATION

- 2.1 The purpose of the Council of Governors’ Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all meetings of the Council of Governors and associated deliberations. The Council shall at all times seek to comply with the Trust’s statement of roles and responsibilities in relation to the Council of Governors and the Trust’s Code of Conduct for Governors.
- 2.2 All business shall be conducted in the name of the Trust.
- 2.3 The Board of Directors shall appoint trustees to administer separately charitable funds received by the Trust and for which they are accountable to the Charity Commission.
- 2.4 A Governor who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability

which is incurred in the execution or purported execution of his or her functions as a Governor save where the Governor has acted recklessly. Any costs arising in this way will be met by the Trust. On behalf of the Council of Governors, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.

3. Composition of the Council of Governors

- 3.1. The composition of the Council of Governors shall be in accordance with paragraph 10 and Annex 3 of the Constitution.
- 3.2. **Appointment and Removal of the Chair and Deputy Chair of the Council of Governors** - These appointments shall be made by the Council of Governors in accordance with paragraphs 24 and 25 of the Constitution.
- 3.3. **Duties of Deputy Chair** - Where the Chair of the Trust has died or has otherwise ceased to hold office or where he has been unable to perform his duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform his duties, be taken to include references to the Deputy Chair. If the person presiding at any meeting of the Council of Governors has a conflict of interest in relation to the business being discussed, the Lead Governor appointed by the Council of Governors will chair that part of the meeting.

4. Meetings of the Council of Governors

- 4.1. **Admission to meetings**
 - 4.1.1 Meetings of the Council of Governors must be open to the public (which, for the avoidance of doubt, includes representatives of the press), subject to 4.1.2 and 4.1.3 below.
 - 4.1.2 The Council of Governors may resolve to exclude members of the public or a representative from the press from any meeting or part of a meeting for reasons of commercial confidentiality or for other special reasons.
 - 4.1.3 The Chair may exclude any member of the public or representative from the press from the meeting of the Council of Governors if he considers that that member of the public or representative from the press is interfering with or preventing the proper conduct of the meeting.
 - 4.1.4 Meetings of the Council of Governors shall be held at least two times each financial year at such times and places that the Chair may determine.

4.1.5 Without prejudice to the power of the Council of Governors to require one or more of the Directors to attend a meeting of the Council of Governors for the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and decide whether to propose a vote on the Trust's or Directors' performance) at paragraph 15 of the Constitution, the Council of Governors may invite the Chief Executive, one or more Directors or a representative of the auditor or other advisors , as appropriate, to attend any meeting of the Council of Governors to enable Governors to raise questions about the Trust's affairs.

4.2 **Calling Meetings**

4.2.1 Meetings of the Council of Governors may be called by the Secretary or the Chair or ten Governors (including at least two elected Governors and two appointed Governors) 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. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If upon receipt of such a request, the Secretary fails to call such a meeting, the Chair or ten Governors, whichever is the case, shall call the meeting.

4.2.2 All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting or the appointment or election of the Governors attending the meeting.

4.3 **Notice of Meetings**

4.3.1 The Secretary shall deliver a schedule of the dates, times and venues of meetings of the Council of Governors for each financial year, one month in advance of the first meeting of the Council of Governors to be called, duly signed by the Chair or by an Officer of the Trust authorised by the Chair to sign on his behalf, to every Governor, or send such schedule by post to the usual place of residence of such Governor. Lack of service of the notice on any Governor shall not affect the validity of a meeting, subject to 4.3.4 below.

4.3.2 Notwithstanding 4.3.1, and subject to 4.3.3, should an

additional meeting of the Council of Governors be called pursuant to 4.2, the Secretary shall, as soon as possible, deliver written notice of the date, time and venue of the meeting to every Governor, or send by post to the usual place of residence of such Governor, so as to be available to him at least fourteen days but not more than twenty-eight days' notice before the meeting. Such notice will also be published on the Trust's website.

- 4.3.3 The Chair may waive the notice required pursuant to 4.3.2 in the case of emergencies or in the case of the need to conduct urgent business.
- 4.3.4 Subject to 4.3.3, failure to serve notice on more than three quarters of Council of Governors will invalidate any meeting. A notice will be presumed to have been served in accordance with the provisions of paragraph 46 of the Trust's Constitution.
- 4.3.5 Before each meeting of the Council of Governors, the Secretary shall ensure that every Governor is provided with reasonable notice of the details of the business to be transacted in it. In the case of a meeting called by Governors in default of the Chair, no business shall be transacted at the meeting other than that specified in the notice.

4.4 Setting the Agenda

- 4.4.1 The Secretary shall ensure an agenda, minutes of the previous meeting of the Council of Governors, copies of any Questions on Notice and/or motions on notice to be considered at the relevant meeting of the Council of Governors and any supporting papers are delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him/her at least seven days in advance of the meeting.
- 4.4.2 Approval of the minutes of the previous meeting of the Council of Governors will be a specific item on each agenda.
- 4.4.3 In the case of a meeting called by the Chair, a Governor desiring a matter to be included on an agenda shall make his request in writing to the Chair at least ten days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.4.4 Without prejudice to the Chair's discretion to allow urgent motions or urgent questions, there will no agenda item entitled "Any Other Business." Instead, there will be an item for Questions on Notice and/or motions on notice which are subject to other provisions of these standing orders.

4.5 Chair of Meeting

At any meeting of the Council of Governors, the person presiding shall be determined in accordance with paragraph 15 of the Constitution.

4.6 Notices of Motions

4.6.1 For the avoidance of doubt, motions by the Council of Governors may only concern matters for which the Council of Governors has a responsibility or which affect the services provided by the Trust.

4.6.2 Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Governor who gave it and the signature of four other Governors. When any such motion has been disposed of by the Council of Governors it shall not be competent for any Governor, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if he considers it appropriate.

4.6.3 Subject to 4.6.5 and except in the circumstances covered by 4.8, Governors desiring to move or amend a motion shall send a written notice thereof at least ten days before the meeting at which it is proposed to be considered to the Secretary, such written notice to be signed or transmitted by at least two Governors. For the purposes of this 4.6, receipt of such motions by electronic means is acceptable.

4.6.4 Upon receipt of a motion, the Secretary shall:

4.6.4.1 acknowledge receipt in writing to each of the Governors who signed or transmitted it; and

4.6.4.2 insert this in the agenda for that meeting, together with any relevant papers.

4.6.5 The following motions may be moved at any meeting without notice:

4.6.5.1 To amend the minutes of the previous meeting of the Council of Governors in order to ensure accuracy;

4.6.5.2 To change the order of business in the agenda for the meeting;

4.6.5.3 To refer a matter discussed at a meeting to an appropriate body or individual;

4.6.5.4 To appoint a working group arising from an item on the agenda for the meeting;

- 4.6.5.5 To receive reports or adopt recommendations made by the Board of Directors;
- 4.6.5.6 To withdraw a motion;
- 4.6.5.7 To amend a motion;
- 4.6.5.8 To proceed to the next business on the agenda;
- 4.6.5.9 That the question be now put;
- 4.6.5.10 To adjourn a debate;
- 4.6.5.11 To adjourn a meeting;
- 4.6.5.12 To exclude the public and press from the meeting in question pursuant to 4.1.2 (in which case, the motion shall state on what grounds such exclusion is appropriate).
- 4.6.5.13 To not hear further from a Governor, or to exclude them from the meeting in question (if a member persistently disregards the ruling of the Chair or behaves improperly or offensively or deliberately obstructs business, the Chair, in his absolute discretion, may move that the Governor in question will not be heard further at that meeting and, if seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chair may move that either the Governor leaves the meeting room or that the meeting is adjourned for a specific period. If seconded, that motion will be voted on without discussion.)
- 4.6.5.14 To give the consent of the Council of Governors to any matter on which its consent is required pursuant to the Constitution.
- 4.6.6 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

4.7 Questions on Notice at Meetings

- 4.7.1 Subject to 4.7.2, a Governor may ask a Question on Notice of:
 - 4.7.1.1 the Chair;
 - 4.7.1.2 another Governor;
 - 4.7.1.3 an Executive Director; or
 - 4.7.1.4 the chair of any sub-committee or working group of the Council.
- 4.7.2 Except in the circumstances covered by 4.8, notice of a Question on Notice must be given in writing to the Secretary at least ten days prior to the relevant meeting. For the purposes of

this Standing Order 4.7, receipt of any such Questions on Notice via electronic means is acceptable.

4.7.3 A response to a Question on Notice may take the form of:

4.7.3.1 A direct oral answer at the relevant meeting (which may, where the desired information is in a publication of the Trust or other published work, take the form of a reference to that publication);

4.7.3.2 Where a direct oral answer cannot be given, a written answer which will be circulated as soon as reasonably practicable to the questioner and circulated to the remaining Governors with the agenda for the next meeting.

4.7.4 Supplementary questions for the purpose of clarification of a reply to a Question on Notice may be asked at the absolute discretion of the Chair.

4.8 **Urgent motions or questions**

4.8.1 The Chair may, in his opinion, table an urgent motion or question.

4.8.2 A Governor may submit an urgent motion or question in writing to the Secretary before the commencement of the meeting at which it is proposed it should be considered.

4.9 **Reports from the Executive Directors**

4.9.1 At any meeting, a Governor may ask any question on any report by an Executive Director or another Officer through the Chair without notice, after that report has been received by or while such report is under consideration by the Council of Governors at the meeting.

4.9.2 Unless the Chair decides otherwise, no statements will be made by a Governor other than those which are strictly necessary to define or clarify any questions posed pursuant to 4.9.1 and, in any event, no such statement may last longer than three minutes each.

4.9.3 A Governor who has asked a question pursuant to 4.9.1 may ask a supplementary question if the supplementary question arises directly out of the reply given to the initial question.

4.9.4 The Chair may, in his absolute discretion, reject any question from any Governor if, in the opinion of the Chair, the question is substantially the same and relates to the same topic as a question which has already been put to the meeting or a previous meeting.

- 4.9.5 At the absolute discretion of the Chair, questions may, at any meeting which is held in public, be asked of the Executive Directors present by members of the Foundation Trust or any other members of the public present at the meeting.

4.10 Speaking

This Standing Order applies to all forms of speech/debate by Governors or members of the Trust and public in relation to a motion or question under discussion at a meeting of the Council of Governors.

- 4.10.1 Any approval to speak must be given by the Chair.
- 4.10.2 All speakers must state their name and role before starting to speak to ensure the accuracy of the meeting minutes.
- 4.10.3 Speeches must be directed to the matter, motion or question under discussion or to a point of order.
- 4.10.4 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 or importance, no proposal, speech nor any reply may exceed three minutes.
- 4.10.5 The Chair may, in his absolute discretion, limit the number of replies, questions or speeches which are heard at any one meeting.
- 4.10.6 A person who has already spoken on a matter at a meeting may not speak again at that same meeting in respect of that matter unless exercising a right of reply or speaking on a point of order.

4.11 Chair's Ruling

Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

4.12 Voting

- 4.12.1 Save as otherwise specified in this Constitution, decisions at meetings shall be determined by a majority of the members of the Council of Governors present and voting. In the case of any equality of votes, the person presiding shall have a casting vote. However, no resolution shall be passed if it is opposed by all of the Public Governors present.
- 4.12.2 All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the

Governors present so request or if the Chair so directs.

- 4.12.3 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.12.4 If a Governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.12.5 In no circumstances may an absent Governor vote by proxy. Subject to paragraph 4.17.4, absence is defined as being absent at the time of the vote.
- 4.12.6 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 Council of Governors of the particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a Governor on 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 and every agenda for meetings of the Council of Governors shall draw this to the attention of the elected Governors.

4.13 **Suspension of Standing Orders (SOs)**

- 4.13.1 Except where this would contravene any statutory provision or a direction made by the Secretary of State, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council of Governors are present and that a majority of those present vote in favour of suspension.
- 4.13.2 A decision to suspend SOs shall be recorded in the minutes of the meeting.
- 4.13.3 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Directors.
- 4.13.4 No formal business may be transacted while SOs are suspended.
- 4.13.5 The Trust's Audit Committee shall review every decision to suspend SOs.

4.14 **Variation and Amendment of Standing Orders**

These Standing Orders shall be amended only in accordance with the procedure set out in the Constitution and only if:

- 4.14.1 the variation proposed does not contravene a statutory provision; and

4.14.2 a motion to amend the Standing Orders is signed by ten Governors (including at least two elected Governors and two appointed Governors) and submitted to the Secretary in writing at least 14 days before the meeting at which the motion is intended to be proposed.

4.15 **Record of Attendance**

4.15.1 The names of the Governors present at the meeting (including when present pursuant to paragraph 4.17.4) shall be recorded in the minutes.

4.15.2 Governors who are unable to attend a meeting shall notify the Secretary in writing in advance of the meeting in question in order that their apologies are submitted.

4.16 **Minutes**

4.16.1 The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.

4.16.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.16.3 The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public and press are excluded pursuant to 4.1.2 unless otherwise required by law.

4.17 **Quorum**

4.17.1 Subject to 4.17.2, twelve Governors shall form a quorum.

4.17.2 The Council of Governors shall not be quorate unless a majority of governors present are Public Governors.

4.17.3 If a Governor has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

4.17.4 The Council of Governors may agree that its members can

participate in its meetings by telephone, video or video media link and where appropriate, address communication and language needs. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

5. Arrangements for the Exercise of Functions by Delegation

The Council of Governors may not delegate any of its powers to a committee or sub-committee, although it may appoint committees consisting of its members, Directors and other persons to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.

6. Confidentiality

- 6.1 A Governor on the Council of Governors shall not disclose a matter dealt with by, or brought before, the Council of Governors without its permission.
- 6.2 Members of the Nominations-Remuneration Committee shall not disclose any matter dealt with by the Committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or the Committee resolves that it is confidential.

7. Declaration of Interests and Register of Interests

- 7.1 Governors are required to comply with the Trust's Standards of Business Conduct and to declare interests to the Council in accordance with the Constitution and any other material interest as defined below. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.
- 7.2 Subject to the exceptions in 7.3, a "material interest" is:
 - 7.2.1 any directorship of a company;
 - 7.2.2 any interest or position in any firm, company, business or organisation (including any charitable or voluntary organisation) which has or is likely to have a trading or commercial relationship with the Trust;
 - 7.2.3 any interest in an organisation providing health and social care services to the National Health Service;
 - 7.2.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
 - 7.2.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.

- 7.3 The exceptions which shall not be treated as material interests for the purposes of these provisions are as follows:
- 7.3.1 shares where the value of those securities does not exceed £10,000 or the number of shares does not exceed 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
 - 7.3.2 an employment contract with the Trust held by a Staff Governor;
 - 7.3.3 an employment contract with a Higher Education provider held by a Higher Education Governor;
 - 7.3.4 an employment contract with a local authority held by a Local Authority Governor;
 - 7.3.5 an employment contract with or other position of authority within a partnership organisation held by a Partnership Governor.
- 7.4 Any Governor who has an interest in a matter to be considered by the Council of Governors (whether because the matter involves a firm, company, business or organisation in which the Governor or his spouse or partner has a material interest or otherwise) shall declare such interest to the Council of Governors and:
- 7.4.1 shall withdraw from the meeting;
 - 7.4.2 play no part in the relevant discussion or decision; and
 - 7.4.3 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 7.5 Any Governor who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining Governors.
- 7.6 If a Governor has any doubt about the relevance of an interest, he should discuss it with the Chair who shall advise him whether or not to disclose the interest.
- 7.7 At the time a Governor's interests are declared, they should be recorded in the Council of Governors' minutes and entered on a Register of Interests of Governors to be maintained by the Secretary. Any changes in interests should be declared at the next meeting of the Council of Governors following the change occurring.
- 7.8 Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report.

8. Register of Interests

- 8.1 The Secretary, will ensure that a Register of Interests is established to record formally declarations of interests of Governors.

- 8.2 Details of the Register will be kept up to date and reviewed annually.
- 8.3 The Register will be available to the public.

9. Compliance - Other Matters

- 9.1 All Governors shall comply with the Standards of Business Conduct set by the Board of Directors for the guidance of all staff employed by the Trust.
- 9.2 All Governors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Trust.
- 9.3 All Governors must behave in accordance with the Trust's Statement of roles and responsibilities, Code of Conduct for Governors as amended from time to time including the seven Nolan principles of behaviour in Public Life: -
- Selflessness;
 - Integrity;
 - Objectivity;
 - Accountability;
 - Openness;
 - Honesty, and
 - Leadership.

10. Resolution of Disputes with Board of Directors

- 10.1. Should a dispute arise between the Council of Governors and the Board of Directors, then the disputes resolution procedure set out below shall be followed.
- 10.2. The Chair, or Deputy Chair (if the dispute involves the Chair), shall first endeavour, through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
- 10.3. Failing resolution under 10.2 above, then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 10.4. The Chair shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 10.5. The Chair or Deputy Chair (if the dispute involves the Chair) shall immediately, or as soon as is practical, communicate the outcome to

the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 10.2 above shall be repeated.

- 10.6. If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair) and following the further discussions prescribed in 10.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the Council of Governors and Board of Directors accordingly.
- 10.7. On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 10.8. On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 10.9. Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing Monitor that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors that the Trust is not acting in accordance with the terms of its Constitution or not complying with the terms of the 2006 Act.

11. Council Performance

- 11.1. The Chair shall, at least annually, lead a performance assessment process for the Council of Governors to enable the Council of Governors to review its roles, structure and composition, and procedures, taking into account emerging best practice.
- 11.2. The performance assessment process in 11.1 shall include a review of the input into the Council of Governors of each appointing organisation.

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

1. Interpretation

1.1. Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he shall be advised by the Secretary).

1.2. If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.

1.3. Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

"BOARD OF DIRECTORS" shall mean the Chair and Non-Executive Directors and the Executive Directors.

"CHAIR" is the person appointed as Chairman by the Council of Governors in accordance with this Constitution. The expression "the Chair" shall be deemed to include the Deputy Chair or otherwise a Non-Executive Director appointed by the Board of Directors to preside for the time being over its meetings.

"CHIEF EXECUTIVE" shall mean the chief officer of the Foundation Trust.

"COMMITTEE" shall mean a committee appointed by the Board of Directors.

"COMMITTEE MEMBERS" shall be persons formally appointed by the Board of Directors to sit on or to chair specific committees.

"CONSTITUTION" shall mean the constitution of the Trust and all annexes to it, as may be amended from time to time.

"DIRECTOR" shall mean a member of the Board of Directors appointed in accordance with the Trust's Constitution and includes the Chair.

"MOTION" means a formal proposition to be discussed and voted

on during the course of a meeting.

"NOMINATED OFFICER" means an Officer charged with the responsibility for discharging specific tasks within Standing Orders.

"OFFICER" means an employee of the Trust.

"SECRETARY" means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including a joint assistant or deputy secretary.

"SOS" mean Standing Orders.

2. General Information

- 2.1. The purpose of the Board of Directors Standing Orders is to ensure that the highest standards of Corporate Governance are achieved in the Board of Directors and throughout the organisation. The Board of Directors shall at all times seek to comply with the Trust's Code of Conduct for Directors.
- 2.2. All business shall be conducted in the name of the Trust.
- 2.3. All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 2.4. A Director, or Officer of the Trust, who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her functions as a Director save where the Director has acted recklessly. Any ~~costs~~ arising in this way will be met by the Trust. On behalf of the Directors, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.

3. Composition of the Board of Directors

- 3.1. The composition of the Board of Directors shall be as set out in paragraph 21 of the Trust's Constitution.
- 3.2. **Appointment and Removal of the Chair and Non-Executive Directors**
 - 3.2.1. Paragraph 23 of the Constitution sets out the eligibility criteria for appointment as the Chair or another Non-Executive Director.

- 3.2.2. The Chair and Non-Executive Directors are appointed/removed by the Council of Governors in accordance with paragraph 24 of the Trust's Constitution using the following procedure:
- 3.2.2.1. The Council of Governors will maintain a policy for the appointment of the Chair and the other Non-Executive Directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.
- 3.2.2.2. The Council of Governors may work with an external organisation recognised as expert at appointments to identify the skills and experience required for Non-Executive Directors.
- 3.2.2.3. Appropriate candidates (not more than five (5) for each vacancy) will be identified by a nominations-remuneration committee through a process of open competition, which takes account of the policy maintained by the Council of Governors and the skills and experience required.
- 3.2.2.4. The nominations-remuneration committee will comprise the Chair of the Trust (save where the Chair is being appointed, the Chair shall be replaced by the Deputy Chair, unless he is standing for appointment, in which case another Non-Executive Director) who should act as chair of the nominations-remuneration committee, two Elected Governors and one Appointed Governor. The nominations-remuneration committee will be advised by an independent assessor, who may be a chair of another Foundation Trust or NHS Trust.
- 3.2.2.5. The Chair and any other Non-Executive Director may hold office for a period of up to 3 years and shall, subject to any other eligibility criteria to hold office, be eligible for re-appointment at the end of his term.
- 3.2.3. The removal of the Chair or any other non-executive director shall be in accordance with the provisions of this Constitution and the following procedure:
- 3.2.3.1. Any proposal for removal must be proposed by a Governor and seconded by no fewer than ten (10) Governors including at least two (2) Elected Governors and two (2) Appointed Governors.

- 3.2.3.2. Written reasons for the proposal shall be provided to the Chair or other Non-Executive Director in question, who shall be given the opportunity to respond to such reasons.
 - 3.2.3.3. In making any decision to remove a Non-Executive Director (other than the Chair), the Council of Governors shall take into account any annual appraisal carried out by the Chair.
 - 3.2.3.4. If any proposal to remove the Chair or other Non-Executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such Non-Executive Director based upon the same reasons within twelve (12) months of the meeting.
- 3.3. The Chief Executive and the other Executive Directors shall be appointed in accordance with paragraph 26 of the Trust's Constitution.
- 3.4. **Secretary** - The Board of Directors shall appoint the Secretary of the Trust.
- 3.5. **Senior Independent Director** - The Board of Directors shall, following consultation with the Council of Governors, appoint one of the Non-Executive Directors to be the senior independent director. The senior independent director shall make himself available to members and Governors who have concerns that they do not feel they can raise with the Chair or any Executive Director of the Trust. Recourse to the senior independent director shall not replace the right to instigate the dispute resolution procedures at Annex 9
- 3.6. **Appointment and Removal of Deputy Chair** – For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, a Deputy Chair shall be appointed in accordance with paragraph 25 of the Trust's Constitution.
- 3.7. **Powers of Deputy Chair** - Where the Chair of the Trust has died or has otherwise ceased to hold office or where he has been unable to perform his duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform his duties, be taken to include references to the Deputy Chair or otherwise to the Non-Executive Director appointed by the Board of Directors to preside for the time being over its meetings.
- 3.8. **Deputy Chief Executive** - The Chief Executive shall delegate authority to act in his/her absence and to deputise in the stead of the Chief Executive to an Executive Director or Executive Directors as

appropriate to the circumstances and will put in place arrangements to maintain a record of such delegated authority.

- 3.9. **Joint Directors** - Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for executive directorship or in relation to which an Executive Director is to be appointed, those persons shall become appointed as an Executive Director jointly, and shall count as one person.
- 3.10. Non-Executive Directors may seek external advice or appoint an external advisor on any material matter of concern provided the decision to do so is a collective one by the majority of Non-Executive Directors.

4. Meetings of the Board of Directors

4.1. Admission to meetings

- 4.1.1. Meetings of the Board of Directors must be open to the public, unless the Board decides otherwise in relation to all or part of such meetings for reasons of commercial sensitivity or for other special reasons.
- 4.1.2. The Board of Directors may resolve to invite an individual to any meeting or part of a meeting on the grounds that it considers that:
- (a) their attendance at the meeting is relevant and beneficial to the nature of the business under consideration or is otherwise in the public interest; and
 - (b) that the individual understands any requirements for confidentiality that may be required of them by attending that meeting or part of a meeting.
- 4.1.3. The Board of Directors shall meet sufficiently regularly to discharge its duties effectively. Meetings shall be held at such times and places that the Board of Directors may determine.

4.2. Calling Meetings

- 4.2.1. Meetings of the Board of Directors may be called by the Secretary, or by the Chair or by four Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting, the Chair or four Directors, whichever is the case, shall call the meeting.
- 4.2.2. All decisions taken in good faith at a meeting of the Board of Directors or of any committee shall be valid even if it is

discovered subsequently that there was a defect in the calling of the meeting, a vacancy on the Board of Directors, or defect in the appointment of the Directors attending the meeting.

4.3. Notice of Meetings

- 4.3.1. The Secretary shall give to all Directors at least fourteen (14) days' written notice of the date and place of every meeting of the Board of Directors.
- 4.3.2. The Chair may waive the notice required pursuant to 4.3.1 in the case of emergencies or in the case of the need to conduct urgent business.
- 4.3.3. Subject to 4.3.2, failure to serve such a notice on more than three Directors will invalidate the meeting. A notice will be presumed to have been served in accordance with the provisions of paragraph 46 of the Trust's Constitution.
- 4.3.4. Before each meeting of the Board, the Secretary shall ensure that every Director is provided with reasonable notice of the details of the business proposed to be transacted at it. In the case of a meeting called by Directors in default of the Chair, no business shall be transacted at the meeting other than that specified in the notice.

4.4. Setting the Agenda

- 4.4.1. The agenda for all meetings of the Board of Directors will be prepared by the Chair and Chief Executive, as advised by the Secretary. However, the Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Board of Directors and shall be addressed prior to any other business being conducted.
- 4.4.2. In the case of a meeting called by the Chair or Secretary, a Director desiring a matter to be included on an agenda shall make his request in writing to the Secretary at least ten days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.4.3. The Secretary shall make arrangements to ensure that the final agenda and any supporting papers for the meeting, following the receipt of any requests in accordance with 4.4.2 above, are delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him at least seven days before the meeting. Copies of the

final agenda must be sent to the Council of Governors at the same time.

4.5. Chair of Meeting

At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair appointed by the Council of Governors to take on the Chair's duties shall preside. Otherwise, such Non-Executive Director as the Directors present shall choose shall preside.

4.6. Notices of Motions

4.6.1. A Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten days before the meeting to the Secretary, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to 4.3.4 above.

4.6.2. A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

4.6.3. Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Directors who gave it and also the signature of four other Directors. When any such motion has been disposed of by the Board of Directors it shall not be competent for any Director, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if he considers it appropriate.

4.6.4. The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

4.6.5. When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:

- (a) An amendment to the motion.
- (b) The adjournment of the discussion or the meeting.
- (c) The appointment of an ad hoc committee to deal with a specific item of business.
- (d) That the meeting proceeds to the next business.
- (e) That the motion be now put.

Such a motion, if seconded, shall be disposed of before the

motion, which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

In the case of motions under (d) and (e), to ensure objectivity, motions may only be put by a Director who has not previously taken part in the debate.

4.7. Chair's Ruling

Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

4.8. Voting

4.8.1. Save as otherwise specified in this Constitution, decisions at meetings shall be determined by a majority of the votes of the Directors present and voting. In the case of any equality of votes, the Chair, or, in his absence, the person appointed to preside in accordance with 4.5 shall have a second and casting vote. No resolution of the Board of Directors shall be passed if it is opposed by all of the Non-Executive Directors present or by all of the Executive Directors present.

4.8.2. All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request or if the Chair so directs.

4.8.3. If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.

4.8.4. If a Director so requests, her vote shall be recorded by name upon any vote (other than by paper ballot).

4.8.5. In no circumstances may an absent Director vote by proxy. Subject to paragraph 4.14.4, absence is defined as being absent at the time of the vote.

4.8.6. An officer who has been appointed formally by the Board of Directors to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not

exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

4.9. Joint Directors

Where an Executive Director post is shared by more than one person:

- (a) each person shall be entitled to attend meetings of the Board of Directors;
- (b) in the case of agreement between them, they shall be eligible to have one vote between them;
- (c) in the case of disagreement between them, no vote should be cast;
- (d) the presence of those persons shall count as one person.

4.10. Suspension of Standing Orders (SOs)

4.10.1. Except where this would contravene any statutory provision or direction made by the Secretary of State, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board of Directors are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.

4.10.2. A decision to suspend SOs shall be recorded in the minutes of the meeting.

4.10.3. A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Directors.

4.10.4. No formal business may be transacted while SOs are suspended.

4.10.5. The Audit Committee shall review every decision to suspend SOs.

4.11. Variation and Amendment of Standing Orders

These Standing Orders shall be amended only in accordance with paragraph 42 of the Constitution and only if:

4.11.1. the variation proposed does not contravene a statutory provision; and

4.11.2. notice of a motion to amend the Standing Orders is given in accordance with these Standing Orders; and

4.11.3. no fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment; and

4.11.4. at least two-thirds of the Directors are present.

4.12. **Record of Attendance**

The Secretary shall keep and maintain a record of the number of meetings of the Board of Directors and the attendance of individual directors. The names of the Directors present at the meeting (including when deemed present pursuant to paragraph 4.14.4) shall also be recorded in the minutes.

4.13. **Minutes**

4.13.1. The minutes of the proceedings of a meeting shall be drawn up and maintained as a permanent record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.

4.13.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.13.3. Approved minutes shall be sent to the Council of Governors as soon as practicable after each meeting of the Board and shall be otherwise circulated in accordance with the Directors' wishes.

4.14. **Quorum**

4.14.1. Seven Directors including not less than two Executive Directors (one of whom must be the Chief Executive or another Executive Director nominated by the Chief Executive), and not less than two Non-Executive Directors (one of whom must be the Chair or the Deputy Chair of the Board of Directors) shall form a quorum.

4.14.2. An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

4.14.3. If a Director has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

4.14.4. The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link and where appropriate, address communication and language

needs. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

5. Arrangements for the Exercise of Functions by Delegation

- 5.1. The Trust has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. These powers and decisions are set out in "Reservation of Powers to the Board."
- 5.2. The Board of Directors may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, or by a Director or an Officer of the Trust in each case subject to such restrictions and conditions as the Board of Directors thinks fit.
- 5.3. **Emergency Powers** - The powers which the Board of Directors has retained to itself within these Standing Orders may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board of Directors for ratification.
- 5.4. **Delegation to Committees** - The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees of Directors, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board of Directors.
- 5.5. **Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to one of its Committees shall be exercised on behalf of the Board of Directors by the Chief Executive. He shall determine which functions he will perform personally and shall nominate Officers to undertake remaining functions but still retain accountability for these to the Board of Directors.
- 5.6. The Chief Executive shall prepare a Scheme of Delegation identifying his proposals that shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.
- 5.7. Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Executive Directors to provide information and advise the Board of Directors in accordance with any statutory requirements.

- 5.8. The arrangements made by the Board of Directors as set out in the "Scheme of Delegation" shall have effect as if incorporated into these Standing Orders.

6. Committees

6.1. Appointment of Committees

- 6.1.1. The Board of Directors may appoint committees of the Board of Directors, consisting wholly or partly of Directors of the Trust or wholly of persons who are not Directors of the Trust.
- 6.1.2. A committee so appointed may appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include Directors of the Trust) or wholly of persons who are not members of the committee (whether or not they include Directors of the Trust).
- 6.1.3. The Standing Orders of the Board of Directors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Board of Directors.
- 6.1.4. Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors) as the Board of Directors shall decide from time to time following reviews of the terms of reference, powers and conditions. Such terms of reference shall be read in conjunction with these Standing Orders.
- 6.1.5. The Board of Directors may not delegate their executive powers to a committee, and a committee may not delegate any executive power it may have to a sub-committee, unless the committee or subcommittee consists wholly of Directors and such delegation is expressly authorised by the Board of Directors.
- 6.1.6. The Board of Directors shall approve the appointments to each of the committees that it has formally constituted. Where the Board of Directors determines that persons, who are neither Directors nor Officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board of Directors.
- 6.1.7. Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions as required by Monitor, and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with

the applicable statute and regulations and with any guidance issued by Monitor and approved by the Board of Directors.

6.2. Confidentiality

- 6.2.1. A member of the Board of Directors shall not disclose a matter dealt with by, or brought before, the Board of Directors without its permission.
- 6.2.2. A member of a committee of the Board of Directors shall not disclose any matter dealt with by, or brought before, the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

7. Declaration of Interests and Register of Interests

7.1. Declaration of Interests

- 7.1.1. Directors are required to comply with the Trust's Standards of Business Conduct, to declare interests that are required to be declared by the Constitution and to declare any other interests that are material to the Board of Directors. All Directors should declare such interests on appointment and on any subsequent occasion that a conflict arises.
- 7.1.2. Interests regarded as "material" include any of the following, held by a Director or the spouse or partner of a Director if living together as a couple (whether married or not):
 - a) Any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue or the value of such shareholding does not exceed £10,000) or position held by a Director in any firm, company or business which has or is likely to have a trading or commercial relationship with the Trust.
 - b) Any directorship of a company.
 - c) Any interest in a voluntary or other organisation providing health and social care services to the National Health Service.
 - d) A position of authority in a charity or voluntary organisation in the field of health and social care.
 - e) Any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.
- 7.1.3. Any Director who has a material interest in a matter as defined above shall declare such interest to the Board of Directors and:

- 7.1.3.1. withdraw from the meeting and play no part in the relevant discussion or decision, and
 - 7.1.3.2. shall not vote on any issue arising out of or connected with the matter (and if by inadvertence they do remain and vote, their vote shall not be counted).
 - 7.1.4. Any Director who fails to disclose any interest required to be disclosed under the preceding paragraph or otherwise required to be disclosed by this Constitution must permanently vacate their office if required to do so by a majority of the remaining Directors and (in the case of a Non-Executive Director) by the requisite majority of the Council of Governors pursuant to paragraph 24 of the Trust's Constitution.
 - 7.1.5. If Directors have any doubt about the relevance of an interest, he should discuss it with the Chair.
 - 7.1.6. At the time Directors' interests are declared, they should be recorded in the Board minutes. Any changes in interests should be declared at the next Board meeting following the change occurring.
 - 7.1.7. Directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Board of Director's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 7.2. Register of Interests
 - 7.2.1. The Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Directors. In particular the Register will include details of all directorships and other relevant and material interests that have been declared by both Executive and Non-Executive Directors.
 - 7.2.2. These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
 - 7.2.3. The Register will be available to the public and the Secretary will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.
- 7.3. Disability in proceedings on account of pecuniary interest
 - 7.3.1. Subject to the following provisions of this Standing Order, if a Director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present

at a meeting of the Board at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

7.3.2. The Board shall exclude a Director from a meeting of the Board while any contract, proposed contract or other matter in which he or a relative has a pecuniary interest, is under consideration.

7.3.3. For the purpose of this Standing Order the Chair or a Director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

7.3.3.1. he, or a nominee of his, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

7.3.3.2. he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

7.3.3.3. and in the case of persons living together as partners the interest of one or other shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other, save that:

7.3.3.4. A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

7.3.3.4.1. of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;

7.3.3.4.2. of an interest in any company, body or person with which he is connected as mentioned in paragraph 7.3.3.3 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in

voting on, any question with respect to that contract or matter.

7.3.4. Where a Director:

7.3.4.1. has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and

7.3.4.2. the total nominal value of those securities does not exceed £10,000 or 2% of the total nominal value of the issued share capital of the company or body, whichever is the less, and

7.3.4.3. if the share capital is of more than one class, the total nominal value of shares of any one class in which he/she has a beneficial interest does not exceed 2% of the total issued share capital of that class,

this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his/her duty to disclose his/her interest.

7.3.5. This paragraph 7.3 applies to a committee or sub-committee of the Board as it applies to the Board and applies to any member of any such committee or sub-committee (whether or not he/she is also a Director) as it applies to a Director

8. Compliance - Other Matters

8.1. All Directors of the Trust shall comply with the Standards of Business Conduct set by the Board of Directors for the guidance of all staff employed by the Trust.

8.2. All Directors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors.

8.3. All Directors must behave in accordance with the seven Nolan principles of behaviour in Public Life and the Trust's Code of Conduct for Directors as amended from time to time: -

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty; and
- Leadership.

9. Resolution of Disputes with Council of Governors

- 9.1. Should a dispute arise between the Board of Directors and the Council of Governors, then the disputes resolution procedure set out below shall be followed.
- 9.2. The Chair, or Deputy Chair (if the dispute involves the Chair), shall first endeavour, through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
- 9.3. Failing resolution under 9.2 above, then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 9.4. The Chair shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 9.5. The Chair or Deputy Chair (if the dispute involves the Chair) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 9.2 above shall be repeated.
- 9.6. If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair) and following the further discussions prescribed in 9.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the Council of Governors and Board of Directors accordingly.
- 9.7. On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 9.8. On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 9.9. Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing Monitor that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors that the Trust is not acting in accordance with the terms of its Constitution or not complying with the terms of the 2006 Act.

10. Notification to Council of Governors

The Board of Directors shall notify the Council of Governors of any major changes in the circumstances of the Trust, which have made or could lead to a substantial change to its financial well-being, healthcare delivery performance, reputation and standing or which might otherwise affect the Trust's compliance with the terms of its NHS provider licence, Constitution or the 2006 Act.

11. Board of Directors' Performance

The Chair shall, at least annually, lead a performance assessment process for the Board of Directors. This process should act as the basis for determining individual and collective professional development programs for Directors.

ANNEX 8 MEMBERSHIP AND MEMBERS MEETINGS

1 Members Meetings

- 1.1** The trust is to hold a members meeting (called the annual members meeting) within nine months of the end of each Financial Year.
- 1.2** All members meetings other than annual meetings are called special members meetings.
- 1.3** Members meetings are open to all members of the trust, governors and directors, representatives of the auditor and to members of the public.
- 1.4** The Council of Governors 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 a members meeting.
- 1.5** All members meetings are to be convened by the Secretary by order of the Council of Governors.
- 1.6** The Council of Governors may decide where a members meeting is to be held and may also for the benefit of members arrange for the annual members meeting to be held in different venues each year
- 1.7** Council of Governors shall also fix an appropriate quorum for each venue provided that the aggregate of the quorum requirements shall not be less than the quorum set out below at the annual members meeting.
- 1.8** At each annual members meeting the Board of Directors shall present to the members:
 - 1.8.1** the annual accounts
 - 1.8.2** any report of the auditor
 - 1.8.3** the annual report
 - 1.8.4** forward planning information for the next financial year
- 1.9** At each annual members meeting the Council of Governors shall present to the members:
 - 1.9.1** a report on steps taken to secure that (taken as a whole) the actual membership of each of the areas of its Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;
 - 1.9.2** the progress of the membership strategy
 - 1.9.3** any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors

- 1.10** At any members meeting the results will be announced of the election and appointment of governors and the appointment of non-executive Directors that have occurred since the preceding members meeting
- 1.11** Notice of a members meeting is to be given:
- 1.11.1** by notice to all members;
 - 1.11.2** by notice prominently displayed at the head office and at all of the Trust's places of business; and
 - 1.11.3** by notice on the trust's website at least fourteen (14) clear days before the date of the meeting.
- 1.12** The notice of a members meeting must:
- 1.12.1** be given to the Council of Governors and the Board of Directors, and to the auditor;
 - 1.12.2** state whether the meeting is an annual or special members meeting; give the time, date and place of the meeting; and indicate the business to be dealt with at the meeting.
- 1.13** Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is one (1) member present from each of the trust's constituencies.
- 1.14** The trust may make arrangements for members to vote by post, or by using electronic communications.
- 1.15** It is the responsibility of the Council of Governors, the chair of the members meeting and the Secretary to ensure that at any members meeting:
- 1.15.1** the issues to be decided are clearly explained;
 - 1.15.2** sufficient information is provided to members to enable rational discussion to take place.
- 1.16** The Chair of the trust, or in their absence the Deputy Chair of the Board of Directors, or in their absence one of the other non-executive Directors shall act as chair at all members meetings of the trust. If neither the Chair, the Deputy Chair of the Board of Directors or a non-executive Director is present, the members of the Council of Governors present shall elect one of their numbers to be chair of that member's meeting and if there is only one (1) governor present and willing to act they shall be chair of that members meeting.
- 1.17** If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.

- 1.18** A resolution put to the vote at a members meeting shall be decided upon by a poll.
- 1.19** Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the chair of the meeting is to have a second or casting vote.
- 1.20** The result of any vote will be declared by the chair of the members meeting and entered in the minutes. The minutes will be conclusive evidence of the result of the vote.

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 or of any of the classes of the Staff Constituency;
 - 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 to be 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 a 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 at Annex 9, paragraph 1 dismiss the complaint and take no further action; or
 - 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;
 - 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 complaint 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 the 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 readmitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a meeting of the Council of Governors.

ANNEX 9 FURTHER PROVISIONS

1. Dispute Resolution Procedures

1.1 Every unresolved dispute which arises out of this constitution between the trust and:

1.1.1 a member; or

1.1.2 any person aggrieved who has ceased to be a member within the six (6) months prior to the date of the dispute; or

1.1.3 any person bringing a claim under this constitution; or

1.1.4 an office-holder of the trust

is to be submitted to a single arbitrator agreed by the parties. The arbitrator shall arbitrate any such dispute in accordance with the Arbitration Act 1996. The arbitrator's decision will be final and binding on all parties.

1.2 Any person bringing a dispute must, if required to do so, deposit with the trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.