



Cornwall Partnership
NHS Foundation Trust

**CORNWALL PARTNERSHIP NHS FOUNDATION
TRUST**

(A PUBLIC BENEFIT CORPORATION)

CONSTITUTION

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PREAMBLE

An NHS Foundation Trust is a Public Benefit Corporation authorised under the National Health Service Act 2006 to provide goods and services for the purposes of the health service in England. A Public Benefit Corporation is a body corporate which is constituted in accordance with Schedule 7 of the 2006 Act. The Constitution provides, inter alia, for the Foundation Trust to have Members, Governors and Directors, and determines who may be eligible for membership and how Governors and Directors are appointed and defines their respective roles and powers. Further, Members of the Foundation Trust may attend and participate at Members' meetings, vote in elections to, and stand for election for, the Council of Governors, as provided in this Constitution.

1 Interpretation and definitions

- 1.1 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 2006 Act as amended by the 2012 Act.
- 1.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 1.3 References in this Constitution to legislation include all amendments, replacements or re-enactments made and include all subordinate legislation made thereunder.
- 1.4 Headings are for ease of reference only and are not to affect interpretation.
- 1.5 All annexes and appendices referred to in this Constitution form part of it.
- 1.6 References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an annex or appendix to this Constitution it shall be a reference to a paragraph in that annex or appendix unless the contrary is expressly stated or the context otherwise so requires.
- 1.7 In this Constitution:

"2006 Act"

means the National Health Service Act 2006;

"2012 Act"

means the Health and Social Care Act 2012;

"Accounting Officer"

means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;

"Annual Accounts"

means those accounts prepared by the Foundation Trust pursuant to paragraph 25 of Schedule 7 to the 2006 Act;

"Annual Members' Meeting"

has the meaning ascribed to it in paragraph 11 of this Constitution;

"Annual Report"

means a report prepared by the Foundation Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act;

"Annual Plan"

means the document prepared by the Foundation Trust pursuant to paragraph 27 of Schedule 7 to the 2006 Act;

"Appointed Governors"

means a Local Authority Governor, or a Partnership Governor;

"Area of the Foundation Trust"

means the area, consisting of all the areas, specified in column 2 of Annex 1 of this Constitution, as an area for a Public Constituency;

"Audit Committee"

means a committee of the Board of Directors as established pursuant to paragraph 39 of this Constitution;

"Auditor"

means the auditor of the Foundation Trust appointed by the Council of Governors pursuant to paragraph 38 of this Constitution;

"Board of Directors"

means the Board of Directors of the Foundation Trust as constituted in accordance with this Constitution;

"Chair"

means the person appointed in accordance with the Constitution to ensure that the Board of Directors and Council of Governors successfully discharge their overall responsibilities for the Foundation Trust as a whole. The expression "the Chair" shall be deemed to include the Vice Chair or any other Non-Executive Director appointed if the Chair and/or Vice Chair is absent from the meeting or is otherwise unavailable;

"Chief Executive"

means the Chief Executive of the Foundation Trust;

"Clear Day"

means a day of the week not including a Saturday, Sunday or public holiday;

"Code"

means "The NHS Foundation Trust Code of Governance" published by NHS Improvement (Monitor) in July 2014 and as may be amended, varied or replaced by NHS Improvement (Monitor) from time to time;

"Comptroller and Auditor General"

means the individual engaged in the position of Comptroller and Auditor General to the National Audit Office (UK government department) or its statutory successor from time to time;

"Constitution"

means this Constitution together with the annexes and appendices attached hereto;

"Cornwall Council"

means the local authority of that name established pursuant to Article 3 of the Cornwall (Structural Change) Order 2008 (SI 2008/491) of County Hall, Treyew Road, Truro, TR1 3AY;

"Council of Governors"

means the Council of Governors as constituted in this Constitution in accordance with paragraph 7 of Schedule 7 to the 2006 Act;

"Council of the Isles of Scilly"

means the local authority of that name established pursuant to the Local Government Act 1972 (as amended) of Town Hall, St Mary's, Isles of Scilly, TR21 0LW;

"Deputy Chief Executive"

means an Executive Director appointed pursuant to paragraph 26.8 of this Constitution;

"Designated Organisation"

means an organisation and/or individuals registered as such in the Foundation Trust's register of Designated Organisations whose employees or, in the case of an individual, who exercise functions for the purpose of the Foundation Trust;

"Director"

means a member of the Board of Directors;

"Directors' Code of Conduct"

means the Code of Conduct for Directors of the Foundation Trust, as adopted by the Foundation Trust and as amended from time to time by the Board of Directors, to which all Directors must subscribe;

"Disclosure and Barring Service (DBS)"

means the executive non-departmental public body of the Home Office established under section 87 of the Protection of Freedoms Act 2012;

"Elected Governor"

means a Public Governor or a Staff Governor;

"Executive Director"

means an executive member of the Board of Directors of the Foundation Trust;

"External Auditor"

means any person appointed by the Board of Directors to review and report upon any aspect of the Foundation Trust's performance (for the avoidance of doubt this is not the Auditor appointed by the Council of Governors in accordance with paragraph 38 of this Constitution);

"Finance Director"

means the Director of Finance of the Foundation Trust;

"Financial Year"

means:

- (a) a period beginning with the date on which the Foundation Trust is authorised as an NHS foundation trust and ending with the next 31 March; and
- (b) each successive period of twelve months beginning with 1 April;

"Foundation Trust"

means Cornwall Partnership NHS Foundation Trust;

"Foundation Trust Head Office"

means the principal place of business of the Foundation Trust: Carew House, Beacon Technology Park, Dunmere Road, Bodmin, Cornwall PL31 2QN;

"Foundation Trust Premises"

means those premises set out in Article 3(2) of the Establishment Order and all associated hospitals, establishments and facilities at which the Foundation Trust provides and/or manages the provision of goods and/or services, including accommodation;

"Funds held on Trust"

means those funds which the Foundation Trust held as at 1 March 2010, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Section 47(2)(c) of the 2006 Act. Such funds may or may not be charitable;

"Governor"

means a member of the Council of Governors;

"Governors' Code of Conduct"

means the Code of Conduct for Governors of the Foundation Trust, as adopted by the Foundation Trust and as amended from time to time by the Board of Directors, which all Governors must subscribe to;

"Governor Roles and Responsibilities"

means the document of that name, as adopted by the Foundation Trust and as amended from time to time by the Board of Directors, which all Governors must subscribe to;

"Health Overview and Scrutiny Committee"

means a local authority overview and scrutiny committee established pursuant to Section 21 of the Local Government Act 2000;

"Health Service Body"

shall have the meaning ascribed to it in Section 65(1) of the 2006 Act;

"Immediate Family Member"

means, in relation to another person, either:

- (a) a spouse;
- (b) a person whose status is that of "Civil Partner" as defined in the Civil Partnerships Act 2004;
- (c) a child, step child or adopted child;
- (d) a parent; or
- (e) a member of the same household;

"Lead Governor/Designated Governor"

means the Lead Governor/Designated Governor of the Council of Governors appointed pursuant to paragraph 6 of Appendix 2 of Annex 5 of this Constitution;

"Local Authority Governor"

means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of the Area of the Foundation Trust;

"Local Authority Partnership Agreement"

means an agreement made under Section 75 of the 2006 Act;

"Member"

means a Member of the Foundation Trust and the term "membership" shall be construed accordingly;

"Model Rules for Elections"

means the election rules set out in Annex 4 of this Constitution;

"NHS Improvement (Monitor)"

means the body corporate of that name as provided by Section 61 of the 2012 Act;

"NHS Provider Licence"

means NHS Improvement's (Monitor) tool for the regulation of providers of NHS services;

"NHS Trust"

means Cornwall Partnership NHS Trust, established pursuant to the Cornwall Healthcare National Health Service Trust (Establishment) Order 1993 (SI 1993/813) as amended by the Cornwall Healthcare National Health Service Trust Change of Name and (Establishment) Amendment Order (SI 2002/1234) (together the "Establishment Order"), which made the application to become the Foundation Trust;

"Nominated Officer"

means an Officer charged with the responsibility for discharging specific tasks within the SOs, the SFIs, or the Scheme of Delegation;

"Nominations Committee"

means a committee appointed pursuant to paragraph 1.2 of Appendix 3 of Annex 8 of this Constitution;

"Non-Executive Director"

means a non-executive member of the Board of Directors of the Foundation Trust;

"Officer"

means an employee of the Foundation Trust or any other person holding a paid appointment or office with the Foundation Trust;

"Partnership Governor"

means a member of the Council of Governors other than: a Public Governor; Staff Governor; or Local Authority Governor;

"Partnership Organisation"

means an organisation that may appoint Partnership Governors and which is listed at paragraph 1.3 of Annex 3 of this Constitution;

"Principal Purpose"

means the purpose set out in Section 43(1) of the 2006 Act;

"Provider Licence"

means the licence granted to the Foundation Trust under Section 88 of the 2012 Act;

"Public Constituency"

has the meaning ascribed to it in paragraph 8.2 of this Constitution;

"Public Governor"

means a member of the Council of Governors elected by the members of one of the Public Constituencies;

"Registered Dentist"

means a fully registered person within the meaning of the Dentists Act 1984 who holds a licence to practice under that Act;

"Registered Medical Practitioner"

means a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practice under that Act;

"Registered Midwife"

means a fully registered person within the meaning of the Nurse and Midwifery Order 2001 (SI 2001/253);

"Registered Nurse"

means a fully registered person within the meaning of the Nurse and Midwifery Order 2001 (SI 2001/253);

"Regulatory Framework"

means the 2006 Act, the Constitution and the terms of the Provider Licence;

"Remuneration and Terms of Service Committee"

means the committee established under Committee established under SO 6.1.7.2 of Annex 7 of this Constitution;

"Replacement Governor"

has the meaning ascribed to it in paragraph 2.3 of Appendix 2 of Annex 5 of this Constitution;

"Scheme of Delegation"

means the Foundation Trust's Reservation of Powers to the Board of Directors and Delegation of Powers;

"Secretary"

means the Secretary of the Foundation Trust or any other person other than a Governor, the Chief Executive or the Finance Director of the Foundation Trust, appointed by the Foundation Trust pursuant to paragraph 3 of Appendix 5 of Annex 8 of this Constitution to perform the roles and responsibilities as set out in Appendix 5 of Annex 8 of this Constitution and Appendix A of the Code;

"Sex Offenders Order"

means either:

- (a) a Sexual Offences Prevention Order made under either Section 104 or 105 of the Sexual Offences Act 2003; or
- (b) an Interim Sexual Offences Prevention Order made under Section 109 of the Sexual Offences Act 2003; or
- (c) a Risk of Sexual Harm Order made under Section 123 of the Sexual Offences Act 2003; or
- (d) the Interim Risk of Sexual Harm Order made under Section 126 of the Sexual Offences Act 2003;

"Sex Offenders Register"

means the notification requirements, set out in Part 2 of the Sexual Offences Act 2003, commonly known as the 'Sex Offenders Register';

"SFIs"

means the Foundation Trust's Standing Financial Instructions, which regulate the conduct of Directors, Officers and Nominated Officers in relation to all financial matters with which they are concerned;

"Significant Transaction"

has the meaning ascribed to it in Annex 10 of this Constitution;

"Special Members' Meeting"

has the meaning ascribed to it in paragraph 7 of Appendix 1 to Annex 8 of this Constitution;

"Staff Constituency"

has the meaning ascribed to it in paragraph 9.3 of this Constitution;

"Staff Governor"

means a member of the Council of Governors elected by the members of the Staff Constituency;

"Standing Orders for the Board of Directors"

means the Standing Orders set out in Annex 7 of this Constitution and the term "SO" when used in Annex 7 shall be construed accordingly;

"Standing Orders for the Council of Governors"

means the Standing Orders set out in Annex 6 of this Constitution and the term "SO" when used in Annex 6 shall be construed accordingly;

"Truro and Penwith College"

means the Truro and Penwith College whose registered address is College Road, Truro, TR1 3XX;

"Vice Chair"

means the Vice Chair of the Foundation Trust appointed pursuant to paragraph 28 of this Constitution;

"Volunteer Cornwall"

means Volunteer Cornwall whose registered address is Acorn House, Heron Way, Newham, Truro, Cornwall TR1 2XN (registered with the Charity Commission, registered charity number 1069957);

"Voluntary Organisation"

means a body other than a public or local authority, the activities of which are not carried on for profit; and

"Volunteer"

means a person who provides goods or services to the Foundation Trust, but who is not employed to do so by the Foundation Trust.

2 Name

The name of the Foundation Trust is "Cornwall Partnership NHS Foundation Trust".

3 Principal Purpose

- 3.1 The Principal Purpose of the Foundation Trust is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Foundation Trust does not fulfil its Principal Purpose unless, in each Financial Year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Foundation Trust may provide goods and services for any purposes related to:
 - 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
 - 3.3.2 the promotion and protection of public health.
- 3.4 The Foundation Trust may also carry on activities other than those mentioned in paragraph 3.3 above for the purpose of making additional income available in order to better carry on its Principal Purpose.

4 Powers

- 4.1 The Foundation Trust is to have all the powers of an NHS foundation trust set out in the 2006 Act.
- 4.2 In the exercise of its powers, the Foundation Trust shall have regard to the values of the Foundation Trust as set out in Appendix 1 of Annex 8.
- 4.3 All the powers of the Foundation Trust shall be exercised by the Board of Directors on behalf of the Foundation Trust.
- 4.4 Subject to any restriction contained in this Constitution or in the 2006 Act, and to paragraph 4.5 below, any of these powers may be delegated to a committee of Directors or to an Executive Director.
- 4.5 Where the Foundation Trust is exercising functions of the managers pursuant to Section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised by the Board of Directors, each of whom must not be an Executive Director of the Foundation Trust, an employee of the Foundation Trust or a Governor of the Foundation Trust.

5 Other purposes

- 5.1 The purpose of the Foundation Trust is to provide goods and services, including education, training and research and other facilities for purposes related to the provision of health, in accordance with its statutory duties and the terms of the Provider Licence.
- 5.2 The Foundation Trust may carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others.
- 5.3 The Foundation Trust may fulfil the social care functions of any local authority as specified by an agreement made under Section 75 of the 2006 Act.

- 5.4 The Foundation Trust may also undertake activities other than those mentioned in paragraphs 5.1 to 5.3. These activities must be for the purpose of making additional income available in order to carry out the Foundation Trust's Principal Purpose better.

6 Membership and constituencies

- 6.1 The Foundation Trust shall have Members, each of whom shall be a member of one of the following constituencies:

6.1.1 a Public Constituency; or

6.1.2 the Staff Constituency.

7 Application for membership

- 7.1 Subject to paragraph 9.6 below, an individual who is eligible to become a Member of the Foundation Trust may do so on application to the Foundation Trust as set out in paragraphs 8 and 9 below.

- 7.2 Subject to paragraph 9.2 below, applicants for membership of the Foundation Trust must complete an application in the form prescribed by the Secretary and approved by the Council of Governors.

8 Public Constituency

- 8.1 Subject to the provisions of paragraphs 10.1 to 10.3 below and paragraphs 1 to 3 of Appendix 2 to Annex 8, 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 Foundation Trust.

- 8.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the "Public Constituency".

- 8.3 The minimum number of Members in each area for the Public Constituency is specified in Annex 1.

- 8.4 An eligible individual shall become a Member upon entry to the Foundation Trust's register of Members pursuant to an application by them. The Secretary may require any individual to supply supporting evidence to confirm eligibility.

- 8.5 The Secretary shall, normally within 28 days of receipt of an application for membership, and subject to being satisfied that the applicant is eligible, cause the applicant's name to be entered in the Foundation Trust's register of Members.

9 Staff Constituency

- 9.1 An individual who is employed by the Foundation Trust under a contract of employment with the Foundation Trust may become or continue as a Member of the Foundation Trust provided:

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

- 9.1.2 he has been continuously employed by the Foundation Trust under a contract of employment for at least 12 months.
- 9.2 Individuals who are employed by a Designated Organisation and who otherwise exercise functions for the purposes of the Foundation Trust otherwise than under contract of employment with the Foundation 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. For the avoidance of doubt, this excludes Volunteers and Voluntary Organisations, and individuals who assist or provide goods or services to the Foundation Trust on a voluntary or not for profit basis.
- 9.3 Those individuals who are eligible for membership of the Foundation Trust by reason of the provisions of paragraphs 9.1 and 9.2 above are referred to collectively as the "Staff Constituency".
- 9.4 The minimum number of Members of the Staff Constituency is specified in Annex 2.
- 9.5 For the purposes of paragraphs 9.1 and 9.2 above, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Foundation Trust or has continuously exercised functions for the purposes of the Foundation Trust, as it applies for the purposes of that Act.
- 9.6 An individual who is eligible to become a member of the Staff Constituency under paragraph 9.1 above and who is invited by the Foundation Trust to become a member of the Staff Constituency, shall become a Member of the Foundation Trust as a member of the Staff Constituency without an application being made unless he informs the Foundation Trust that he does not wish to do so.
- 9.7 Any individual who is eligible to become a member of the Staff Constituency under paragraph 9.2 above shall become a member upon entry to the Foundation Trust's register of Members pursuant to an application by them.
- 9.8 On receipt of an application for membership as described in paragraph 9.7 above and subject to being satisfied that the applicant is eligible, the Secretary shall cause the applicant's name to be entered into the Foundation Trust's register of members.
- 9.9 The Foundation Trust shall designate organisations and/or individuals who exercise functions for the purposes of the Foundation Trust as Designated Organisations for the purpose of paragraph 9.2 above, and the Secretary shall maintain a register of Designated Organisations.

10 Restriction on Membership

- 10.1 An individual, who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 10.3 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Foundation Trust are set out in Appendix 2 of Annex 8.

11 Annual Members' Meeting

- 11.1 The Foundation Trust shall hold an annual meeting of its members ("Annual Members' Meeting"). The Annual Members' Meeting shall be open to members of the public.
- 11.2 Further provisions about the Annual Members' Meeting are set out in Annex 9

12 Council of Governors – composition

- 12.1 The Foundation Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors.
- 12.2 The composition of the Council of Governors is specified in Annex 3.
- 12.3 The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency.
- 12.4 The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

13 Council of Governors – election of Governors

- 13.1 Elections for Elected Governors of the Council of Governors shall be conducted in accordance with the Model Rules for Elections using the single transferable voting system.
- 13.2 The Model Rules for Elections, as published from time to time by NHS Providers, form part of this Constitution. The current Model Rules for Elections are attached at Annex 4.
- 13.3 A subsequent variation of the Model Rules for Elections by NHS Providers shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 44 below. For the avoidance of doubt, the Foundation Trust cannot amend the Model Rules for Elections.
- 13.4 An election, if contested, shall be by secret ballot.
- 13.5 A person may not vote at an election for or stand for election as an Elected Governor unless within the specified period stated in the Model Rules for Elections he has made a declaration in the forms specified in paragraphs 5.1 and/or 5.2 (as appropriate) of Appendix 2 of Annex 5 of this Constitution. It is an offence (other than in relation to the Staff Constituency) to knowingly or recklessly make such a declaration which is false in a material particular.

14 Council of Governors - tenure

14.1 Elected Governors

- 14.1.1 An Elected Governor may hold office for a period of up to 3 years.
- 14.1.2 An Elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.

14.1.3 Subject to paragraph 14.1.4 below, an Elected Governor shall be eligible for re-election at the end of his term.

14.1.4 An Elected Governor may not hold office for more than 10 consecutive years and shall not be eligible for re-election if he has held office as a Governor for more than 7 consecutive years at the closing date for nominations.

14.2 **Appointed Governors**

14.2.1 An Appointed Governor's tenure of office shall be for periods up to 3 years. Appointed Governors may be re-appointed as per paragraph 14.2.5.

14.2.2 An Appointed Governor shall cease to hold office if the relevant sponsoring organisation withdraws its sponsorship of him by notice in writing to the Chair or Secretary.

14.2.3 An Appointed Governor shall cease to hold office if he ceases to be employed by or associated with the relevant sponsoring organisation.

14.2.4 Subject to paragraph 14.2.5 below, an Appointed Governor shall be eligible for re-appointment at the end of his term.

14.2.5 An Appointed Governor may be re-appointed but may not hold office for more than 6 consecutive years.

14.3 The appointment of Appointed Governors is subject to the veto provisions contained at paragraph 2.2.3 of Annex 3.

15 **Council of Governors – disqualification and removal**

15.1 A person may not become or continue as a member of the Council of Governors if he does not meet Condition G4, concerning 'Fit and proper persons as Governors and Directors (also applicable to those performing equivalent or similar functions)' of the Trust's NHS Provider Licence; or is a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986).

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

15.3 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Chair or Secretary.

15.4 Subject to paragraph 15.5, if a Governor fails to attend 3 consecutive meetings of the Council of Governors, his tenure of office is to be terminated immediately unless the Council of Governors is satisfied by a 75% majority of those members of the Council of Governors present and voting at a meeting of the Council of Governors that:

15.4.1 the absence was due to a reasonable cause; and

15.4.2 he will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable.

- 15.5 Notwithstanding the provisions of paragraph 15.4 above, if a Governor fails to attend 2 out of 3 consecutive meetings of the Council of Governors and he has previously been the subject of a decision in his favour under paragraph 15.4 above, that Governor's tenure of office is to be terminated immediately.
- 15.6 If a Governor is considered to have acted in a manner inconsistent with:
- 15.6.1 the values of the Foundation Trust, as set out in Appendix 1 of Annex 8, or in a manner detrimental to the interests of the Foundation Trust; or
 - 15.6.2 the Provider Licence; or
 - 15.6.3 the Standing Orders for the Council of Governors; or
 - 15.6.4 the Governor's Code of Conduct; or
 - 15.6.5 the Governor Roles and Responsibilities; or
 - 15.6.6 he has failed to declare an interest as required by this Constitution or the Standing Orders for the Council of Governors, or he has spoken or voted at a meeting on a matter in which he has an interest contrary to this Constitution or the Standing Orders for the Council of Governors, and in this paragraph "interest" includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect, and
- he is adjudged to have so acted by a majority of not less than 75% of the members of the Council of Governors present and voting at a meeting of the Council of Governors then the Governor shall vacate his office immediately.
- 15.6A Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by the Governor concerned to the dispute resolution procedure (as set out in paragraph 2.2 of Appendix 4 of Annex 8) within 28 days of the date upon which notice in writing of the Council of Governor's decision is made in accordance with paragraphs 15.4 and 15.6 above is communicated to the Governor concerned.
- 15.7 The Standing Orders for the Council of Governors shall provide for the process to be adopted in cases relating to the termination of a Governor's tenure.
- 15.8 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 Appendix 1 of Annex 5.

16 Council of Governors – duties of governors

- 16.1 The general duties of the Council of Governors are:
- 16.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and
 - 16.1.2 to represent the interests of the Members of the Foundation Trust as a whole and the interest of the public.

- 16.2 The Foundation Trust must take steps to ensure that the Council of Governors is equipped with the skills and knowledge it requires in its capacity as such.

17 Council of Governors – meetings of Governors

- 17.1 The Chair of the Foundation Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 26.1 below) or, in his absence, the Vice Chair (appointed in accordance with the provisions of paragraph 28 below), shall preside at meetings of the Council of Governors. If the Chair and the Vice Chair are absent temporarily from a meeting of the Council of Governors owing to a declared conflict of interest or otherwise, the Lead Governor/Designated Governor shall preside for that part of the meeting and the person chairing the meeting shall have a casting vote in accordance with the Standing Orders for the Council of Governors. In the event that one of the Chair, the Vice Chair or the Lead Governor/Designated Governor is unable to attend the meeting, the meeting shall not be convened.
- 17.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons by resolution of the Council of Governors on the grounds that 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 stated in the resolution and arising from the nature of the business or the proceedings.
- 17.3 For the purposes of obtaining information about the Foundation Trust's performance of its functions or the Board of Directors performance of their duties (and deciding whether to propose a vote on the Foundation Trust's or Board of Directors performance), the Council of Governors may require one or more of the members of the Board of Directors to attend a meeting of the Council of Governors.

18 Council of Governors – standing orders

- 18.1 The Standing Orders for the Council of Governors are attached at Annex 6.

19 Council of Governors – referral to the panel

- 19.1 In this paragraph, the “panel” means a panel or persons appointed by NHS Improvement (Monitor) to which a member of the Council of Governors may refer a question as to whether the Foundation Trust has failed or is failing:
- 19.1.1 to act in accordance with this Constitution, or
 - 19.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 19.2 A member of the Council of Governors may refer a question to the panel only if more than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors approve the referral.

20 Council of Governors - conflicts of interest of Governors

- 20.1 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.

- 20.2 The Standing Orders for the Council of Governors 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.

21 Council of Governors – travel and other expenses

The Foundation Trust may pay travelling and other costs and expenses to members of the Council of Governors at such rates as the Board of Directors decides from time to time in its absolute discretion.

22 Council of Governors – further provisions

- 22.1 Further provisions with respect to the Council of Governors are set out in Annex 5. These include:
- 22.1.1 Eligibility to be on the Council of Governors;
 - 22.1.2 Remuneration;
 - 22.1.3 Vacancies;
 - 22.1.4 Meetings;
 - 22.1.5 Committees, sub-committees and joint committees; and
 - 22.1.6 Council of Governors: declarations.

23 Board of Directors – composition

- 23.1 The Foundation Trust is to have a Board of Directors, which shall comprise both Executive Directors and Non-Executive Directors.
- 23.2 The Board of Directors is to comprise:
- 23.2.1 a Non-Executive Director Chair; and
 - 23.2.2 up to a maximum of 7 other Non-Executive Directors; and
 - 23.2.3 up to a maximum of 7 Executive Directors.
- 23.3 One of the Executive Directors shall be the Chief Executive.
- 23.4 The Chief Executive shall be the Accounting Officer.
- 23.5 One of the Executive Directors shall be the Finance Director.
- 23.6 One of the Executive Directors is to be a Registered Medical Practitioner or a Registered Dentist.
- 23.7 One of the Executive Directors is to be a Registered Nurse or a Registered Midwife.
- 23.8 In the event that the number of Non-Executive Directors (including the Chair) is equal to the number of Executive Directors, the Chair (and in his absence, the Vice Chair),

shall have a casting vote at meetings of the Board of Directors in accordance with the Standing Orders for the Board of Directors.

- 23.9 The validity of any act of the Foundation Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.
- 23.10 Subject to the provisions of paragraphs 23.3 to 23.7 above, the Board of Directors shall determine any change in the number of Directors, provided that:
- 23.10.1 any change in the number of Directors is within the range set out in paragraph 23.2 above; and
- 23.10.2 there shall be a majority of Non-Executive Directors (including the Chair).
- 23.11 The post of an Executive Director may be held by two individuals on a job share basis (the executive positions of doctor and nurse cannot be shared between the two professions) but where such an agreement is in force the two individuals may only exercise one vote between them at any meeting of the Board of Directors. In the case of disagreements, no vote may be cast.

24 Board of Directors – general duty

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

25 Board of Directors – qualification for appointment as a Non-Executive Director

- 25.1 A person may be appointed as a Non-Executive Director only if:
- 25.1.1 he is a member of the Public Constituency; and
- 25.1.2 he is not disqualified by virtue of paragraph 29 below.

26 Board of Directors – appointment and removal of Chair and other Non-Executive Directors

- 26.1 Subject to paragraph 26.2 below, the Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Foundation Trust and the other Non-Executive Directors.
- 26.2 During any general meeting of the Council of Governors at which the Chair may be removed, the Vice Chair shall preside or, if the Vice Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, the Lead Governor/Designated Governor shall preside.
- 26.3 Removal of the Chair or another Non-Executive Director shall require a resolution to be submitted by a Governor which must be seconded by not less than 5 (five) Governors including at least 2 (two) Elected Governors and 2 (two) Appointed Governors, and requires the resolution in question to be approved by three-quarters of the members of the Council of Governors.
- 26.4 The Governor sponsoring the resolution mentioned in paragraph 26.3 above shall provide written reasons in support of the resolution to the Chair or other Non-

Executive Director in question, who shall be given the opportunity to respond to such reasons at the meeting of the Council of Governors which the resolution is to be considered and voted upon. If the individual in question fails to attend the meeting without due cause, the meeting may proceed in their absence. The decision to proceed in these circumstances will be at the sole discretion of the person chairing the meeting in question.

- 26.5 In making any decision to remove either the Chair or a Non-Executive Director under paragraph 26.4 above, the Council of Governors shall take into account the results (if any) of the annual appraisal concerning the Chair (or, as the case may be) the Non-Executive Director in question.
- 26.6 If any resolution to remove either the Chair or a Non-Executive Director is not approved at a meeting of the Council of Governors in accordance with paragraph 26.3 above, no further resolution can be put forward to remove such Non-Executive Director, or the Chair which is based on the same reasons within 12 calendar months of the meeting of the Council of Governors at which the resolution mentioned in paragraph 26.3 above was considered.
- 26.7 The process for appointing new Non-Executive Directors and the Chair will be as set out in paragraph 1 of Appendix 3 of Annex 8.
- 26.8 The Remuneration and Terms of Service Committee may from time to time nominate, by way of written resolution, one of the Executive Directors to be the Deputy Chief Executive and the resolution in question is to be approved by a majority of members of the Board of Directors present and voting at a meeting of the Board of Directors.

27 Board of Directors – appointment and removal of the Chief Executive and other Executive Directors

- 27.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 27.2 The appointment of the Chief Executive shall require the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors.
- 27.3 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

28 Board of Directors – appointment of Vice Chair

- 28.1 The Council of Governors at a general meeting or otherwise of the Council of Governors shall appoint one of the Non-Executive Directors as a Vice Chair for such period, not exceeding his term of office as a Non-Executive Director, as the Council of Governors may specify on appointing him.
- 28.2 Any Non-Executive Director so appointed under paragraph 28.1 above may at any time resign from the office of Vice Chair by giving notice in writing to the Chair or Secretary. The Council of Governors may thereupon appoint another Non-Executive Director as Vice Chair in accordance with paragraph 28.1 above.
- 28.3 If the Chair is unable to discharge his functions as Chair of the Foundation Trust, the Vice Chair will be the "acting Chair" of the Foundation Trust until such time as the Chair is able to discharge his functions as Chair, or a new Chair is appointed by the Council of Governors in accordance with paragraph 26 above.

29 Board of Directors – disqualification

- 29.1 The following may not become or continue as a member of the Board of Directors:
- 29.1.1 a person not meeting Condition G4 concerning ‘Fit and proper persons as Governors and Directors (also applicable to those performing equivalent or similar functions)’ of the Trust’s NHS Provider Licence;
 - 29.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
 - 29.1.3 a person whose tenure of office as a Chair or member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of the health service;
 - 29.1.4 a person who has had his name removed from a list maintained under regulations pursuant to Sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list;
 - 29.1.5 a person who has within the preceding five years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
 - 29.1.6 a person who is a member of the Council of Governors;
 - 29.1.7 a person who is a member of a local authority Health Overview and Scrutiny Committee;
 - 29.1.8 a person who is the subject of a disqualification order made under the Company Directors’ Disqualification Act 1986;
 - 29.1.9 in the case of a Non-Executive Director, a person who has failed without reasonable cause to fulfil any training requirement established by the Board of Directors;
 - 29.1.10 a person who has failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Directors’ Code of Conduct;
 - 29.1.11 a person who is an Immediate Family Member of a Director or a Governor;
 - 29.1.12 a person who is the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register;
 - 29.1.13 a person who by reference to information revealed by a Disclosure and Barring Service check is considered by the Board of Directors to be inappropriate on the grounds that his appointment may adversely affect public confidence in the Foundation Trust or otherwise bring the Foundation Trust into disrepute;

- 29.1.14 subject to the provisions of paragraph 5 of Appendix 1 of Annex 5, a person who is incapable by reason of mental disorder, illness or injury of managing and/or administering his property and/or his affairs; or
- 29.1.15 a person who is included in any barred list established under the Safeguarding Vulnerable Groups Act 2006 or who is in an equivalent list maintained under the laws of Scotland or Northern Ireland.

30 Board of Directors – meetings

- 30.1 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.
- 30.2 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.

31 Board of Directors – standing orders

The Standing Orders for the Board of Directors are attached at Annex 7.

32 Board of Directors - conflicts of interest of Directors

- 32.1 If a Director 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 Board of Directors, the Director shall disclose that interest to the members of the Board of Directors as soon as he becomes aware of it.
- 32.2 The duties that a member of the Board of Directors of the Foundation Trust has include in particular:
 - 32.2.1 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 Foundation Trust,
 - 32.2.2 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;
- 32.3 The duty referred to in sub-paragraph 32.2.1 is not infringed if:
 - 32.3.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 32.3.2 the matter has been authorised in accordance with the Constitution.
- 32.4 The duty referred to in sub-paragraph 32.2.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.5 In paragraph 32.2.2 "third party" means a person other than:
 - 32.5.1 the Foundation Trust; or
 - 32.5.2 a person acting on its behalf.

- 32.6 If a Director of the Foundation Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Foundation Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 32.7 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 32.8 Any declaration required by this paragraph must be made before the Foundation Trust enters into the transaction or arrangement.
- 32.9 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.
- 32.10 A Director need not declare an interest:
- 32.10.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 32.10.2 if, or to the extent that, the Directors are already aware of it;
 - 32.10.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
 - 32.10.3.1 by a meeting of the Board of Directors; or
 - 32.10.3.2 by a committee of the Directors appointed for the purpose under the Constitution.
- 32.11 A matter shall have been authorised for the purposes of paragraph 32.3.2 if:
- 32.11.1 the Board of Directors by majority disapplies the provision of the Constitution which would otherwise prevent a Director from being counted as participating in the decision-making process;
 - 32.11.2 the Director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 32.11.3 the Director's conflict of interest arises from a permitted cause (in accordance with SO 8.9 of Annex 7 as determined by the Board of Directors from time to time).
- 32.12 The Standing Orders for the Board of Directors contain further provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

33 Board of Directors – remuneration and terms of office

- 33.1 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.

- 33.2 The Foundation 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.

34 Registers

- 34.1 The Foundation Trust shall have:

- 34.1.1 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;
- 34.1.2 a register of members of the Council of Governors;
- 34.1.3 a register of interests of the members of the Council of Governors;
- 34.1.4 a register of members of the Board of Directors; and
- 34.1.5 a register of interests of the members of the Board of Directors.

- 34.2 The Secretary shall be responsible for compiling and maintaining the registers in paragraph 34.1 above and the registers may be kept in either paper or electronic form. Admission to and removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 28 days of receipt.

35 Admission to and removal from the registers

35.1 Register of Members

The Secretary shall maintain the register of Members in two parts:

- 35.1.1 Part one, which shall be the register referred to in the 2006 Act, shall include the name of each Member and the constituency and, where there are classes within it, the class to which they belong, and shall be open to inspection by the public in accordance with paragraphs 36 and 37 below.
- 35.1.2 Part two shall contain all the information from the application referred to in paragraph 7 above and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party (save to the extent that copies or extracts are made available to the organisation appointed by the Foundation Trust to maintain the register of Members and to conduct elections).
- 35.1.3 Notwithstanding the provisions of paragraphs 35.1.1 and 35.1.2 above, the Foundation Trust shall extract such information as it needs in aggregate to satisfy itself that the actual membership of the Foundation Trust is representative of those eligible for membership and for the administration of the provisions of this Constitution.

35.2 Register of members of the Council of Governors

The register of members of the Council of Governors shall list:

- 35.2.1 the name of each Governor;
- 35.2.2 their category of membership of the Council of Governors (public, staff, local authority, or partnership organisation); and
- 35.2.3 an address through which they may be contacted, which may be the Secretary.

35.3 Register of interests of members of the Council of Governors

The register of interests of the members of the Council of Governors shall contain:

- 35.3.1 the name of each Governor; and
- 35.3.2 whether he has declared any interests and, if so, the interests declared in accordance with this Constitution and the Standing Orders for the Council of Governors.

35.4 Register of members of the Board of Directors

The register of members of the Board of Directors shall list:

- 35.4.1 the name of each Director;
- 35.4.2 their capacity on the Board of Directors; and
- 35.4.3 an address through which they may be contacted which may be the Secretary.

35.5 Register of interests of members of the Board of Directors

The register of interests of members of the Board of Directors shall contain:

- 35.5.1 the name of each Director;
- 35.5.2 whether he has declared any interests; and
- 35.5.3 if so, the interests declared in accordance with this Constitution and the Standing Orders for the Board of Directors.

36 Registers – inspection and copies

- 36.1 The Foundation Trust shall make the registers specified in paragraphs 35.1 to 35.5 above available for inspection by members of the public, except in the circumstances set out below in paragraph 36.2 below or as otherwise prescribed by regulations including, for the avoidance of doubt, the Public Benefit Corporation (Register of Members) Regulations 2004 (SI 2004/539).
- 36.2 The Foundation Trust shall not make any part of the register of Members available for inspection by members of the public which shows details of any Member of the Foundation Trust, if the Member so requests.

- 36.3 So far as the registers are required to be made available:
- 36.3.1 they are, subject to paragraph 36.4 below, to be available for inspection free of charge at all reasonable times; and
 - 36.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4 If the person requesting a copy or extract is not a Member of the Foundation Trust, the Foundation Trust may impose a reasonable charge for doing so.

37 Documents available for public inspection

- 37.1 Subject to paragraph 37.4 below, the Foundation Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times as well as on the Foundation Trust's website:
- 37.1.1 a copy of the current Constitution;
 - 37.1.2 a copy of the latest Annual Accounts and of any report of the Auditor on them; and
 - 37.1.3 a copy of the latest Annual Report.
- 37.2 The Foundation Trust shall also make the following documents relating to a special administration of the Foundation Trust available for inspection by members of the public free of charge at all reasonable times:
- 37.2.1 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;
 - 37.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 37.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 37.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
 - 37.2.6 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 (NHS Improvement's (Monitor) decision), 65KB (Secretary of State's response to NHS Improvement's (Monitor) decision), 65KC (action following Secretary of State's response to re-submitted final report) of the 2006 Act;
 - 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;

- 37.2.8 a copy of any final report published under section 65I (administrator's final report);
 - 37.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
 - 37.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 37.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy, or extract.
- 37.4 If the person requesting a copy or extract is not a Member of the Foundation Trust, the Foundation Trust may impose a reasonable charge for doing so.

38 Auditor

- 38.1 The Foundation Trust is to have an Auditor.
- 38.2 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.
- 38.3 In appointing the Auditor, the Council of Governors shall have regard to the recommendations (if any) of the Audit Committee.
- 38.4 The Accounting Officer shall ensure that the Auditor carries out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any guidance or best practice advice issued by NHS Improvement (Monitor) on standards, procedures and techniques to be adopted.
- 38.5 The Board of Directors may resolve that an External Auditor be appointed to review and publish a report on any other aspect of the Foundation Trust's performance. Any such External Auditor is to be appointed by the Board of Directors.

39 Audit Committee

The Board of Directors shall cause the Foundation Trust to establish a committee of Non-Executive Directors as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

40 Accounts and records

- 40.1 The Foundation Trust must keep proper accounts and proper records in relation to the accounts.
- 40.2 NHS Improvement (Monitor) may, with the approval of the Secretary of State for Health, give directions to the Foundation Trust as to the content and form of its accounts.
- 40.3 The accounts are to be audited by the Auditor.
- 40.4 The following documents will be made available to the Comptroller and Auditor General for examination at his request:

- 40.4.1 the accounts;
 - 40.4.2 the records in relation to them; and
 - 40.4.3 any report of the Auditor on them.
- 40.5 The Foundation Trust is to prepare in respect of each Financial Year Annual Accounts in such form as NHS Improvement (Monitor) may with the approval of the Secretary of State for Health direct.
- 40.6 NHS Improvement (Monitor) may with the approval of the Secretary of State for Health direct the Foundation Trust:
- 40.6.1 to prepare accounts in respect of such period or periods as may be specified in the direction; and/or
 - 40.6.2 that any accounts prepared by it by virtue of paragraph 40.6.1 above are to be audited in accordance with such requirements as may be specified in the direction.
- 40.7 In preparing its Annual Accounts or in preparing any accounts by virtue of paragraph 40.6.1 above, the Foundation Trust must comply with any directions given by NHS Improvement (Monitor) with the approval of the Secretary of State for Health as to:
- 40.7.1 the methods and principles according to which the Annual Accounts must be prepared; and/or
 - 40.7.2 the content and form of the Annual Accounts.
- 40.8 The Foundation Trust must:
- 40.8.1 lay a copy of the Annual Accounts, and any report of the Auditor on them, before Parliament; and
 - 40.8.2 send copies of the Annual Accounts, and any report of the Auditor on them to NHS Improvement (Monitor) within such a period as NHS Improvement (Monitor) may direct.
- 40.9 The Foundation Trust must send a copy of any accounts prepared by virtue of paragraph 40.6.1 above and a copy of any report of the Auditor to NHS Improvement (Monitor) within such a period as NHS Improvement (Monitor) may direct.
- 40.10 The functions of the Foundation Trust referred to in this paragraph 40 shall be delegated to the Accounting Officer.

41 Annual Report, Annual Plans and non-NHS work

- 41.1 The Foundation Trust is to prepare Annual Reports and send them to NHS Improvement (Monitor).
- 41.2 Each Annual Report must give:

- 41.2.1 information on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual membership of any Public Constituency is representative of those eligible for such membership;
 - 41.2.2 information on the impact that income received by the Foundation Trust otherwise than from the fulfilment of the Principal Purpose has had on the provision by the Foundation Trust of goods and services for those purposes;
 - 41.2.3 information on any occasions in the period to which the Annual Report relates on which the Council of Governors exercised its power under paragraph 17.3;
 - 41.2.4 information on the Foundation Trust's policy on pay and on the work of the committee established under paragraph 33.2 and such other procedures as the Foundation Trust has on pay;
 - 41.2.5 information on the remuneration of the Board of Directors and on the expenses of the Council of Governors and the Board of Directors; and
 - 41.2.6 such other information as may be prescribed by NHS Improvement (Monitor).
- 41.3 The Foundation Trust shall give the Annual Plan in respect of each Financial Year to NHS Improvement (Monitor).
- 41.4 The Annual Plan shall be prepared by the Board of Directors.
- 41.5 In preparing the Annual Plan, the Board of Directors shall have regard to the views of the Council of Governors.
- 41.6 Each Annual Plan must include information about:
- 41.6.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Foundation Trust proposes to carry on; and
 - 41.6.2 the income that it expects to receive from doing so.
- 41.7 Where an Annual Plan contains a proposal that the Trust carry on an activity of a kind mentioned in paragraph 41.6.1 above, the Council of Governors must:
- 41.7.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Foundation Trust of its Principal Purpose or the performance of its other functions; and
 - 41.7.2 notify the Directors of the Foundation Trust of its determination.
- 41.8 The Foundation Trust may implement a proposal to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the fulfilment of the Principal Purpose only if more than half of the members of the Council of Governors present and voting approve the implementation of the proposal.

42 Presentation of the Annual Accounts and reports to the Council of Governors and Members

- 42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 42.1.1 the Annual Accounts;
 - 42.1.2 any report of the Auditor on them; and
 - 42.1.3 the Annual Report.
- 42.2 The documents shall also be presented to the Members of the Foundation Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 42.3 The Foundation Trust may combine a meeting of the Council of Governors convened for the purposes of paragraphs 42.1 and 42.2.

43 Instruments

- 43.1 The Foundation Trust shall have a seal.
- 43.2 The seal shall not be affixed except under the authority of the Board of Directors as set out in the Standing Orders for the Board of Directors.

44 Amendment of the Constitution

- 44.1 The Foundation Trust may make amendments to the Constitution only if:
- 44.1.1 more than half of the members of the Council of Governors of the Foundation Trust present and voting at a meeting of the Council of Governors approve the amendments; and
 - 44.1.2 more than half of the members of the Board of Directors of the Foundation Trust present and voting at a meeting of the Board of Directors approve the amendments.
- 44.2 Amendments made under paragraph 44.1 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.
- 44.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Foundation Trust):
- 44.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment;
 - 44.3.2 the Foundation Trust must give the Members present at the Annual Members' Meeting an opportunity to vote on whether they approve the amendment; and
 - 44.3.3 if more than half of the Members present and voting at the Annual Members' Meeting approve the amendment, the amendment continues

to have effect; otherwise, it ceases to have effect and the Foundation Trust must take such steps as are necessary as a result.

- 44.4 Amendments by the Foundation Trust to the Constitution are to be notified to NHS Improvement (Monitor). For the avoidance of doubt, NHS Improvement's (Monitor) 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.

45 Mergers acquisition, separation or dissolution, and Significant Transactions

- 45.1 The Foundation 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.
- 45.2 The Foundation Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors approve entering into the transaction.

ANNEX 1 – THE PUBLIC CONSTITUENCIES

(Paragraph 8)

1 PUBLIC CONSTITUENCIES OF THE FOUNDATION TRUST

NAME OF CONSTITUENCY	AREA	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
East Service Area	<p>The following electoral division areas comprising the area covered by Cornwall Council, and, for the avoidance of doubt, comprising any successor authority of Cornwall Council:</p> <ul style="list-style-type: none"> • Altarnun & Stoke Climsland • Bodmin, St Mary's & St Leonard • Bodmin St Petrocs • Bude • Callington & St Dominic • Calstock • Camelford & Boscastle • Fowey, Tywardreath & Par • Lanivet, Blisland & Bodmin St Lawrence • Launceston North & North Petherwin • Launceston South • Liskeard Central • Liskeard South & Dobwalls • Looe East & Deviock • Looe West, Pelynt, Lansallos & Lanteglos • Lostwithiel & Lanreath • Lynher • Mevagissey & St Austell Bay • Newquay Central & Pentire • Newquay Porth & Tretherras • Newquay Trenance • Padstow • Penwithick & Boscoppa • Poundstock • Probus & St Erme 	50	5

NAME OF CONSTITUENCY	AREA	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
	<ul style="list-style-type: none"> • Rame Peninsula & St Germans • Roche & Bugle • Saltash Essa • Saltash Tamar • Saltash Trematon & Landrake • St Austell Bethel & Holmbush • St Austell Central & Gover • St Austell Poltair & Mount Charles • St Blazey • St Cleer & Menheniot • St Columb Major, St Mawgan & St Wenn • St Columb Minor & Colan • St Dennis & St Enoher • St Mewan & Grampond • St Newlyn East, Cubert, & Goonhavern • St Stephen-in –Brannel • St Teath & Tintagel • Stratton, Kilkhampton & Morwenstow • Torpoint • Wadebridge East & St Minver • Wadebridge West & St Mabyn 		

West Service Area	<p>The following electoral division areas comprising the area covered by Cornwall Council and, for the avoidance of doubt, comprising any successor authority of Cornwall Council:</p> <ul style="list-style-type: none"> • Camborne Roskear & Tuckingmill • Camborne Trelowarren • Camborne West & Treswithian • Constantine, Mabe & Mawnan • Crowan, Sithney & Wendron • Falmouth Arwenack • Falmouth Boslowick • Falmouth Penwerris • Falmouth Trescobeas & Budock • Feock & Kea • Four Lanes, Beacon & Troon • Gloweth, Malabar & Shortlanesend • Gwinear-Gwithian & Hayle East • Hayle West • Helston North • Helston South & Meneage • Illogan & Portreath • Land's End • Lanner, Stithians & Gwennap • Long Rock, Marazion & St Erth • Ludgvan, Madron, Gulval & Heamoor • Mousehole, Newlyn, & St Buryan • Mullion & St Keverne • Mylor, Perranarworthal & Ponsanooth • Penryn • Penzance East • Penzance Promenade • Perranporth • Pool & Tehidy • Porthleven, Breage & Germoe • Redruth Central, Carharrack & St Day • Redruth North • Redruth South • St Agnes • St Goran, Tregony, & the Roseland 	50	5
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	<ul style="list-style-type: none"> • St Ives East, Lelant & Carbis Bay • St Ives West & Towednack • Threemilestone & Chacewater • Truro Boscawen & Redannick • Truro Moresk & Trehaverne • Truro Tregolls <p>The electoral areas comprising the areas covered by the parishes of the Council of the Isles of Scilly and, for the avoidance of doubt, comprising any successor authority of the Council of the Isles of Scilly:</p> <ul style="list-style-type: none"> • St Mary's; • Bryher; • St Martin's; • St Agnes; and • Tresco 		
Other	All other electoral division areas in England and Wales, save those areas that are included in the East Service Area and the West Service Area	10	1
Totals	Minimum Membership	110	
	Public Governors		11

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraph 9)

1 Staff Constituency

The minimum number of members of the Staff Constituency shall be 50.

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraph 12)

1 Composition

- 1.1 The Council of Governors shall comprise:
- 1.1.1 **11 Public Governors;**
 - 1.1.2 **4 Staff Governors;**
 - 1.1.3 **2 Local Authority Governors; and**
 - 1.1.4 **2 Partnership Governors.**
- 1.2 The number of Public Governors is to be more than half of the total membership of the Council of Governors.
- 1.3 The organisations currently specified as Partnership Organisations that may appoint members of the Council of Governors are:
- 1.3.1 Truro and Penwith College; and
 - 1.3.2 Volunteer Cornwall.
- 1.4 The organisations listed in paragraphs 1.3 above may be varied from time to time by the Foundation Trust in accordance with paragraph 44 of this constitution.

2 Appointed Governors

2.1 Local Authority Governors

- 2.1.1 Cornwall Council or its successor organisation may appoint 1 (one) Local Authority Governor by notice in writing signed by the leader of the Council or a member of the Council Executive and delivered to the Chair or Secretary.
- 2.1.2 The Council of the Isles of Scilly or its successor organisation may appoint 1 (one) Local Authority Governor by notice in writing signed by the leader of the Council or a member of the Council Executive and delivered to the Chair or Secretary.

2.2 Partnership Governors

- 2.2.1 Subject to the provisions contained at paragraph 2.2.3 below, Truro and Penwith College or its successor organisation may appoint 1 (one) Partnership Governor by notice in writing signed by the chief executive or principal of the organisation and delivered to the Chair or Secretary.
- 2.2.2 Subject to the provisions contained at paragraph 2.2.3 below, Volunteer Cornwall or its successor organisation may appoint 1 (one) Partnership Governor by notice in writing signed by the principal of the organisation and delivered to the Chair or Secretary.

2.2.3 Notwithstanding the provisions of paragraphs 2.2.1 to 2.2.2 above, the Chair may veto the appointment of a Partnership Governor by serving notice in writing on the relevant Partnership Organisation where he believes that the appointment in question is unreasonable, irrational, or otherwise inappropriate, and shall invite the relevant Partnership Organisation to appoint an alternative individual as Partnership Governor.

ANNEX 4 –THE MODEL RULES FOR ELECTIONS

(Paragraph 13)

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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

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9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination forms
15. Publication of statement of nominated candidates
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17. Withdrawal of candidates
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20. The ballot paper
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29. Spoilt ballot papers and spoilt text message votes
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33. Procedure for remote voting by internet
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59. Countermand or abandonment of poll on death of candidate

PART 10 ELECTION EXPENSES AND PUBLICITY

Expenses

60. Election expenses
61. Expenses and payments by candidates
62. Expenses incurred by other persons

Publicity

63. Publicity about election by the corporation

- 64. Information about candidates for inclusion with voting information
- 65. Meaning of “for the purposes of an election”

PART 11 QUESTIONING ELECTIONS AND IRREGULARITIES

- 66. Application to question an election

PART 12 MISCELLANEOUS

- 67. Secrecy
- 68. Prohibition of disclosure of vote
- 69. Disqualification
- 70. Delay in postal service through industrial action or unforeseen event

PART 1 INTERPRETATION

1. Interpretation

- 1.1. In these rules, unless the context otherwise requires:

"2006 Act" means the National Health Service Act 2006;

"corporation" means the public benefit corporation subject to this constitution;

"Council of Governors" means the council of governors of the corporation;

"declaration of identity" has the meaning set out in rule 21.1;

"election" means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the Council of Governors;

"e-voting" means voting using either the internet, telephone or text message;

"e-voting information" has the meaning set out in rule 24.2;

"ID declaration form" has the meaning set out in rule 21.1;

"internet voting record" has the meaning set out in rule 26.4(d);

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

"lead governor" means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (NHS Improvement (Monitor), July 2014) or any later version of such code;

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

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

"NHS Improvement (Monitor)" means the corporate body known as NHS Improvement (Monitor) as provided by section 61 of the 2012 Act;

"numerical voting code" has the meaning set out in rule 64.2(b);

"polling website" has the meaning set out in rule 26.1;

"postal voting information" has the meaning set out in rule 24.1;

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

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

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

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

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

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

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

"voter ID number" means a unique, randomly generated numeric identifier allocated to each voter by the returning officer for the purpose of e-voting;

"voting information" means postal voting information and/or e-voting information.

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

PART 2 TIMETABLE FOR ELECTIONS

2. Timetable

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

<hr/>	
Proceeding	
Publication of notice of election	Not later than the 40th day before the day of the close of the poll.
Final day for delivery of nomination forms to returning officer	Not later than the 28th day before the day of the close of the poll.

Publication of statement of nominated Candidates	Not later than the 27th 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 25th day before the day of the close of the poll.
Notice of the poll	Not later than the 15th day before the day of the close of the poll.
Close of the poll	By 5pm on the final day of the election.

3. Computation of time

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

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

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

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

PART 3 RETURNING OFFICER

4. Returning Officer

4.1. Subject to rule 69, the returning officer for an election is to be appointed by the corporation.

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

5. Staff

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

6. Expenditure

6.1. The corporation is to pay the returning officer:

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

7. Duty of co-operation

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

PART 4 STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

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

9. Nomination of candidates

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

9.2. The returning officer:

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

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

10. Candidate's particulars

10.1. The nomination form must state the candidate's:

- (a) full name;
- (b) contact address in full (which should be a postal address although an email address may also be provided for the purposes of electronic communication); and

- (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

11.1. The nomination form must state:

- (a) any financial interest that the candidate has in the corporation; and
 - (b) whether the candidate is a member of a political party, and if so, which party;
- and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

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

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

- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election;
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11;
 - (d) that the paper does not include a declaration of eligibility as required by rule 12; or
 - (e) that the paper is not signed and dated by the candidate, if required by rule 13.
- 14.3. The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- 14.4. Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5. The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an email address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

- 15.1. The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2. The statement must show:
- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing; and
 - (b) the declared interests of each candidate standing;
- as given in their nomination form.
- 15.3. The statement must list the candidates standing for election in alphabetical order by surname.
- 15.4. The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination forms

- 16.1. The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.
- 16.2. If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

17. Withdrawal of candidates

- 17.1. A candidate may withdraw from election on or before the date and time for withdrawal by candidates, by providing to the returning officer a written notice of withdrawal which is signed by the candidate and attested by a witness.

18. Method of election

- 18.1. If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Council of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 18.2. If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the Council of Governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- 18.3. If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be Council of Governors, then:
- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules; and
 - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

PART 5 COUNTING THE VOTES

19. Poll to be taken by ballot

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

who casts his or her vote using the internet voting system;

- (b) if telephone voting is to be a method of polling, the telephone voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
- (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

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

20.2. Every ballot paper must specify:

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

20.3. Each ballot paper must have a unique identifier.

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

21. The declaration of identity (Public Constituency)

21.1. The corporation shall require each voter who participates in an election for a Public Constituency to make a declaration confirming:

- (a) that the voter is the person:
 - (i) to whom the ballot paper was addressed; and/or
 - (ii) to whom the voter ID number contained within the e-voting

- information
was allocated;
- (b) that he or she has not marked or returned any other voting information in the election; and
 - (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held;

("declaration of identity")

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

- 21.2. The voter must be required to return his or her declaration of identity with his or her ballot.
- 21.3. The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

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

22.2. The list is to include, for each member:

- (a) a postal address; and
- (b) the member's email address, if this has been provided;

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

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

23. Notice of poll

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

- (a) the name of the corporation;
- (b) the constituency, or class within a constituency, for which the election is being held;
- (c) the number of members of the Council of Governors to be elected from that constituency, or class with that constituency;
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;

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

24. Issue of voting information by returning officer

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

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

("postal voting information").

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

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

(d) ("e-voting information").

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

- (a) only be sent postal voting information; or
- (b) only be sent e-voting information; or
- (c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2. The covering envelope is to have:

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

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

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

26. E-Voting systems

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

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

26.3. If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message

(in these rules referred to as "the text message voting facility").

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

(a) require a voter to:

- (i) enter his or her voter ID number; and
- (ii) where the election is for a Public Constituency, make a declaration of identity;

in order to be able to cast his or her vote;

(b) specify:

- (i) the name of the corporation;
- (ii) the constituency, or class within a constituency, for which the election is being held;
- (iii) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency;
- (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;
- (v) instructions on how to vote and how to make a declaration of identity;
- (vi) the date and time of the close of the poll; and
- (vii) the contact details of the returning officer;

(c) prevent a voter from voting for more candidates than he or she is entitled to at the election;

(d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of:

- (i) the voter's voter ID number;
- (ii) the voter's declaration of identity (where required);
- (iii) the candidate or candidates for whom the voter has voted; and
- (iv) the date and time of the voter's vote;

(e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and

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

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

(a) require a voter to:

- (i) enter his or her voter ID number in order to be able to cast his or her vote; and
- (ii) where the election is for a Public 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.

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

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

- 28.1. The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 28.2. Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

29. Spoilt ballot papers and spoilt text message votes

- 29.1. If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2. On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3. The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
 - (a) is satisfied as to the voter's identity; and
 - (b) has ensured that the completed ID declaration form, if required, has not been returned.
- 29.4. After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers"):
 - (a) the name of the voter; 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.
- 29.5. If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a "spoilt text message vote"), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6. On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 29.7. The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter's identity.
- 29.8. After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):

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

30. Lost voting information

- 30.1. Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2. The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
 - (a) is satisfied as to the voter's identity;
 - (b) has no reason to doubt that the voter did not receive the original voting information;
 - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3. After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):
 - (a) the name of the voter;
 - (b) the details of the unique identifier of the replacement ballot paper, if applicable; and
 - (c) the voter ID number of the voter.

31. Issue of replacement voting information

- 31.1. If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2. After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
 - (a) the name of the voter;
 - (b) the unique identifier of any replacement ballot paper issued under this rule;
 - (c) the voter ID number of the voter.

32. ID declaration form for replacement ballot papers (Public Constituency)

- 32.1. In respect of an election for a Public Constituency an ID declaration form must be issued with each replacement ballot paper requiring the voter to make a declaration of identity.

Polling by internet, telephone or text

33. Procedure for remote voting by internet

- 33.1. To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2. When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.3. If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4. To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5. The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

34. Voting procedure for remote voting by telephone

- 34.1. To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.
- 34.2. When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 34.3. If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4. When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.
- 34.5. The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

35. Voting procedure for remote voting by text message

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

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

36. Receipt of voting documents

- 36.1. Where the returning officer receives:

- (a) a covering envelope; or
- (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper;

before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.

36.2. The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:

- (a) the candidate for whom a voter has voted; or
- (b) the unique identifier on a ballot paper.

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

37. Validity of votes

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

37.2. Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:

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

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

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

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

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

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

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

38. Declaration of identity but no ballot paper (Public Constituency)

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

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

39. De-duplication of votes

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

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

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

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

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

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

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) "disqualified";

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

40. Sealing of packets

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

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

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

PART 6 COUNTING THE VOTES

41. Interpretation of Part 6

41.1. In Part 6 of these rules:

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

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

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

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

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

"non-transferable vote" means a ballot document:

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

candidate;

or

- (b) which is excluded by the returning officer under rule 49;

"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 46;

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

"stage of the count" means:

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

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

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

"transfer value" means the value of a transferred vote calculated in accordance with rules 47.4 or 47.7.

42. Arrangements for counting of the votes

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

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

- (a) the Board of Directors and the Council of Governors of the corporation have

approved:

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

43. The count

43.1. The returning officer is to:

- (a) count and record the number of:
 - (i) ballot papers that have been returned; and
 - (ii) the number of internet voting records, telephone voting records and/or text voting records that have been created; and
- (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

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

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

44. Rejected ballot papers and rejected text voting records

44.1. 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.

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

44.3. Any text voting record:

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

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

44.4. The returning officer is to endorse the word "rejected" on any text voting record which under this rule is not to be counted.

44.5. The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule 44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule 44.3.

45. First stage

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

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

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

46. The quota

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

46.2. The result, increased by one, of the division under rule 46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as "the quota").

46.3. At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules 47.1 to 47.3 has been complied with.

47. Transfer of votes

47.1. Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub-parcels so that they are grouped:

- (a) according to next available preference given on those ballot documents for any continuing candidate; or

- (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- 47.2. The returning officer is to count the number of ballot documents in each parcel referred to in rule 47.1.
- 47.3. The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.1 (a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.4. The vote on each ballot document transferred under rule 47.3 shall be at a value ("the transfer value") which:
- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus; and
 - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- 47.5. Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate; or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- 47.6. The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.7. The vote on each ballot document transferred under rule 47.6 shall be at:
- (a) a transfer value calculated as set out in rule 47.4(b); or
 - (b) at the value at which that vote was received by the candidate from whom it is now being transferred;
- whichever is the less.
- 47.8. Each transfer of a surplus constitutes a stage in the count.
- 47.9. Subject to rule 47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- 47.10. Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote; or

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

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

48. Supplementary provisions on transfer

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

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

48.2. The returning officer shall, on each transfer of transferable ballot documents under rule 47:

- (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.

48.3. All ballot documents transferred under rule 47 or 49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.

48.4. Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule 47 or 49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a nontransferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

49. Exclusion of candidates

49.1. If:

- (a) all transferable ballot documents which under the provisions of rule 47 (including that rule as applied by rule 49.11) and this rule are required to be transferred, have been transferred; and
- (b) subject to rule 50, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule 49.12 applies, the candidates with the then lowest votes).

49.2. The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule 49.1 into two sub-parcels so that they are grouped as:

- (a) ballot documents on which a next available preference is given; and
- (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).

49.3. The returning officer shall, in accordance with this rule and rule 48, transfer each sub-parcel of ballot documents referred to in rule 49.2 to the candidate for whom the next available preference is given on those ballot documents.

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

49.5. If, subject to rule 50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule 49.1 into sub- parcels according to their transfer value.

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

49.7. The vote on each transferable ballot document transferred under rule 49.6 shall be at the value at which that vote was received by the candidate excluded under rule 49.1.

49.8. Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.

49.9. After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule 49.1.

49.10. 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:
 - (iii) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (iv) the recorded total of valid first preference votes.

49.11. If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules 47.5 to 47.10 and rule 48.

49.12. 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.

49.13. 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.

50. Filling of last vacancies

50.1. 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.

50.2. 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.

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

51. Order of election of candidates

51.1. 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 47.10.

51.2. 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 or she obtained the quota.

51.3. 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.

- 51.4. 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

52. Declaration of result for contested elections

- 52.1. 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 Trust by section 33(4) of the 2006 Act, to the chair of Cornwall Partnership 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.

- 52.2. 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
- (e) the number of rejected ballot papers under each of the headings in rule 44.1;
- (f) the number of rejected text voting records under each of the headings in rule 44.3;

available on request.

53. Declaration of result for uncontested elections

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

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

54. Sealing up of documents relating to the poll

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

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

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1. Where:

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

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

57. Retention and public inspection of documents

- 57.1. The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the Board of Directors of the corporation, cause them to be destroyed.
- 57.2. With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- 57.3. A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

- 58.1. The corporation may not allow:
 - (a) the inspection of, or the opening of any sealed packet containing:
 - (i) any rejected ballot papers, including ballot papers rejected in part;
 - (ii) any rejected text voting records, including text voting records rejected in part;
 - (iii) any disqualified documents, or the list of disqualified documents;
 - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records; or
 - (v) the list of eligible voters; or
 - (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage;

by any person without the consent of the Board of Directors of the corporation.

- 58.2. A person may apply to the Board of Directors of the corporation to inspect any of the documents listed in rule 58.1, and the Board of Directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- 58.3. The Board of Directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

- (a) persons;
- (b) time;
- (c) place and mode of inspection;
- (d) production or opening;

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

58.4. On an application to inspect any of the documents listed in rule 58.1 the Board of Directors of the corporation must:

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

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

- (i) that his or her vote was given; and
- (ii) that NHS Improvement (Monitor) has declared that the vote was invalid.

PART 9 DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

59. Countermand or abandonment of poll on death of candidate

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

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

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

PART 10 ELECTION EXPENSES AND PUBLICITY

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1. No person may:

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

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

Publicity

63. Publicity about election by the corporation

63.1. The corporation may:

- (a) compile and distribute such information about the candidates; and
- (b) organise and hold such meetings to enable the candidates to speak and respond to questions

as it considers necessary.

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

- (a) objective, balanced and fair;
- (b) equivalent in size and content for all candidates;
- (c) compiled and distributed in consultation with all of the candidates standing for election; and

- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

64. Information about candidates for inclusion with voting information

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

64.2. The information must consist of:

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

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

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

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

PART 11 QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

66.1. An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHS Improvement (Monitor).

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

66.3. An application may only be made to NHS Improvement (Monitor) by:

- (a) a person who voted at the election or who claimed to have had the right to vote; or
- (b) a candidate, or a person claiming to have had a right to be elected at the election.

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- 66.4. The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as NHS Improvement (Monitor) may require.
- 66.5. The application must be presented in writing within 21 days of the declaration of the result of the election.
- 66.6. If NHS Improvement (Monitor) requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7. NHS Improvement (Monitor) shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8. The determination by the person or panel of persons nominated in accordance with rule 66.7 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.
- 66.9. NHS Improvement (Monitor) may prescribe rules of procedure for the determination of an application including costs.

PART 12 MISCELLANEOUS

67. Secrecy

67.1. The following persons:

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

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

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

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

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraphs 15 and 22)

Appendix 1:

Eligibility to be on the Council of Governors

- 1 A person may not become or continue as a Governor of the Foundation Trust if:
 - 1.1 he fails to meet Condition G4 concerning 'Fit and proper persons as Governors and Directors (also applicable to those performing similar functions)' of the Trust's NHS Provider Licence;
 - 1.2 he is a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
 - 1.3 in the case of an Elected Governor, he ceases to be a member of the constituency or (where relevant) the class within the constituency he represents;
 - 1.4 in the case of an Appointed Governor, the sponsoring organisation withdraws their sponsorship of him;
 - 1.5 in the case of an Appointed Governor, his primary place of residence or (where relevant) his primary place of business is located outside the Area of the Foundation Trust;
 - 1.6 he is a person whose tenure of office as the chair or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interest of the health service;
 - 1.7 he has within the preceding five years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
 - 1.8 he is a Director of the Foundation Trust, or a governor, executive director, non-executive director, chair, chief executive officer of another Health Service Body (unless they are appointed by a sponsoring organisation which is a Health Service Body);
 - 1.9 he has been a director of the Foundation Trust in the preceding year prior to the date of his nomination to stand for election as an Elected Governor, or in the case of an Appointed Governor, the date of his appointment;
 - 1.10 he has had his name removed from a list maintained under regulations pursuant to Sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list;
 - 1.11 subject to paragraph 5 below he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
 - 1.12 he has refused without reasonable cause to undertake any training which the Chair and/or Board of Directors and/or Council of Governors requires all Governors to undertake;

- 1.13 he is a member of a local authority Health Overview and Scrutiny Committee;
 - 1.14 he is the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register;
 - 1.15 he is an Immediate Family Member of a Governor or Director of the Foundation Trust;
 - 1.16 he has failed to repay (without good cause) any amount of monies properly owed to the NHS Trust or the Foundation Trust;
 - 1.17 he has failed to sign and deliver to the Secretary a statement in the form required by the Foundation Trust confirming acceptance of the Governor's Code of Conduct;
 - 1.18 he has failed to make, or has falsely made, any declaration as required by paragraph 13.5 of the Constitution;
 - 1.19 he is included in any barred list established under the Safeguarding Vulnerable Groups Act 2006 or an equivalent list maintained under the laws of Scotland or Northern Ireland ;
 - 1.20 he is a person who, by reference to information revealed in a disclosure and barring certificate issued by the Disclosure and Barring Service, is considered by the Trust to be inappropriate on the grounds that his appointment might adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
 - 1.21 he has received a written warning from the Foundation Trust for verbal and/or physical abuse towards Foundation Trust staff;
 - 1.22 the relevant Partnership Organisation which he represents ceases to exist; or
 - 1.23 he is exercising functions of the manager pursuant to Section 23 of the Mental Health Act 1983 (as amended).
- 2 Where a person has been elected or appointed to be a Governor and he becomes disqualified or is removed from office under paragraph 15 of the Constitution or paragraph 1 above, he shall notify the Chair or Secretary in writing of such disqualification and/or (as the case may be), removal as soon as is practicable and, in any event, within 14 days of first becoming aware of those matters which rendered him disqualified or removed.
 - 3 If it comes to the notice of the Chair or Secretary at the time of his taking office or later that the Governor is so disqualified, the Chair or Secretary shall immediately declare that the person in question is disqualified and notify him in writing to that effect as soon as is practicable.
 - 4 Upon despatch of any such notification under paragraphs 2 or 3 above, that person's tenure of office, if any, shall be terminated immediately and he shall cease to act as a Governor, and the Secretary shall cause his name to be removed from the register of members of the Council of Governors.
 - 5 Where an individual is deemed by the Chair or Secretary, at his absolute discretion, to be incapable by reason of mental disorder, illness or injury of managing and/or administering his property and/or affairs for the purposes of paragraph 1.8 above or paragraph 29.1.14 of this Constitution, the Chair or Secretary shall either:

- 5.1 temporarily suspend the individual from office until such time as the Chair or Secretary, in his absolute discretion, considers him to be capable of managing and/or administering his property and affairs; or
- 5.2 (where the Chair or Secretary, in his absolute discretion, considers him to be permanently incapable of managing and/or administering his property and affairs), declare that the individual is disqualified from office:
 - 5.2.1 In the case of a Governor, in accordance with paragraphs 3 and 4 above; and
 - 5.2.2 In the case of a Director, in accordance with the individual's terms and conditions of employment, service or engagement (as the case may be).

In considering whether an individual is incapable by reason of mental disorder, illness or injury of managing and/or administering his property and/or affairs, the Chair or Secretary shall take into account the provisions of the Mental Capacity Act 2005, or any statutory modification thereof and he shall be entitled to take appropriate professional advice from internal Foundation Trust advisors, and/or external advisors, as necessary.

Appendix 2:

Council of Governors: further provisions

1 Remuneration

- 1.1 Governors are not to receive remuneration from the Foundation Trust, provided that this shall not prevent the remuneration of Governors by their employer.

2 Vacancies

- 2.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of a term of office, the following provisions will apply.
- 2.2 Where the vacancy arises amongst the Elected Governors, the Council of Governors shall decide either:
- 2.2.1 to call an election within three months to fill the seat for the remainder of that term of office; or
 - 2.2.2 to invite the next highest polling candidate for that seat at the most recent election or (where relevant) by-election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and be subject to election for any unexpired period of the term of office, or
 - 2.2.3 to leave the seat vacant until the next scheduled elections are held if the unexpired period of office is less than three months.
- 2.3 Where the vacancy arises amongst the Appointed Governors, the Foundation Trust will request that the relevant organisation appoints a Replacement Governor within 30 days to hold office for the remainder of the term of office. Appointed Governors shall be replaced in accordance with the processes agreed pursuant to paragraph 2 of Annex 3 of this Constitution.
- 2.4 The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

3 Meetings

- 3.1 The Council of Governors is to meet at least four times in each Financial Year, including an annual meeting, when the Council of Governors is to receive and consider the Annual Accounts and any report of the Auditor on them and the Board of Directors is to present to the Council of Governors the Annual Report, which may be combined with the Annual Members' Meeting pursuant to paragraph 42.3 of the Constitution.
- 3.2 The Chair or Secretary shall call meetings in accordance with paragraph 3.1 above.
- 3.3 Subject to paragraph 3.5 below, any meeting of the Council of Governors requires a quorum of 7 (seven) Governors.
- 3.4 No business shall be carried out at a meeting which is not quorate.

- 3.5 If at any meeting of the Council of Governors, there is no quorum present within 30 minutes of the time fixed for the start of the meeting the meeting shall stand adjourned for a minimum period of 14 Clear Days and the Chair or Secretary shall give or shall procure the giving of notice to all Governors of the date, time and place of that adjourned meeting. Notwithstanding paragraph 3.3 above, upon reconvening, those present shall constitute a quorum. In the event that one of the Chair, the Vice Chair or the Lead Governor/Designated Governor is unable to attend the meeting, the meeting shall not be convened.

4 Committees, sub-committees and joint committees

- 4.1 The Council of Governors may appoint committees consisting wholly or partly of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.
- 4.2 These committees, sub-committees or joint committees may call upon outside advisers to help them in their tasks, provided that the financial and other implications of seeking outside advisers have been discussed and agreed by the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph will be determined in accordance with paragraph 2.3 of Appendix 4 of Annex 8.

5 Council of Governors: declarations

- 5.1 The specified form of declaration referred to at paragraph 13.5 of this Constitution regarding the declaration to stand for election as an Elected Governor shall be as set out on the nomination paper referred to in the Model Rules for Elections at Annex 4 and shall state as follows:

"I declare that I am resident at the address detailed in Section 1 of this form. I declare that to the best of my knowledge I am eligible to stand for election to the Council of Governors for the seat named in Section 2 of this form. I declare that to the best of my knowledge I am not de-barred from standing for election by any of the provisions detailed at Section 3 of this form. I declare that I have stated details of any of my political membership and any financial interests I have in the NHS Trust or (as the case may be) the Foundation Trust at Section 4 of this form. I understand that if any of these declarations are later found to be false I will if elected lose my seat on the Council of Governors and may also have my membership withdrawn."

- 5.2 The specified form of declaration referred to at paragraph 13.5 of this Constitution regarding the declaration to vote in elections for Public Governors will be as set out in Rule 21 of the Model Rules for Elections.

6 Lead Governor/Designated Governor

The Governors shall, at a general meeting or otherwise, appoint one of the Governors to be Lead Governor/Designated Governor of the Council of Governors.

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

(Paragraph 18)

1 INTRODUCTION

- 1.1 The Foundation Trust became a Public Benefit Corporation on 1 March 2010 following authorisation by NHS Improvement (Monitor) pursuant to the 2006 Act.
- 1.2 The Foundation Trust's principal place of business is the Foundation Trust Head Office.
- 1.3 The Foundation Trust is governed by the Regulatory Framework. The functions of the Foundation Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Governors to adopt SOs for the regulation of its proceedings and business and to adhere at all times to the Governors' Code of Conduct.

2 INTERPRETATION

- 2.1 Save as otherwise permitted by law, at any meeting of the Council of Governors, the Chair of the Foundation Trust shall be the final authority on the interpretation of SOs (on which he should be advised by the Secretary).
- 2.2 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these SOs shall bear the same meaning as in the Constitution.
- 2.3 The provisions of paragraphs 1.2 to 1.6 of the Constitution apply to these SOs, save that any reference to "Constitution" shall be read as a reference to these "SOs".

3 THE COUNCIL OF GOVERNORS

The roles and responsibilities of the Governors are set out in a document entitled Governor Roles and Responsibilities and have effect as if incorporated into the SOs but for the avoidance of doubt do not form part of the SOs or the Constitution. Certain powers and decisions may only be exercised by the Council of Governors in formal session.

4 MEETINGS OF THE COUNCIL OF GOVERNORS

4.1 Admission of the public

- 4.1.1 The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors except where it resolves by special resolution that members of the public and representatives of the press be excluded from all or part of a meeting on the grounds that:
 - 4.1.1.1 any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
 - 4.1.1.2 for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Council of Governors believe

are special reasons for excluding the public from the meeting in accordance with the Constitution.

- 4.1.2 Nothing in these SOs shall require the Council of Governors to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Chair.

4.2 Calling meetings

- 4.2.1 Meetings of the Council of Governors shall be held at such times and places as the Chair may determine and there shall be at least 4 meetings in each Financial Year and any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.
- 4.2.2 The Secretary or the Chair may call a meeting of the Council of Governors at any time. If the Secretary or the Chair refuses to call a meeting after a requisition for that purpose, signed by at least 10 (ten) Governors including at least 2 (two) Elected Governors and 2 (two) Appointed Governors and specifying the business to be transacted at the meeting, has been presented to him, or if, without so refusing, the Secretary or Chair does not call a meeting within 14 Clear Days after such requisition has been presented to him at the Foundation Trust Head Office, such 10 or more of the Governors mentioned above may forthwith call a meeting for the purpose of conducting that business.
- 4.2.3 The Council of Governors may invite the Chief Executive, members of the Board of Directors, a representative of the Auditor or other advisors to attend a meeting of the Council of Governors.
- 4.2.4 The Council of Governors may agree that Governors can participate in its meetings by telephone, video link or computer. Participation in a meeting in this manner shall be deemed to be exceptional but shall constitute presence in person at the meeting for the purposes of SO 4.17 (Quorum).
- 4.2.5 Notwithstanding the provisions of SO 4.2.1 above, the Secretary shall publish the dates, times and locations of meetings of the Council of Governors, apart from meetings convened under SO 4.2.2 or those held in the event of an emergency giving rise to the need for an immediate meeting, for each year, three months in advance.

4.3 Notice of meetings and agenda

- 4.3.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an Officer authorised by the Chair to sign on his behalf, shall be delivered to, or sent by post to the usual place of residence of every Governor or sent electronically, so as to be available to him at least 3 days before the meeting save in the case of emergencies.

- 4.3.2 Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and if possible the public part of the agenda, shall be displayed at the Foundation Trust Head Office and shall be advertised on the Foundation Trust's website at least 7 days before the meeting, save in the case of emergencies.
- 4.3.3 Failure to serve notice of a meeting on any one Governor shall not affect the validity of a meeting but failure to serve such a notice on more than three Governors will invalidate the meeting. A notice of meeting shall be presumed to have been served one day after posting or, in the case of a notice sent electronically, on the date of transmission.
- 4.3.4 In the case of a meeting called by Governors in default of the Secretary or Chair in accordance with SO 4.2.2, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the requisition.
- 4.3.5 Agendas will be sent to Governors electronically, by mail or other means before the meeting and supporting papers (including draft minutes of the previous meeting), whenever possible, shall accompany the agenda, but will certainly be despatched no later than 3 days before the meeting, save in the case of emergencies.
- 4.3.6 In the event of an emergency giving rise to the need for an immediate meeting failure to comply with the notice periods referred to in SOs 4.2.5, 4.3.1, 4.3.2 and 4.3.5 shall not prevent the calling of or invalidate such meeting provided that every effort is made to contact members of the Council of Governors who are not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.

4.4 Setting the agenda

- 4.4.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted ("Standing Items").
- 4.4.2 A member of the Council of Governors desiring a matter other than a Standing Item to be included on an agenda, including a formal motion for discussion and voting on at a meeting, shall make his request in writing to the Chair or Secretary at least 14 days before the meeting. For the purposes of this SO 4.4.2 receipt of any such requests via electronic communication is acceptable. A request for a formal motion must be signed or transmitted by at least 2 (two) Governors. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 14 days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.4.3 All requests received by the Chair or Secretary pursuant to SO 4.4.2 will be acknowledged by the Chair or Secretary in writing to the Governors who have signed or transmitted the same.

4.5 Petitions

Where a petition has been received by the Foundation Trust, the Chair shall include the petition as an item for the agenda of the next meeting of the Council of Governors.

4.6 Written motions

- 4.6.1 In urgent situations and with the consent of the Chair, business may be effected by a Governor's written motion to deal with business otherwise required to be conducted at a meeting of the Council of Governors.
- 4.6.2 If all members of the Council of Governors have been notified of the proposal and a majority of Governors entitled to attend and vote at a meeting of the Council of Governors confirms acceptance of the written motion either in writing or electronically to the Chair or Secretary within 5 Clear Days of dispatch then the motion will be deemed to have been resolved, notwithstanding that the Governors have not gathered in one place.
- 4.6.3 The effective date of the resolution shall be the date that the last confirmation is received by the Chair or Secretary and, until that date, a Governor who has previously indicated acceptance can withdraw, and the motion shall fail.
- 4.6.4 Once the resolution is passed, a copy certified by the Chair or Secretary shall be recorded in the minutes of the next ensuing meeting where it shall be signed by the person presiding at it.

4.7 Chair of meeting

- 4.7.1 At any meeting of the Council of Governors, the Chair, if present, shall preside.
- 4.7.2 If the Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, the Vice Chair shall preside.
- 4.7.3 If the Chair and the Vice Chair are absent from the meeting or are absent temporarily on the grounds of a declared conflict of interest, the Lead Governor/Designated Governor shall preside.

4.8 Motions

- 4.8.1 Where Governors have requested inclusion of a matter on the agenda in accordance with SO 4.4.2 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this SO 4.9 shall apply in respect of the motion:
- 4.8.2 Subject to SO 4.8.6 below, the mover of the motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto, or to raise a point of order.
- 4.8.3 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move (without prior notice having been given):
 - 4.8.3.1 that the motion be withdrawn; or

- 4.8.3.2 an amendment to the motion; or
- 4.8.3.3 the adjournment of the discussion or the meeting; or
- 4.8.3.4 that the meeting proceed to the next item of business on the agenda;
or
- 4.8.3.5 the appointment of an ad hoc committee or working group to deal with a specific item of business; or
- 4.8.3.6 that the motion be now put; or
- 4.8.3.7 that the public and press be excluded from the meeting in relation to the discussion concerning the motion under SO 4.1.
- 4.8.4 In the case of SOs 4.8.3.4 and 4.8.3.6 above, to ensure objectivity these matters may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.
- 4.8.5 No amendment to the motion shall be admitted if, in the opinion of the Chair, the amendment negates the substance of the motion.
- 4.8.6 The Chair of the meeting shall have absolute discretion as to the time permitted to members of the Council of Governors to move a motion or reply to a motion.
- 4.8.7 For the avoidance of doubt, the following motions may be moved at a meeting of the Council of Governors without notice pursuant to SO 4.4.2 above:
 - 4.8.7.1 a motion in relation to the accuracy of the minutes of the previous meeting of the Council of Governors;
 - 4.8.7.2 a motion to change the order of business in the agenda for that meeting;
 - 4.8.7.3 a motion to refer a matter discussed at a meeting to an appropriate body or individual;
 - 4.8.7.4 a motion to appoint an ad hoc committee or a working group to deal with a specific item of business;
 - 4.8.7.5 a motion to receive reports or adopt recommendations made by the Board of Directors;
 - 4.8.7.6 a motion to withdraw a motion;
 - 4.8.7.7 a motion to amend a motion;
 - 4.8.7.8 a motion to proceed to the next item of business on the agenda;
 - 4.8.7.9 a motion that the question be now put;
 - 4.8.7.10 a motion to adjourn a debate;

- 4.8.7.11 a motion to adjourn a meeting;
- 4.8.7.12 a motion to suspend a particular SO (subject to SO 4.14 below);
- 4.8.7.13 a motion to exclude the public and press from the meeting in question pursuant to SO 4.1 above;
- 4.8.7.14 a motion to not hear further from a Governor, or to exclude them from the meeting in question (if a Governor 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 be not heard further at the meeting in question. 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 in question is adjourned for a specified period. If seconded, the motion will be voted on without discussion); and
- 4.8.7.15 a motion to give the consent of the Council of Governors to any matter where its consent is required pursuant to the Constitution.

4.9 Report from the Board of Directors

- 4.9.1 Unless otherwise agreed in writing between the Council of Governors and the Board of Directors, at each meeting of the Council of Governors, the Board of Directors through the Chair or an Executive Director (or Nominated Officer) is required to report to the Council of Governors on the Foundation Trust's general progress forward and forward planning.
- 4.9.2 At any meeting a Governor may ask any question through the Chair without notice on any report made pursuant to SO 4.9.1 above after that report has been received by or while such report is under consideration by the Council of Governors at the meeting. Unless the Chair decides otherwise no statements will be made other than those which are strictly necessary to define any question posed and in any event no statements will be allowed to last longer than 3 minutes each. A Governor who has put such a question may also put one supplementary question if the supplementary question arises directly out of the reply given to the initial question. The Chair may, in his absolute discretion, reject any question from any Governor if in his opinion the question is substantially the same and relates to the same subject matter as a question which has already been put to that meeting or a previous meeting. 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 Statements of Governors and Chair's ruling

- 4.10.1 Subject to SO 4.10.2 below, statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and subject to SO 2.1 the

decision of the Chair on questions of order, relevancy, regularity and any other matters shall be final.

4.10.2 This SO applies to all forms of speech/debate by Governors in relation to motions or questions under discussion at a meeting of the Council of Governors.

4.10.2.1 Content and length of speeches

Any approval to speak must be given by the Chair. Speeches must be directed to the matter, motion or question under discussion or to a point of order. Unless in the opinion of the Chair it would not be desirable or appropriate to 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. In the interests of time the Chair may, in his absolute discretion, limit the number of replies, questions or speeches which are heard at any one meeting.

4.10.2.2 When a person may speak again

A person who has already spoken on a matter at a meeting may not speak again at that meeting in respect of the same matter, except:

4.10.2.2.1 in exercise of a right of reply; or

4.10.2.2.2 on a point of order; or

4.10.2.2.3 at the Chair's discretion.

4.10.2.3 Identification

All speakers must state their name and role before starting to speak to ensure the accuracy of the minutes.

4.11 Voting

4.11.1 A Governor may not vote at a meeting of the Council of Governors unless, within 7 Clear Days prior to the commencement of the meeting he has:

4.11.1.1 made a declaration in the form specified within Annex A of these SOs, that he is a member of the constituency which elected him; and

4.11.1.2 that he is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution.

A Governor shall be deemed to have confirmed the declarations upon attending a subsequent meeting of the Council of Governors unless he otherwise notifies the Secretary in writing.

4.11.2 Subject to SO 4.11.4 below or as otherwise provided by these SOs and the Constitution, every question at a meeting shall be determined by a majority of the votes of the Chair and the Governors present and

voting on the question but no resolution may be passed if it is opposed by all of the Public Governors present and voting on the question.

- 4.11.3 Whoever is Chair of the meeting of the Council of Governors shall in the case of an equality of votes on any question or proposal have a second or casting vote.
- 4.11.4 A resolution for the removal of the Chair or a Non-Executive Director shall be passed only if three-quarters of the total number of Governors vote in favour of it and the provisions of paragraphs 26.2 to 26.6 of the Constitution have been complied with.
- 4.11.5 All questions put to the vote shall, at the discretion of the Chair, be determined by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 4.11.6 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.
- 4.11.7 If a Governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.11.8 A Governor may only vote if present at the time of the vote on which the question is to be decided; no Governor may vote by proxy but a Governor is considered to have been present at the meeting if they took part by telephone, video link or computer and so is therefore entitled to vote.
- 4.11.9 In certain circumstances, the Chair may specify in a notice of meeting any matter which requires approval by a written resolution and such a matter may be approved in writing provided that at least three-quarters of the Governors approve the resolution in writing within the timescale imposed in such a notice.
- 4.11.10 All decisions taken in good faith at the meeting of the Council of Governors or at any meeting of a committee of the Council of Governors shall be valid even if it is subsequently discovered that there was a defect in the calling of the meeting or the appointment of the Governors attending the meeting.

4.12 Special provisions relating to termination of Governors' tenure:

- 4.12.1 Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under paragraph 15, or the provisions of Appendix 1 of Annex 5 of the Constitution, he shall notify the Chair or Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of the first becoming aware of those matters which render him disqualified. The Secretary shall forthwith remove him from the register of members of the Council of Governors.
- 4.12.2 If it comes to the notice of the Chair or Secretary that the Governor is disqualified pursuant to SO 4.12.1, whether at the time of the Governor's appointment or (as the case may be) election, or later, the

Chair or Secretary shall immediately declare that the individual in question is disqualified and give him notice in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration. In the event that the Governor shall dispute that he is disqualified the Governor may refer the matter to the dispute resolution procedure set out in paragraph 2.2 of Appendix 4 of Annex 8 of the Constitution within 28 days of the date upon which the notice was given to the Governor.

- 4.12.3 The Chair shall be authorised to take such action as may be immediately required, including but not limited to exclusion of the Governor concerned from the meeting so that any allegation made against a Governor on the grounds set out in paragraph 15.6 of the Constitution can be investigated.
- 4.12.4 Where any grounds within SO 4.12.3 are alleged, it shall be open to the Council of Governors to decide, by two-thirds majority of those present and voting, to lay a formal charge of non-compliance or misconduct.
- 4.12.5 The Governor in question will be notified in writing of the allegations and grounds upon which the charges referred to in SO 4.12.4 are made, inviting his response within a defined, appropriate and reasonable timescale.
- 4.12.6 The Governor may be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.
- 4.12.7 The Governors, by three-quarters majority of those present and voting can decide whether to uphold the charge.
- 4.12.8 Should the Governors uphold the charge in accordance with SO 4.12.7, the Governors can impose such sanctions as shall be deemed appropriate. Such sanctions may range from the issuing of a written warning as to the Governor's future conduct and consequences, to non-payment of expenses, or removal of the Governor from office in accordance with paragraph 15 of the Constitution.
- 4.12.9 Upon disqualification, removal or termination of a Governor's office under this SO, the Secretary shall cause his name to be removed immediately from the register of members of the Council of Governors.
- 4.12.10 Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by the Governor concerned to the dispute resolution procedure set out in paragraph 2.2 of Appendix 4 of Annex 8 of the Constitution within 28 days of the date upon which notice in writing of the Council of Governor's decision made in accordance with SOs 4.12.7 and 4.12.8 is communicated to the Governor concerned.
- 4.12.11 A Governor may resign from that office at any time during the term of that office by giving notice to the Chair or Secretary in writing, upon which he shall cease to hold office.

- 4.12.12 A Governor who resigns under SO 4.12.11 above or whose office is terminated under this SO or paragraph 15 of the Constitution shall not be eligible to stand for re-election or re-appointment to the Council of Governors for a period of 5 years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of whichever is later.
- 4.12.13 Where a vacancy arises on the Council of Governors, the provisions of paragraph 2 of Appendix 4 of Annex 5 of the Constitution shall apply.

4.13 Minutes

- 4.13.1 The minutes of the proceedings of a meeting of the Council of Governors shall be drawn up by the Secretary and submitted for agreement at the next ensuing 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 person chairing the meeting considers discussion appropriate.
- 4.13.3 Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.14 Suspension of Standing Orders

- 4.14.1 Except where this would contravene any provision of the Regulatory Framework or any guidance or best practice advice issued by NHS Improvement (Monitor), any one or more of the SOs may be suspended at any meeting, provided that at least one-half of the Governors are present and that a majority of those present vote in favour of suspension.
- 4.14.2 A decision to suspend an SO or the SOs shall be recorded in the minutes of the meeting and shall only be suspended for the duration of the meeting in question.
- 4.14.3 A separate record of matters discussed during the suspension of SOs shall be made and shall be made available to the Chair and Governors.
- 4.14.4 No formal business may be transacted while the SOs are suspended.

4.15 Variation and amendment of Standing Orders

These SOs shall be amended in accordance with paragraph 44 of the Constitution.

4.16 Record of attendance

The names of the person chairing the meeting and Governors present at the meeting shall be recorded in the minutes.

4.17 Quorum

- 4.17.1 No business shall be transacted at a meeting unless at least 7 (seven) Governors are present and in the event that one of the Chair, the Vice Chair or the Lead Governor/Designated Governor is unable to attend the meeting, the meeting shall not be convened.
- 4.17.2 If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for a minimum period of 14 Clear Days and the Secretary shall give or shall procure the giving of notice to all Governors of the date, time and place of the adjourned meeting. Notwithstanding SO 4.17.1 above, upon reconvening, those present shall constitute a quorum.
- 4.17.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest as provided in SO 6, 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.

5 COMMITTEES

- 5.1 Subject to the Regulatory Framework and any guidance or best practice advice issued by NHS Improvement (Monitor), the Council of Governors may and, if directed by NHS Improvement (Monitor), shall appoint committees of the Council of Governors to assist it in the proper performance of its functions under the Regulatory Framework, consisting wholly or partly of the Chair, Governors and others.
- 5.2 A committee appointed under SO 5.1 may, subject to such directions as may be given by the Council of Governors, appoint sub-committees consisting wholly or partly of members of the committee.
- 5.3 These SOs, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors with the terms "Chair" to be read as a reference to the Chair of the committee, and the term "Governor" to be read as a reference to a member of the committee as the context permits.
- 5.4 Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the Regulatory Framework and any guidance or best practice advice issued by NHS Improvement (Monitor), but the Council of Governors shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council of Governors at a formal meeting.
- 5.5 Where committees are authorised to establish sub-committees they may not delegate their powers to the sub-committee unless expressly authorised by the Council of Governors.
- 5.6 Any committee or sub-committee established under this SO 5 may call upon outside advisers to assist them with their tasks, subject to the advance agreement of the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph shall be determined in accordance with the

dispute resolution procedure set out at paragraph 2.3 of Appendix 4 of Annex 8 of the Constitution.

- 5.7 The Council of Governors shall approve the appointments to each of the committees which it has formally constituted.
- 5.8 Where the Council of Governors is required to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Council of Governors, such appointments shall be made in accordance with applicable statute and regulations and with guidance or best practice advice issued by NHS Improvement (Monitor).
- 5.9 Where the Council of Governors determines that persons who are neither Governors, nor Directors or Officers of the Foundation Trust, shall be appointed to a committee, the terms of such appointment shall be determined by the Council of Governors subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Board of Directors.
- 5.10 The Council of Governors may appoint Governors to serve on joint committees with the Board of Directors or committees of the Board of Directors on the request of the Chair.

6 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

6.1 Declaration of interests

- 6.1.1 The Regulatory Framework requires each Governor to declare to the Secretary:
- 6.1.1.1 any actual or potential interest, direct or indirect, which is relevant and material to the business of the Foundation Trust, as described in SO 6.2.1; and
- 6.1.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Foundation Trust, as described in SOs 6.2.2 and 6.2.3; and
- 6.1.1.3 any actual or potential family interest, direct or indirect, of which the Governor is aware, as described in SO 6.2.5.
- 6.1.2 Such a declaration shall be made either at the time of the Governor's election or appointment or as soon thereafter as the interest arises, and in a form prescribed by the Secretary.
- 6.1.3 In addition, if a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter.
- 6.1.4 Subject to SO 6.2.4, if a Governor has declared a pecuniary interest (as described in SOs 6.2.2 and 6.2.3) he shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the Governor's meeting minutes.

Any changes in interests should be officially declared at the next relevant meeting following the change occurring.

- 6.1.5 This SO 6 applies to any committee, sub-committee or joint committee of the Council of Governors and applies to any member of any such committee, sub-committee, or joint committee (whether or not he is also a Governor).
- 6.1.6 The interests of Governors in companies likely or possibly seeking to do business with the NHS or the Foundation Trust should be published in the Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

6.2 Nature of interests

- 6.2.1 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance or best practice advice issued by NHS Improvement (Monitor):
 - 6.2.1.1 directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies); or
 - 6.2.1.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS or the Foundation Trust;
 - 6.2.1.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS or the Foundation Trust;
 - 6.2.1.4 a position of authority in a charity or Voluntary Organisation in the field of health and social care; or
 - 6.2.1.5 any connection with a voluntary or other organisation contracting for NHS or Foundation Trust services or commissioning NHS or Foundation Trust services; or
 - 6.2.1.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Foundation Trust, including but not limited to, lenders or banks.
- 6.2.2 A Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
 - 6.2.2.1 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
 - 6.2.2.2 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.

- 6.2.3 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 6.2.3.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; or
- 6.2.3.2 of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or
- 6.2.3.3 of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.
- 6.2.4 Where a Governor:
- 6.2.4.1 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
- 6.2.4.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
- 6.2.4.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,
- the Governor shall not be prohibited 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 duty to disclose his interest.
- 6.2.5 A family interest is an interest of an Immediate Family Member of a Governor which if it were the interest of that Governor would be a personal interest or a pecuniary interest of his.
- 6.2.6 If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Secretary. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships should also be considered.

6.3 Confidentiality

- 6.3.1 A member of a committee (including sub-committees or joint committees) shall not disclose any matter dealt with, by, or brought before, the committee, sub-committee or joint committee without its permission until the committee, sub-committee or joint committee (as appropriate) shall have reported to the Council of Governors or shall otherwise have concluded on that matter.
- 6.3.2 A Governor or a member of a committee, sub-committee or joint committee shall not disclose any matter reported to the Council of

Governors or otherwise dealt with by the committee, sub-committee or joint committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee, sub-committee or joint committee resolve that it is confidential.

6.4 Register of members of the Council of Governors

The Secretary shall keep a register of members of the Council of Governors which shall list the names of Governors, their category of membership of the Council of Governors and an address through which they may be contacted which may be the Secretary.

6.5 Register of interests of members of the Council of Governors

The Secretary shall keep a register of interests of members of the Council of Governors which shall contain the names of each Governor, whether he has declared any interest, and if so, the interest declared.

7 STANDARDS OF BUSINESS CONDUCT

Members of the Council of Governors shall comply with the Regulatory Framework, the Governors' Code of Conduct and any guidance or best practice advice issued by NHS Improvement (Monitor).

8 APPOINTMENTS AND RECOMMENDATIONS

8.1 A Governor shall not solicit for any person any appointment under the Foundation Trust or recommend any person for such appointment, but this paragraph of this SO 8 shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Foundation Trust in relation to any appointment.

8.2 Informal discussions outside nominations panels, appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee in question.

8.3 Every Governor shall disclose to the Chair or Secretary any relationship between himself and a candidate of whose candidature that Governor is aware. It shall be the duty of the Chair or Secretary to report to the Council of Governors any such disclosure made.

8.4 On appointment, members of the Council of Governors should disclose to the Council of Governors whether they are related to any other member of the Council of Governors or holder of any office in the Foundation Trust.

8.5 Where the relationship to a member of the Council of Governors of the Foundation Trust is disclosed, SO 6 shall apply.

9 MISCELLANEOUS

9.1 The Secretary shall provide a copy of these SOs to each Governor and endeavour to ensure that each Governor understands his responsibilities within these SOs.

9.2 If for any reason these SOs are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-

compliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All Governors have a duty to disclose any non-compliance with these SOs to the Chair or Secretary as soon as possible.

Annex A

Declaration to the Secretary of Cornwall Partnership NHS Foundation Trust

I hereby declare that I am at the date of this declaration a member of the [Public/Staff]¹ Constituency, and I am not prevented from being a member of the Council of Governors by reason of any provision of paragraph 8 of Schedule 7 to the 2006 Act or the Constitution.

¹ Please delete as appropriate.

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

(Paragraph 31)

1 INTRODUCTION

1.1 Statutory framework

- 1.1.1 The Foundation Trust became a Public Benefit Corporation on 1 March 2010 following authorisation by NHS Improvement (Monitor) pursuant to the 2006 Act.
- 1.1.2 The Foundation Trust's principal place of business is the Foundation Trust Head Office.
- 1.1.3 The Foundation Trust is governed by the Regulatory Framework. The functions of the Foundation Trust are conferred by the Regulatory Framework. The Regulatory Framework and in particular paragraph 26 of the Constitution requires the Board of Directors to adopt SOs for the regulation of its proceedings and business.
- 1.1.4 As a Public Benefit Corporation the Foundation Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Foundation Trust also has a common law duty as a bailee for patients' property held by the Foundation Trust on behalf of patients.
- 1.1.5 The SOs, Scheme of Delegation and SFIs provide a comprehensive business framework for the administration of the Foundation Trust's affairs, and these need to be read in conjunction with the Regulatory Framework. All Directors and Nominated Officers should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions contained within them.
- 1.1.6 The Foundation Trust will deal with NHS Improvement (Monitor) in an open and co-operative manner and must promptly notify NHS Improvement (Monitor) of anything relating to the Foundation Trust which NHS Improvement (Monitor) would reasonably expect prompt notice of, including, without prejudice to the foregoing generality, any anticipated failure or anticipated prospect of failure on the part of the Foundation Trust to meet its obligations under the Provider Licence or any financial or performance thresholds which NHS Improvement (Monitor) may specify from time to time.
- 1.1.7 The Chair, Chief Executive or any other person giving information to the public on behalf of the Foundation Trust shall ensure that they follow the principles set out in the Directors' Code of Conduct and the best practice advice set out in the Code.

1.2 Delegation of powers – Scheme of Delegation

Under SO 5 (Arrangements for the Exercise of Functions by Delegation) the Board of Directors exercises its power to make arrangements for the exercise, on behalf of the Foundation Trust, of any of its functions by a committee of the Board of Directors appointed by virtue of SO 6 (Committees) or by an Executive Director of the Foundation Trust, in each case subject to such restrictions and conditions as the Board of Directors thinks fit. Delegated powers are covered in the Scheme of Delegation.

2 INTERPRETATION

- 2.1 Save as otherwise permitted by law, at any meeting of the Board of Directors, the Chair of the Foundation Trust shall be the final authority on the interpretation of SOs (on which he should be advised by the Chief Executive and Secretary).
- 2.2 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these SOs shall bear the same meaning as in the Constitution.
- 2.3 The provisions of paragraphs 1.2 to 1.6 of the Constitution apply to these SOs, save that any reference to "Constitution" shall be read as a reference to these "SOs".

3 THE FOUNDATION TRUST BOARD OF DIRECTORS

- 3.1 All business shall be conducted in the name of the Foundation Trust.
- 3.2 All funds received in trust shall be in the name of the Foundation Trust as corporate trustee. Directors acting on behalf of the Foundation Trust as corporate trustees are acting as quasi-trustees.
- 3.3 In relation to Funds held on Trust, powers exercised by the Foundation Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as the Foundation Trust. Accountability for charitable Funds held on Trust is to the Charity Commission.
- 3.4 The Foundation Trust has the functions conferred on it by the Regulatory Framework.
- 3.5 The powers of the Foundation Trust shall be exercised by the Board of Directors meeting either in public or private session except as otherwise provided for in SO 4.1.
- 3.6 The Foundation Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors. These powers and decisions are set out in the Scheme of Delegation.

3.7 Senior Independent Director

- 3.7.1 The Board of Directors (in consultation with the Council of Governors) may appoint any independent Non-Executive Director as the "senior independent director" (as defined in the Code), for such period not exceeding the remainder of his term as a Non-Executive Director, as they may specify on appointing him.
- 3.7.2 Any Non-Executive Director appointed under SO 3.7.1 may at any time resign from the office of "senior independent director" by giving notice in writing to the Chair or Secretary. The Board of Directors (in consultation with the Council of Governors) may thereupon appoint

another independent Non-Executive Director as "senior independent director" in accordance with the provisions of SO 3.7.1.

- 3.7.3 The "senior independent director" shall perform the role set out in the Code.

4 MEETINGS OF THE BOARD OF DIRECTORS

4.1 Admission of the public and the press

- 4.1.1 Meetings of the Board of Directors shall be held in public at least four times in every Financial Year unless the Board of Directors in its absolute discretion determines that any meeting of the Board of Directors shall be held in private.

- 4.1.2 Where the Board of Directors determines that a meeting of the Board of Directors will be held in public, the public and representatives of the press shall be afforded facilities to attend such meetings of the Board of Directors but shall be required to withdraw upon the Board of Directors resolving as follows:

"...that representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity of which would be prejudicial to the public interest".

- 4.1.3 The Chair shall give such directions as he thinks fit (including a direction to expel or exclude any member of the public and/or press if the individual in question is interfering with or preventing the proper conduct of the meeting) in regard to the arrangements for meetings of the Board of Directors and (where relevant) the accommodation of the public and representatives of the press such as to ensure that the Board of Directors' business shall be conducted without interruption or disruption and, without prejudice to the power to exclude the public and representatives of the press under SO 4.1.2 above, members of the public and representatives of the press will be required to withdraw upon the Board of Directors resolving as follows:

"...that in the interests of public order the meeting adjourn for a [insert period] to enable the Board of Directors to complete business without the presence of the public or press."

- 4.1.4 Nothing in these SOs shall require the Board of Directors to allow members of the public or representative of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Chair.

- 4.1.5 Matters to be dealt with by the Board of Directors following the exclusion of the public and representatives of the press under SOs 4.1.2 or 4.1.3 above shall be confidential to the Directors. Members of the Board of Directors, Nominated Officers, Officers and/or others in attendance at the request of the Chair shall not reveal or disclose the content of papers or reports presented, or any discussion on these

generally, which take place while the public and press are excluded, without the express permission of the Chair.

- 4.1.6 The Board of Directors will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers, advisors and others to attend and address any meeting of the Board of Directors, and may change, alter or vary these terms and conditions as it deems fit.

4.2 Calling meetings

- 4.2.1 Subject to SO 4.2.2 below, meetings of the Board of Directors shall be held at such times and places as the Board of Directors may, in its absolute discretion, determine.
- 4.2.2 The Secretary or Chair may call a meeting of the Board of Directors at any time. If the Secretary or Chair refuses to call a meeting after a requisition for that purpose, signed by at least 4 (four) members of the Board of the Directors and specifying the business to be transacted at the meeting, and this has been presented to him, or if, without so refusing, the Secretary or Chair does not call a meeting within 14 Clear Days after such requisition has been presented to him, at the Foundation Trust Head Office, such 4 (four) or more members of the Board of Directors may forthwith call a meeting for the purpose of conducting that business.

4.3 Notice of meetings

- 4.3.1 Before a meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair, or by an Officer of the Foundation Trust authorised by the Chair to sign on his behalf, shall be delivered to every Director, or sent by post to the usual place of residence of every Director or sent electronically, so as to be available to him at least 3 days before the meeting, save in the case of emergencies.
- 4.3.2 Before a public meeting of the Board of Directors a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Foundation Trust Head Office and shall be advertised on the Foundation Trust's website at least 3 days before the meeting, save in the case of emergencies.
- 4.3.3 Failure to serve such notice of a meeting on any member of the Board of Directors shall not affect the validity of a meeting but failure to serve such a notice on more than 2 of the Executive Directors and 2 of the Non-Executive Directors will invalidate the meeting. Notice of the meeting shall be presumed to have been served one day after posting or, in the case of a notice sent electronically, on the date of transmission.
- 4.3.4 In the case of a meeting called by the Directors in default of the Secretary or Chair in accordance with SO 4.2.2 above, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the requisition.

- 4.3.5 In the event of an emergency giving rise to the need for an immediate meeting of the Board of Directors, failure to comply with the notice periods referred to in SO 4.3.1 and (where relevant) SO 4.3.2 above shall not prevent the calling of, or invalidate, such a meeting provided that every effort is made to make personal contact with every Director who is not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.

4.4 Agendas and supporting papers

Agendas will be sent to members of the Board of Directors and the Council of Governors at least 3 days before the meeting and supporting papers (including the minutes of the previous meeting of the Board of Directors), whenever possible, shall accompany the agenda, but will certainly be dispatched no later than 2 days before the meeting, save in the event of an emergency giving rise to the need for an immediate meeting of the Board of Directors, as set out in SO 4.3.5 above. Failure to serve the agenda and (where relevant) supporting papers on more than three members of the Board of Directors will invalidate the meeting. The agenda and supporting papers shall be presumed to have been served one day after posting or, in the case of a notice being sent electronically, on the date of transmission.

4.5 Setting the agenda

- 4.5.1 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 ("Standing Items").
- 4.5.2 A Director desiring a matter to be included on an agenda, other than a Standing Item or a motion under SO 4.10 (emergency motions and written motions) below, including a formal motion for discussion and voting on at a meeting, shall make his request in writing to the Chair at least 10 days before the meeting. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.

4.6 Petitions

Where a petition has been received by the Foundation Trust, the Chair shall include the petition as an item for the agenda of the next meeting of the Board of Directors.

4.7 Chair of meeting

- 4.7.1 At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting the Vice Chair, if there is one and he is present, shall preside. If the Chair and Vice Chair are absent such Non-Executive Director as the members of the Board of Directors present shall choose shall preside.
- 4.7.2 If the Chair is absent temporarily on the grounds of a declared conflict of interest, the Vice Chair, if present, shall preside. If the Chair and Vice Chair are absent, or are disqualified from participating, such Non-Executive Director as the members of the Board of Directors present shall choose shall preside.

- 4.7.3 If any matter for consideration at a meeting of the Board of Directors relates to the interests of the Chair or the Non-Executive Directors as a class, neither the Chair nor any of the Non-Executive Directors shall preside over the period of the meeting during which the matter is under discussion. The Directors (excluding the Chair and the Non-Executive Directors) shall elect one of the number to preside during that period and that person shall exercise all the rights and obligations of the Chair, including (for the avoidance of doubt) the right to exercise a second or casting vote where the numbers of votes for and against a motion is equal.

4.8 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 subject to SO 2.1 the decision of the Chair on questions of order, relevancy, regularity and any other matters shall be final.

4.9 Notices of motion

- 4.9.1 Notwithstanding the provisions of SO 4.5 above, and subject to the provisions of SO 4.11 (Motions: procedure at and during a meeting) and SO 4.12 (Motion to rescind a resolution) below, a member of the Board of Directors wishing to move or amend a motion shall send a written notice to the Chair or Secretary.

- 4.9.2 The notice shall be delivered at least 15 Clear Days before the meeting. The Chair shall include in the agenda for the meeting all notices so received that are in order and permissible under these SOs. Subject to SO 4.3.4, this SO shall not prevent any motion being moved without notice on any business mentioned on the agenda for the meeting.

4.10 Emergency motions and written motions

4.10.1 Emergency motions

Subject to the agreement of the Chair, and subject also to the provisions of SO 4.11 (Motions: procedure at and during a meeting), a member of the Board of Directors may give the Chair written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared by the Chair to the Board of Directors at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

4.10.2 Written motions

- 4.10.2.1 In urgent situations and with the consent of the Chair, business may be effected by a Director's written motion to deal with business otherwise required to be conducted at a meeting of the Board of Directors.

- 4.10.2.2 If all members of the Board of Directors have been notified of the proposal and a majority of Directors entitled to attend and vote at a

meeting of the Board of Directors confirms acceptance of the written motion either in writing or electronically to the Secretary within 5 Clear Days of dispatch then the motion will be deemed to have been resolved notwithstanding that the Directors have not gathered in one place.

4.10.2.3 The effective date of the resolution shall be the date that the last confirmation is received by the Secretary and, until that date a Director who has previously indicated acceptance can withdraw and the motion shall fail.

4.10.2.4 Once the resolution is passed, a copy certified by the Secretary shall be recorded in the minutes of the next ensuing meeting where it shall be signed by the person presiding at it.

4.11 Motions: procedure at and during a meeting

4.11.1 Who may propose

A motion properly notified under SO 4.9 above may be proposed by the Chair of the meeting or any other member of the Board of Directors present at the meeting. All motions so proposed must be seconded by another member of the Board of Directors.

4.11.2 Contents of motions

The Chair may exclude from the debate at his sole discretion any motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

4.11.2.1 the reception of a report;

4.11.2.2 consideration of any item of business before the Board of Directors;

4.11.2.3 the accuracy of minutes;

4.11.2.4 that the Board of Directors proceed to the next item of business on the agenda;

4.11.2.5 that the Board of Directors adjourn the discussion or the meeting;

4.11.2.6 that the question be now put.

4.11.3 Amendments to motions

4.11.3.1 A motion for amendment shall not be discussed unless it has been proposed and seconded.

4.11.3.2 Amendments to motions shall be moved relevant to the motion and shall not have the effect of negating the motion before the Board of Directors.

4.11.3.3 If there are a number of amendments proposed and seconded to a motion, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive

motion before the meeting, upon which any further amendment may be moved.

4.11.4 Rights of reply to motions

4.11.4.1 Amendments

The mover of an amendment to a motion may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak on it.

4.11.4.2 Substantive/original motion

The mover who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

4.11.5 Withdrawing a motion

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

4.11.6 Motions once under debate

4.11.6.1 When a motion is under debate, no motion may be moved other than:

4.11.6.1.1 an amendment to the motion; or

4.11.6.1.2 the adjournment of the discussion, or the meeting; or

4.11.6.1.3 that the meeting proceed to the next item of business on the agenda; or

4.11.6.1.4 the appointment of an ad hoc committee to deal with a specific item of business; or

4.11.6.1.5 that the motion be now put; or

4.11.6.1.6 (where relevant), a motion under SO 4.1 above resolving to exclude the public (including the press); or

4.11.6.1.7 that a member of the Board of Directors be not further heard.

4.11.6.2 In the case of motions under SO 4.11.6.1.3 (proceed to next business) or 4.11.6.1.5 (motion be now put), in the interests of objectivity these motions should only be put forward by a member of the Board of Directors who has not previously taken part in the debate and who is eligible to vote.

4.11.6.3 If a motion to proceed to the next business or that the question be now put, is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

- 4.11.6.4 The Chair shall have absolute discretion as to the time permitted to members of the Board of Directors to move a motion or respond or reply to the motion.

4.12 Motion to rescind a resolution

- 4.12.1 Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the member of the Board of Directors who gives it and also the signature of four other members of the Board of Directors, and before considering any such motion of which notice shall have been given, the Board of Directors may refer the matter to an appropriate committee of the Board of Directors for recommendation.
- 4.12.2 When any such motion has been dealt with by the Board of Directors, it shall not be competent for any member of the Board of Directors other than the Chair to propose a motion to the same effect within 6 calendar months. However, the Chair may do so if he considers it appropriate. This SO shall not apply to motions moved in pursuance of a report or recommendations of a committee of the Board of Directors.

4.13 Voting

- 4.13.1 Subject to SO 4.15 (Suspension of Standing Orders), or as otherwise provided by these SOs and the Constitution, every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair shall have a second or casting vote.
- 4.13.2 All questions put to the vote shall, at the discretion of the Chair, be determined by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 4.13.3 If at least one-third of the members of the Board of 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.
- 4.13.4 If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.13.5 In no circumstances may:
- 4.13.5.1 an absent Director vote by proxy (absence is defined as being absent at the time of the vote); or
- 4.13.5.2 a resolution be passed if it is opposed by all of the Non-Executive Directors present and voting, or by all of the Executive Directors present or voting.
- 4.13.6 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.

4.14 Minutes

- 4.14.1 The minutes of the proceedings of a meeting of the Board of Directors shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting, where they will be signed by the person presiding at it.
- 4.14.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate.
- 4.14.3 Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 4.14.4 Minutes of the meetings of the Board of Directors shall be retained in the Secretary's office.
- 4.14.5 Where providing a record of a public meeting the minutes shall be made available to the public, save for items discussed by the Board of Directors following the exclusion of the public and representatives of the press under SOs 4.1.2 and 4.1.3.

4.15 Suspension of Standing Orders

- 4.15.1 Except where this would contravene any provision of the Regulatory Framework or any guidance or best practice advice issued by NHS Improvement (Monitor), any one or more of the SOs may be suspended at any meeting, provided that at least five of the Directors are present, including not less than 2 (two) Executive Directors (one of whom must be either the Chief Executive or his nominee) and not less than 3 (three) Non-Executive Directors (one of whom must be either the Chair or the Vice Chair or their Nominated Officer), and that a majority of those present vote in favour of suspension.
- 4.15.2 A decision to suspend the SOs shall be recorded in the minutes of the meeting.
- 4.15.3 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Directors.
- 4.15.4 No formal business may be transacted while the SOs are suspended.
- 4.15.5 The Audit Committee shall review every decision to suspend the SOs.

4.16 Variation and amendment of Standing Orders

These SOs shall be amended in accordance with paragraph 44 of the Constitution.

4.17 Record of attendance and apologies

- 4.17.1 The names of the Directors present at a meeting of the Board of Directors shall be recorded in the minutes, together with the names of any Nominated Officers, Officers, and others invited by the Chair to be in attendance, save for members of the public or representatives of the press.
- 4.17.2 Directors who are unable to attend a meeting of the Board of Directors shall notify the Secretary in writing in advance of the meeting in question so that their apologies may be submitted.

4.18 Quorum

- 4.18.1 No business shall be transacted at a meeting of the Board of Directors unless at least 5 (five) Directors, including not less than 2 (two) Executive Directors (one of whom must be either the Chief Executive or his nominee) and not less than 3 (three) Non-Executive Directors (one of whom must be either the Chair or the Vice Chair or their Nominated Officer) are present.
- 4.18.2 An Officer in attendance for an Executive Director but without formal acting up status as described in SO 4.13.6 above may not count towards the quorum.
- 4.18.3 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest as provided in SO 8 below, 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. The requirement in SO 4.18.1 above for at least two Executive Directors to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Remuneration and Terms of Service Committee established under SO 6.1.7.2 below).

4.19 Meetings: electronic communication

- 4.19.1 In this SO, "communication" and "electronic communication" shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 4.19.2 A Director in electronic communication with the Chair and all other parties to a meeting of the Board of Directors or of a committee of the Directors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.

- 4.19.3 A meeting at which one or more of the Directors attends by way of electronic communication is deemed to be held at such a place as the Directors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Directors attending the meeting are physically present, or in default of such a majority, the place at which the Chair of the meeting is physically present.
- 4.19.4 Meetings held in accordance with this SO are subject to SO 4.18 (Quorum). For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.
- 4.19.5 The minutes of a meeting held in this way must state that it was held by electronic communication and that the Directors were all able to hear each other and were present throughout the meeting.

4.20 Adjournment of meetings

- 4.20.1 The Board of Directors may, by resolution, adjourn any meeting to some other specified date, place and time and such adjourned meeting shall be deemed a continuation of the original meeting.
- 4.20.2 No business shall be transacted at any adjourned meeting which was not included in the agenda of the meeting of which it is an adjournment.
- 4.20.3 When any meeting is adjourned to another day, other than the following day, notice of the adjourned meeting shall be sent to each Director specifying the business to be transacted and the date, time and place of the adjournment.

4.21 Reports from the Executive Directors

At any meeting of the Board of Directors a Director may ask any question through the Chair without notice on any report by an Executive Director, or other Officer of the Foundation Trust, after that report has been received by or while such report is under consideration by the Board of Directors at the meeting. The Chair may, in his absolute discretion, reject any question from any Director if, in his opinion, the question is substantially the same and relates to the same subject matter as a question which has already been put to that meeting or a previous meeting.

5 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 5.1 Subject to SO 3.6, the Regulatory Framework and such guidance or best practice advice as may be issued by NHS Improvement (Monitor), the Board of Directors may make arrangements for the exercise of any of its functions by a committee appointed by virtue of SO 5.3 below or by an Executive Director in each case subject to such restrictions and conditions as the Board of Directors considers appropriate.

5.2 Emergency powers

The powers which the Board of Directors has retained to itself within these SOs may in emergency or for an urgent decision 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.

5.3 Delegation to committees

The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees of the Board of Directors, which it has formally constituted. The constitution and terms of reference of these committees and their specific executive powers shall be approved by the Board of Directors.

5.4 Delegation to Nominated Officers

5.4.1 Those functions of the Foundation Trust which have not been retained as reserved by the Board of Directors or delegated to a committee of the Board of Directors shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate Officers to undertake the remaining functions for which he will still retain accountability to the Board of Directors.

5.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals, which shall be considered 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 by the Board of Directors as indicated above.

5.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Finance Director or other Executive Director to provide information and advise the Board of Directors in accordance with any statutory requirements.

5.4.4 The arrangements made by the Board of Directors as set out in the Scheme of Delegation shall have effect as if incorporated in these SOs, but, for the avoidance of doubt, the Scheme of Delegation does not form part of the Constitution.

5.5 Duty to report non-compliance with Standing Orders

If for any reason these SOs are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All members of the Board of Directors and all Officers (including Nominated Officers) have a duty to disclose any non-compliance with these SOs to the Secretary as soon as possible.

6 COMMITTEES

6.1 Appointment of committees

6.1.1 Subject to SO 3.6, the Regulatory Framework and such guidance or best practice advice issued by NHS Improvement (Monitor), the Board of Directors may and, if directed by NHS Improvement (Monitor), shall appoint committees of the Board of Directors consisting wholly or partly of Directors or wholly of persons who are not Directors.

- 6.1.2 A committee appointed under SO 6.1.1 may, subject to the Regulatory Framework and such guidance or best practice advice as may be issued by NHS Improvement (Monitor) or the Board of Directors, appoint sub-committees and joint committees consisting wholly or partly of Directors or wholly of persons who are not Directors.
- 6.1.3 These SOs, as far as they are applicable, shall apply with appropriate modification to meetings of any committees (and any sub-committees or joint committees established under SO 6.1.2) established by the Board of Directors, in which case the term "Chair" is to be read as a reference to the Chair of the committee (or sub-committee or joint committee) as the context permits, and the term "member" is to be read as a reference to a member of the committee (or sub-committee or joint committee) also as the context permits.
- 6.1.4 Each such committee, sub-committee or joint 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 in accordance with any legislation, and/or regulations and/or such guidance or best practice advice issued by NHS Improvement (Monitor). Such terms of reference shall have effect as if incorporated into the SOs, but, for the avoidance of doubt, these terms of reference do not form part of the Constitution.
- 6.1.5 Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board of Directors.
- 6.1.6 The Board of Directors shall approve the appointments to each of the committees, which it has formally constituted. Where the Board of Directors determines, and the Regulatory Framework permits, that persons, who are neither Directors nor Officers, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board of Directors as defined by the Regulatory Framework. The Board of Directors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses.
- 6.1.7 The committees established by the Board of Directors are:
- 6.1.7.1 Audit Committee; and
- 6.1.7.2 Remuneration and Terms of Service Committee for Executive Directors and the Chief Executive.
- 6.1.8 The constitution and terms of reference of the committees listed in SOs 6.1.7.1 to 6.1.7.2 above shall be agreed by the Board of Directors.
- 6.1.9 Notwithstanding the provisions of SO 6.1.7 above, the Board of Directors may establish other committees, sub-committees and joint committees, including ad hoc committees, sub-committees and joint committees from time to time at its discretion.

6.2 Confidentiality

- 6.2.1 A member of a committee (including sub-committees or joint committees) shall not disclose any matter dealt with, by, or brought before, the committee, sub-committee or joint committee without its permission until the committee, sub-committee or joint committee (as appropriate) shall have reported to the Board of Directors or shall otherwise have concluded on that matter.
- 6.2.2 A Director or a member of a committee, sub-committee or joint committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, sub-committee or joint committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee, sub-committee or joint committee resolve that it is confidential.

7 INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS

- 7.1 The Board of Directors will cooperate with the Council of Governors as far as possible in order to comply with the Regulatory Framework in all respects and in particular in relation to the following matters which are set out specifically within the Constitution:
- 7.1.1 the Directors, having regard to the views of the Council of Governors, are to prepare the Annual Plan in respect of each Financial Year to be given to NHS Improvement (Monitor); and
- 7.1.2 subject to paragraph 42.2 of the Constitution the Directors are to present to the Council of Governors at a general meeting of the Council of Governors the Annual Accounts, any report of the Auditor on them, and the Annual Report.
- 7.2 The Annual Report is to give:
- 7.2.1 information on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual membership of its Public Constituency is representative of those eligible for such membership;
- 7.2.2 information on the impact that income received by the Foundation Trust otherwise than from the fulfilment of the Principal Purpose has had on the provision by the Foundation Trust of goods and services for those purposes; and
- 7.2.3 any other information which NHS Improvement (Monitor) or the 2006 Act requires.
- 7.3 In order to comply with the Regulatory Framework in all respects and in particular in relation to the matters which are set out in SOs 7.1 and 7.2 above, the Council of Governors may request that a matter which relates to paragraphs 41 and/or 42 of the Constitution is included on the agenda for a meeting of the Board of Directors.
- 7.4 If the majority of the Council of Governors so desires such a matter as described within SO 7.3 above to be included on an agenda item, it shall make their request in writing to the Chair or Secretary at least 30 Clear Days before the meeting of the Board of Directors, subject to SO 4.3. The Chair shall decide whether the matter is

appropriate to be included on the agenda. Requests made less than 30 Clear Days before a meeting may be included on the agenda at the discretion of the Chair.

8 DECLARATIONS OF INTERESTS, AND REGISTER OF INTERESTS OF THE MEMBERS OF THE BOARD OF DIRECTORS

- 8.1 Subject to acting in accordance with the requirements of paragraph 32 of the Constitution, the Regulatory Framework requires members of the Board of Directors to declare:
- 8.1.1 any pecuniary interest in any contract, proposed contract or other matter which is under consideration or is to be considered by the Board of Directors; and
 - 8.1.2 any interests including but not limited to any personal or family interests which are relevant and material to the business of the Foundation Trust,

irrespective of whether those interests are direct or indirect, actual or potential.
- 8.2 All members of the Board of Directors must declare such interests as soon as the Director in question becomes aware of it. Any new members of the Board of Directors must do so on appointment.
- 8.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Chair from time to time, setting out any interests required to be declared outside a meeting of the Board of Directors in accordance with the Constitution or these SOs and delivering it to the Secretary on appointment or as soon thereafter as the interest arises, but within 14 Clear Days of becoming aware of the existence of a relevant and material interest.
- 8.4 In addition, if a Director is present at a meeting of the Board of Directors and has an interest of any sort in any matter which is the subject of consideration, he must at the meeting and as soon as practicable after its commencement disclose the fact and he must then withdraw from the meeting and play no part in the relevant discussion and he shall not vote on any question with respect to the matter.
- 8.5 If a Director has declared a pecuniary interest in accordance with SO 8.8 below he shall not take part in the consideration or discussion of the matter in respect of which an interest has been disclosed and shall be excluded from the meeting whilst that matter is under consideration. At the time the interests are declared, they should be recorded in the Director's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 8.6 Subject to any guidance or best practice advice issued by NHS Improvement (Monitor), interests which should be regarded as "relevant and material" for the purposes of these SOs are:
- 8.6.1 Directorships, including non-executive directorships held in private companies or public listed companies (with the exception of those of dormant companies);

- 8.6.2 Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS or the Foundation Trust;
 - 8.6.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS or the Foundation Trust;
 - 8.6.4 a position of authority in a charity or Voluntary Organisation in the field of health and social care;
 - 8.6.5 any connection with a voluntary or other organisation contracting for NHS or Foundation Trust services or commissioning NHS or Foundation Trust services;
 - 8.6.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Foundation Trust, including but not limited to, lenders or banks;
 - 8.6.7 research funding or grants that may be received by an individual or their department; and
 - 8.6.8 interests in pooled funds that are under separate management.
- 8.7 Members of the Board of Directors who hold directorships in companies likely or possibly seeking to do business with the NHS or the Foundation Trust should be published in the Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.
- 8.8 A Director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or matter, if:
- 8.8.1 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 matter under consideration; or
 - 8.8.2 he is a partner or associate 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 matter under consideration.
- 8.9 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or matter by reason only:
- 8.9.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; or
 - 8.9.2 of an interest in any company, body or person with which he is connected 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.
- 8.10 Where a Director:

- 8.10.1 has an indirect pecuniary interest in a contract, proposed contract or matter by reason only of a beneficial interest in securities of a company or other body; and
- 8.10.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; and
- 8.10.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

the Director shall not be prohibited from taking part in the consideration or discussion of the contract or matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest in accordance with the Constitution and these SOs.

- 8.11 In the case of Immediate Family Members, the interest of one Immediate Family Member shall, if known to the other, be deemed for the purposes of the Constitution and these SOs to be also an interest of the other.
- 8.12 If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Secretary. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships should also be considered.
- 8.13 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 to Schedule 7 of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this SO.
- 8.14 SO 8 applies to any committee, sub-committee or joint committee of the Board of Directors and applies to any member of any such committee, sub-committee or joint committee (whether or not he is also a Director).

8.15 Register of interests of the members of the Board of Directors

- 8.15.1 The register of interests of members of the Board of Directors shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with the Constitution or these SOs.
- 8.15.2 In accordance with SO 8.3 above, it is the obligation of the Director to inform the Secretary in writing within 14 Clear Days of becoming aware of the existence of a relevant or material interest. The Secretary must then amend the register of interests of members of the Board of Directors upon receipt of new or amended information as soon as is practical and, in any event, within 14 days of receipt.
- 8.15.3 The register of interests of members of the Board of Directors will be available to the public in accordance with paragraph 36 of the Constitution.

9 STANDARDS OF BUSINESS CONDUCT

9.1 Policy

Directors and (where relevant) Nominated Officers and Officers should comply with the Directors' Code of Conduct and any guidance issued by NHS Improvement (Monitor). This section of the SOs should be read in conjunction with these documents.

9.2 Interest of Directors and Officers in contracts

9.2.1 Any Director or Officer who comes to know that the Foundation Trust has entered into or proposes to enter into a contract in which he has any pecuniary interest, direct or indirect, shall give notice in writing of such fact to the Chair/Chief Executive/Secretary as soon as practicable, but in any event within 7 days of first becoming aware of the fact. In the case of Immediate Family Members, the interest of one Immediate Family Member shall, if known to the other, be deemed to be also the interest of that Immediate Family Member.

9.2.2 A Director or Officer must also declare to the Chair/Chief Executive/Secretary any other employment or business or other relationship of his, or of an Immediate Family Member, that conflicts, or might reasonably be predicted could conflict with the interests of the Foundation Trust in accordance with SO 8. The Foundation Trust shall require such interests to be recorded in the register of interests of members of the Board of Directors.

9.3 Canvassing of, and recommendations by, Directors in relation to appointments

9.3.1 Canvassing of Directors or members of any committee, sub-committee or joint committee of the Board of Directors directly or indirectly for any appointment under the Foundation Trust shall disqualify the candidate for such appointment. The contents of this paragraph of these SOs shall be included in application forms or otherwise brought to the attention of candidates.

9.3.2 A Director shall not solicit for any person any appointment under the Foundation Trust or recommend any person for such appointment; but this paragraph of this SO shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Foundation Trust in relation to any appointment.

9.3.3 Informal discussions outside nominations panels, appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee in question.

9.4 Relatives of Directors or Officers

9.4.1 Directors and Officers shall bear in mind that candidates for any staff appointment under the Foundation Trust shall, when making an application to the Foundation Trust, disclose in writing to the Foundation Trust whether they are related to any Director, Governor or the holder of any office under the Foundation Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.

- 9.4.2 Directors and Officers shall disclose to the Secretary any relationship between himself and a candidate of whose candidature that Director or Officer is aware. It shall be the duty of the Secretary to report to the Board of Directors any such disclosure made.
- 9.4.3 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) must disclose to the Secretary whether they are related to any other member of the Board of Directors, the Council of Governors, or holder of any office in the Foundation Trust.
- 9.4.4 Where the relationship to an Officer, Governor or another Director is disclosed, SO 8 shall apply.

9.5 External consultants

SO 9 will apply equally to all external consultants or other agents acting on behalf of the Foundation Trust.

10 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

10.1 Custody of seal

The common seal of the Foundation Trust shall be kept by the Secretary or his Nominated Officer in a secure place.

10.2 Sealing of documents

- 10.2.1 The common seal of the Foundation Trust shall not be affixed to any documents unless the sealing has been authorised by a resolution of the Board of Directors or of a committee thereof, or where the Board of Directors has delegated its powers in accordance with the Scheme of Delegation.
- 10.2.2 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Finance Director (or his Nominated Officer) and authorised and countersigned by the Chief Executive (or his Nominated Officer who shall not be within the originating directorate).
- 10.2.3 Where it is necessary that a document shall be sealed, the common seal of the Foundation Trust shall be affixed in the presence of two Officers duly authorised by the Chief Executive, and also not from the originating department, and shall be attested by them.

10.3 Register of sealing

The Secretary shall make an entry of every sealing (numbered consecutively) in a book maintained for that purpose, and shall ensure that each entry is signed by the persons who shall have approved and authorised the document and those who shall have attested the seal. The Secretary shall make a report of all sealings to the Board of Directors bi-annually (the Secretary's report shall contain details of the seal number, the description of the document and date of sealing).

11 SIGNATURE OF DOCUMENTS

- 11.1 Where the signature of any document will be a necessary step in legal proceedings involving the Foundation Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.
- 11.2 The Chief Executive or his Nominated Officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Foundation Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors or a committee of the Board of Directors to which the Board of Directors has delegated appropriate authority.
- 11.3 Notwithstanding the generality of SOs 11.1 and 11.2 above in land transactions the signing of certain supporting documents may be delegated to Nominated Officers, as set out in the Scheme of Delegation, but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works, or main warranty agreements) or any document which is required to be executed as a deed.

12 MISCELLANEOUS

12.1 Standing Orders to be given to Directors and Nominated Officers

- 12.1.1 It is the duty of the Chief Executive/Secretary to ensure that existing Directors and Nominated Officers, and all new appointees are notified of and understand their responsibilities within these SOs.

12.2 Documents having the standing of Standing Orders

The SFIs and the Scheme of Delegation shall have effect as if incorporated into these SOs, but, for the avoidance of doubt, neither the SFIs nor the Scheme of Delegation form part of the Constitution.

ANNEX 8 - FURTHER PROVISIONS

(Paragraphs 1, 4, 8, 9, 15, and 26)

Appendix 1:

1 Foundation Trust values

1.1 The Foundation Trust is committed to the following values:

- Compassionate Services
- Achieving High Standards
- Respecting Individuals
- Empowering People

1.2 The Foundation Trust will comply with its general duty under Section 63 of the 2006 Act to exercise its functions effectively, efficiently and economically.

2 Representative membership

The Foundation Trust shall at all times strive to ensure that, taken as a whole, its actual membership of the Public Constituency is representative of those eligible for membership. To this end the Foundation Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors and shall be reviewed by them from time to time and at least every three years.

3 Co-operation with health service and other bodies

3.1 In exercising its functions, the Foundation Trust shall co-operate with Health Service Bodies and any local authority with which the Foundation Trust has a Local Authority Partnership Agreement.

3.2 Notwithstanding the provisions of paragraph 3.1 above, the Foundation Trust shall co-operate with any specific third party body that it has a duty (statutory, contractual, or otherwise) to co-operate with.

4 Respects for rights of people

In conducting its affairs, the Foundation Trust shall respect the rights of the members of the community it serves, its employees and people dealing with the Foundation Trust as set out in the Human Rights Act 1998.

5 Openness

In conducting its affairs, the Foundation Trust shall have regard to the need to provide information to Members and conduct its affairs in an open and accessible way.

6 Distribution of profits and surpluses

The profits or surpluses (if any) of the Foundation Trust are not to be distributed either directly or indirectly in any way among the Members of the Foundation Trust.

7 Foundation Trust Special Members' Meetings

- 7.1 Notwithstanding any provisions contained in this Constitution regarding the Annual Members' Meeting, meetings of the Council of Governors and the Board of Directors, the Board of Directors may resolve to call special meetings of the Foundation Trust for the benefit of its Members (a "Special Members' Meeting").
- 7.2 Special Members' Meetings are open to all Members of the Foundation Trust, Governors, Directors, and representatives of the Auditor and any External Auditor, but not to members of the general public or representatives of the press unless the Council of Governors and the Board of Directors determine otherwise.
- 7.3 Notwithstanding the provisions of paragraph 7.2 above, the Council of Governors and/or the Board of Directors may invite representatives of the press and any experts or advisors whose attendance they consider to be in the best interests of the Foundation Trust to attend a Special Members' Meeting.
- 7.4 All Special Members' Meetings are to be convened by the Secretary by order of the Board of Directors and the following provisions of paragraphs 7.5 and 7.6 shall apply for these purposes.
- 7.5 Notice of a Special Members' Meeting is to be given to all Members, Governors, Directors, the Auditor and any External Auditor, personally, or:
- 7.5.1 by notice prominently displayed at the Foundation Trust Head Office and at each of the Foundation Trust Premises; and
- 7.5.2 by notice on the Foundation Trust's website,
at least 3 days before the date of the meeting.
- 7.6 The notice referred to in paragraph 7.5 above must;
- 7.6.1 state the time, date and place of the meeting; and
- 7.6.2 indicate the business to be dealt with at the meeting.
- 7.7 No business may be conducted at a Special Members' Meeting unless a quorum is present. The quorum for Special Members' Meetings is the Chair (or the Vice Chair) and at least one Member from each of the Staff Constituency and the Public Constituency.
- 7.8 It is the responsibility of the person chairing the meeting to ensure that:
- 7.8.1 any issues to be decided upon at the meeting are clearly explained; and
- 7.8.2 sufficient information is provided to those in attendance to enable rational discussion to take place.
- 7.9 The Chair of the Foundation Trust or in his absence the Vice Chair shall act as Chair at all Special Members' Meetings. If neither the Chair nor the Vice Chair is present, the members of the Council of Governors present shall elect one of their number to chair the meeting; if there is only one Governor present and willing to act, then he shall chair the meeting.

- 7.10 If at any Special Members' Meeting, there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned to such date, time and place as the Board of Directors shall in its absolute discretion determine, and the Secretary shall give or shall procure the giving of notice to all Members, Governors, Directors, the Auditor or any External Auditor of the date, time and place of that adjourned meeting. Notwithstanding the provisions of paragraph 7.7 above, upon reconvening, those present shall constitute a quorum.
- 7.11 Any resolution put to the vote at a Special Members' Meeting shall be decided upon by a poll.
- 7.12 Every Member present is to have one vote. In the case of an equality of votes the person chairing the meeting is to have a second and casting vote.
- 7.13 The result of any vote will be declared by the person chairing the meeting and the Secretary shall cause the result to be entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

Appendix 2:

Membership

1 Disqualification from membership of the Foundation Trust

- 1.1 A person may not become or continue as a Member of the Foundation Trust if:
- 1.1.1 he is under 14 years of age at the date of his application or invitation to become a Member (as the case may be);
 - 1.1.2 in the five years preceding the date of his application or invitation to become a Member, he has demonstrated aggressive or violent behaviour at any Foundation Trust Premises or against the Foundation Trust's employees, volunteers or other persons who exercise functions for the purposes of the Foundation Trust whether or not in circumstances leading to his removal or exclusion from any Foundation Trust Premises;
 - 1.1.3 he has been confirmed as a 'vexatious complainant' in accordance with the relevant NHS Trust or (as the case may be) the Foundation Trust policy for handling complaints;
 - 1.1.4 he has within the preceding five years been removed as a member from another NHS foundation trust;
 - 1.1.5 he has been deemed to have acted in a manner contrary to the interests of the NHS Trust or (as the case may be) the Foundation Trust;
 - 1.1.6 he fails or ceases to fulfil the criteria for membership of the Public Constituency or the Staff Constituency; or
 - 1.1.7 in the case the Public Constituency, the individual's principal place of residence is not within an area specified in Annex 1.
- 1.2 Where the Foundation Trust is on notice that a Member may be disqualified from membership, or may no longer be eligible to be a Member, or where it appears to the Secretary that the individual no longer wishes to be a Member of the Foundation Trust, the Secretary shall give the Member 14 days' written notice to show cause why his name should not be removed from the Foundation Trust's register of Members. On receipt of any such information supplied by the Member, the Secretary may, if he considers it appropriate, remove the Member from the Foundation Trust's register of Members. In the event of any dispute about entitlement to membership, the dispute shall be resolved in accordance with the procedure set out in paragraph 2.1 of Appendix 4 of this Annex 8.
- 1.3 All Members of the Foundation Trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a Member.

2 Expulsion from membership of the Foundation Trust

- 2.1 A Member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors.
- 2.2 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 or contrary to the interests of the Foundation Trust, or is otherwise disqualified as set out in paragraph 1 above; and
 - 2.2.2 subject to paragraphs 2.3 to 2.7 below, if a complaint is made, the Council of Governors, or a delegated committee, sub-committee or joint committee of the Council of Governors and the Board of Directors, will consider the complaint, having taken such steps as it (or they) consider appropriate, to ensure that each Member's point of view is heard and may either:
 - 2.2.2.1 dismiss the complaint and take no further action; or
 - 2.2.2.2 arrange for a resolution to expel the Member complained of to be considered at the next meeting of the Council of Governors.
- 2.3 If a resolution to expel a Member is to be considered at a meeting of the Council of Governors pursuant to paragraph 2.2.2.2 above, details of the complaint must be sent to the Member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and to attend the meeting.
- 2.4 At the meeting referred to in paragraph 2.3 above, the Council of Governors will consider the evidence in support of the complaint and such other evidence as the Member complained of may wish to place before them.
- 2.5 If the Member complained of fails to attend the meeting mentioned in paragraph 2.3 above without due cause, the meeting may proceed in his/her absence. The decision to proceed in these circumstances will be at the sole discretion of the person chairing the meeting in question.
- 2.6 A person expelled from membership under the provisions of paragraphs 2.1 to 2.5 above will cease to be a Member upon the declaration by the person chairing the meeting that the resolution to expel them is carried.
- 2.7 No person who has been expelled from membership pursuant to the provisions of paragraphs 2.1 to 2.6 above is to be re-admitted as a Member except by a resolution of the Council of Governors carried by votes of two-thirds of the members of the Council of Governors present and voting at a general meeting of the Council of Governors.

3 Termination of Membership

- 3.1 A Member shall cease to be a Member on:
 - 3.1.1 death; or

- 3.1.2 resignation by notice in writing to the Secretary; or
- 3.1.3 ceasing to fulfil the requirements of paragraphs 8 or 9 of this Constitution, as the case may be; or
- 3.1.4 being disqualified pursuant to paragraph 1 above, or being expelled pursuant to paragraph 2 above.

Appendix 3:

Board of Directors – further provisions

1 Process for appointing Non-Executive Directors and the Chair

- 1.1 The Council of Governors shall have a Nominations Committee which shall be constituted in accordance with paragraph 1.2 below.
- 1.2 The Nominations Committee shall consist of the Chair and three Governors. The Chair shall be the chair of the Nominations Committee. The Vice Chair (or if the Vice Chair is absent, or is disqualified from participating on grounds of conflict of interest, another Non-Executive Director chosen by the members of the Council of Governors) shall preside as the chair of the Nominations Committee when it is considering items relating to the Chair. If the number of Governors prepared to serve on the Nominations Committee is greater than the number of places available, the Nominations Committee members will be selected by election by their peer Governors.
- 1.3 The Nominations Committee constituted under paragraph 1.2 above may be supported by appropriate advice from a human resources specialist. Further the Nominations Committee should take account of the views of the Board of Directors on the qualifications, skills and experience required for the position.
- 1.4 Each member of the Nominations Committee will have one vote and, in the event of an equality in votes, the person chairing the Nominations Committee will have a second or casting vote.
- 1.5 The Nominations Committee will make recommendations to the Council of Governors, including recommendations about pay.
- 1.6 Subject to the provisions of paragraphs 25 and 26 of the Constitution, the process for appointing new Non-Executive Directors and the Chair will be as follows:
 - 1.6.1 Not less than six months before the end of the term of office, or as soon as the Chair or a Non-Executive Director (as the case may be) resigns, the Nominations Committee will seek a suitable replacement.
 - 1.6.2 Where the Nominations Committee considers that either the Chair or the Non-Executive Director coming to the end of his term of office should be appointed for a further term, the Nominations Committee shall make a recommendation to the Council of Governors to that effect.
 - 1.6.3 Where:
 - 1.6.3.1 the Nominations Committee does not make a recommendation that the Chair or a Non-Executive Director should be reappointed in accordance with paragraph 1.6.2 above; or
 - 1.6.3.2 the Chair or (as the case may be) the Non-Executive Director in question resigns or does not want to be reappointed; or

- 1.6.3.3 the Council of Governors rejects a recommendation that the Chair or (as the case may be) a Non-Executive Director should be reappointed in accordance with paragraph 1.6.2 above,
- the Nominations Committee shall initiate a process of open competition for the appointment of the Chair and/or Non-Executive Director, and the post will be advertised.
- 1.7 Where the Nominations Committee initiates a process of open competition and arranges for the post to be advertised, the Nominations Committee will appoint an Interview Panel to shortlist and interview potential candidates for the position. The Interview Panel shall be constituted in accordance with paragraphs 1.8 and 1.9 below.
- 1.8 The Interview Panel for the Chair will consist of a minimum of two Elected Governors, one Appointed Governor and the Vice Chair (or if the Vice Chair is absent, or is disqualified from participating on grounds of conflict of interest, another Non-Executive Director chosen by the members of the Council of Governors). The Nominations Committee may invite the Chair of another NHS foundation trust to sit on the Interview Panel (and for the avoidance of doubt, such Chair of another foundation trust shall have a vote). The Interview Panel will be chaired by a Governor.
- 1.9 The Interview Panel for the Non-Executive Directors will consist of a minimum of three Governors and the Chair (or if the Chair is absent, or is disqualified from participating on grounds of conflict of interest, the Vice Chair or another Non-Executive Director chosen by the members of the Council of Governors). The Nominations Committee may invite the Chair of another NHS foundation trust to sit on the Interview Panel (and for the avoidance of doubt, such Chair of another foundation trust shall have a vote).
- 1.10 Each member of the Interview Panel will have one vote, and in the event of an equality in votes, the person chairing the Interview Panel will have a second or casting vote.
- 1.11 For the avoidance of doubt, the Chair of another NHS foundation trust, as an Interview Panel member, is not a member of the Nominations Committee.
- 1.11 The Council of Governors will not consider nominations for Non-Executive membership of the Board of Directors other than those made by the appropriate Nominations Committee.

Appendix 4:

Further Provisions: general

1 Indemnity

- 1.1 Members of the Council of Governors, the Board of Directors and the Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions save where they have acted recklessly. Any costs arising in this way will be met by the Foundation Trust.
- 1.2 The Foundation Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors, the Board of Directors and the Secretary.
- 1.3 The Foundation Trust may take out insurance either through the NHS Resolution or otherwise in respect of directors and officers liability, including liability arising by reason of the Foundation Trust acting as a corporate trustee of an NHS charity.

2 Dispute Resolution Procedures

Membership disputes

- 2.1 In the event of any dispute about the entitlement to membership, the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the Member or applicant (as the case may be) is aggrieved at the decision of the Secretary he may appeal in writing within 14 days of the Secretary's decision to the Council of Governors or a delegated committee, sub-committee of the Council of Governors or a joint committee of the Council of Governors and the Board of Directors, whose decision shall be final.

Other disputes

- 2.2 In the event of any dispute in relation to this Constitution that concerns anything other than membership, the dispute shall be referred to the Chair who shall make a determination on the point in issue. If the Member or complainant (as the case may be) is aggrieved at the decision of the Chair he may appeal in writing within 14 days of the Chair's decision to the Board of Directors whose decision shall be final.
- 2.2A In the event of a dispute being referred to the Chair under paragraph 15.6A of this Constitution, and a determination being made in accordance with the procedure set out in paragraph 2.2 above, if the Governor in question is aggrieved at the decision of the Board of Directors he may apply in writing within 7 days to the Board of Directors for the decision to be referred to an independent assessor. The independent assessor will then consider the evidence and conclude whether the proposed removal is reasonable or otherwise.
- 2.2B On receipt of an application under paragraph 2.2A above, the Board of Directors and the applicant Governor will co-operate in good faith to agree on the appointment of the independent assessor. If the parties fail to agree on an independent assessor within 21 days of the date upon which the application is received by the Board of Directors, the independent assessor will be nominated by the Centre for Dispute

Resolution. The independent assessor's decision will be binding and conclusive on the parties.

Disputes between the Council of Governors and the Board of Directors

- 2.3 In the event of dispute between the Council of Governors and the Board of Directors:
- 2.3.1 in the first instance the Chair on the advice of the Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;
 - 2.3.2 if the Chair is unable to resolve the dispute he shall appoint a committee comprising equal numbers of Directors and Governors to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute (the "Special Committee");
 - 2.3.3 if the recommendations (if any) of the Special Committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

3 Notices

- 3.1 Save where a specific provision of the Constitution otherwise requires or permits, 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.
- 3.2 In this paragraph 3 "electronic communication" shall have the meaning ascribed to it in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 3.3 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice served pursuant to paragraph 3.1 above shall be deemed to have been received 48 hours after the envelope containing it was posted, or in the case of a notice contained in an electronic communication, 48 hours after it was sent.

Appendix 5

The Role and Responsibilities of the Secretary

- 1 The Foundation Trust shall have a Secretary who may be an Officer of the Foundation Trust, but may not be a Governor, the Chief Executive, the Finance Director or the Chair of the Foundation Trust.
- 2 Notwithstanding the specific functions of the Secretary, as set out in this Constitution, the Secretary will be expected to:
 - 2.1 ensure good information flows within the Board of Directors and its committees and between senior management, Non-Executive Directors and the Council of Governors;
 - 2.2 ensure that the procedures of the Board of Directors (as set out in this Constitution and the Standing Orders for the Board of Directors) are complied with;
 - 2.3 ensure that the procedures of the Council of Governors (as set out in this Constitution and the Standing Orders for the Council of Governors) are complied with;
 - 2.4 advise the Board of Directors and the Council of Governors (through the Chair, Vice Chair or the Lead Governor/Designated Governor, as the case may be) on all governance matters;
 - 2.5 be available to give advice and support to individual Directors, particularly in relation to the induction of new Directors and assistance with professional development;
 - 2.6 attend all Members' meetings, meetings of the Council of Governors (including the Annual Members' Meeting) and meetings of the Board of Directors, and to keep minutes of those meetings; and
 - 2.7 to assist the Board of Directors with the preparation, and sending to NHS Improvement (Monitor) and any other statutory body, of all returns and submissions which the Foundation Trust is required to make.
- 3 The Secretary is to be appointed and removed by the Board of Directors of the Foundation Trust after consultation with the Council of Governors and consideration of their views.

ANNEX 9 – ANNUAL MEMBERS MEETINGS

1 Annual Members' Meeting

- 1.1 In accordance with paragraph 11.1 of the Constitution, the Foundation Trust shall hold an Annual Members' Meeting in each Financial Year and shall present to that meeting:
- 1.1.1 a report on the proceedings of its meetings held since the last Annual Members' Meeting;
 - 1.1.2 a report on the progress since the last Annual Members' Meeting in developing the membership strategy including the steps taken to ensure that, taken as a whole, the actual membership of the Public Constituency is representative of those eligible to be Members under the Constitution;
 - 1.1.3 any changes to the membership strategy since the last Annual Members' Meeting;
 - 1.1.4 a report on any change to the Governors and (where relevant) any proposed changes to the Foundation Trust's policy for the composition of the Council of Governors which has taken place since the last Annual Members' Meeting; and
 - 1.1.5 a report approved by the Chair regarding the performance of the Foundation Trust and the accounts of the Foundation Trust for the preceding Financial Year and the future service development plans of the Foundation Trust.

ANNEX 10 – SIGNIFICANT TRANSACTION

1 A Significant Transaction is a transaction which meets any of the following criteria:

Ratio	Description	Percentage
Assets	The Gross Assets subject to the transaction divided by the gross assets of the Foundation Trust.	> 25%
Income	<p>The income attributable to:</p> <ul style="list-style-type: none"> • the assets; or • the contract <p>associated with the transaction divided by the income of the Foundation Trust.</p>	> 25%
Consideration to total Trust Capital	The Gross Capital of the company or business being acquired/divested divided by the Total Capital of the Foundation Trust following completion, or the effects on the Total Capital of the Foundation Trust resulting from a transaction.	> 25%

2 For the purposes of this Annex 10:

2.1 “Gross Assets” is the total of fixed assets and current assets;

2.2 “Gross Capital” equals the market value of the target’s shares and debt securities, plus the excess of current liabilities over current assets; and

2.3 “Total Capital” of the Foundation Trust equals taxpayers’ equity.

3 Notwithstanding the above provisions and for the avoidance of doubt, a Significant Transaction does not include a merger, acquisition, separation or dissolution pursuant to paragraph 45.1 of this Constitution.