

Central and North West London NHS Foundation Trust

(A Public Benefit Corporation)

Constitution 2020

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

**Amendment to the Constitution approved by the CNWL Council of Governors
at its meeting on 7 March 2024.**

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1 Interpretation and definitions

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

"**2006 Act**" is the National Health Service Act 2006 (as amended);

"**2012 Act**" is the Health and Social Care Act 2012;

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

"**Annual Accounts**" means those accounts prepared by the Trust pursuant to Schedule 7 of the 2006 Act;

"**Annual Members Meeting**" is defined in paragraph 11 of the Constitution;

"**Annual Report**" means a report prepared by the Trust pursuant to paragraph 26 of Schedule 7 of the 2006 Act;

"**Appointed Governor**" means a Local Authority Governor, or a Partnership Governor as set out at Annex 4;

"**Appointments Committee**" means a committee of the Board of Directors as established pursuant to paragraph 31 of this Constitution;

"**Audit Committee**" means a committee of the Board of Directors as established pursuant to paragraph 43 of the Constitution;

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

"**Chair**" means the Chair of the Trust;

"**Chief Executive**" means the Chief Executive Officer of the Trust;

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

"**Constitution**" means this constitution and all annexes to it;

"**Council of Governors**" means the Council of Governors as constituted in accordance with this Constitution;

"**Criminal Records Bureau**" means the Executive Agency of the Home Office to whom the Secretary of State has delegated his functions under Part V of the Police Act 1997 in relation to applications for criminal record certificates and enhanced criminal record certificates;

"**Deputy Chair**" means the Deputy Chair of the Trust appointed pursuant to paragraph 30 of this Constitution'

"**Director**" means a member of the Board of Directors;

"**Dispute Resolution Procedure**" is the dispute resolution procedure to be established by the Trust in accordance with paragraph 49;

"**Elected Governors**" means a Public Governor, Staff Governor or Service User/Carer Governor;

"**Executive Director**" means an executive member of the Board of Directors of the Trust;

"**Finance Director**" means the Finance Director of the Trust;

"**Financial Year**" means:

- (a) a period beginning with the date on which the Trust is authorised as an NHS foundation trust and ending with the next 31 March; and
- (b) each successive period of twelve (12) months beginning with 1 April;

"**Forward Plan**" means the document prepared by the Trust pursuant to paragraph 27 of Schedule 7 to the 2006 Act;

"**Funds held on Trust**" means those funds which the Trust holds at the date of Authorisation, 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;

"**Governor Code of Conduct Group**" means a group of Governors established by, and reports to, the Council of Governors to review any breaches of the Code of Conduct of the Council of Governors other than non-attendance at meetings of the Council of Governors;

"**Health Service Body**" shall have the meaning ascribed to it in section 65(1) of the 2006 Act;

"**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 Trust;

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

"**Model Rules for Elections**" means the election rules set out in Annex 5 of this Constitution;

"**Monitor**" is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act; NHS England replaces Monitor (see below);

"**NHS England**" is the body corporate known as NHS England (NHSE) which replaces and takes over the functions of Monitor as provided by Section 33 of the Health and Care Act 2022;

"Nominations Committee" means a committee appointed pursuant to paragraphs 5.7 of Annex 7 of this Constitution;

"Non-Executive Director" means a non-executive member of the Board of Directors of the Trust including the Chair;

"Partnership Governor" means a member of the Council of Governors other than a Public Governor, Staff Governor, Local Authority Governor;

"Partnership Organisation" means an organisation that may appoint Partnership Governors and which is listed at Annex 4 of this Constitution;

"Public Governor" means any and all Governors elected by any of the Public Constituencies in accordance with this Constitution;

"Regulatory Framework" has the meaning ascribed to it in paragraph 1.3 of Annex 6 of this Constitution;

"Returning Officer" means the person referred to in paragraph 4(1) of Schedule 5;

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

"Service User or Carer Governor" means a member of the Council of Governors elected by the members of the Service User and Carer's Constituency;

"Secretary" means the Secretary of the Trust or any other person appointed by the Trust to perform the duties of the Secretary of the Trust including a joint, assistant or deputy Secretary or such other person as may be appointed by the Trust to perform the functions of the Secretary under this Constitution;

"Sex Offenders Order" means either:

- (a) a Sexual Offences Prevention Order made under either Section 104 or Section 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 Foreign Travel Order made under Section 114 of the Sexual Offences Act 2003; or
- (d) Risk of Sexual Harm Order made under Section 123 of the Sexual Offences Act 2003; or
- or
- (e) an 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";

"Staff Governor" means a member of the Council of Governors elected by the members of the staff constituency;

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

"Standing Orders for Board of Directors" means the standing orders set out at Annex 7 of this Constitution;

"Standing Orders for the Council of Governors" means the standing orders set out at Annex 6 of this Constitution;

"Trust" means the Central and North West London NHS Foundation Trust;

"Trust Headquarters" means 350 Euston Road, London NW1 3AX;

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

2 Name

2.1 The name of the Trust is "Central and North West London NHS Foundation Trust".

3 Principal purpose

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

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

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

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

3.3.2 the promotion and protection of public health.

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

4 Powers

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

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

4.3 Subject to any restriction contained in this Constitution or in the 2006 Act, and to paragraph 4.4 below, any of these powers may be delegated to a committee of Directors or to an Executive Director.

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

5 Membership and constituencies

5.1 The Trust shall have Members, each of whom shall be a Member of one of the following constituencies:

5.1.1 the public constituency; or

5.1.2 the staff constituency; or

5.1.3 the service user and carer constituency.

6 Application for membership

- 6.1 Subject to paragraph 8.6 below, an individual who is eligible to become a Member of the Trust may do so on application to the Trust. The Secretary may require any individual to supply supporting evidence to confirm eligibility.
- 6.2 Subject to paragraph 8.6 below, applicants for membership of the Trust must complete an application in the form prescribed by the Chief Executive or his delegated Officer.
- 6.3 The Secretary shall, normally within seven (7) 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 Trust's register of Members.

7 Public Constituency

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a Member of the Trust.
- 7.2 Those individuals who live in an area specified for a public constituency are referred to collectively as the Public Constituency.
- 7.3 The minimum number of Members in each public constituency is specified in Annex 1.

8 Staff Constituency

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided:
 - 8.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least twelve (12) months; or
 - 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least twelve (12) months.
- 8.2 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.3 The Staff Constituency shall be divided into 5 (five) descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.4 The minimum number of Members in each class in the Staff Constituency is specified in Annex 2.
- 8.5 An individual who is eligible to become a Member of the Staff Constituency under paragraph 8.1 above and who is invited by the Trust to become a Member of the Staff Constituency, shall become a Member of the Trust as a member of the Staff Constituency without an application being made unless he informs the Trust that he does not wish to do so.
- 8.6 An eligible individual shall become a Member of the Staff Constituency upon entry to the Trust's Register of Members either pursuant to the process set out above or pursuant to an application by them.
- 8.7 On receipt of an application for membership as described in paragraph 8.6 above, and subject to being satisfied that the applicant is eligible, the Secretary shall cause the applicant's name to be entered into the Trust's Register of Members.

- 8.8 Where an individual is eligible for admission to more than one class in the Staff Constituency, the individual may select a class in writing to the Secretary.
- 8.9 Until such time as an individual shall specify clearly to the Secretary which class the individual wishes to be allocated to pursuant to paragraph 8.8 above, that individual shall be allocated to such class as the Secretary shall decide as a matter of the Secretary's absolute discretion.

9 Service User and Carer Constituency

- 9.1 An individual:
- 9.1.1 whose name is recorded as a patient on the Trust's patient administration system or other record maintained by the Trust for the purpose of identifying patients of the Trust and who has, within the period specified below, attended any of the Trust's hospitals as a patient; or
 - 9.1.2 who has within the period specified below, attended any of the Trust's hospitals as the carer of a patient,
- may become or continue as a Member of the Trust.
- 9.2 The period referred to above shall be the period of 3 years immediately preceding the date of an application by the patient or carer to become a Member of the Trust.
- 9.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Service User and Carer's Constituency.
- 9.4 The Service User and Carer's Constituency shall be divided into 3 descriptions of individuals who are eligible for membership of the Service User and Carers' Constituency, each description of individuals being specified within Annex 3 and being referred to as a class within the Service User and Carers' Constituency.
- 9.5 An individual providing care in pursuance of a contract (including a contract of employment) with a Voluntary Organisation, or as a volunteer for a Voluntary Organisation, does not come within the category of those who qualify for membership of the Service User and Carers' Constituency.
- 9.6 The minimum number of Members in each class of the Service User and Carers' Constituency is specified in Annex 3.
- 9.7 Where an individual is eligible for admission to both the Public Constituency and the Service User and Carers' Constituency the individual may specify which constituency the individual wishes to belong to, either in the individual's application or subsequently in writing.
- 9.8 If such an individual does not specify, in accordance with paragraph 9.7 above, or the specification is unclear, the individual will be allocated to the Public Constituency, until such time as the individual shall make a clear specification.
- 9.9 Where an individual is eligible for admission to more than one class in the Service User and Carer's Constituency, the individual may select which class they wish to belong to in either the individual's application or subsequently in writing.
- 9.10 If such an individual does not specify in accordance with paragraph 9.9 above, or the specification is unclear, the individual will be allocated to such class as the Secretary shall

decide as a matter of the Secretary's absolute discretion until such time as the individual makes a clear specification.

10 Restriction on membership

- 10.1 An individual who is a Member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a Member of any other constituency or class.
- 10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a Member of any constituency other than the Staff Constituency.
- 10.3 An individual shall not become or continue as a Member of the Trust if:
 - 10.3.1 he is less than 16 years of age at the time of the application to become a Member;
 - 10.3.2 in the five years prior to the individual's application, he has been involved as a perpetrator in a serious incident of violence or harassment of people working for the Trust or any other health service body or any service users or carers of or visitors to the Trust or any other health service body consistent with the Trust's zero tolerance policy;
 - 10.3.3 he has been excluded from the Trust's premises;
 - 10.3.4 he is ineligible under paragraphs 7, 8 or 9 above of this Constitution to be a Member;
 - 10.3.5 he has been confirmed as a 'vexatious complainant' in accordance with the relevant Trust policy for handling complaints; or
 - 10.3.6 the Council of Governors resolves for reasonable cause that the individual so doing would, or would be likely to:
 - 10.3.6.1 prejudice the ability of the Trust to fulfil its principal purpose or any other of its purposes under this Constitution or otherwise to discharge its duties and functions; or
 - 10.3.6.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or
 - 10.3.6.3 adversely affect public confidence in the goods or services provided by the Trust; or
 - 10.3.6.4 otherwise bring the Trust into disrepute.
- 10.4 A Member shall cease to be a Member if the individual:
 - 10.4.1 resigns by giving notice in writing to the Secretary;
 - 10.4.2 is deceased; or
 - 10.4.3 ceases to meet the requirements of being a Member.
- 10.5 It is the responsibility of each Member to ensure their eligibility at all times and not the responsibility of the Trust to do so on their behalf. A Member who becomes aware of their

ineligibility shall inform the Trust as soon as practicable and that person shall thereupon be removed forthwith from the Trust's Register of Members and shall cease to be a Member.

- 10.6 Where the Trust has reason to believe that a Member is ineligible for membership or may be disqualified for membership under this Constitution, the Secretary shall carry out reasonable enquiries to establish if this is the case.
- 10.7 Where the Secretary considers that there may be reasons for concluding that a Member or an applicant for membership may be ineligible or be disqualified for membership, the Secretary shall advise that individual of those reasons in summary form and invite representations from the Member or applicant for membership within twenty-one (21) days or such other reasonable period as the Secretary may as a matter of absolute discretion determine. Any representations received shall be considered by the Secretary whereby a decision on the Member's or applicant's eligibility or disqualification shall be made as soon as reasonably practicable and shall give notice in writing of that decision to the Member or applicant within fourteen (14) days of the decision being made.
- 10.8 If no representations are received within the period of twenty-one (21) days or longer period (if any) permitted under the preceding paragraph, the Secretary shall be entitled nonetheless to proceed and make a decision on the Member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from the Member/applicant.
- 10.9 Upon a decision being made under paragraphs 10.7 or 10.8 above that the Member is ineligible or disqualified for membership the Member's name shall be removed from the Trust's Register of Members forthwith and the individual shall thereupon cease to be a Member.
- 10.10 Any decision made under this paragraph 10 to disqualify a Member or an applicant for membership may be referred by the Member or applicant concerned to the relevant Dispute Resolution Procedure described in paragraph 49 below.

11 Annual Members' Meeting

- 11.1 The Trust shall hold an annual meeting of its Members ("**Annual Members' Meeting**"). The Annual Members' Meeting shall be open to members of the public.
- 11.2 At least one member of the Board of Directors must attend the meeting and present the following documents to the Members at the meeting:
 - 11.2.1 the annual accounts;
 - 11.2.2 any report of the auditor on them;
 - 11.2.3 the annual report.

12 Council of Governors – Composition

- 12.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed Governors.
- 12.2 The composition of the Council of Governors is specified in Annex 4.
- 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 4.

13 Council of Governors – election of Governors

13.1 Elections for Elected Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.

13.2 The Model Rules for Elections, as published from time to time, by the Department of Health form part of this Constitution. The current version of the Model Rules for Elections are attached at Annex 5.

13.3 A subsequent variation of the Model Rules for Elections by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 50 below. For the avoidance of doubt, the Trust cannot amend the Model Rules for Elections.

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

14 Council of Governors – tenure

14.1 Elected Governor

14.1.1 An elected Governor may hold office for a period of up to 3 years.

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

14.1.3 An elected Governor will usually not hold office for a total period of more than 9 years (in aggregate) unless it is in the interests of the Trust for such period to be extended. The Appointments Committee shall consider such cases and make recommendations to the Council of Governors.

14.1.4 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.

14.2 Appointed Governor

14.2.1 An appointed Governor may hold office for a period of up to 3 years.

14.2.2 An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him by giving notice in writing to the Secretary.

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

14.2.4 An appointed Governor may hold office for a maximum of 9 years (in aggregate).

15 Council of Governors - disqualification and removal

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

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

- 15.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, the person's creditors and has not been discharged in respect of it;
 - 15.1.3 a person who within the preceding five years has been convicted in the British Islands or any foreign country of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three (3) months (without the option of a fine) was imposed on the person;
 - 15.1.4 the individual is an Executive Director or Non-Executive Director of the Trust;
 - 15.1.5 NHS England has exercised its powers to remove that person as a Governor of the Trust or has suspended the individual from office or has disqualified the individual from holding office as a Governor of the Trust for a specified period or NHS England has exercised any of those powers in relation to the person concerned at any other time whether in relation to the Trust or some other NHS foundation trust;
 - 15.1.6 the individual has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a public service body;
 - 15.1.7 the individual is subject to a Sex Offenders Order;
 - 15.1.8 the individual has been involved in any act of violence against staff, service users, their carers, visitors or a Member of the Trust;
 - 15.1.9 the individual is deemed not to be suitable by the Director of Human Resources based on the results of a Criminal Records Bureau check and any information provided by the Independent Safeguarding Authority;
 - 15.1.10 the individual has failed or refused to confirm in writing that the individual will abide by any Code of Conduct of the Council of Governors which the Trust shall have published from time to time;
 - 15.1.11 the individual has failed or refused without reasonable cause to undertake any training that the Council of Governors requires all Governors to undertake;
 - 15.1.12 the individual 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 their appointment was not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 15.1.13 the individual has had their name removed other than by reason of resignation from any list prepared under Sections 91, 106, 123 and 146 of the 2006 Act and has not subsequently had their name included on such a list;
 - 15.1.14 the individual has acted in a manner prejudicial to the interests of the Trust.
- 15.2 Governors must be at least sixteen (16) years of age at the date they are nominated for election or appointment.
- 15.3 Where an individual has been elected or appointed to be a Governor and they are disqualified for appointment under paragraphs 15.1 or 15.2 above, the individual shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within fourteen (14) days of first becoming aware of those matters which render the individual disqualified. The Secretary shall forthwith remove the individual from the Trust's Register of Members of the Council of Governors.

15.4 If it comes to the notice of the Secretary that the Governor is disqualified otherwise than pursuant to paragraph 15.3 above, whether at the time of the Governor's appointment or later, the Secretary shall immediately declare that the individual in question is disqualified and give notice to them in writing to that effect as soon as practicable and in any event within fourteen (14) days of the date of the said declaration. In the event that a Governor shall dispute the individual's ineligibility the Governor may refer the matter to the relevant Dispute Resolution Procedure described in paragraph 49 below within twenty-eight (28) days of the date upon which notice in writing is given to the Governor.

16 Council of Governors – termination

16.1 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary whereupon that individual shall cease to hold office.

16.2 A Governor shall cease to hold office on their death.

16.3 If a Governor fails to attend any meeting of the Council of Governors for a consecutive period of six (6) months or alternatively for two successive meetings of the Council of Governors, the individual's tenure of office is to be immediately terminated by the Council of Governors unless the Council of Governors is satisfied that:

16.3.1 the absence was due to reasonable cause; and

16.3.2 that the Governor will be able to start attending meetings of the Council of Governors within such a period as it considers reasonable,

provided that the process set out in the Code of Conduct of the Council of Governors relating to breaches of the Code of Conduct of the Council of Governors has been followed.

16.4 The Council of Governors may by a resolution terminate a Governor's tenure of office if for reasonable cause it considers that:

16.4.1 the individual has knowingly or recklessly made a false declaration for any purpose provided for under this Constitution or in the 2006 Act;

16.4.2 the individual has acted in a way that is judged to contravene the Code of Conduct of the Council of Governors, provided that the process set out in the Code of Conduct of the Council of Governors relating to breaches of the Code of Conduct of the Council of Governors has been followed; or

16.4.3 that the individual continuing as a Governor would or would be likely to:

16.4.3.1 prejudice the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions; or

16.4.3.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provisions of goods and services; or

16.4.3.3 adversely affect public confidence in the goods or services provided by the Trust; or

16.4.3.4 otherwise bring the Trust into disrepute; or

- 16.4.4 the individual has been confirmed as a 'vexatious complainant' in accordance with the relevant Trust policy for handling complaints.
- 16.5 Upon termination or cessation of a Governor's office under paragraph 16.4 above the individual's name shall be forthwith removed from the Trust's Register of Governors.
- 16.6 Any decision of the Council of Governors to terminate a Governor's tenure of office pursuant to paragraph 16.3 or 16.4 above shall be final.
- 16.7 A Governor whose tenure of office is terminated under paragraphs 16.3 or 16.4 above shall not be eligible to stand for re-election for a period of three years from the date of their removal from office or the date upon which any appeal against their removal from office is disposed of, whichever is the later.
- 16.8 The Chair shall be authorised to take such action as may be immediately required, including the exclusion of the Governor concerned from a meeting so that any allegation made against a Governor on the following grounds can be investigated:
- 16.8.1 any non-compliance with the Regulatory Framework or Code of Conduct or the Standing Orders for the Council of Governors; or
- 16.8.2 any misconduct detrimental to the Trust; or
- 16.8.3 failure to attend two consecutive meetings of the Council of Governors or any meetings within a six (6) month consecutive period without good reason established to the satisfaction of the Chair and the Council of Governors; or
- 16.8.4 if any other of the circumstances set out in paragraph 16 relating to the disqualification or removal of a Governor are applicable.
- 16.9 Where any grounds within this paragraph 16 are alleged, it shall be for the Chair on advice from the Governor Code of Conduct Group to lay a formal charge of non-compliance or misconduct.
- 16.10 The Governor in question will be notified in writing of the allegations, detailing the specific behaviour which is considered to be detrimental to the Trust, and inviting and considering the individual's response within a defined appropriate and reasonable timescale.
- 16.11 The Governor may be invited to address the Council in person if the matter cannot be resolved satisfactorily through correspondence.
- 16.12 The Governors, by a simple majority of those present and voting at a meeting of the Council of Governors can decide whether to uphold the charge of non-compliance or misconduct detrimental to the Trust.
- 16.13 For the avoidance of doubt, and save for where the provisions of Paragraph 16.2 above apply which lead to an automatic disqualification, the Governors can impose such sanctions as shall be deemed appropriate and as shall be in accordance with the Constitution. Such sanctions will range from the issuing of a written warning as to the Governor's future conduct and consequences, non-payment of expenses and removal of the Governor from office.

17 Council of Governors - vacancies

- 17.1 Where a Governor's membership of the Council of Governors ceases for one of the reasons set out in paragraph 15 or 16 above the Governor shall be replaced in accordance with paragraphs 17.2 to 17.4 below.
- 17.2 Where an elected Governor ceases to hold office during their term of office the Trust shall offer the first reserve candidate in the previously held election or by-election the opportunity to assume the vacant office for the unexpired balance of the retiring Governor's term of office, subject to the provisions of paragraph 17.5 below. If that candidate does not accept to fill the vacancy it will then be offered to the next reserve candidate and so on until the vacancy is filled.
- 17.3 The first reserve candidate shall be the highest polling candidate amongst those candidates neither elected as a Governor in the last election or by-election for the relevant class in a Constituency nor appointed as a Governor in the relevant class pursuant to the process in paragraphs 17.2 and 17.3, being alive and having the necessary mental capacity. The next reserve candidate is the next highest polling candidate after the last candidate to be offered the opportunity to fill the vacancy, being alive and having the relevant mental capacity.
- 17.4 If no reserve candidate is available or willing to fill the vacancy, an election will then be held in accordance with the Model Rules of Elections save that if an election is due to be held within nine (9) months of the vacancy having arisen the office will stand vacant until the next scheduled election unless by so doing this causes the aggregate number of Governors who are Public Governors and Service User and Carer Governors to be less than half the total membership of the Council of Governors. In that event an election will be held in accordance with the Model Rules of Election as soon as reasonably practicable.
- 17.5 A Governor elected to replace a Governor ceasing to be a Member under paragraph 15 or 16 above shall be appointed for the unexpired balance of the retiring Governor's term of office unless it shall be less than a year from election in which case it shall be for such period as the Board of Directors shall determine.
- 17.6 The Returning Officer under the Model Rules of Elections shall maintain a record of votes cast at each election under the Model Rules of Elections for the above purposes and the Returning Officer shall conduct or shall oversee the conducting of the process set out in paragraphs 17.4 and 17.5 above.
- 17.7 No proceedings of the Council of Governors shall be invalidated by any vacancy in its membership or any defect in the appointment or election of any Governor.

18 Council of Governors – Duties of Governors

- 18.1 The general duties of the Council of Governors are:
- 18.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and
 - 18.1.2 to represent the interests of the Members of the Trust as a whole and the interests of the public.
- 18.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

19 Council of Governors – meetings of Governors

- 19.1 The Council of Governors shall meet not less than four times each Financial Year.

- 19.2 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 28 or paragraph 29.1 below) or, in the absence of the Chair, the Deputy Chair shall preside at meetings of the Council of Governors. In the absence of the Chair and the Deputy Chair, the Lead Governor shall preside at meetings of the Council of Governors.
- 19.3 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons by a 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 business or nature of the proceedings.
- 19.4 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.
- 19.5 The person chairing a meeting of the Council of Governors in accordance with the Standing Orders for the Council of Governors is to have a casting vote in the event of deadlock at a meeting of the Council of Governors.

20 Council of Governors – standing orders

- 20.1 The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6.

21 Council of Governors – referral to the Panel

- 21.1 In this paragraph 21, the 'Panel' means a panel of persons appointed by NHS England to which a Governor of an NHS foundation trust may refer a question as to whether the Trust has failed or is failing—

21.1.1 to act in accordance with its Constitution, or

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

- 21.2 A Governor 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.

22 Council of Governors – conflicts of interest

- 22.1 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. The Standing Orders for the Council of Governors and the Code of Conduct of the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

23 Council of Governors – travel expenses

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

24 Council of Governors – further provisions

24.1 Further provisions with respect to the Council of Governors are set out in Annex 6.

25 Board of Directors – composition

25.1 The Trust is to have a Board of Directors, which shall comprise both Executive Directors and Non-Executive Directors.

25.2 The Board of Directors is to comprise:

25.2.1 a non-executive Chair;

25.2.2 up to a maximum of nine (9) other Non-Executive Directors; and

25.2.3 up to a maximum of seven (7) Executive Directors which shall include the Executive Directors described in paragraphs 25.3, 25.5, 25.6 and 25.7 below.

25.3 One of the Executive Directors shall be the Chief Executive.

25.4 The Chief Executive shall be the Accounting Officer.

25.5 One of the Executive Directors shall be the Finance Director.

25.6 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

25.7 One of the Executive Directors is to be a registered nurse or a registered midwife.

25.8 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 Deputy Chair), shall have a casting vote at meetings of the Board of Directors in accordance with the Standing Orders for the Board of Directors.

25.9 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

25.10 Subject to the provisions of paragraphs 25.3 to 25.7 above, the Board of Directors shall determine any change in the number of Directors, provided that:

25.10.1 any change in the number of Directors is within the range set out in paragraph 25.2 above; and

25.10.2 there shall be a majority of Non-Executive Directors (including the Chair).

26 Board of Directors – general duty

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

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

- 27.1 A person may be appointed as a Non-Executive Director only if:
- 27.1.1 the individual is a Member of a Public Constituency, or
 - 27.1.2 the individual is a Member of the Service User and Carers' Constituency, or
 - 27.1.3 where any of the Trust's hospitals includes a medical or dental school provided by a university, the individual exercises functions for the purposes of that university, and
 - 27.1.4 the individual is not disqualified by virtue of paragraph 34 below.

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

- 28.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other Non-Executive Directors.
- 28.2 The Council of Governors will not consider nominations for membership of the Board of Directors other than those made by the Appointments Committee.
- 28.3 Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the Members of the Council of Governors.

29 Board of Directors – appointment of initial Chair and other initial Non-Executive Directors

- 29.1 This section has been revoked as the Foundation Trust is established and the provisions for initial membership of the Board are no longer relevant

30 Board of Directors – appointment of a Deputy Chair

- 30.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a Deputy Chair.

31 Board of Directors – remuneration and terms of office

- 31.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors.
- 31.2 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

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

- 32.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 32.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.

32.3 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

33 Board of Directors – appointment and removal of initial Chief Executive

33.1 This section has been revoked as the Foundation Trust is established and the provisions for initial membership of the Board are no longer relevant.

34 Board of Directors – disqualification

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

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

34.1.2 a person who has made a composition or arrangement with, or granted a Trust deed for, the individual's creditors and has not been discharged in respect of it;

34.1.3 a person who within the preceding five years has been convicted in the British Islands or any foreign country of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three (3) months (without the option of a fine) was imposed on him.

34.1.4 a person whose tenure of office as a Chair or as a member or director of a health service body has been terminated on the grounds that the individual's appointment is not in the interests of the public service for non-attendance at meetings or for non-disclosure of pecuniary interest;

34.1.5 a person whose name has been removed other than by reason of resignation from any list prepared under Sections 91, 106, 123 and 146 of the 2006 Act and has not subsequently had the individual's name included on such a list;

34.1.6 a person who has within the two preceding years been dismissed or otherwise than by reason of redundancy or ill health from any paid employment with a health service body;

34.1.7 a person who is the subject of a disqualification order made under the Company Directors' Disqualification Act 1986; or

34.1.8 a Non-Executive Director who no longer satisfies paragraph 27 above (except in the case of any appointment of the Chair or a Non-Executive Director under paragraph 28 above).

35 Board of Directors – meetings

35.1 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 by resolution of the Board of Directors 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 the other special reasons stated in the resolution and arising from the business or nature of the proceedings.

35.2 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.

36 Board of Directors – standing orders

36.1 The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 7.

37 Board of Directors – conflicts of interest of Directors

37.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:

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

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

37.2 The duty referred to in sub-paragraph 37.1.1 above is not infringed if –

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

37.2.2 the matter has been authorised in accordance with the Constitution.

37.3 The duty referred to in paragraph 37.1.2 above is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

37.4 In paragraph 37.1.2 above, “third party” means a person other than –

37.4.1 the Trust, or

37.4.2 a person acting on its behalf.

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

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

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

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

37.9 A Director need not declare an interest –

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

37.9.2 if, or to the extent that, the Directors are already aware of it;

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

37.9.3.1 by a meeting of the Board of Directors, or

37.9.3.2 by a committee of the Directors appointed for the purpose under the Constitution.

38 Interface between the Board of Directors and the Council of Governors

38.1 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 matters set out within the Constitution.

38.2 The Board of Directors, having regard to the views of the Council of Governors, are to prepare the Forward Plan in respect of each Financial Year to be given to NHS England.

38.3 The Board of Directors are to present to the Council of Governors at a general meeting the Annual Accounts, any report of the auditor on them, and the Annual Report.

38.4 The Annual Report is to give:

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

38.4.2 any other information NHS England requires.

38.5 In order to comply with the Regulatory Framework in all respects and in particular in relation to the matters which are set out above, the Council of Governors may request that a matter which relates to Annual Accounts or the Forward Plan is included on the agenda for a meeting of the Board of Directors.

38.6 If the Council of Governors so desires such a matter as described within paragraph 38.5 above to be included on an agenda, they shall make their request in writing to the Chair at least fourteen (14) days before the meeting of the Board of Directors. The Chair shall decide whether the matter is appropriate to be included on the agenda. Requests made less than fourteen (14) days before a meeting may be included on the agenda at the discretion of the Chair.

39 Registers

39.1 The Trust shall have:

39.1.1 a register of Members showing, in respect of each Member, the constituency to which the individual belongs and, where there are classes within it, the class to which the individual belongs;

39.1.2 a register of members of the Council of Governors;

39.1.3 a register of interests of Governors;

39.1.4 a register of members of the Board of Directors; and

39.1.5 a register of interests of Directors.

39.2 The Secretary shall be responsible for compiling and maintaining the registers and the registers may be kept in either paper or electronic form. 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 fourteen (14) days of receipt.

40 Registers – inspection and copies

- 40.1 The Trust shall make the registers specified in paragraph 39 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 40.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:
 - 40.2.1 any Member of the Service User and Carer's Constituency; or
 - 40.2.2 any other Member of the Trust, if the individual so requests.
- 40.3 So far as the registers are required to be made available:
 - 40.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 40.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 40.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

41 Documents available for public inspection

- 41.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
 - 41.1.1 a copy of the current Constitution;
 - 41.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and
 - 41.1.3 a copy of the latest annual report.
- 41.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
 - 41.2.1 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;
 - 41.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 41.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 41.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;

- 41.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
 - 41.2.6 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 England's decision), 65KB (Secretary of State's response to NHS England's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
 - 41.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 41.2.8 a copy of any final report published under section 65I (administrator's final report);
 - 41.2.9 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
 - 41.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 41.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy or extract.
- 41.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

42 Auditor

- 42.1 The Trust shall have an auditor.
- 42.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

43 Audit committee

- 43.1 The Trust shall establish a committee of Non-Executive Directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

44 Accounts

- 44.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 44.2 NHS England may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 44.3 The accounts are to be audited by the Trust's auditor.
- 44.4 The Trust shall prepare in respect of each Financial Year Annual Accounts in such form as NHS England may with the approval of the Secretary of State direct.
- 44.5 The functions of the Trust with respect to the preparation of the Annual Accounts shall be delegated to the Accounting Officer.

45 Annual Report, Forward Plans and non-NHS work

- 45.1 The Trust shall prepare an Annual Report and send it to NHS England.
- 45.2 The Trust shall give its Forward Plan in respect of each Financial Year to NHS England.
- 45.3 The Forward Plan shall be prepared by the Directors.
- 45.4 In preparing a Forward Plan, the Directors shall have regard to the views of the Council of Governors.
- 45.5 Each Forward Plan must include information about:
 - 45.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on; and
 - 45.5.2 the income it expects to receive from doing so.
- 45.6 Where a Forward Plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 45.5.1 above the Council of Governors must:
 - 45.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and
 - 45.6.2 notify the Directors of the Trust of its determination.
- 45.7 A Trust which proposes to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the Trust present and voting at a meeting of the Council of Governors approve its implementation.

46 Presentation of the Annual Accounts and reports to the Governors and members

- 46.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
 - 46.1.1 the Annual Accounts;
 - 46.1.2 any report of the auditor on them;
 - 46.1.3 the Annual Report.
- 46.2 The documents shall also be presented to the Members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 46.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 46.1 above with the Annual Members' Meeting.

47 Instruments

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

48 Indemnity

- 48.1 Members of the Council of Governors, 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 Council of Governors or Board of Directors functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 48.2 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, Governors, Directors and the Secretary to meet all or any liabilities which are properly the liabilities of the Trust under paragraph 48.1 above.

49 Dispute Resolution Procedures

- 49.1 Except where otherwise specified in the Constitution or the Standing Orders for the Practice and Procedure of the Council of Governors or the Code of Conduct of the Council of Governors, questions of eligibility, procedure and administrative matters in relation to governorship or meetings of Members or Governors shall be determined by the Secretary. There will be a right of appeal to the Chair whose decision shall be final and binding except in the case of manifest error.
- 49.2 Except where otherwise specified in this Constitution, the Code of Conduct for the Council of Governors, the Standing Orders for the Council of Governors, the Standing Orders for the Board of Directors, and for the Practice and Procedure of the Board of Directors, matters in relation to Directorship or meetings of Directors shall be determined by the Secretary, with a right of appeal to the Chair whose decision shall be final and binding except in the case of manifest error.
- 49.3 Where a dispute as to a Governor's ineligibility is made, if it is the final decision of the Chair that such Governor is ineligible pursuant to the provisions of paragraphs 15.1 and 15.2 above, the Governor shall upon such determination be forthwith removed from the register of members of the Council of Governors in accordance with the provisions of Paragraphs 15.3 or 15.4 above.
- 49.4 In the event of a dispute between the Council of Governors and the Board of Directors:
- 49.4.1 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;
- 49.4.2 If the Chair is unable to resolve the dispute the individual shall refer the dispute to the Secretary who shall appoint a joint special committee constituted as a committee of the Board of Directors and a committee of the Council of Governors, both 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;
- 49.4.3 If the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

50 Amendment of the Constitution

- 50.1 The Trust may make amendment of its constitution only if:

- 50.1.1 more than half of the members of the Council of Governors of the Trust present and voting at a meeting of the Council of Governors approve the amendments, and
- 50.1.2 More than half of the members of the Board of Directors of the Trust present and voting at a meeting of the Board of Directors approve the amendments.
- 50.2 Amendments made under paragraph 50.1 above 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.
- 50.3 Where an amendment is made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
 - 50.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
 - 50.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 50.4 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 Trust must take such steps as are necessary as a result.
- 50.5 Amendments by the Trust of its Constitution are to be notified to NHS England. For the avoidance of doubt, NHS England's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

51 Mergers etc. and significant transactions

- 51.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 51.2 The Constitution does not contain any descriptions of the term 'significant transaction' for the purposes of section 51A of the 2006 Act and therefore, for the avoidance of doubt, no transactions are 'significant transactions' for the purposes of section 51A of the 2006 Act.

ANNEX 1 – THE PUBLIC CONSTITUENCIES

Area	Minimum Numbers
All electoral wards within the area of the London Borough of Brent and for the avoidance of doubt any successor of the London Borough of Brent	20
All electoral wards within the area of the London Borough of Harrow and for the avoidance of doubt any successor of the London Borough of Harrow	20
All electoral wards within the area of the London Borough of Hillingdon and for the avoidance of doubt any successor of the London Borough of Hillingdon	20
All electoral wards within the area of the Royal Borough of Kensington & Chelsea and for the avoidance of doubt any successor of the Royal Borough of Kensington and Chelsea	20
All electoral wards within the area of the City of Westminster and for the avoidance of doubt any successor of the City of Westminster	20
All electoral wards within the area of the London Borough of Camden and for the avoidance of doubt any successor of the London Borough of Camden	20
All electoral wards within the areas of London Boroughs of Ealing, Hounslow and Hammersmith & Fulham and for the avoidance of doubt any successor of the London Boroughs of Ealing, Hounslow and Hammersmith & Fulham	20
All electoral wards within the area of Milton Keynes Council and for the avoidance of doubt any successor of Milton Keynes Council	20
The rest of England and Wales excluding those boroughs specified above	20

ANNEX 2 – THE STAFF CONSTITUENCY

Area	Minimum Numbers
Nursing staff (including health care assistants)	800
Medical staff	75
Allied health professionals	200
Social care	20
Other staff	200

ANNEX 3 – THE SERVICE USER AND CARERS’ CONSTITUENCY

Class	Minimum Numbers
Service users from the Boroughs of Hillingdon, Harrow, Brent, Ealing, Hounslow	250
Service users from the Boroughs of Westminster, Kensington and Chelsea, Hammersmith and Fulham, Camden, Enfield and the rest of the GLA and elsewhere	250
Carers	30

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

Elected Governors:

Constituency / Class	Number of Council Governors
Service users from the Boroughs of Hillingdon, Harrow, Brent, Ealing, Hounslow	5
Service users from the Boroughs of Westminster, Kensington and Chelsea, Hammersmith and Fulham, Camden, Enfield and the rest of the GLA and elsewhere	5
Carers	3
Public - London Borough of Brent	1
Public - London Borough of Harrow	1
Public - London Borough of Hillingdon	1
Public - Royal Borough of Kensington & Chelsea	1
Public - City of Westminster	1
Public - London Borough of Camden	1
Public - London Boroughs of Ealing, Hounslow and Hammersmith & Fulham	1
Public – Milton Keynes Council	1
Public – the rest of England and Wales excluding those boroughs specified above	1
Nursing staff (including health care assistants)	2
Medical staff	1
Allied health professionals	1
Social care	1
Other staff	1

Appointed Governors:

Organisation	Number of Council Governors
Local Authority Governors (representatives from the following local authorities Brent, Harrow, Hillingdon, Kensington and Chelsea, Milton Keynes, Westminster and Camden)	7
Partnership Governors (as set out below):	5
○ Mencap	1
○ Age UK	1
○ Terrance Higgins Trust	1
○ Imperial College London	1
○ Clinical Commissioning Group	1

- 1 Subject to provisions contained in paragraph 2 below, NHS Hammersmith and Fulham Clinical Commissioning Group, NHS Central London Clinical Commissioning Group, NHS West London Clinical Commissioning Group and NHS Hounslow Clinical Commissioning Group or their respective successor organisation(s) may jointly appoint 1 (one) Partnership Governor between them by notice in writing signed by the chief executive or equivalent of one of the organisation (who has been nominated by the organisations to serve as the notice on behalf of all of the organisations) and delivered to the Corporate Secretary.
- 2 Notwithstanding the provisions of paragraph 1 above, the Chair may veto the appointment of a Partnership Governor by serving notice in writing to the relevant Partnership Organisation(s) where he believes that the appointment in question is unreasonable, irrational or otherwise inappropriate."

ANNEX 5 – THE MODEL RULES FOR ELECTIONS

1 **Appendix E: Model Election Rules**

Part 1 – Interpretation

1 Interpretation

Part 2 – Timetable for election

2 Timetable

3 Computation of time

Part 3 – Returning officer

4 Returning officer

5 Staff

6 Expenditure

7 Duty of co-operation

Part 4 – Stages common to contested and uncontested elections

8 Notice of election

9 Nomination of candidates

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11 Declaration of interests

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Part 1 – Interpretation

1 Interpretation –

(1) In these rules, unless the context otherwise requires:

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

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

“**the regulator**” means the Independent Regulator for NHS Foundation Trusts; and

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

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

Part 2 – Timetable for election

2 Timetable –

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

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

3 **Computation of time –**

(1) In computing any period of time for the purposes of the timetable:

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

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

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

Part 3 – Returning officer

4 **Returning officer –**

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

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

5 **Staff** – Subject to rule 64, the returning officer may appoint and pay such staff, including such technical advisers, as the individual considers necessary for the purposes of the election.

6 **Expenditure** – The corporation is to pay the returning officer:

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

7 **Duty of co-operation** – The corporation is to co-operate with the returning officer in the exercise of the individual’s functions under these rules.

Part 4 - Stages common to contested and uncontested elections

8 **Notice of election** – The returning officer is to publish a notice of the election stating:

- (a) the constituency, or class within a constituency, for which the election is being held;
- (b) the number of Governors 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 papers may be obtained;

- (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer;
- (f) the date and time by which any notice of withdrawal must be received by the returning officer;
- (g) the contact details of the returning officer; and
- (h) the date and time of the close of the poll in the event of a contest.

9 Nomination of candidates –

- (1) Each candidate must nominate themselves on a single nomination paper.
- (2) The returning officer:
 - (a) is to supply any member of the corporation with a nomination paper; and
 - (b) is to prepare a nomination paper for signature at the request of any member of the corporation,but it is not necessary for a nomination to be on a form supplied by the returning officer.

10 Candidate's particulars –

- (1) The nomination paper must state the candidate's:
 - (a) full name;
 - (b) contact address in full; and
 - (c) constituency, or class within a constituency, of which the candidate is a member.

11 Declaration of interests – The nomination paper must state:

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

12 Declaration of eligibility – The nomination paper must include a declaration made by the candidate:

- (a) that the individual is not prevented from being a Governor of the Council of Governors by paragraph 8 of Schedule 1 of the 2006 Act or by any provision of the Constitution; and
- (b) for a member of the public or patient constituency, of the particulars of the individual's qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

- 13 **Signature of candidate** – The nomination paper must be signed and dated by the candidate, indicating that:
- (a) they wish to stand as a candidate;
 - (b) their declaration of interests as required under rule 11, is true and correct; and
 - (c) their declaration of eligibility, as required under rule 12, is true and correct.
- 14 **Decisions as to the validity of nomination** –
- (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
 - (a) decides that the candidate is not eligible to stand;
 - (b) decides that the nomination paper is invalid;
 - (c) receives satisfactory proof that the candidate has died; or
 - (d) receives a written request by the candidate of their withdrawal from candidacy.
 - (2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds:
 - (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election;
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11;
 - (d) that the paper does not include a declaration of eligibility as required by rule 12; or
 - (e) that the paper is not signed and dated by the candidate, as required by rule 13.
 - (3) The returning officer is to examine each nomination paper as soon as is practicable after the individual has received it, and decide whether the candidate has been validly nominated.
 - (4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.
 - (5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.
- 15 **Publication of statement of candidates** –

- (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- (2) The statement must show:
 - (a) the name, contact address, and constituency or class within a constituency of each candidate standing; and
 - (b) the declared interests of each candidate standing,
as given in their nomination paper.
- (3) The statement must list the candidates standing for election in alphabetical order by surname.
- (4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16 Inspection of statement of nominated candidates and nomination papers –

- (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.
- (2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

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

18 Method of election –

- (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Board of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- (2) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the Board of Governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- (3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be Board 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 them in consultation with the corporation.

Part 5 – Contested elections

19 **Poll to be taken by ballot –**

- (1) The votes at the poll must be given by secret ballot.
- (2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

20 **The ballot paper –**

- (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- (2) Every ballot paper must specify:
 - (a) the name of the corporation;
 - (b) the constituency, or class within a constituency, for which the election is being held;
 - (c) the number of Governors 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;
 - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll; and
 - (g) the contact details of the returning officer.
- (3) Each ballot paper must have a unique identifier.
- (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21 **The declaration of identity (public and patient constituencies) –**

- (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.
- (2) The declaration of identity is to include a declaration:
 - (a) that the voter is the person to whom the ballot paper was addressed;
 - (b) that the voter has not marked or returned any other voting paper in the election; and

- (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.
- (3) The declaration of identity is to include space for:
 - (a) the name of the voter;
 - (b) the address of the voter;
 - (c) the voter's signature; and
 - (d) the date that the declaration was made by the voter.
 - (4) The voter must be required to return the declaration of identity together with the ballot paper.
 - (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

22 List of eligible voters –

- (1) The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- (2) The list is to include, for each member, a mailing address where the individual's ballot paper is to be sent.

23 Notice of poll – The returning officer is to publish a notice of the poll stating:

- (a) the name of the corporation;
- (b) the constituency, or class within a constituency, for which the election is being held;
- (c) the number of Governors of the Council of Governors to be elected from that constituency, or class with that constituency;
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post;
- (f) the address for return of the ballot papers, and the date and time of the close of the poll;
- (g) the address and final dates for applications for replacement ballot papers; and
- (h) the contact details of the returning officer.

24 **Issue of voting documents by returning officer –**

- (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters:
 - (a) a ballot paper and ballot paper envelope;
 - (b) a declaration of identity (if required);
 - (c) information about each candidate standing for election, pursuant to rule 59 of these rules; and
 - (d) a covering envelope.
- (2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25 **Ballot paper envelope and covering envelope –**

- (1) The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- (2) The covering envelope is to have:
 - (a) the address for return of the ballot paper printed on it; and
 - (b) pre-paid postage for return to that address.
- (3) There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer:
 - (a) the completed declaration of identity if required; and
 - (b) the ballot paper envelope, with the ballot paper sealed inside it.

The poll

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

27 **Voting by persons who require assistance –**

- (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- (2) Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as the individual considers necessary to enable that voter to vote.

28 **Spoilt ballot papers –**

- (1) If a voter has dealt with the individual's ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- (2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if the individual can obtain it.
- (3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless the individual:
 - (a) is satisfied as to the voter's identity; and
 - (b) has ensured that the declaration of identity, if required, has not been returned.
- (4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers"):
 - (a) the name of the voter; and
 - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it); and
 - (c) the details of the unique identifier of the replacement ballot paper.

29 Lost ballot papers –

- (1) Where a voter has not received the individual's ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.
- (2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless the individual:
 - (a) is satisfied as to the voter's identity;
 - (b) has no reason to doubt that the voter did not receive the original ballot paper; and
 - (c) has ensured that the declaration of identity if required has not been returned.
- (3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list ("the list of lost ballot papers"):
 - (a) the name of the voter; and
 - (b) the details of the unique identifier of the replacement ballot paper.

30 Issue of replacement ballot paper –

- (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), the individual is also satisfied that that person has not already voted in the election, notwithstanding the

fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

- (2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”):
 - (a) the name of the voter; and
 - (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31 Declaration of identity for replacement ballot papers (public and patient constituencies) –

- (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.
- (2) The declaration of identity is to include a declaration:
 - (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration; and
 - (b) of the particulars of that member’s qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.
- (3) The declaration of identity is to include space for:
 - (a) the name of the voter;
 - (b) the address of the voter;
 - (c) the voter’s signature, and the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for receipt of envelopes

32 Receipt of voting documents –

- (1) Where the returning officer receives a:
 - (a) covering envelope; or
 - (b) any other envelope containing a declaration of identity (if required), a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

- (2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to:
 - (a) the candidate for whom a voter has voted; or
 - (b) the unique identifier on a ballot paper.
- (3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33 Validity of ballot paper –

- (1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with a declaration of identity (if required) that has been correctly completed, signed, and dated.
- (2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, the individual is to:
 - (a) put the declaration of identity (if required) in a separate packet; and
 - (b) put the ballot paper aside for counting after the close of the poll.
- (3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, the individual is to:
 - (a) mark the ballot paper “disqualified”;
 - (b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper;
 - (c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and
 - (d) place the document or documents in a separate packet.

34 Declaration of identity but no ballot paper (public and patient constituency) – Where the returning officer receives a declaration of identity (if required) but no ballot paper, the returning officer is to:

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

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

- (a) the disqualified documents, together with the list of disqualified documents inside it;

- (b) any declarations of identity;
- (c) the list of spoiled ballot papers;
- (d) the list of lost ballot papers;
- (e) the list of eligible voters; and
- (f) the list of tendered ballot papers.

Part 6 - Counting the votes

36 Interpretation of Part 6 – In Part 6 of these rules:

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

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

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

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

“**non-transferable vote**” means a ballot paper:

- (a) on which no second or subsequent preference is recorded for a continuing candidate;
or
- (b) which is excluded by the returning officer under rule 44(4) below;

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

- (a) “**first preference**” means the figure “1” or any mark or word which clearly indicates a first (or only) preference;
- (b) “**next available preference**” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
- (c) in this context, a “**second preference**” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on;

“**quota**” means the number calculated in accordance with rule 41 below;

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

“**stage of the count**” means:

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

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

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

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

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

38 **The count** –

- (1) The returning officer is to:
 - (a) count and record the number of ballot papers that have been returned; and
 - (b) count the votes according to the provisions in this Part of the rules.
- (2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.
- (3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

39 **Rejected ballot papers** –

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

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

- (2) The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.
- (3) The returning officer is to draw up a statement showing the number of ballot papers rejected by them under each of the subparagraphs (a) to (d) of paragraph (1).

40 **First stage –**

- (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.
- (2) The returning officer is to then count the number of first preference votes given on ballot papers for each candidate, and is to record those numbers.
- (3) The returning officer is to also ascertain and record the number of valid ballot papers.

41 **The quota –**

- (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.
- (2) The result, increased by one, of the division under paragraph (1) above (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- (3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule 44 has been complied with.

42 **Transfer of votes –**

- (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped:
 - (a) according to next available preference given on those papers for any continuing candidate; or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- (2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.
- (3) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.
- (4) The vote on each ballot paper transferred under paragraph (3) above shall be at a value (“the transfer value”) which:
 - (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus; and

- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- (5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
 - (a) according to the next available preference given on those papers for any continuing candidate; or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
 - (6) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.
 - (7) The vote on each ballot paper transferred under paragraph (6) shall be at:
 - (a) a transfer value calculated as set out in paragraph (4)(b) above; or
 - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,
 whichever is the less.
 - (8) Each transfer of a surplus constitutes a stage in the count.
 - (9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
 - (10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
 - (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote; or
 - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
 - (11) This rule does not apply at an election where there is only one vacancy.

43 Supplementary provisions on transfer –

- (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if:

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first; and
 - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.
- (2) The returning officer shall, on each transfer of transferable papers under rule 42 above:
- (a) record the total value of the votes transferred to each candidate;
 - (b) add that value to the previous total of votes recorded for each candidate and record the new total;
 - (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes; and
 - (d) compare—
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- (3) All ballot papers transferred under rule 42 or 44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.
- (4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule 42 or 44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

44 Exclusion of candidates –

- (1) If:
 - (a) all transferable papers which under the provisions of rule 42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred; and
 - (b) subject to rule 45 below, one or more vacancies remain to be filled,

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

- (2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as:
 - (a) ballot papers on which a next available preference is given; and
 - (b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).
- (3) The returning officer shall, in accordance with this rule and rule 43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.
- (4) The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- (5) If, subject to rule 45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.
- (6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).
- (7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.
- (8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- (9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value the individual shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until the individual has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.
- (10) The returning officer shall after each stage of the count completed under this rule:
 - (a) record—
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total;

- (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total; and
 - (d) compare—
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- (11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule 42 and rule 43.
- (12) Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- (13) If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded; and
 - (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

45 Filling of last vacancies –

- (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.
- (2) Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.
- (3) Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

46 Order of election of candidates –

- (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule 42(10) above.
- (2) A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which the individual obtained the quota.

- (3) Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- (4) Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

Part 7 – Final proceedings in contested and uncontested elections

47 **Declaration of result for contested elections –**

- (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to:
 - (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected;
 - (b) give notice of the name of each candidate who the individual has declared elected:
 - (i) where the election is held under a proposed Constitution pursuant to powers conferred on the Central and North West London Mental Health NHS Foundation Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust; or
 - (ii) in any other case, to the Chair of the corporation,
 - and
 - (c) give public notice of the name of each candidate who the individual has declared elected.
- (2) The returning officer is to make:
 - (a) the number of first preference votes for each candidate whether elected or not;
 - (b) any transfer of votes;
 - (c) the total number of votes for each candidate at each stage of the count at which such transfer took place;
 - (d) the order in which the successful candidates were elected; and
 - (e) the number of rejected ballot papers under each of the headings in rule 39(1), available on request.

48 **Declaration of result for uncontested elections –** In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:

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

Part 8 – Disposal of documents

49 **Sealing up of documents relating to the poll –**

- (1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:
 - (a) the counted ballot papers;
 - (b) the ballot papers endorsed with “rejected in part”;
 - (c) the rejected ballot papers; and
 - (d) the statement of rejected ballot papers.
- (2) The returning officer must not open the sealed packets of:
 - (a) the disqualified documents, with the list of disqualified documents inside it;
 - (b) the declarations of identity;
 - (c) the list of spoiled ballot papers;
 - (d) the list of lost ballot papers;
 - (e) the list of eligible voters; and
 - (f) the list of tendered ballot papers.
- (3) The returning officer must endorse on each packet a description of:
 - (a) its contents;
 - (b) the date of the publication of notice of the election;
 - (c) the name of the corporation to which the election relates; and
 - (d) the constituency, or class within a constituency, to which the election relates.

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

51 **Forwarding of documents received after close of the poll – Where:**

- (a) any voting documents are received by the returning officer after the close of the poll;
or

- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent; or
- (c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued,

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

52 **Retention and public inspection of documents –**

- (1) The corporation is to retain the documents relating to an election that are forwarded to the Chair by the returning officer under these rules for one year, and then, unless otherwise directed by the Regulator, cause them to be destroyed.
- (2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- (3) A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

53 **Application for inspection of certain documents relating to an election –**

- (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing:
 - (a) any rejected ballot papers, including ballot papers rejected in part;
 - (b) any disqualified documents, or the list of disqualified documents;
 - (c) any counted ballot papers;
 - (d) any declarations of identity; or
 - (e) the list of eligible voters,

by any person without the consent of the Regulator.

- (2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- (3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to:
 - (a) persons;
 - (b) time;
 - (c) place and mode of inspection;
 - (d) production or opening;

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

- (4) On an application to inspect any of the documents listed in paragraph (1):
- (a) in giving its consent, the regulator; and
 - (b) making the documents available for inspection,

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

- (i) that the individual's vote was given; and
- (ii) that the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

54 **Countermand or abandonment of poll on death of candidate –**

- (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) publish a notice stating that the candidate has died; and
 - (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that:
 - (i) ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted; and
 - (ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- (2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity

Election expenses

- 55 **Election expenses** – Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application to the regulator under Part 11 of these rules.
- 56 **Expenses and payments by candidates** – A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:
- (a) personal expenses;

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

57 Election expenses incurred by other persons –

- (1) No person may:
 - (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise; or
 - (b) give a candidate or the individual's family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
- (2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

Publicity

58 Publicity about election by the corporation –

- (1) The corporation may:
 - (a) compile and distribute such information about the candidates; and
 - (b) organise and hold such meetings to enable the candidates to speak and respond to questions,as it considers necessary.
- (2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, must be:
 - (a) objective, balanced and fair;
 - (b) equivalent in size and content for all candidates;
 - (c) compiled and distributed in consultation with all of the candidates standing for election; and
 - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- (3) Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

59 Information about candidates for inclusion with voting documents –

- (1) The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.
- (2) The information must consist of:
 - (a) a statement submitted by the candidate of no more than 250 words; and
 - (b) a photograph of the candidate.

60 Meaning of “for the purposes of an election” –

- (1) In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.
- (2) The provision by any individual of the individual’s own services voluntarily, on the individual’s 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

61 Application to question an election –

- (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.
- (2) An application may only be made once the outcome of the election has been declared by the returning officer.
- (3) An application may only be made to the Regulator by:
 - (a) a person who voted at the election or who claimed to have had the right to vote; or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- (4) The application must:
 - (a) describe the alleged breach of the rules or electoral irregularity; and
 - (b) be in such a form as the Regulator may require.
- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.
- (6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- (7) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
- (8) The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the

members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

- (9) The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62 **Secrecy –**

- (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 a ballot paper or who has or has not voted;
 - (ii) the unique identifier on any ballot paper;
 - (iii) the candidate(s) for whom any member has voted.
- (2) No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter.
- (3) The returning officer is to make such arrangements as the individual thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

63 **Prohibition of disclosure of vote –**

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

64 **Disqualification –**

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

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

65 **Delay in postal service through industrial action or unforeseen event –**

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

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

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

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

1 Introduction

- 1.1 The Central and North West London NHS Foundation Trust (the “**Trust**”) is a statutory body which became a Public Benefit Corporation on 1st May 2007 following its approval as an NHS Foundation Trust by the Monitor pursuant to the National Health Service Act 2006 (the “**2006 Act**”).
- 1.2 The principal place of business of the Trust is at Trust Headquarters, Stephenson House, Hampstead Road, London, NW1 2PL.
- 1.3 The Trust is governed by the 2006 Act and its Constitution (together the “**Regulatory Framework**”). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Governors of the Trust to adopt standing orders for the regulation of its proceedings and business and the Code of Conduct for the Council of Governors is incorporated as part of these standing orders and applies to all Governors.

2 Interpretation

- 2.1 Save as otherwise permitted by law, at any meeting of the Council of Governors the Chair of the Trust shall be the final authority on the interpretation of the 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.

3 The Council of Governors

- 3.1 The roles and responsibilities of the Council of Governors to be carried out in accordance with the Regulatory Framework include the following:
 - 3.1.1 to hold the Board of Directors to account for the performance of the Trust;
 - 3.1.2 to respond as appropriate when consulted by the Board of Directors in accordance with the Constitution;
 - 3.1.3 to prepare and from time to time review the Trust’s membership strategy; and
 - 3.1.4 when appropriate to make recommendations for the revision of the Constitution.
- 3.2 Certain powers and decisions may only be exercised by the Council of Governors in formal session. These powers and decisions are set out in the Constitution and have effect as if incorporated into the Standing Orders.
- 3.3 The Council of Governors shall at all times seek to comply with the Trust’s code of governance and the Code of Conduct for the Council of Governors.

4 Meetings of the Council of Governors

- 4.1 **Admission of the public**

- 4.1.1 The public and representatives of the media 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 media 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 media 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 Council of Governors.

4.2 **Calling meetings**

- 4.2.1 Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine and there shall be at least 4 meetings in any Financial Year including:
 - 4.2.1.1 An annual meeting no later than the 30 September in each Financial Year, when the Council of Governors are to receive and consider the Annual Accounts, any report by the Auditor on them and the Annual Report; and
 - 4.2.1.2 any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.
- 4.2.2 The Chair, or in the individual's absence the Deputy Chair, may call a meeting of the Council of Governors at any time.
- 4.2.3 If at least one third of the total number of Governors requisition the Chair to call a meeting and the Chair refuses to call such meeting after the requisition, signed by at least one third of the whole number of the Governors and specifying the business to be transacted at the meeting, has been presented to him, or if, without so refusing, the Chair does not call a meeting within seven (7) days after such requisition has been presented to him at the Trust's Headquarters, such one third or more of the Governors may forthwith call a meeting for the purpose of conducting that business.

4.3 **Notice of meetings**

- 4.3.1 Save in an emergency, at least seven (7) days before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, shall be delivered or posted to the usual place of residence of every Governor. The agenda will be circulated to every Governor at least seven (7) days in advance of the meeting. Whenever possible, the supporting papers will be circulated with the agenda.
- 4.3.2 Lack of service of the notice 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 at the time at which the notice would be delivered in the ordinary course of posting.

4.3.3 Before each meeting of the Council of Governors, a public notice of the date, time and place of the meeting and the agenda shall be publicised at least seven (7) days before the meeting, save in the case of emergencies.

4.3.4 In the case of a meeting called by Governors in default of the Chair, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the requisition.

4.4 **Setting the agenda**

4.4.1 The Chair shall decide with the Secretary the items to be added to a Council of Governors meeting agenda.

4.4.2 A Governor desiring a matter to be included on an agenda, including a formal proposition for discussion and voting on at a meeting, shall make the request in writing to the Chair at least fourteen (14) days before the meeting. 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. The placing of agenda items on the agenda will not be unreasonably refused and any decision will be at the discretion of the Chair. Requests made less than fourteen (14) days before a meeting may be included on the agenda at the discretion of the Chair.

4.4.3 A matter may be included on the agenda and a discussion at a meeting will be allowed only if it relates to an issue arising from and relevant to the role and responsibilities of the Council of Governors.

4.5 **Petitions**

4.5.1 Where a petition has been received by the Trust, the Chair shall include the petition as an item for the agenda of the next meeting of the Council of Governors, provided that petition is received more than fourteen (14) days before the next meeting of the Council of Governors. Where it is received less than fourteen (14) days prior to the meeting the petition may only be heard at the meeting at the discretion of the Chair.

4.6 **Chair of meeting**

4.6.1 The Chair of the Trust will chair the meetings of the Council of Governors.

4.6.2 If the Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Deputy Chair shall preside over the meeting.

4.6.3 If the Chair and the Deputy Chair are absent from the meeting or are absent temporarily on the grounds of a declared conflict of interest, the Lead Governor shall preside over the meeting.

4.6.4 If the Chair, the Deputy Chair and Lead Governor are absent from the meeting or are absent temporarily on the grounds of a declared conflict of interest, a Governor shall be appointed by a simple majority of the Governors present and voting at the meeting to preside over the meeting.

4.7 **Chair's ruling**

- 4.7.1 Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the person chairing the meeting on questions of order, relevancy, regularity and any other matters shall be final.
- 4.7.2 Subject to SO 2.1, and save as permitted by law, at any meeting the person presiding shall be the final authority on the interpretation of these Council Standing Orders in relation to that meeting.

4.8 **Conduct of meetings**

- 4.8.1 The decision of the person chairing the meeting on questions of order, relevance, regularity, appropriateness and any other matters shall be observed at the meeting.
- 4.8.2 Approval to speak will be given by the person chairing the meeting. Chair.
- 4.8.3 All speakers must state their name and role before speaking to ensure accuracy of the minutes.

4.9 **Voting**

- 4.9.1 When an issue or question at a Council of Governors meeting requires a vote each Governor shall have one vote.
- 4.9.2 Subject to SO 4.9.5 below, every question at a meeting of the Council of Governors shall be determined by a majority of the votes of the Chair of the meeting and the Governors present and voting on the question.
- 4.9.3 Unless otherwise specified in the Constitution, the person chairing the meeting of the Council of Governors shall in the case of an equality of votes on any question or proposition have a casting vote.
- 4.9.4 All questions put to the vote shall, at the discretion of the person chairing the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 4.9.5 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.
- 4.9.6 If a Governor so requests, the individual's vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.9.7 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.

4.10 **Minutes**

- 4.10.1 The minutes of the proceedings of a meeting of the Council of Governors shall be drawn up and maintained as a public record by the Secretary and submitted for agreement at the next ensuing meeting.

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

4.10.3 Minutes shall be circulated to all Governors. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of SO 4.1 above.

4.11 Record of Attendance

4.11.1 The names of the Chair and Governors present at the meeting shall be recorded in the minutes.

4.12 Quorum

4.12.1 No business shall be transacted at a meeting unless at least one third of the total number of Governors, including at least 5 Governors who are members of either the Public Constituency or the Service User and Carers' Constituency, are present.

4.12.2 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 number of days to be fixed by the Chair and in any event not exceeding thirty (30) days and upon reconvening, those present shall constitute a quorum.

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

4.13 Repeat considerations

4.13.1 When any issue has been dealt with by the Council of Governors, it shall not be competent for any member of the Council of Governors other than the Chair to propose a motion to the same effect within six (6) months. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a committee or the Chief Executive.

4.14 Role of the Lead Governor

4.14.1 The Lead Governor shall provide a single point of contact on all Governors' issues and be the primary contact for NHS England when communicating directly to the Governors.

5 Suspension of Standing Orders

5.1 Except where this would contravene any statutory provision or the Regulatory Framework, any one or more of the standing orders may be suspended at any meeting, provided that at least two-thirds of the Governors are present, there is a majority of Governors who are members of the Public Constituency and the Service User and Carers' Constituency, and that a majority of those present vote in favour of suspension.

5.2 A decision to suspend the standing orders shall be recorded in the minutes of the meeting.

5.3 A separate record of matters discussed during the suspension of standing orders shall be made and shall be available to the Chair and Governors.

5.4 No formal business may be transacted while standing orders are suspended.

6 Committees

6.1 The Council of Governors are required to establish an Appointment Committee¹.

6.2 The Council of Governors can also establish other formal committees and working group, consisting wholly or partly of the Chair and Governors.

6.3 A committee appointed under this SO may, subject to such directions as may be given by NHS England or the Council of Governors, appoint sub-committees consisting wholly or partly of members of the committee.

6.4 The standing orders of the Council of Governors as far as they are appropriate shall apply to any committees of the Council of Governors.

6.5 Each committee shall have terms of reference and powers and be subject to conditions determined by the Council of Governors.

6.6 The Council of Governors shall approve the appointments to each of the committees which it has formally constituted.

6.7 Each committee shall elect its own chair.

6.8 Committees will normally only make recommendations and provide advice to the Council of Governors unless the Council of Governors has specifically delegated powers to the committee.

7 Declarations of interest

7.1 The Constitution requires all Governors to declare all interest which they have which would be considered relevant and material to the Council of Governors.

7.2 Further provisions in respect of the Governors duties to declare conflicts of interests are set out at Annex 8.

8 Confidentiality

8.1 Subject to SO 8.2 below a member of the Council of Governors or an attendee on a committee of the Council of Governors shall not disclose a matter dealt with by, or brought before, the Council of Governors or a committee of the Council of Governors without the permission of the Council of Governors or such committee (as applicable) until such matter shall have been concluded or in the case of such committee, until the committee shall have reported to the Council of Governors.

8.2 A Governor or a non-Governor in attendance at a committee meeting or a meeting of the Council of Governors shall not disclose any matter dealt with by the committee or the Council of Governors, notwithstanding that the matter has been reported or concluded, if the Council of Governors or committee resolves that it is confidential.

¹ Trust to provide details of other committees.

9 Miscellaneous

- 9.1 The Secretary shall provide a copy of these standing orders to each Governor and endeavour to ensure that each Governor understands the individual's responsibilities within these Standing Orders.
- 9.2 These standing orders including all documents having effect as if incorporated in them shall be reviewed as necessary by the Board of Directors and the Council of Governors.
- 9.3 If for any reason these standing orders 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 standing orders to the Chair as soon as possible.

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

Introduction

The Central and North West London NHS Foundation Trust (the “**Trust**”) is a statutory body which became a public benefit corporation on 1st May 2007 following its approval as an NHS Foundation Trust by the Monitor pursuant to the National Health Service Act 2006 (the “**2006 Act**”).

The principal place of business of the Trust is at Trust Headquarters, 350 Euston Road, London, NW1 3AX.

The Trust is governed by the 2006 Act and its Constitution (together the “**Regulatory Framework**”). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Board Directors of the Trust to adopt standing orders for the regulation of certain of its proceedings and business.

These standing orders, together with the Scheme of Reservation and Delegation and the Standing Financial Instructions, provide a comprehensive framework for the functions of the Trust. All Executive Directors, Non-Executive Directors and Officers should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.

1 Interpretation

- 1.1 Save as otherwise permitted by law, at any meeting of the Board of Directors, the Chair of the Trust shall be the final authority on the interpretation of the SOs (on which he should be advised by the Chief Executive and Secretary).
- 1.2 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.
- 1.3 The provisions of paragraph 1 of the Constitution apply to these SOs save that any reference to “Constitution” shall be read as a reference to these SOs.

2 The Trust Board of Directors

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 All funds received in trust shall be in the name of the Trust as corporate trustee. Directors acting on behalf of the Trust as corporate trustees are acting as quasi-trustee.
- 2.3 In relation to Funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as the Trust. Accountability for charitable Funds held on Trust is to be made to the Charity Commission and to NHS England. Accountability for non-charitable Funds held on Trust is only to NHS England.
- 2.4 The Trust has the functions conferred on it by the Regulatory Framework.
- 2.5 The powers of the Trust shall be exercised by the Board of Directors meeting either in public or private session except as otherwise provided for in SO 4.

2.6 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. These powers and decisions are set out in the Scheme of Reservation and Delegation.

2.7 **Senior Independent Director**

2.7.1 The Board (in consultation with the Council of Governors) may appoint any independent Non-Executive Director as the Senior Independent Director, for such period not exceeding the remainder of the individual's term as a Non-Executive Director as they may specify on appointing them.

2.7.2 The Senior Independent Director shall perform the role set out in "The NHS Foundation Trust Code of Governance" (2006) issued by NHS England.

2.8 **Appointment of the Executive Directors**

Executive Directors

2.8.1 Executive Directors shall exercise their authority within the terms of these standing orders and Standing Financial Instructions and the Scheme of Reservation and Delegation.

Chief Executive

2.8.2 The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust.

2.8.3 The individual is the Accounting Officer and shall be responsible for ensuring the discharge of obligations under all relevant financial directions and guidance issued by NHS England or any other relevant body, including the NHS Foundation Trust Accounting Officer Memorandum issued in April 2008 and any additional or replacement document in relation to the role of the Accounting Officer.

Finance Director

2.8.4 The Finance Director shall be responsible for the provision of financial advice to the Trust and to its members and for the supervision of financial control and accounting systems.

2.8.5 The individual shall be responsible, along with the Chief Executive, for ensuring the discharge of obligations under all relevant financial directions and guidance issued by NHS England or any other relevant body.

3 Meetings of the Trust

3.1 Admission of the public and the press

3.1.1 Meetings of the Board of Directors shall normally be held in public and members of the general public and representatives of the press shall be afforded facilities to attend, unless decided otherwise by the Chair or Board of Directors.

3.1.2 The public and representatives of the press 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”

- 3.1.3 The Chair shall give such directions as he thinks fit (including a decision 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).
- 3.1.4 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.
- 3.1.5 Matters to be dealt with by the Board of Directors following the exclusion of the public and representatives of the press under SOs 3.1.2 or 3.1.3 above shall be confidential to the Directors. Members of the Board of Directors and 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.
- 3.1.6 The 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.

3.2 Calling meetings

- 3.2.1 Ordinary meetings of the Board of Directors shall be held at regular intervals at such times and places as the Board of Directors may determine.
- 3.2.2 The Chair may call a meeting of the Board of Directors at any time.
- 3.2.3 One third or more members of the Board of Directors may requisition a meeting in writing. If the Chair refuses, or fails, to call a meeting within seven (7) days of a requisition being presented, the members of the Board of Directors signing the requisition may forthwith call a meeting for the purpose of conducting that business.
- 3.2.4 The Board of Directors may agree that its members can participate in its meetings by contemporaneous telephone, video or computer link through which they can hear and take part in proceedings. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

3.3 Notice of meetings

- 3.3.1 Save in an emergency, at least seven (7) days before each meeting of the Board of Directors, a written notice of the meeting, specifying the business proposed to be transacted at it, and shall be delivered or posted to every Director.
- 3.3.2 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 publicised at least seven (7) days before the meeting, save in case of emergencies.

- 3.3.3 Lack of service of the notice 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 three Directors will invalidate the meeting.
- 3.3.4 In the case of a meeting called by the Directors in default of the Chair, in accordance with SO 3.2.3 above, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice or emergency motions allowed under SO 3.3.5.
- 3.3.5 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 3.3.1 and 3.3.2 shall not prevent the calling of such meeting without the requisite seven (7) days' notice 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.

3.4 Agendas and supporting papers

- 3.4.1 Agendas will be sent to members of the Board of Directors seven (7) days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three (3) days before the meeting, save in exceptional circumstances which will be agreed with the Chair or Secretary. 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 (1) day after posting.

3.5 Setting the agenda

- 3.5.1 A Director desiring a matter to be included on an agenda, shall make his request in writing to the Chair at least fourteen (14) days before the meeting. The request should include appropriate supporting information. Inclusion in the agenda is at the discretion of the Chair. Requests made less than fourteen (14) days before a meeting may be included on the agenda at the discretion of the Chair. Where relevant, 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.
- 3.5.2 No business may be transacted at any meeting of the Board of Directors which is not specified in the notice of that meeting unless the Chair, in his absolute discretion, agrees that the item and (where relevant) any supporting papers should be considered by the Board of Directors as a matter of urgency. A decision by the Chair to permit consideration of the item in question and (where relevant) the supporting papers shall be recorded in the minutes of that meeting.

3.6 Petitions

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

3.7 Chair of meeting

- 3.7.1 At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting, the Deputy Chair (if the Council of Governors has appointed one), if present, shall preside.

3.7.2 If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest, the Deputy Chair, if present, shall preside. If the Chair and Deputy Chair are both absent, or are disqualified from participating, such Non-Executive Director as the members of the Board present choose shall preside during that period.

3.8 Chair's ruling

3.8.1 The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and the individual's interpretation of the standing orders and Standing Financial Instructions, at the meeting, shall be final.

3.9 Emergency Motions

3.9.1 A member of the Board may give 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 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.

3.10 Repeat Considerations

3.10.1 When any issue 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 six (6) months. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a committee or the Chief Executive.

3.11 Voting

3.11.1 Every question put to a vote at a meeting shall be determined by a majority of the votes of members of the Board of Directors present and voting on the question.

3.11.2 In the case of an equal vote, the Chair or such other person presiding at the meeting shall have a casting vote.

3.11.3 At the discretion of the Chair all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.

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

3.11.5 If a member of the Board of Directors so requests, the individual's name shall be recorded by name upon any vote (other than by paper ballot).

3.11.6 In no circumstances may an absent member of the Board of Directors vote by proxy. Absence is defined as being absent at the time of the vote.

3.11.7 An officer who has been formally appointed 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 at a Board of Director's meeting. This status should be recorded in the minutes.

- 3.11.8 An officer attending a meeting of the Board of Directors to represent an Executive Director member during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director.

3.12 Quorum

3.12.1 No business shall be transacted at a meeting of the Board of Directors unless at least two-thirds of the whole number of members of the Board of Directors (including at least one Non-Executive Director and one Executive Director) are present.

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

3.12.3 If a member of the Board of Directors has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see Annex 8) that person 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.

3.12.4 The requirement in SO 3.12.1 above for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting.

3.13 Record of attendance

3.13.1 The names of the members of the Board of Directors present at the meeting shall be recorded.

3.14 Minutes

3.14.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting.

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

3.14.3 Minutes shall be circulated in accordance with the wishes of members of the Board. Where providing a record of a public meeting, the minutes shall be made available to the public.

4 Arrangements for the exercise of Trust functions by delegation

4.1 Delegation of functions to committees and officers

4.1.1 Subject to the Regulatory Framework and such guidance, if any, as may be given by NHS England, the Board of Directors may make arrangements for the exercise, on behalf of the Board of Directors, of any of its functions by a committee of Directors or sub-committee appointed by virtue of SO 5 below or by an Executive

Director, in each case subject to such restrictions and conditions as the Board of Directors thinks fit.

4.2 Emergency powers and urgent decisions

4.2.1 The powers which the Board of Directors has reserved to itself within these standing orders 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 Chair shall be reported to the next formal meeting of the Board of Directors for noting.

4.3 Delegation to committees

4.3.1 The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by other committees, or sub-committees, or joint-committees, which it has formally constituted and which are made up of Directors. The Constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board of Directors.

4.4 Delegation to an Executive Director

4.4.1 Those functions of the Trust which have not been retained as reserved by the Board of Directors, or delegated to a committee or sub-committee, shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions the individual will perform personally and shall nominate an Executive Director to undertake the remaining functions for which the individual will still retain accountability to the Trust.

4.4.2 The Chief Executive shall prepare a Scheme of Reservation and Delegation identifying the individual's proposals which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may from time to time propose amendments to the Scheme of Reservation and Delegation which shall be considered and approved by the Board of Directors.

4.4.3 Nothing in the Scheme of Reservation and Delegation shall impair the discharge of the direct accountability to the Board of the Finance Director to provide information and advise the Board of Directors in accordance with statutory requirements or any requirements of NHS England. For all other functions which do not form part of these requirements, the Finance Director shall be accountable to the Chief Executive.

4.5 Schedule of matters reserved to the Board and Scheme of Reservation and Delegation

4.5.1 The arrangements made by the Board of Directors as set out in the Scheme of Reservation and Delegation shall have effect as if incorporated in these Standing Orders.

4.6 Duty to report non-compliance with standing orders and Standing Financial Instructions

4.6.1 If for any reason these Standing Orders 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 officers have a duty to disclose any non-compliance with these standing orders to the Secretary as soon as possible.

5 Committees

5.1 Appointment of committees

5.1.1 The Board of Directors may appoint committees of the Board of Directors consisting wholly or partly of Directors.

5.1.2 A committee appointed under this SO may, subject to such directions and guidance as may be given by NHS England or the Board of Directors, appoint sub-committees consisting wholly or partly of members of the committee.

5.2 Applicability of Standing Orders and Standing Financial Instructions to committees and sub-committees

5.2.1 The standing orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall as appropriate apply to meetings and any committees and sub-committees established by the Board. In which case the term “Chair” is to be read as a reference to the Chair of the committee or sub-committee as the context permits, and the term “member of the Board” is to be read as a reference to a member of the committee or sub-committee also as the context permits.

5.3 Delegation of powers by Committees to Sub-Committees

5.3.1 Where committees are authorised to establish sub-committees they may not delegate powers to the sub-committee unless expressly authorised by the Board of Directors.

5.4 Terms of reference of committees

5.4.1 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (such as reporting back to the Board of Directors) as the Board of Directors shall decide. Such terms of reference shall be in accordance with the Regulatory Framework and any directions and guidance issued by NHS England and shall have effect as if incorporated into the standing orders.

5.5 Approval of appointments to committees

5.5.1 Subject to standing Order 5.6, the Board of Directors shall approve the appointments to each of the committees which it has formally constituted.

5.5.2 The Board of Directors may elect to change the committees and sub-committees as necessary without the requirement to amend these standing orders.

5.6 Appointments for statutory functions

5.6.1 Where the Board of Directors is required by the Constitution, by any applicable statute or regulations or by any directions or guidance issued by NHS England to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Board of Directors, such appointments shall be made in accordance with the Constitution or such applicable statute or regulations or such directions or guidance issued by NHS England.

5.7 Committees established by the Board of Directors

5.7.1 The committees established by the Board of Directors are:

5.7.1.1 Audit Committee;

5.7.1.2 Remuneration Committee;

5.7.1.3 Nominations Committee; and

5.7.1.4 where so required, a committee to act as a joint special committee with a committee of the Council of Governors for the purpose of resolving disputes between the Council of Governors and the Board of Directors in accordance with the Dispute Resolution Procedure set out in paragraph 49 of the Constitution.

5.8 Other committees and sub-committees

5.8.1 The Board of Directors may also establish and dissolve such other committees and sub-committees as required to discharge the responsibilities of the Board of Directors.

5.9 Confidentiality

5.9.1 A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.

5.9.2 A member of the Board of Directors or a member of a committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

6 Declarations of interests

6.1 The Constitution requires all Directors to declare to the Board of Directors all direct or indirect interests in a proposed transaction or arrangement with the Trust.

6.2 Further provisions in respect of Directors' duties to declare conflicts of interests are set out at Annex 8.

7 Suspension of Standing Orders

7.1 Except where this would contravene any statutory provision or guidance issued by NHS England or the rules relating to the quorum, any one or more of the standing orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board of Directors are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension. The reason for the suspension shall be recorded in the Board of Director's minutes.

7.2 A separate record of matters discussed during the suspension of standing orders shall be made and shall be available to the Chair and members of the Board of Directors.

7.3 No formal business may be transacted while standing orders are suspended.

7.4 The Audit Committee shall review every decision to suspend standing orders.

8 Custody of seal, sealing of documents and signature of documents

8.1 Custody of seal

8.1.1 The common seal of the Trust shall be kept by the Chief Executive or a nominated officer in a secure place.

8.2 Sealing of Documents

8.2.1 The common seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board of Directors which expression includes, by virtue of the resolution of the Board adopting these Standing Orders, documents approved for sealing by the Chair and either the Chief Executive or another Executive Director.

8.3 Register of sealing

8.3.1 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Board of Directors at least twice a year. The report shall contain details of the seal number, the description of the document and date of sealing.

8.4 Signature of documents

8.4.1 Where the signature of any document will be a necessary step in legal proceedings involving the 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.

8.4.2 The Chief Executive or nominated officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board of Directors or any committee or sub-committee with delegated authority.

8.5 External consultants

8.5.1 These standing orders will apply equally to all external consultants or other agents acting on behalf of the Trust. The Scheme of Reservation and Delegation should be adhered to at all times.

9 Miscellaneous

9.1 Standing Orders to be given to members of the Board and Officers

9.1.1 It is the duty of the Chief Executive to ensure that existing members of the Board of Directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive.

9.1.2 New designated officers shall be informed in writing and shall receive copies where appropriate of the standing orders.

ANNEX 8 – DECLARATION OF INTERESTS

1 Interests

- 1.1 Interests which should be regarded as relevant and material for the purposes of this annex are:
- 1.1.1 Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
 - 1.1.2 Ownership or part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
 - 1.1.3 Majority or controlling share-holdings in organisations likely or possibly seeking to do business with the NHS.
 - 1.1.4 A position of authority in a charity or voluntary organisation in the field of health and social care.
 - 1.1.5 Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
 - 1.1.6 Research funding/ grants that may be received by an individual or their department.
 - 1.1.7 Pecuniary interest, direct or indirect, in a contract which the Trust has entered into or proposed to enter into.
 - 1.1.8 Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.

2 Council of Governors

- 2.1 All Governors must declare any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, or proposed transaction involving the Trust.
- 2.2 Any relevant and material interests shall be declared either at the time of the Governor's election or appointment or as soon as thereafter as the interest arises, but within five (5) days of the Governor becoming aware of the existence of that interest. The declaration upon appointment or election shall be in the following form:

Declaration to the Trust Secretary of Central and North West London Mental Health NHS Foundation Trust:

I hereby declare that I am at the date of this declaration [a member of the [Public/Staff/Service User and Carers' Constituency] [an appointed Governor], and I am not prevented from being a member of the Council of Governors by reason of any provision in the Constitution.

- 2.3 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 of the matter. At the time the interest is declared, it should be recorded in the Council of Governor's meeting minutes. Any changes in interested should be

officially declared at the next relevant meeting of the Council of Governors following the change occurring.

- 2.4 The Secretary shall be responsible for compiling and maintaining the register of interests of Governors in accordance with paragraph 39 of the Constitution.
- 2.5 The above list of potential interests applies to the Governors, their partner, and to their immediate family (parent, spouse, child or sibling).
- 2.6 If a Governor has any doubt about the relevance of an interest then they should discuss it with the Secretary.

3 Board of Directors

- 3.1 All Directors of the Trust are under the following duties:
 - 3.1.1 A duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust; and
 - 3.1.2 A duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 3.2 At the time Directors' interests are declared, they should be recorded in the Board of Directors' minutes. Any changes in interests should be officially declared at the next Board of Directors' meeting following the change occurring. It is the obligation of the Director to inform the Secretary in writing within seven (7) days of becoming aware of the existence of a relevant or material interest. The Secretary will amend the Register of interest of Directors upon receipt within three (3) days. The Secretary shall be responsible for compiling and maintaining the registers in accordance with paragraph 39 of the Constitution.
- 3.3 Directors' directorships of companies in paragraph 1.1(a) above likely or possibly seeking to do business with the NHS (paragraph 1.1(b) above) should be published in the Board of Directors annual report. The information should be kept up to date for inclusion in succeeding Annual Reports.
- 3.4 During the course of a Board of Directors meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt, this includes voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, a majority will resolve the issue with the Chair having the casting vote.
- 3.5 If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that 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 including general practitioners should also be considered.

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

- 3.6 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 Trust shall disqualify the candidate for such appointment. The contents of this paragraph of this Annex 8 shall be included in application forms or otherwise brought to the attention of candidates.

- 3.7 A Director of the Board of Directors shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Annex 8 shall not preclude a Director from giving written testimonial of a candidate's ability, experience of character for submission to the Trust in relation to any appointment.
- 3.8 Informal discussions outside appointment panels or committees, whether solicited or unsolicited, should be declared to the panel or committee in question.