



**Cornwall Partnership**  
**NHS Foundation Trust**

**CORNWALL PARTNERSHIP NHS FOUNDATION TRUST**

**(A PUBLIC BENEFIT CORPORATION)**

**CONSTITUTION**

## Table of Contents

1.	INTERPRETATION AND DEFINITIONS .....	5
2.	NAME .....	11
3.	PRINCIPAL PURPOSE .....	11
4.	POWERS.....	12
5.	JOINT WORKING WITH RELEVANT BODIES .....	12
6.	JOINT FINANCIAL OBJECTIVES .....	13
7.	MEMBERSHIP AND CONSTITUENCIES .....	13
8.	APPLICATION FOR MEMBERSHIP .....	13
9.	PUBLIC CONSTITUENCY .....	13
10.	STAFF CONSTITUENCY .....	13
11.	RESTRICTION ON MEMBERSHIP .....	15
12.	ANNUAL MEMBERS' MEETING .....	15
13.	COUNCIL OF GOVERNORS – COMPOSITION.....	15
14.	COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS .....	15
15.	COUNCIL OF GOVERNORS - TENURE .....	16
16.	COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL .....	17
17.	COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS .....	17
18.	COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS .....	17
19.	COUNCIL OF GOVERNORS – STANDING ORDERS.....	18
20.	COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS	18
21.	COUNCIL OF GOVERNORS – TRAVEL AND OTHER EXPENSES .....	18
22.	COUNCIL OF GOVERNORS – FURTHER PROVISIONS .....	18
23.	BOARD OF DIRECTORS – COMPOSITION .....	19
24.	BOARD OF DIRECTORS – GENERAL DUTY .....	19

25.	BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR .....	20
26.	BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS .....	20
27.	BOARD OF DIRECTORS – APPOINTMENT OF VICE CHAIR.....	21
28.	BOARD OF DIRECTORS – APPOINTMENT OF SENIOR INDEPENDENT DIRECTOR.....	21
29.	BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS.....	22
30.	BOARD OF DIRECTORS – DISQUALIFICATION.....	22
31.	BOARD OF DIRECTORS – MEETINGS .....	23
32.	BOARD OF DIRECTORS – STANDING ORDERS .....	23
33.	BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS...	23
34.	BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE ...	25
35.	REGISTERS.....	25
36.	ADMISSION TO AND REMOVAL FROM THE REGISTERS .....	25
37.	REGISTERS – INSPECTION AND COPIES .....	27
38.	DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION .....	27
39.	AUDITOR .....	28
40.	AUDIT COMMITTEE .....	29
41.	ACCOUNTS .....	29
42.	ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK.....	29
43.	PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS .....	31
44.	INSTRUMENTS.....	31
45.	AMENDMENT OF THIS CONSTITUTION.....	32
46.	SIGNIFICANT TRANSACTIONS .....	33
47.	ELECTRONIC COMMUNICATIONS .....	34

48. NOTICES..... 36

49. INDEMNITY ..... 36

50. DEFECTIVE APPOINTMENTS ..... 36

ANNEX 1 - THE PUBLIC CONSTITUENCIES ..... 37

ANNEX 2 - THE STAFF CONSTITUENCY ..... 41

ANNEX 3 - COMPOSITION OF COUNCIL OF GOVERNORS ..... 42

ANNEX 4 - ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS ..... 43

ANNEX 5 - BOARD OF DIRECTORS - FURTHER PROVISIONS..... 49

ANNEX 6 - FURTHER PROVISIONS - MEMBERSHIP ..... 54

ANNEX 7 – DISPUTE RESOLUTION PROCEDURES ..... 59

ANNEX 8 - ANNUAL MEMBERS MEETINGS..... 61

ANNEX 9 – MODEL RULES FOR ELECTIONS..... 62

## 1. INTERPRETATION AND DEFINITIONS

- 1.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act (as amended).
- 1.2 References in this Constitution to legislation include all amendments, replacements or re-enactments made and include all subordinate legislation made thereunder.
- 1.3 Headings are for ease of reference only.
- 1.4 All annexes and appendices referred to in this Constitution form part of it.
- 1.5 References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an annex or appendix to this Constitution it shall be a reference to a paragraph in that annex or appendix unless the contrary is expressly stated or the context otherwise so requires.
- 1.6 In this Constitution the following definitions apply:

**"2006 Act"**

means the National Health Service Act 2006;

**"Accounting Officer"**

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

**"Annual Accounts"**

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

**"Annual Members' Meeting"**

has the meaning ascribed to it in paragraph 12 of this Constitution;

**"Annual Report"**

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

**"Annual Plan"**

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

**"Appointed Governors"**

means a Local Authority Governor, or a Partnership Governor;

**"Audit and Risk Committee"**

means a committee of the Board of Directors as established pursuant to paragraph 40 of this Constitution;

**"Auditor"**

means the Auditor of the Foundation Trust appointed by the Council of Governors pursuant to paragraph 39 of this Constitution;

**"Board of Directors"**

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

**"Chair"**

means the chairperson of the Foundation Trust appointed in accordance with paragraph 26 of this Constitution;

**"Chief Executive"**

means the Chief Executive of the Foundation Trust;

**"Clear Day(s)"**

means, in relation to a period of notice, a period of days not including the day on which notice was given or deemed to be given and the day for which it is given or on which it is to take effect;

**"Code"**

means "The Code of Governance for NHS provider trusts" published by NHS England, as may be amended from time to time;

**"Comptroller and Auditor General"**

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

**"Constitution"**

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

**"Cornwall Council"**

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

**"Council of Governors"**

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

**"Council of the Isles of Scilly"**

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

**"Deputy Chief Executive"**

means an Executive Director appointed pursuant to paragraph 29.4 of this Constitution;

**"Designated Organisation"**

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

**"Director"**

means a member of the Board of Directors;

**"Director Code of Conduct"**

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

**"Elected Governor"**

means a Public Governor or a Staff Governor;

**"Executive Director"**

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

**"External Auditor"**

means any person appointed by the Board of Directors to review and report upon any aspect of the Foundation Trust's performance (for the avoidance of doubt this is not the Auditor appointed by the Council of Governors in accordance with paragraph 39 of this Constitution);

**"Finance Director"**

means the Chief Finance Officer of the Foundation Trust;

**"Financial Year"**

means a period beginning on 1 April and finishing on the following 31 March;

**"Foundation Trust"**

is defined in paragraph 2 of this Constitution;

**"Foundation Trust Head Office"**

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

**"Governor"**

means a member of the Council of Governors;

**"Governors Code of Conduct"**

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

**"Health Overview and Scrutiny Committee"**

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

**"Health Service Body"**

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

**"Immediate Family Member"**

means, in relation to another person, either:

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

**"Independence Criteria"** means the indicative criteria set out at provision 2.6 of the Code or such other guidance produced which the Foundation Trust must have regard to from time to time;

**"Integrated Care Board"** means the NHS Cornwall and Isles of Scilly Integrated Care Board;

**"Lead Governor/Designated Governor"**

means the Lead Governor/Designated Governor of the Council of Governors appointed pursuant to the Council of Governors Standing Orders;

**"Local Authority Governor"**

means a member of the Council of Governors appointed by a local authority specified in Annex 3 of this Constitution;



**"Member"**

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

**"Model Rules for Elections"**

means the rules for the conduct of elections for a member of Council of Governors of Trust published by NHS Providers and set out at Annex 9 of this Constitution;

**"NHS England"**

means the body corporate known as NHS England, established under section 1H of the 2006 Act;

**"NHS Provider Licence"**

means provider licence number: 110029 issued to the Foundation Trust by NHS England (as amended);

**"Nominated Officer"**

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

**"Nominations Committee"**

means a committee appointed pursuant to Annex 5 of this Constitution;

**"Non-Executive Director"**

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

**"Officer"**

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

**"Partnership Governor"**

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

**"Partnership Organisation"**

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

**"Principal Purpose"**

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

**"Public Constituency"**

has the meaning ascribed to it in paragraph 9.2 of this Constitution;

**"Public Governor"**

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

**"Registered Dentist"**

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

**"Registered Medical Practitioner"**

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

**"Registered Midwife"**

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

**"Registered Nurse"**

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

**"Regulatory Framework"**

means the 2006 Act, this Constitution, the terms of the NHS Provider Licence and any guidance issued by NHS England (and other applicable regulators) which the Foundation Trust must have regard to;

**"Remuneration and Terms of Service Committee"**

means the Committee established under the Standing Orders for the Board of Directors;

**"Replacement Governor"**

has the meaning ascribed to it in Annex 4 of this Constitution;

**"Scheme of Delegation"**

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

**"Secretary"**

means the Trust secretary or any other person appointed to perform the roles and responsibilities as set out in any role description issued by the Foundation Trust, this Constitution and Appendix A of the Code;

**"SFIs"**

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

**"Significant Transaction"**

has the meaning ascribed to it in paragraph 46 of this Constitution;

**"Special Members' Meeting"**

has the meaning ascribed to it in Annex 6 of this Constitution;

**"Staff Constituency"**

has the meaning ascribed to it in paragraph 10.3 of this Constitution;

**"Staff Governor"**

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

**"Standing Orders for the Board of Directors"**

means the standing orders for the practice and procedure of the Board of Directors and which are to be read alongside this Constitution;

**"Standing Orders for the Council of Governors"**

means the standing orders for the practice and procedure of the Council of Governors and which are to be read alongside this Constitution;

**"Truro and Penwith College"**

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

**"Vice Chair"**

means the vice chairperson of the Foundation Trust appointed in accordance with paragraph 27 of this Constitution;

**"Volunteer Cornwall"**

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

**"Volunteer"**

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

2. **NAME**

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

3. **PRINCIPAL PURPOSE**

3.1 The Principal Purpose of the Foundation Trust is the provision of goods and services for the purposes of the health service in England.

3.2 The Foundation Trust does not fulfil its Principal Purpose unless, in each Financial Year, its total income from the provision of goods and services for

the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

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

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

3.3.2 the promotion and protection of public health.

3.4 The Foundation Trust may also carry on activities other than those mentioned in paragraph 3.3 above for the purpose of making additional income available in order to better carry on its Principal Purpose.

#### **4. POWERS**

4.1 The Foundation Trust is to have all the powers of an NHS foundation trust set out in the 2006 Act.

4.2 In the exercise of its powers the Foundation Trust shall have regard to:

4.2.1 the values and strategy of the Foundation Trust;

4.2.2 Section 63A of the 2006 Act (duty to have regard to wider effect of decisions), also referred to as the “Triple Aim”;

4.2.3 Section 63B of the 2006 Act (duties in relation to climate change); and

4.2.4 guidance published by NHS England.

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 Foundation Trust is exercising functions of the managers pursuant to Section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised in accordance with that section.

#### **5. JOINT WORKING WITH RELEVANT BODIES**

5.1 The Foundation Trust may arrange for any functions exercisable by it to be exercised by or jointly with any one or more of the relevant bodies set out in Section 65Z5(1) of the 2006 Act.

5.2 Where a function is exercisable jointly, the relevant bodies may arrange for the function to be exercised by joint committee as set out in section 65Z6 of the 2006 Act.

## **6. JOINT FINANCIAL OBJECTIVES**

6.1 The Foundation Trust must:

- 6.1.1 seek to achieve any financial objectives set under section 223L of the 2006 Act;
- 6.1.2 exercise their functions with a view to ensuring that, in respect of each Financial Year, limits specified by NHS England are not exceeded as set out in section 223M of the 2006 Act;
- 6.1.3 comply with any NHS England directions pursuant to section 223N of the NHS Act; and
- 6.1.4 comply with section 223LA with regard to expenditure limits, if and when that section comes into force.

## **7. MEMBERSHIP AND CONSTITUENCIES**

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

- 7.1.1 a Public Constituency; or
- 7.1.2 the Staff Constituency.

## **8. APPLICATION FOR MEMBERSHIP**

8.1 Subject to paragraph 10.6 below, an individual who is eligible to become a Member may do so on application to the Foundation Trust.

## **9. PUBLIC CONSTITUENCY**

- 9.1 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.
- 9.2 Those individuals who live in an area specified as a public constituency are referred to collectively as a "Public Constituency".
- 9.3 The minimum number of Members in each area for the Public Constituency is specified in Annex 1.

## **10. STAFF CONSTITUENCY**

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

- 10.1.1 they are employed by the Foundation Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 10.1.2 they have been continuously employed by the Foundation Trust under a contract of employment for at least 12 months.
- 10.2 Individuals who are employed by a Designated Organisation and who otherwise exercise functions for the purposes of the Foundation Trust otherwise than under contract of employment with the Foundation Trust, may become or continue as members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt, this excludes Volunteers and Voluntary Organisations, and individuals who assist or provide goods or services to the Foundation Trust on a voluntary or not for profit basis.
- 10.3 Those individuals who are eligible for membership of the Foundation Trust by reason of the provisions of paragraphs 10.1 and 10.2 above are referred to collectively as the "Staff Constituency".
- 10.4 The minimum number of Members of the Staff Constituency is specified in Annex 2.
- 10.5 For the purposes of paragraphs 10.1 and 10.2 above, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Foundation Trust or has continuously exercised functions for the purposes of the Foundation Trust, as it applies for the purposes of that Act.
- 10.6 An individual who is eligible to become a member of the Staff Constituency under paragraph 10.1 above and who is invited by the Foundation Trust to become a member of the Staff Constituency, shall become a Member of the Foundation Trust as a member of the Staff Constituency without an application being made unless they inform the Foundation Trust that they do not wish to do so.
- 10.7 Any individual who is eligible to become a member of the Staff Constituency under paragraph 10.2 above shall become a member upon entry to the Foundation Trust's register of Members pursuant to an application by them.
- 10.8 On receipt of an application for membership as described in paragraph 10.7 above and subject to being satisfied that the applicant is eligible, the Secretary shall cause the applicant's name to be entered into the Foundation Trust's register of members.
- 10.9 The Foundation Trust shall designate organisations and/or individuals who exercise functions for the purposes of the Foundation Trust as Designated

Organisations for the purpose of paragraph 10.2 above, and the Secretary shall maintain a register of Designated Organisations.

## **11. RESTRICTION ON MEMBERSHIP**

11.1 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.

11.2 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.

11.3 An individual must be at least fourteen years old to become a Member.

11.4 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Foundation Trust are set out in Annex 6.

## **12. ANNUAL MEMBERS' MEETING**

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

12.2 Further provisions about the Annual Members' Meeting are set out in Annex 8

## **13. COUNCIL OF GOVERNORS – COMPOSITION**

13.1 The Foundation Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors.

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

13.3 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.

13.4 The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

## **14. COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS**

14.1 Elections for Elected Governors of the Council of Governors shall be conducted in accordance with the Model Rules for Elections using the single transferable voting system.

- 14.2 The Model Rules for Elections, as published from time to time by NHS Providers, form part of this Constitution. The current Model Rules for Elections are attached at Annex 9.
- 14.3 A subsequent variation of the Model Rules for Elections shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 45 below. For the avoidance of doubt, the Foundation Trust cannot amend the Model Rules for Elections. An updated version of this Constitution may be published by the Secretary incorporating any revised Model Rules for Elections.
- 14.4 An election, if contested, shall be by secret ballot.
- 14.5 A person may not vote at an election for or stand for election as an Elected Governor unless within the specified period stated in the Model Rules for Elections they have made a declaration in the forms specified in Annex 4 of this Constitution.

## 15. COUNCIL OF GOVERNORS - TENURE

### 15.1 Elected Governors

- 15.1.1 An Elected Governor may hold office for a period of up to three years.
- 15.1.2 An Elected Governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.
- 15.1.3 Subject to paragraph 15.1.4 below, an Elected Governor shall be eligible for re-election at the end of their term.
- 15.1.4 An Elected Governor may not serve on the Council of Governors for more than nine years in aggregate. For the avoidance of doubt, this covers all constituencies such that once an Elected Governor has served for nine years in any one constituency or across a mixture of several Constituencies they are no longer eligible to stand for election in any constituency or be appointed to the Council of Governors.

### 15.2 Appointed Governors

- 15.2.1 An Appointed Governor may hold office for a term of up to three years.
- 15.2.2 An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.
- 15.2.3 An Appointed Governor shall be eligible for re-appointment at the end of their term.



## **16. COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL**

- 16.1 The following may not become or continue as a member of the Council of Governors:
- 16.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 16.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
  - 16.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
  - 16.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them; or
  - 16.1.5 any other requirements that may be set out from time to time in the Regulatory Framework.
- 16.2 Governors must be at least sixteen years of age at the closing date they are nominated for election or appointment.
- 16.3 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Chair or Secretary.
- 16.4 Further provisions as to the circumstances in which an individual may not become or continue as a Governor are set out in Annex 4.

## **17. COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS**

- 17.1 The general duties of the Council of Governors are to:
- 17.1.1 hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and
  - 17.1.2 represent the interests of the Members as a whole and the interest of the public.
- 17.2 The Foundation Trust must take steps to ensure that the Council of Governors is equipped with the skills and knowledge it requires in its capacity as such.

## **18. COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS**

- 18.1 The Chair or, in their absence, the Vice Chair, shall preside at meetings of the Council of Governors.

- 18.2 In the absence of both the Chair and the Vice Chair at a meeting of the Council of Governors, the Lead Governor shall preside over that meeting.
- 18.3 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons by resolution of the Council of Governors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or the proceedings.
- 18.4 For the purposes of obtaining information about the Foundation Trust's performance of its functions or the Board of Directors performance of their duties (and deciding whether to propose a vote on the Foundation Trust's or Board of Directors performance), the Council of Governors may require one or more of the members of the Board of Directors to attend a meeting of the Council of Governors.

**19. COUNCIL OF GOVERNORS – STANDING ORDERS**

The standing orders for the practice and procedure of the Council of Governors shall be read alongside this Constitution.

**20. COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS**

20.1 If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as they become aware of it.

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

**21. COUNCIL OF GOVERNORS – TRAVEL AND OTHER EXPENSES**

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

**22. COUNCIL OF GOVERNORS – FURTHER PROVISIONS**

Further provisions with respect to the Council of Governors are set out in Annex 4.

## 23. **BOARD OF DIRECTORS – COMPOSITION**

- 23.1 The Foundation Trust is to have a Board of Directors, which shall comprise both Executive Directors and Non-Executive Directors.
- 23.2 The Board of Directors is to comprise:
- 23.2.1 a Non-Executive Director Chair; and
  - 23.2.2 up to a maximum of 7 other Non-Executive Directors; and
  - 23.2.3 up to a maximum of 7 Executive Directors.
- 23.3 One of the Executive Directors shall be the Chief Executive.
- 23.4 The Chief Executive shall be the Accounting Officer.
- 23.5 One of the Executive Directors shall be the Finance Director.
- 23.6 One of the Executive Directors is to be a Registered Medical Practitioner or a Registered Dentist.
- 23.7 One of the Executive Directors is to be a Registered Nurse or a Registered Midwife.
- 23.8 In the event that the number of Non-Executive Directors (including the Chair) is equal to the number of Executive Directors, the Chair (and in their absence, the Vice Chair), shall have a casting vote at meetings of the Board of Directors.
- 23.9 The validity of any act of the Foundation Trust is not affected by any vacancy among the Directors.
- 23.10 The post of an Executive Director may be held by two individuals (provided that the provisions of this paragraph 23 are met in respect of required qualifications) on a job share basis. Where such an agreement is in force the two individuals may only exercise one vote between them at any meeting of the Board of Directors. In the case of disagreements, no vote may be cast.
- 23.11 The Foundation Trust may appoint other individuals who may receive a standing invite to attend meetings of the Board of Directors but such individuals shall not be members of the Board of Directors, shall not have a vote and shall not count towards any quorum requirements.

## 24. **BOARD OF DIRECTORS – GENERAL DUTY**

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

25. **BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR**

25.1 A person may be appointed as a Non-Executive Director only if

25.1.1 they are a member of a Public Constituency, or

25.1.2 where any of the Foundation Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university; and

25.1.3 they are not disqualified by virtue of paragraph 30 below.

25.2 On first appointment, re-appointment for each further term and throughout their term of office, the Chair and Non-Executive Directors are required to meet the Independence Criteria. In circumstances where, in relation to the Chair or a Non-Executive Director, the Independence Criteria are not met but the Board of Directors considers that the individual in question is independent this will be explained in the Annual Report.

26. **BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS**

26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair and the other Non-Executive Directors.

26.2 Further provisions regarding the process for the appointment of the Chair and the other Non-Executive Directors are set out in Annex 5.

26.3 Removal of the Chair or another Non-Executive Director shall require a resolution to be submitted by a Governor which must be seconded by not less than five Governors including at least two Elected Governors and two Appointed Governors, and requires the resolution in question to be approved by three-quarters of the members of the Council of Governors.

26.4 The Governor sponsoring the resolution mentioned in paragraph 26.3 above shall provide written reasons in support of the resolution to the Chair or other Non-Executive Director in question, who shall be given the opportunity to respond to such reasons at the meeting of the Council of Governors which the resolution is to be considered and voted upon. If the individual in question fails to attend the meeting without due cause, the meeting may proceed in their absence. The decision to proceed in these circumstances will be at the sole discretion of the person chairing the meeting in question.

26.5 In making any decision to remove either the Chair or a Non-Executive Director under paragraph 26.4 above, the Council of Governors shall take into account the results (if any) of the annual appraisal concerning the Chair (or, as the case may be) the Non-Executive Director in question.

- 26.6 If any resolution to remove either the Chair or a Non-Executive Director is not approved at a meeting of the Council of Governors in accordance with paragraph 26.3 above, no further resolution can be put forward to remove such Non-Executive Director, or the Chair which is based on the same reasons within 12 calendar months of the meeting of the Council of Governors at which the resolution mentioned in paragraph 26.3 above was considered.
- 26.7 Subject always to the Code, the maximum tenure for any individual holding the office of Non-Executive Director shall be nine years in aggregate unless exceptional circumstances apply. For the avoidance of doubt, exceptional circumstances shall be determined on a case by case basis.
- 26.8 In a situation where a Non-Executive Director becomes the Chair, the maximum tenure runs from the time of first appointment to the position of Non-Executive Director.
- 26.9 The process for appointing new Non-Executive Directors and the Chair is set out at Annex 5.

## **27. BOARD OF DIRECTORS – APPOINTMENT OF VICE CHAIR**

- 27.1 The Council of Governors at a general meeting or otherwise of the Council of Governors shall appoint one of the Non-Executive Directors as a Vice Chair for such period, not exceeding their term of office as a Non-Executive Director, as the Council of Governors may specify.
- 27.2 Any Non-Executive Director appointed under paragraph 27.1 may at any time resign from the office of Vice Chair by giving notice in writing to the Chair or Secretary. The Council of Governors may subsequently appoint another Non-Executive Director as Vice Chair in accordance with this Constitution.
- 27.3 If the Chair is unable to discharge their functions as Chair, the Vice Chair will be the "acting Chair" of the Foundation Trust until such time as the Chair is able to discharge their functions as Chair, or a new Chair is appointed by the Council of Governors in accordance with this Constitution.

## **28. BOARD OF DIRECTORS – APPOINTMENT OF SENIOR INDEPENDENT DIRECTOR**

- 28.1 The Board of Directors shall appoint one of the independent Non-Executive Directors (as set out in the Code) to be the Senior Independent Director in consultation with the Council of Governors, for such a period not exceeding the remainder of their term as a Non-Executive Director as they may specify on appointing them.
- 28.2 The Senior Independent Director will be available to Governors if they have concerns that the Chair is unable to resolve.

28.3 Any Non-Executive Director appointed under this paragraph 28 may at any time resign as the Senior Independent Director by giving notice in writing to the Chair or Secretary. Following a resignation another independent Non-Executive Director may be appointed to be the Senior Independent Director in accordance with this paragraph 28.

28.4 The Senior Independent Director shall perform the role set out in the Code.

29. **BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS**

29.1 The Non-Executive Directors shall appoint or remove the Chief Executive.

29.2 The appointment of the Chief Executive shall require the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

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

29.4 The Remuneration and Terms of Service Committee may from time to time nominate, by way of written resolution, one of the Executive Directors to be the Deputy Chief Executive and the resolution in question is to be approved by a majority of members of the Board of Directors present and voting at a meeting of the Board of Directors.

30. **BOARD OF DIRECTORS – DISQUALIFICATION**

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

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

30.1.2 a person in relation to whom a moratorium period under a debt relief order applied (under Part 7A of the Insolvency Act 1986);

30.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;

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

30.1.5 any other requirements that may be set out from time to time in the Regulatory Framework.

30.2 Further provisions as to the circumstances in which a person may not become or continue as a member of the Board of Directors are set out in Annex 5.

**31. BOARD OF DIRECTORS – MEETINGS**

31.1 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.

31.2 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. Minutes of meetings of the Board of Directors held in private shall be provided as required by the Code unless exceptional circumstances apply which shall be determined on a case by case basis.

**32. BOARD OF DIRECTORS – STANDING ORDERS**

The standing orders for the practice and procedure of the Board of Directors shall be read alongside this Constitution.

**33. BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS**

33.1 If a Director has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Board of Directors, the Director shall disclose that interest to the members of the Board of Directors as soon as they become aware of it.

33.2 The duties that a member of the Board of Directors of the Foundation Trust has include in particular:

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

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

33.3 The duty referred to in sub-paragraph 33.2.1 is not infringed if:

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

33.3.2 the matter has been authorised in accordance with this Constitution.

- 33.4 The duty referred to in sub-paragraph 33.2.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.5 In paragraph 33.2.2 "third party" means a person other than:
- 33.5.1 the Foundation Trust; or
  - 33.5.2 a person acting on its behalf.
- 33.6 If a Director of the Foundation Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Foundation Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 33.7 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 33.8 Any declaration required by this paragraph must be made before the Foundation Trust enters into the transaction or arrangement.
- 33.9 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 33.10 A Director need not declare an interest:
- 33.10.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 33.10.2 if, or to the extent that, the Directors are already aware of it;
  - 33.10.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
    - (a) by a meeting of the Board of Directors; or
    - (b) by a committee of the Directors appointed for the purpose under this Constitution.
- 33.11 A matter shall have been authorised for the purposes of paragraph 33.3.2 if:
- 33.11.1 the Board of Directors by majority disapplies the provision of this Constitution which would otherwise prevent a Director from being counted as participating in the decision-making process;
  - 33.11.2 the Director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or



33.11.3 the Director's conflict of interest arises from a permitted cause (in accordance with the Standing Orders for the Board of Directors as determined by the Board of Directors from time to time).

33.12 The Standing Orders for the Board of Directors contain further provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

#### **34. BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE**

34.1 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.

34.2 The Foundation Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

#### **35. REGISTERS**

35.1 The Foundation Trust shall have:

35.1.1 a register of Members showing, in respect of each Member, the constituency to which they belong and, where there are classes within it, the class to which they belong;

35.1.2 a register of members of the Council of Governors;

35.1.3 a register of interests of the members of the Council of Governors;

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

35.1.5 a register of interests of the members of the Board of Directors.

35.2 The Secretary shall be responsible for compiling and maintaining the registers in paragraph 35.1 above and the registers may be kept in either paper or electronic form. Admission to and removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 28 days of receipt.

#### **36. ADMISSION TO AND REMOVAL FROM THE REGISTERS**

36.1 Register of Members

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

- 36.1.1 Part one: shall be the register referred to in the 2006 Act, shall include the name of each Member and the constituency and, where there are classes within it, the class to which they belong.
- 36.1.2 Part two: shall contain all the information from the application for membership and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party (save to the extent that copies or extracts are made available as required by law and to the organisation appointed by the Foundation Trust to maintain the register of Members and to conduct elections).
- 36.1.3 Notwithstanding the provisions of paragraphs 36.1.1 and 36.1.2, the Foundation Trust shall extract such information as it needs in aggregate to satisfy itself that the actual membership of the Foundation Trust is representative of those eligible for membership and for the administration of the provisions of this Constitution.

## 36.2 Register of members of the Council of Governors

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

- 36.2.1 the name of each Governor;
- 36.2.2 their category of membership of the Council of Governors; and
- 36.2.3 an address through which they may be contacted, which may be the Secretary.

## 36.3 Register of interests of members of the Council of Governors

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

- 36.3.1 the name of each Governor; and
- 36.3.2 whether they have declared any interests and, if so, the interests declared in accordance with this Constitution and the Standing Orders for the Council of Governors.

## 36.4 Register of members of the Board of Directors

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

- 36.4.1 the name of each Director;
- 36.4.2 their capacity on the Board of Directors; and
- 36.4.3 an address through which they may be contacted which may be the Secretary.

36.5 Register of interests of members of the Board of Directors

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

36.5.1 the name of each Director;

36.5.2 whether they have declared any interests; and

36.5.3 if so, the interests declared in accordance with this Constitution and the Standing Orders for the Board of Directors.

**37. REGISTERS – INSPECTION AND COPIES**

37.1 The Foundation Trust shall not make any part of its registers available for inspection by members of the public which shows details of any Member, if the Member so requests.

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

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

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

37.3 If the person requesting a copy or extract is not a Member, the Foundation Trust may impose a reasonable charge for doing so.

**38. DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION**

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

38.1.1 a copy of the current Constitution;

38.1.2 a copy of the latest Annual Accounts and of any report of the Auditor on them; and

38.1.3 a copy of the latest Annual Report.

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

38.2.1 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.

- 38.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 38.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 38.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 38.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
  - 38.2.6 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.
  - 38.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
  - 38.2.8 a copy of any final report published under section 65I (administrator's final report),
  - 38.2.9 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.
  - 38.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 38.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 38.4 If the person requesting a copy or extract is not a Member, the Foundation Trust may impose a reasonable charge for doing so.

## 39. **AUDITOR**

- 39.1 The Foundation Trust shall have an Auditor.
- 39.2 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.

- 39.3 A person may only be appointed as the Auditor if they (or, in the case of a firm, each of its members) are a member of one or more of the bodies referred to in paragraph 23(4) of schedule 7 to the 2006 Act.
- 39.4 The Auditor is to carry out their duties in accordance with schedule 10 to the 2006 Act.
- 39.5 The Board of Directors may resolve that an External Auditor be appointed to review and publish a report on any other aspect of the Foundation Trust's performance. Any such External Auditor is to be appointed by the Board of Directors.

#### **40. AUDIT COMMITTEE**

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

#### **41. ACCOUNTS**

- 41.1 The Foundation Trust must keep proper accounts and proper records in relation to the accounts.
- 41.2 NHS England may with the approval of the Secretary of State give directions to the Foundation Trust as to the content and form of its accounts.
- 41.3 The accounts are to be audited by the Foundation Trust's Auditor.
- 41.4 The Foundation 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.
- 41.5 The functions of the Foundation Trust with respect to the preparation of the Annual Accounts shall be delegated to the Accounting Officer.

#### **42. ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK**

- 42.1 The Foundation Trust shall prepare an Annual Report and send it to NHS England.
- 42.2 The Annual Report must
- 42.2.1 review the extent to which the Foundation Trust has exercised its functions in accordance with the plans published under:
- (a) section 14Z52 of the 2006 Act (joint forward plans for integrated care board and its partners); and

- (b) section 14Z56 of the 2006 Act (joint capital resource use plan for integrated care board and its partners),
- 42.2.2 review the extent to which the Foundation Trust has exercised its functions consistently with NHS England's views set out in the latest statement published under section 13SA(1) of the 2006 Act (views about how functions relating to inequalities information should be exercised);
- 42.2.3 give information:
  - (a) on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;
  - (b) on any occasions in the period to which the report relates on which the council of governors exercised its power under paragraph 10C of Schedule 7 to the 2006 Act;
  - (c) on the remuneration of the directors and on the expenses of the Governors and the directors;
  - (d) on the impact that income received by the Foundation Trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the Foundation Trust of goods and services for those purposes; and
  - (e) on any other matter which NHS England requires.
- 42.3 The Foundation Trust shall give information as to its forward planning in respect of each Financial Year to NHS England.
- 42.4 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 42.5 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 42.6 Each forward plan must include information about:
  - 42.6.1 the activities other than the provision of goods and services for the purpose of the health service in England that the Foundation Trust proposes to carry on; and
  - 42.6.2 the income it expects to receive from doing so.

42.7 Where a forward plan contains a proposal that the Foundation Trust carry on an activity of a kind mentioned in paragraph 42.6.1 the Council of Governors must:

42.7.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Foundation Trust of its Principal Purpose or the performance of its functions; and

42.7.2 notify the directors of the Foundation Trust and its determination.

42.8 A Foundation 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 purpose 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 Foundation Trust voting approve its implementation.

#### **43. PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS**

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

43.1.1 the Annual Accounts;

43.1.2 any report of the Auditor on them; and

43.1.3 the Annual Report.

43.2 The documents shall also be presented to the Members of the Foundation Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.

43.3 The Foundation Trust may combine a meeting of the Council of Governors convened for the purposes of paragraphs 43.1 with the Annual Members' Meeting.

#### **44. INSTRUMENTS**

44.1 The Foundation Trust shall have a seal.

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

44.3 The seal shall not be affixed to any documents unless the sealing has been authorised by a resolution of the Board of Directors or of a committee thereof,

or where the Board of Directors has delegated its powers in accordance with the Scheme of Delegation.

- 44.4 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Finance Director (or their Nominated Officer) and authorised and countersigned by the Chief Executive (or their Nominated Officer who shall not be within the originating directorate).
- 44.5 Where it is necessary that a document shall be sealed, the seal of the Foundation Trust shall be affixed in the presence of two Officers duly authorised by the Chief Executive, and also not from the originating department, and shall be attested by them.
- 44.6 A document purporting to be duly executed under the Foundation Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.
- 44.7 The Secretary shall make an entry of every sealing (numbered consecutively) in a book maintained for that purpose, and shall ensure that each entry is signed by the persons who shall have approved and authorised the document and those who shall have attested the seal. The Secretary shall make a report of all sealings to the Board of Directors annually (the Secretary's report shall contain details of the seal number, the description of the document and date of sealing).
- 44.8 Further provisions regarding the signing of documents are set out in Annex 5.

## 45. **AMENDMENT OF THIS CONSTITUTION**

- 45.1 The Foundation Trust may make amendments to this Constitution only if:
  - 45.1.1 more than half of the members of the Council of Governors of the Foundation Trust present and voting at a meeting of the Council of Governors approve the amendments; and
  - 45.1.2 more than half of the members of the Board of Directors of the Foundation Trust present and voting at a meeting of the Board of Directors approve the amendments.
- 45.2 Amendments made under paragraph 45.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as this Constitution would, as a result of the amendment, not accord with Schedule 7 to the 2006 Act.
- 45.3 Where an amendment is made to this Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Foundation Trust):



- 45.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment;
  - 45.3.2 the Foundation Trust must give the Members present at the Annual Members' Meeting an opportunity to vote on whether they approve the amendment; and
  - 45.3.3 if more than half of the Members present and voting at the Annual Members' Meeting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Foundation Trust must take such steps as are necessary as a result.
- 45.4 Amendments by the Foundation Trust to this 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 this Constitution, as a result of the amendments, accords with Schedule 7 to the 2006 Act.
- 45.5 The following amendments to ancillary documents shall not be considered amendments to the Foundation Trust's Constitution and shall not be required to follow the process set out above:
- 45.5.1 new versions of the Model Rules for Elections which will be notified in accordance with paragraph 14.3 above;
  - 45.5.2 amendments to the Standing Orders for the Council of Governors and the Standing Orders for the Board of Directors shall be made in accordance with those documents;
  - 45.5.3 amendments to any Director Code of Conduct will follow the amendment process in that document; and
  - 45.5.4 amendments to any Governor Code of Conduct will follow the amendment process in that document.

## 46. **SIGNIFICANT TRANSACTIONS**

- 46.1 The Foundation Trust may only apply for a merger, acquisition, separation or dissolution ("**Statutory Transaction**") with the approval of more than half of the members of the Council of Governors.
- 46.2 The Foundation Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors approve entering into the transaction.
- 46.3 A Significant Transaction is a transaction which meets any of the following criteria (excluding Statutory Transactions):

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

46.4 For the purposes of this paragraph 46:

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

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

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

#### 47. **ELECTRONIC COMMUNICATIONS**

47.1 Meetings of the Foundation Trust, which for the avoidance of doubt includes the Council of Governors, may be conducted by electronic means (in whole or in part) provided that each person attending has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication where the meeting is hybrid.

- 47.2 A meeting at which one or more persons attends by way of electronic means the meeting will be deemed to be held at such a place as said meeting shall resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of persons attending the meeting are physically present, or in default of such a majority, the place at which the chair of the meeting is physically present.
- 47.3 Meetings held by electronic means remain subject to requirements in respect of quorum. For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.
- 47.4 Voting at meetings held by electronic means shall be as prescribed by the chair of the relevant meeting at the start of the relevant meeting or prior to a vote taking place.
- 47.5 The minutes of a meeting held in this way must state that it was held by electronic means and that all persons were all able to hear each other and were present throughout the meeting.
- 47.6 Meetings open to the public, if held by electronic means, should be open to public attendance by such means.
- 47.7 For the purposes of this paragraph "electronic means" shall include telephone, video conference or any other such electronic methods, which allows all participating persons in the meeting to hear and interact with each other.
- 47.8 Decisions of the Foundation Trust (which for the avoidance of doubt shall include decisions of the Council of Governors) may be made by outside of meetings through e-mail provided that:
- 47.8.1 the decision to be taken is not required by the Regulatory Framework to be taken at a meeting of either the Board of Directors or the Council of Governors (as applicable);
  - 47.8.2 the decision to be taken is communicated to all persons who would be entitled to vote on the decision had it been taken at a meeting;
  - 47.8.3 all persons who would be entitled to vote at a meeting are provided with reasonable time to consider and respond and such timescales are to be set out in the e-mail requesting the decision;
  - 47.8.4 the decision is made in accordance with any quorum required by the Regulatory Framework; and
  - 47.8.5 the outcome of the decision is communicated to all those entitled to vote by the Secretary and reported at the next relevant meeting.

47.9 Unless otherwise stated in this Constitution or the Standing Orders, notices and documents required to be sent by the Foundation Trust under this Constitution or the Standing Orders may be sent by e-mail where such notices are required to be in writing. This paragraph does not prevent an individual requesting a notice to be in hardcopy form by exception.

#### **48. NOTICES**

48.1 Save where a specific provision of this Constitution otherwise requires or permits, any notice required by this Constitution to be given shall be given in writing.

48.2 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice served pursuant to paragraph 48.1 above shall be deemed to have been received 48 hours after the envelope containing it was posted, or in the case of a notice contained in an e-mail, at the time it was sent.

#### **49. INDEMNITY**

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

49.2 To the extent permissible by law, the Foundation Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Foundation Trust, the Council of Governors, the Board of Directors and the Secretary.

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

#### **50. DEFECTIVE APPOINTMENTS**

Acts done by the Foundation Trust or of a committee or by a person acting as a director or Governor shall not be invalidated by the subsequent realisation that the appointment of any such director or Governor person acting as a director or Governor was defective.

## ANNEX 1

### THE PUBLIC CONSTITUENCIES

The Foundation Trust has three Public Constituencies as follows:

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

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

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



## **ANNEX 2**

### **THE STAFF CONSTITUENCY**

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

### ANNEX 3

#### COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors is to comprise:

<b>Constituency</b>	<b>Number of seats on the Council of Governors</b>
<b>Elected Governors</b>	
<b>Public Constituency</b>	<b>11</b>
East Service Area	5
West Service Area	5
Other	1
<b>Staff Constituency</b>	<b>4</b>
<b>Appointed Governors</b>	<b>4</b>
Cornwall Council	1
Council of the Isles of Scilly	1
Truro and Penwith College	1
Volunteer Cornwall	1
<b>Total</b>	<b>19</b>

## **ANNEX 4**

### **ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS**

#### **1. Elected Governors**

A Member of the Public Constituency may not vote at an election for a Public Governor unless at the time of voting they have made and returned a declaration in the form specified in the Model Rules for Elections, that they are qualified to vote as a Member of the Public Constituency.

#### **2. Appointed Governors**

2.1 The Secretary (or such person as they may nominate) shall contact each relevant Local Authority and Partnership Organisation in writing regarding the appointment of the Governor by it.

#### **3. Lead Governor/Designated Governor**

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

3.2 The Lead Governor shall have the responsibilities, and perform the tasks, set out in the Lead Governor role description.

3.3 The term of the Lead Governor shall be as decided at the time of the appointment.

#### **4. Further provisions as to eligibility to be a Governor**

4.1 In addition to paragraph 16 of this Constitution, a person may not become or continue as a Governor if:

4.1.1 they are not a Member;

4.1.2 in the case of a Public Governor or Staff Governor they cease to be a Member of the Constituency for which they were elected;

4.1.3 in the case of an Appointed Governor the organisation which appointed them:

4.1.3.1 terminates that appointment; and/or

4.1.3.2 ceases to exist;

4.1.4 they are a person who is not a fit and proper person as required by the NHS Provider Licence;

- 4.1.5 they have been required to notify the police of their name and address as a result of being convicted or cautioned under the Sexual Offences Act 2003 or other applicable legislation or their name appears a Barred List as defined in the Safeguarding Vulnerable Groups Act 2006;
- 4.1.6 they (or an organisation of which they were a director) have been found guilty of an offence under the Modern Slavery Act 2015;
- 4.1.7 they (or an organisation of which they were a director) have been found guilty of an offence under the Bribery Act 2010 or any other applicable law relating to fraud, financial crime or terrorist financing;
- 4.1.8 they are the spouse, partner, parent, child of, or occupant of the same household as a director or a member of the Council of Governors;
- 4.1.9 they are a member of a local authority's Overview and Scrutiny Committee covering health matters or hold a role at a local authority which involves the review or scrutiny of health matters;
- 4.1.10 they are a director of the Foundation Trust;
- 4.1.11 they have been a director of the Foundation Trust in the preceding year prior to the date of their nomination to stand for election as an Elected Governor, or in the case of an Appointed Governor, the date of their appointment;
- 4.1.12 they have resigned as a Governor or had their office terminated pursuant to this Constitution within a five year period prior to the date that nominations closed. To avoid doubt, where a person appealed their removal from office the period of five years shall run from the date the appeal outcome was determined;
- 4.1.13 they are a governor, non-executive director (including the chair) or, executive director (including the chief executive officer) of another Health Service Body, unless they are appointed by an appointing organisation which is a Health Service Body or the Chair agrees to them becoming, or continuing as, a governor of the Foundation Trust in exceptional circumstances;
- 4.1.14 they have within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
- 4.1.15 they are a person whose tenure of office as a Chair or as a member or director of a Health Service Body has been terminated on the grounds that their appointment is not in the interests of the NHS, for

- non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 4.1.16 they are exercising functions of the manager pursuant to Section 23 of the Mental Health Act 1983 (as amended);
  - 4.1.17 they have previously been removed as a Governor of the Foundation Trust;
  - 4.1.18 they have previously been removed as a governor from another NHS foundation trust;
  - 4.1.19 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of any Governor Code of Conduct;
  - 4.1.20 they have committed a serious breach of the Governor Code of Conduct;
  - 4.1.21 they lack capacity within the meaning of the Mental Capacity Act 2005 to carry out all the duties and responsibilities of a Governor;
  - 4.1.22 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 4.1.23 they have had their name removed from a list maintained under regulations pursuant to sections 91 (Persons performing primary medical services), 106 (Persons performing primary dental services), 123 (Persons performing primary ophthalmic services), or 146 (Persons performing local pharmaceutical services) of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales, and they have not subsequently had their name included in such a list;
  - 4.1.24 they are deemed a vexatious or persistent complainant (as defined in the Foundation Trust's policy for handling complaints) or litigant against the Foundation Trust without reasonable cause; or
  - 4.1.25 they have failed to repay (without good cause) any amount of monies properly owed to the Foundation Trust.
- 4.2 Where a person has been elected or appointed to be a Governor and they become disqualified or are removed from office pursuant to this Constitution, they shall notify the Chair or Secretary in writing of such disqualification and/or (as the case may be), removal as soon as is practicable and, in any event, within 14 days of first becoming aware of those matters which rendered them disqualified or removed. Any failure to notify the Secretary of grounds for

disqualification pursuant to this paragraph 4.2 shall result in such individual becoming ineligible to become a Governor in the future.

- 4.3 If it comes to the notice of the Chair or Secretary at the time of taking office or later that a Governor is so disqualified, the Chair or Secretary shall immediately declare that the person in question is disqualified and notify them in writing to that effect as soon as is practicable.
- 4.4 Upon despatch of any notification under paragraphs 4.2 or 4.3 above, that person's tenure of office, if any, shall be terminated immediately and they shall cease to act as a Governor. The Secretary remove their name from the register of members of the Council of Governors.
- 4.5 Where a Governor resigns, they are disqualified or their office is terminated, they shall not be eligible to stand for re-election or re-appointment to the Council of Governors for a period of five years from the date of their resignation, disqualification or removal from office or the date upon which any appeal against his removal from office is disposed of whichever is later.

## **5. Removal of Governor from office**

- 5.1 Where there is an alleged breach of the Governor Code of Conduct or where any grounds of disqualification are alleged against a Governor but not yet proven, the provisions of this paragraph 5 shall apply.
- 5.2 The Chair shall be authorised to take such action as may be immediately required, including the temporary exclusion of the Governor concerned from any meeting or temporary exclusion from their role.
- 5.3 Where the Chair, in consultation with the Senior Independent Non-Executive Director. considers the alleged breach requires investigation, the following process will apply:
  - 5.3.1 The Senior Independent Director will (with the assistance of a member of the Chief People Officer's team) draft the terms of reference and appoint an Investigating Officer (a Foundation Trust employee with appropriate experience).
  - 5.3.2 The Investigating Officer will carry out a reasonable investigation, including meeting with the relevant Governor where appropriate, to establish the facts of the case. The Investigating Officer will prepare an investigation report which the Senior Independent Non-Executive Director will review in consultation with an HR Manager to determine whether the alleged breach will:
    - 5.3.2.1 be referred to a Non-Compliance Panel,

5.3.2.2 result in other action being taken, which may include a warning or a requirement for further training; or

5.3.2.3 result in no further action being taken.

5.4 Where a Non Compliance Panel is required:

5.4.1 A Non-Compliance Panel will be formed comprising the Senior Independent Non-Executive Director and three Governors to include at least one public Governor and one staff Governor. A Foundation Trust HR Manager will be assigned to support the Panel.

5.4.2 The Governor must be notified in writing of the decision to progress the matter to a Non-Compliance Panel. The Governor will be given at least 48 hours' notice of a Non-Compliance Panel and invited to prepare a Statement of Case to present at the Non-Compliance Panel. The Governor may be accompanied at the Non-Compliance Panel for support; it would generally be expected that such companion would be another Governor of the Foundation Trust.

5.4.3 The Investigating Officer and Governor will present their respective cases at the Non-Compliance Panel following which the Panel will make a recommendation to the Council of Governors.

5.4.4 The Council of Governors, by three-quarters majority of those present and voting can decide whether to uphold the charge.

5.5 Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by the Governor concerned to the dispute resolution procedure set out at annex 7 of the Constitution.

5.6 Upon disqualification, removal or termination of a Governor's office, the Secretary shall cause their name to be removed immediately from the register of members of the Council of Governors.

## **6. Remuneration**

Governors are not to receive remuneration from the Foundation Trust other than expenses as permitted by the Regulatory Framework, provided that this shall not prevent the remuneration of Governors by their employer.

## **7. Vacancies**

7.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of a term of office, the following provisions will apply.

7.2 Where the vacancy arises amongst the Elected Governors, the Council of Governors shall decide either:

- 7.2.1 to call an election within three months to fill the seat for the remainder of that term of office; or
  - 7.2.2 to invite the next highest polling candidate for that seat at the most recent election or (where relevant) by-election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and be subject to election for any unexpired period of the term of office, or
  - 7.2.3 to leave the seat vacant until the next scheduled elections provided that elections continue to be held annually.
- 7.3 Where the vacancy arises amongst the Appointed Governors, the Foundation Trust will request that the relevant organisation appoints a Replacement Governor within 30 days to hold office for the remainder of the term of office. Appointed Governors shall be replaced in accordance with the processes set out in this Constitution.
- 7.4 The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

## **8. Council of Governors: declarations**

- 8.1 The specified form of declaration referred to at paragraph 14.5 of this Constitution regarding the declaration to stand for election as an Elected Governor shall be as set out on the nomination paper referred to in the Model Rules for Elections and shall state as follows:

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

- 8.2 The specified form of declaration referred to at paragraph 14.5 of this Constitution regarding the declaration to vote in elections for Public Governors will be as set out in Rule 21 of the Model Rules for Elections.



## ANNEX 5

### BOARD OF DIRECTORS - FURTHER PROVISIONS

#### 1. Disqualification of directors

- 1.1 In addition to paragraph 30 of this Constitution, a person may not become or continue as a Director if:
- 1.1.1 they have been required to notify the police of their name and address as a result of being convicted or cautioned under the Sexual Offences Act 2003 or other applicable legislation or their name appears a Barred List as defined in the Safeguarding Vulnerable Groups Act 2006;
  - 1.1.2 they (or an organisation of which they were a director) have been found guilty of an offence under the Modern Slavery Act 2015;
  - 1.1.3 they (or an organisation of which they were a director) have been found guilty of an offence under the Bribery Act 2010 or any other applicable law relating to fraud, financial crime or terrorist financing;
  - 1.1.4 they are the spouse, partner, parent, child of, or occupant of the same household as a Director or a member of Council of Governors;
  - 1.1.5 they are a member of a local authority's Overview and Scrutiny Committee covering health matters;
  - 1.1.6 they are a Governor;
  - 1.1.7 they are a governor, non-executive director (including the Chair) or, executive director (including the chief executive officer) of another Health Service, unless:
    - 1.1.7.1 in the case of an executive director other than the Chief Executive, the Chair, following consultation with the Chief Executive;
    - 1.1.7.2 in the case of the Chief Executive, the Chair, following consultation with the Board of Directors;
    - 1.1.7.3 in the case of a non-executive director other than the Chair, the Chair following consultation with the Council of Governors; or
    - 1.1.7.4 in the case of the Chair, the Senior Independent Director, following consultation with the Board of Directors and the Council of Governors,

agrees to them becoming, or continuing as, a Director;

- 1.1.8 they are a person whose tenure of office as a Chair or as a member or director of a Health Service Body has been terminated on the grounds that their appointment is not in the interests of the NHS, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
  - 1.1.9 in the case of a non-executive Director, they have refused, without reasonable cause, to fulfil any training requirement established by the Board of Directors;
  - 1.1.10 they lack capacity within the meaning of the Mental Capacity Act 2005 to carry out all the duties and responsibilities of a Director;
  - 1.1.11 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 1.1.12 they have had their name removed from a list maintained under regulations pursuant to sections 91 (Persons performing primary medical services), 106 (Persons performing primary dental services), 123 (Persons performing primary ophthalmic services), or 146 (Persons performing local pharmaceutical services) of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and they have not subsequently had their name included in such a list;
  - 1.1.13 they are deemed a vexatious or persistent complainant in accordance (as defined in the Foundation Trust's policy for handling complaints) or litigant against the Foundation Trust without reasonable cause;
  - 1.1.14 they have failed to repay (without good cause) any amount of monies properly owed to the Foundation Trust; or
  - 1.1.15 they fail to satisfy the fit and proper persons requirements for directors as detailed in Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, as may be amended from time to time.
- 1.2 Where a Director becomes disqualified for appointment under paragraph 1 of this Annex or paragraph 30 of this Constitution, they shall notify the Secretary in writing of such disqualification.
  - 1.3 If it comes to the notice of the Secretary that at the time of their appointment or later the Director is so disqualified, they shall immediately declare that the Director in question is disqualified and notify them in writing to that effect.

- 1.4 Where a Director is disqualified their tenure of office shall automatically terminate and they shall cease to hold office with immediate effect.

## **2. Expenses**

- 2.1 The Foundation Trust may reimburse executive Directors travelling and other costs and expenses incurred in carrying out their duties in accordance with the Foundation Trust's policies. These are to be disclosed in the Annual Report.

## **3. Process for appointing Non-Executive Directors and the Chair**

- 3.1 The Council of Governors shall have a Nominations Committee which shall be constituted in accordance with paragraph 3.2 below.
- 3.2 The Nominations Committee shall consist of the Chair and three Governors. The Chair shall be the chair of the Nominations Committee. The Vice Chair (or if the Vice Chair is absent, or is disqualified from participating on grounds of conflict of interest, another independent Non-Executive Director chosen by the members of the Council of Governors) shall preside as the chair of the Nominations Committee when it is considering items relating to the Chair. If the number of Governors prepared to serve on the Nominations Committee is greater than the number of places available, the Nominations Committee members will be selected by election by their peer Governors.
- 3.3 The Nominations Committee constituted under paragraph 3.2 may be supported by appropriate external advisers. Further the Nominations Committee should take account of the views of the Board of Directors on the qualifications, skills and experience required for the position.
- 3.4 Each member of the Nominations Committee will have one vote and, in the event of an equality in votes, the person chairing the Nominations Committee will have a second or casting vote.
- 3.5 The Nominations Committee will make recommendations to the Council of Governors, including recommendations about pay.
- 3.6 Subject to the provisions of paragraphs 25 and 26 of this Constitution, the process for appointing new Non-Executive Directors and the Chair will be as follows:
  - 3.6.1 Not less than six months before the end of the term of office, or as soon as the Chair or a Non-Executive Director (as the case may be) resigns, the Nominations Committee will seek a suitable replacement.
  - 3.6.2 Subject always to the Code and this Constitution, where the Nominations Committee considers that either the Chair or the Non-Executive Director coming to the end of their term of office should be

appointed for a further term, the Nominations Committee shall make a recommendation to the Council of Governors to that effect.

3.6.3 Where:

3.6.3.1 the Nominations Committee does not make a recommendation that the Chair or a Non-Executive Director should be reappointed in accordance with paragraph 3.6.2 above; or

3.6.3.2 the Chair or (as the case may be) the Non-Executive Director in question resigns or does not want to be reappointed; or

3.6.3.3 the Council of Governors rejects a recommendation that the Chair or (as the case may be) a Non-Executive Director should be reappointed in accordance with paragraph 3.6.2 above,

the Nominations Committee shall initiate a process of open competition for the appointment of the Chair and/or Non-Executive Director, and the post will be advertised.

3.7 Where the Nominations Committee initiates a process of open competition and arranges for the post to be advertised, the Nominations Committee will appoint an Interview Panel to shortlist and interview potential candidates for the position.

3.8 Each member of the Interview Panel will have one vote, and in the event of an equality in votes, the person chairing the Interview Panel will have a second or casting vote.

3.9 The Nominations Committee will invite a member of the ICB and/or a representative from NHS England to sit on the Interview Panel. The Nominations Committee may also invite the Chair of another NHS foundation trust to sit on the Interview Panel. For the avoidance of doubt, each of the individuals referenced in this paragraph shall have a vote. The Interview Panel will be chaired by a Governor.

3.10 For the avoidance of doubt, a chair of another NHS foundation trust, a member of the ICB and/or a representative from NHS England, as an Interview Panel member, is not a member of the Nominations Committee.

3.11 Interview Panels shall be constituted in accordance with this paragraphs 3.13 and 3.14 of this Annex.

- 3.12 The Council of Governors will not consider nominations for Non-Executive membership of the Board of Directors other than those made by the appropriate Nominations Committee.

#### **Interview Panel for the Chair**

- 3.13 The Interview Panel for the Chair will consist of a minimum of two Elected Governors, one Appointed Governor and the Vice Chair (or if the Vice Chair is absent, or is disqualified from participating on grounds of conflict of interest, another Non-Executive Director chosen by the members of the Council of Governors) in addition to the individuals to be invited to be members pursuant to paragraph 3.9 above.

#### **Interview Panel for Non-Executive Directors**

- 3.14 The Interview Panel for the Non-Executive Directors will consist of a minimum of three Governors and the Chair (or if the Chair is absent, or is disqualified from participating on grounds of conflict of interest, the Vice Chair or another Non-Executive Director chosen by the members of the Council of Governors) in addition to the individuals to be invited to be members pursuant to paragraph 3.9 above.

### **4. Signature of documents other than under seal**

- 4.1 Where the signature of any document will be a necessary step in legal proceedings involving the Foundation Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.
- 4.2 The Chief Executive or their Nominated Officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Foundation Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors or a committee of the Board of Directors to which the Board of Directors has delegated appropriate authority.
- 4.3 Notwithstanding the generality of paragraphs 4.1 and 4.2 above in land transactions the signing of certain supporting documents may be delegated to Nominated Officers, as set out in the Scheme of Delegation, but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works, or main warranty agreements) or any document which is required to be executed as a deed.

## ANNEX 6

### FURTHER PROVISIONS - MEMBERSHIP

#### 1 Representative membership

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

#### 2 Foundation Trust Special Members' Meetings

2.1 Notwithstanding any provisions contained in this Constitution regarding the Annual Members' Meeting, meetings of the Council of Governors and the Board of Directors, the Board of Directors may resolve to call special meetings of the Foundation Trust for the benefit of its Members (a "**Special Members' Meeting**").

2.2 Special Members' Meetings are open to all Members of the Foundation Trust, Governors, Directors, and representatives of the Auditor and any External Auditor, but not to members of the general public or representatives of the press unless the Council of Governors and the Board of Directors determine otherwise.

2.3 Notwithstanding the provisions of paragraph 2.3 above, the Council of Governors and/or the Board of Directors may invite representatives of the press and any experts or advisors whose attendance they consider to be in the best interests of the Foundation Trust to attend a Special Members' Meeting.

2.4 All Special Members' Meetings are to be convened by the Secretary by order of the Board of Directors and the following provisions of paragraphs 2.5 and 2.6 shall apply for these purposes.

2.5 Notice of a Special Members' Meeting is to be given to all Members, Governors, Directors, the Auditor and any External Auditor, personally, or:

2.5.1 by notice prominently displayed at the Foundation Trust Head Office and at each of the Foundation Trust Premises; and

2.5.2 by notice on the Foundation Trust's website,

at least three days before the date of the meeting.

2.6 The notice referred to in paragraph 2.5 above must;

- 2.6.1 state the time, date and place of the meeting; and
- 2.6.2 indicate the business to be dealt with at the meeting.
- 2.7 No business may be conducted at a Special Members' Meeting unless a quorum is present. The quorum for Special Members' Meetings is the Chair (or the Vice Chair) and at least one Member from each of the Staff Constituency and the Public Constituency.
- 2.8 It is the responsibility of the person chairing the meeting to ensure that:
  - 2.8.1 any issues to be decided upon at the meeting are clearly explained; and
  - 2.8.2 sufficient information is provided to those in attendance to enable rational discussion to take place.
- 2.9 The Chair or in their absence the Vice Chair shall act as Chair at all Special Members' Meetings. If neither the Chair nor the Vice Chair is present, the members of the Council of Governors present shall elect one of their number to chair the meeting; if there is only one Governor present and willing to act, then they shall chair the meeting.
- 2.10 If at any Special Members' Meeting, there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned to such date, time and place as the Board of Directors shall in its absolute discretion determine, and the Secretary shall give or shall procure the giving of notice to all Members, Governors, Directors, the Auditor or any External Auditor of the date, time and place of that adjourned meeting. Notwithstanding the provisions of paragraph 2.7 above, upon reconvening, those present shall constitute a quorum.
- 2.11 Any resolution put to the vote at a Special Members' Meeting shall be decided upon by a poll.
- 2.12 Every Member present is to have one vote. In the case of an equality of votes the person chairing the meeting is to have a second and casting vote.
- 2.13 The result of any vote will be declared by the person chairing the meeting and the Secretary shall cause the result to be entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

### **3 Disqualification from membership**

- 3.1 A person may not become or continue as a Member:

- 3.1.1 they are under fourteen years of age at the date of their application or invitation to become a Member (as the case may be);
  - 3.1.2 in the five years preceding the date of their application or invitation to become a Member, they have demonstrated aggressive or violent behaviour at any Foundation Trust Premises or against the Foundation Trust's employees, Volunteers or other persons who exercise functions for the purposes of the Foundation Trust whether or not in circumstances leading to their removal or exclusion from any Foundation Trust Premises;
  - 3.1.3 they have been confirmed as a 'vexatious complainant' (as defined in the Foundation Trust's policy for handling complaints);
  - 3.1.4 they have within the preceding five years been removed as a member from another NHS foundation trust;
  - 3.1.5 they have been deemed to have acted in a manner contrary to the interests of the Foundation Trust or the NHS;
  - 3.1.6 they fail or cease to fulfil the criteria for membership of the Public Constituency or the Staff Constituency; or
  - 3.1.7 in the case the Public Constituency, the individual's principal place of residence is not within an area specified in Annex 1.
- 3.2 Where the Foundation Trust is on notice that a Member may be disqualified from membership, or may no longer be eligible to be a Member, or where it appears to the Secretary that the individual no longer wishes to be a Member of the Foundation Trust, the Secretary shall give the Member 14 days' written notice to show cause why their name should not be removed from the Foundation Trust's register of Members. On receipt of any such information supplied by the Member, the Secretary may, if they consider it appropriate, remove the Member from the Foundation Trust's register of Members. In the event of any dispute about entitlement to membership, the dispute shall be resolved in accordance with the procedure set out in paragraph 1 of Annex 9.
- 3.3 All Members shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a Member.

#### **4 Expulsion from membership**

- 4.1 A Member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors.



- 4.2 The following procedure is to be adopted:
- 4.2.1 any Member may complain to the Secretary that another Member has acted in a way detrimental to or contrary to the interests of the Foundation Trust, or is otherwise disqualified as set out in paragraph 3 above; and
- 4.2.2 subject to paragraphs 4.3 to 4.7 below, if a complaint is made, the Council of Governors, or a delegated committee, sub-committee or joint committee of the Council of Governors and the Board of Directors, will consider the complaint, having taken such steps as it (or they) consider appropriate, to ensure that each Member's point of view is heard and may either:
- (a) dismiss the complaint and take no further action; or
  - (b) arrange for a resolution to expel the Member complained of to be considered at the next meeting of the Council of Governors.
- 4.3 If a resolution to expel a Member is to be considered at a meeting of the Council of Governors pursuant to paragraph 4.2.2(a) above, details of the complaint must be sent to the Member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and to attend the meeting.
- 4.4 At the meeting referred to in paragraph 4.3 above, the Council of Governors will consider the evidence in support of the complaint and such other evidence as the Member complained of may wish to place before them.
- 4.5 If the Member complained of fails to attend the meeting mentioned in paragraph 4.3 above without due cause, the meeting may proceed in their absence. The decision to proceed in these circumstances will be at the sole discretion of the person chairing the meeting in question.
- 4.6 A person expelled from membership under the provisions of paragraphs 4.1 to 4.5 above will cease to be a Member upon the declaration by the person chairing the meeting that the resolution to expel them is carried.
- 4.7 No person who has been expelled from membership pursuant to the provisions of paragraphs 4.1 to 4.6 above is to be re-admitted as a Member except by a resolution of the Council of Governors carried by votes of two-thirds of the members of the Council of Governors present and voting at a general meeting of the Council of Governors.

## **5 Termination of Membership**

5.1 A Member shall cease to be a Member on:

5.1.1 death; or

5.1.2 resignation by notice in writing to the Secretary; or

5.1.3 ceasing to fulfil the requirements of membership as set out in this Constitution; or

5.1.4 being disqualified pursuant to the terms of this Constitution.

## **ANNEX 7**

### **DISPUTE RESOLUTION PROCEDURES**

#### **1 Membership disputes**

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

#### **2 Other disputes**

- 2.1 In the event of any dispute in relation to this Constitution that concerns anything other than membership, the dispute shall be referred to the Chair who shall make a determination on the point in issue. If the Member or complainant (as the case may be) is aggrieved at the decision of the Chair they may appeal in writing within 14 days of the Chair's decision to the Board of Directors whose decision shall be final.
- 2.2 In the event of a dispute being referred to the Chair regarding the termination of a Governor's tenure pursuant to the Standing Orders for the Council of Governors, and a determination being made in accordance with the procedure set out in paragraph 2.1 above, if the Governor in question is aggrieved at the decision of the Board of Directors they may apply in writing within seven days to the Board of Directors for the decision to be referred to an independent assessor. The independent assessor will then consider the evidence and conclude whether the proposed removal is reasonable or otherwise.
- 2.3 On receipt of an application under paragraph 2.2 above, the Board of Directors and the applicant Governor will co-operate in good faith to agree on the appointment of the independent assessor. If the parties fail to agree on an independent assessor within 21 days of the date upon which the application is received by the Board of Directors, the independent assessor will be nominated by the Centre for Dispute Resolution. The independent assessor's decision will be binding and conclusive on the parties.

#### **3 Disputes between the Council of Governors and the Board of Directors**

- 3.1 In the event of dispute between the Council of Governors and the Board of Directors:
- 3.1.1 in the first instance the Chair on the advice of the Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;

- 3.1.2 if the Chair is unable to resolve the dispute they shall appoint a committee comprising equal numbers of Directors and Governors to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute (the "**Special Committee**");
- 3.1.3 if the recommendations (if any) of the Special Committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

## **ANNEX 8**

### **ANNUAL MEMBERS MEETINGS**

#### **1 Annual Members' Meeting**

- 1.1 In accordance with paragraph 12.1 of this Constitution, the Foundation Trust shall hold an Annual Members' Meeting in each Financial Year and shall present to that meeting:
- 1.1.1 a report on the proceedings of its meetings held since the last Annual Members' Meeting;
  - 1.1.2 a report on the progress since the last Annual Members' Meeting in developing the membership strategy including the steps taken to ensure that, taken as a whole, the actual membership of the Public Constituency is representative of those eligible to be Members under this Constitution;
  - 1.1.3 any changes to the membership strategy since the last Annual Members' Meeting;
  - 1.1.4 a report on any change to the Governors and (where relevant) any proposed changes to the Foundation Trust's policy for the composition of the Council of Governors which has taken place since the last Annual Members' Meeting; and
  - 1.1.5 a report approved by the Chair regarding the performance of the Foundation Trust and the accounts of the Foundation Trust for the preceding Financial Year and the future service development plans of the Foundation Trust.

## **ANNEX 9**

### **MODEL RULES FOR ELECTIONS**

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## **PART 1 INTERPRETATION**

1. Interpretation

## **PART 2 TIMETABLE FOR ELECTION**

2. Timetable
3. Computation of time

## **PART 3 RETURNING OFFICER**

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

## **PART 4 STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

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

## **PART 5 CONTESTED ELECTIONS**

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (Public Constituency)

### *Action to be taken before the poll*

22. List of eligible voters
23. Notice of poll
24. Issue of voting information by returning officer
25. Ballot paper envelope and covering envelope
26. E-voting systems

### *The poll*

27. Eligibility to vote
28. Voting by persons who require assistance

29. Spoilt ballot papers and spoilt text message votes
30. Lost voting information
31. Issue of replacement voting information
32. ID declaration form for replacement ballot papers (Public Constituency)
33. Procedure for remote voting by internet
34. Procedure for remote voting by telephone
35. Procedure for remote voting by text message

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

36. Receipt of voting documents
37. Validity of votes
38. Declaration of identity but no ballot (Public Constituency)
39. De-duplication of votes
40. Sealing of packets

## **PART 6 COUNTING THE VOTES**

41. Interpretation of Part 6
42. Arrangements for counting of the votes
43. The count
44. Rejected ballot papers and rejected text voting records
45. First stage
46. The quota
47. Transfer of votes
48. Supplementary provisions on transfer
49. Exclusion of candidates
50. Filling of last vacancies
51. Order of election of candidates

## **PART 7 FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS**

52. Declaration of result for contested elections
53. Declaration of result for uncontested elections

## **PART 8 DISPOSAL OF DOCUMENTS**

54. Sealing up of documents relating to the poll
55. Delivery of documents
56. Forwarding of documents received after close of the poll
57. Retention and public inspection of documents
58. Application for inspection of certain documents relating to election

## **PART 9 DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

59. Countermand or abandonment of poll on death of candidate

## **PART 10 ELECTION EXPENSES AND PUBLICITY**



### *Expenses*

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

### *Publicity*

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

## **PART 11 QUESTIONING ELECTIONS AND IRREGULARITIES**

- 66. Application to question an election

## **PART 12 MISCELLANEOUS**

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

## **PART 1 INTERPRETATION**

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### **1. Interpretation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **PART 2 TIMETABLE FOR ELECTIONS**

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### **2. Timetable**

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

Proceeding	Time
Publication of notice of election	Not later than the 40th day before the day of the close of the poll.
Final day for delivery of nomination forms to returning officer	Not later than the 28th day before the day of the close of the poll.
Publication of statement of nominated Candidates	Not later than the 27th day before the day of the close of the poll.

Final day for delivery of notices of withdrawals by candidates from election	Not later than 25th day before the day of the close of the poll.
Notice of the poll	Not later than the 15th day before the day of the close of the poll.
Close of the poll	By 5pm on the final day of the election.

### 3. Computation of time

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

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

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

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

## PART 3 RETURNING OFFICER

### 4. Returning Officer

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

### 5. Staff

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

### 6. Expenditure

- 6.1. The corporation is to pay the returning officer:
  - (a) any expenses incurred by that officer in the exercise of his or her functions

under these rules;

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

## **7. Duty of co-operation**

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

## **PART 4 STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

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### **8. Notice of election**

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

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

### **9. Nomination of candidates**

- 9.1. Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.
- 9.2. The returning officer:
  - (a) is to supply any member of the corporation with a nomination form; and

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

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

## **10. Candidate's particulars**

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

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

## **11. Declaration of interests**

11.1. The nomination form must state:

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

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

## **12. Declaration of eligibility**

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

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

## **13. Signature of candidate**

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

- (a) they wish to stand as a candidate;

- (b) their declaration of interests as required under rule 11, is true and correct; and
- (c) their declaration of eligibility, as required under rule 12, is true and correct.

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

#### **14. Decisions as to the validity of nomination**

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

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

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

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

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

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

14.5. The returning officer is to send notice of the decision as to whether a nomination is

valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an email address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

## **15. Publication of statement of candidates**

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

## **16. Inspection of statement of nominated candidates and nomination forms**

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

## **17. Withdrawal of candidates**

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

## **18. Method of election**

- 18.1. If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Council of Governors, a poll is to be taken in accordance with Parts 5 and 6 of



these rules.

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

## **PART 5 COUNTING THE VOTES**

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### **19. Poll to be taken by ballot**

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

be used for the purpose of the election is:

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

## **20. The ballot paper**

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

20.2. Every ballot paper must specify:

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

20.3. Each ballot paper must have a unique identifier.

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

reproduced.

## **21. The declaration of identity (Public Constituency)**

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

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

("declaration of identity")

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

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

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

### **Action to be taken before the poll**

## **22. List of eligible voters**

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

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

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

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

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

## **23. Notice of poll**

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

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

## **24. Issue of voting information by returning officer**

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

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

("postal voting information").

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

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

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

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

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

for the purposes of the poll.

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

email address is included in that list, then the returning officer shall only send that information by email.

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

## **25. Ballot paper envelope and covering envelope**

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

- 25.2. The covering envelope is to have:

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

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

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

## **26. E-Voting systems**

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

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

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

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

- (a) require a voter to:
  - (i) enter his or her voter ID number; and

- (ii) where the election is for a Public Constituency, make a declaration of identity;

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

(b) specify:

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

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

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

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

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

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

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

(a) require a voter to:

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

- (b) specify:
  - (i) the name of the corporation;
  - (ii) the constituency, or class within a constituency, for which the election is being held;
  - (iii) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency;
  - (iv) instructions on how to vote and how to make a declaration of identity;
  - (v) the date and time of the close of the poll; and
  - (vi) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
  - (i) the voter's voter ID number;
  - (ii) the voter's declaration of identity (where required);
  - (iii) the candidate or candidates for whom the voter has voted; and
  - (iv) the date and time of the voter's vote;
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

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

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

in order to be able to cast his or her vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:



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

## **The poll**

### **27. Eligibility to vote**

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

### **28. Voting by persons who require assistance**

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

### **29. Spoilt ballot papers and spoilt text message votes**

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

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

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

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

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

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

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

### **30. Lost voting information**

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

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

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

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

- (a) the name of the voter;

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

### **31. Issue of replacement voting information**

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

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

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

### **Polling by internet, telephone or text**

### **33. Procedure for remote voting by internet**

- 33.1. To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2. When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.3. If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4. To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.

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

#### **34. Voting procedure for remote voting by telephone**

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

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

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

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

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

#### **35. Voting procedure for remote voting by text message**

35.1. To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.

35.2. The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.

35.3. The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

#### **36. Receipt of voting documents**

36.1. Where the returning officer receives:

(a) a covering envelope; or

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

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

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

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

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

### **37. Validity of votes**

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

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

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

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

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

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

37.5. Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as

applicable) aside for counting after the close of the poll.

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

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

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

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

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

### **39. De-duplication of votes**

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

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

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

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

- (a) mark the ballot paper "disqualified";
- (b) if there is an ID declaration form accompanying the ballot paper, mark it "disqualified" and attach it to the ballot paper;

- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

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

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

#### **40. Sealing of packets**

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

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

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

## **PART 6 COUNTING THE VOTES**

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### **41. Interpretation of Part 6**

41.1. In Part 6 of these rules:

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

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

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

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

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

"non-transferable vote" means a ballot document:

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

or

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

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

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

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

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

"quota" means the number calculated in accordance with rule 46;



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

"stage of the count" means:

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

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

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

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

## **42. Arrangements for counting of the votes**

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

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

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

## **43. The count**

43.1. The returning officer is to:

- (a) count and record the number of:

- (i) ballot papers that have been returned; and
- (ii) the number of internet voting records, telephone voting records and/or text voting records that have been created; and

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

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

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

#### **44. Rejected ballot papers and rejected text voting records**

44.1. Any ballot paper:

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

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

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

44.3. Any text voting record:

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

(c) which is unmarked or rejected because of uncertainty;

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

- 44.4. The returning officer is to endorse the word "rejected" on any text voting record which under this rule is not to be counted.
- 44.5. The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule 44.1 and the number of text voting records rejected by him or her under each of the subparagraphs (a) to (c) of rule 44.3.

#### **45. First stage**

- 45.1. The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.
- 45.2. The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.
- 45.3. The returning officer is to also ascertain and record the number of valid ballot documents.

#### **46. The quota**

- 46.1. The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.
- 46.2. The result, increased by one, of the division under rule 46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as "the quota").
- 46.3. At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules 47.1 to 47.3 has been complied with.

#### **47. Transfer of votes**

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

continuing candidate; or

- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

47.2. The returning officer is to count the number of ballot documents in each parcel referred to in rule 47.1.

47.3. The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.1 (a) to the candidate for whom the next available preference is given on those ballot documents.

47.4. The vote on each ballot document transferred under rule 47.3 shall be at a value ("the transfer value") which:

- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus; and
- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

47.5. Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:

- (a) according to the next available preference given on those ballot documents for any continuing candidate; or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

47.6. The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

47.7. The vote on each ballot document transferred under rule 47.6 shall be at:

- (a) a transfer value calculated as set out in rule 47.4(b); or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred;

whichever is the less.

47.8. Each transfer of a surplus constitutes a stage in the count.

47.9. Subject to rule 47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

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

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

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

#### **48. Supplementary provisions on transfer**

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

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

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

- (a) record the total value of the votes transferred to each candidate;
- (b) add that value to the previous total of votes recorded for each candidate and record the new total;
- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes; and
- (d) compare:

- (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes; with
- (ii) the recorded total of valid first preference votes.

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

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

#### **49. Exclusion of candidates**

49.1. If:

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

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

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

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

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

49.4. The exclusion of a candidate, or of two or more candidates together, constitutes a

further stage of the count.

- 49.5. If, subject to rule 50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule 49.1 into sub- parcels according to their transfer value.
- 49.6. The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- 49.7. The vote on each transferable ballot document transferred under rule 49.6 shall be at the value at which that vote was received by the candidate excluded under rule 49.1.
- 49.8. Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- 49.9. After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule 49.1.
- 49.10. The returning officer shall after each stage of the count completed under this rule:
  - (a) record:
    - (i) the total value of votes; or
    - (ii) the total transfer value of votes transferred to each candidate;
  - (b) add that total to the previous total of votes recorded for each candidate and record the new total;
  - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total; and
  - (d) compare:
    - (iii) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
    - (iv) the recorded total of valid first preference votes.
- 49.11. If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules 47.5 to 47.10 and rule 48.
- 49.12. Where the total of the votes of the two or more lowest candidates, together with any

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

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

(a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded; and

(b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

## **50. Filling of last vacancies**

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

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

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

## **51. Order of election of candidates**

51.1. The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule 47.10.

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

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

51.4. Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the



candidate on whom the lot falls shall be deemed to have been elected first.

## **PART 7 FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS**

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### **52. Declaration of result for contested elections**

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

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected;
- (b) give notice of the name of each candidate who he or she has declared elected:
  - (i) where the election is held under a proposed constitution pursuant to powers conferred on the Trust by section 33(4) of the 2006 Act, to the chair of Cornwall Partnership NHS Trust; or
  - (ii) in any other case, to the chair of the corporation; and
- (c) give public notice of the name of each candidate who he or she has declared elected.

52.2. The returning officer is to make:

- (a) the number of first preference votes for each candidate whether elected or not;
- (b) any transfer of votes;
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place;
- (d) the order in which the successful candidates were elected; and
- (e) the number of rejected ballot papers under each of the headings in rule 44.1;
- (f) the number of rejected text voting records under each of the headings in rule 44.3;

available on request.

### **53. Declaration of result for uncontested elections**

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

- (a) declare the candidate or candidates remaining validly nominated to be elected;

97

- (b) give notice of the name of each candidate who he or she has declared elected to the chair of the corporation; and
- (c) give public notice of the name of each candidate who he or she has declared elected.

## **PART 8 DISPOSAL OF DOCUMENTS**

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### **54. Sealing up of documents relating to the poll**

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

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

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

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

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

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

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

- (a) its contents;
- (b) the date of the publication of notice of the election;

- (c) the name of the corporation to which the election relates; and
- (d) the constituency, or class within a constituency, to which the election relates.

## **55. Delivery of documents**

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

## **56. Forwarding of documents received after close of the poll**

56.1. Where:

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

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

## **57. Retention and public inspection of documents**

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

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

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

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

58.1. The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing:
  - (i) any rejected ballot papers, including ballot papers rejected in

- part;
  - (ii) any rejected text voting records, including text voting records rejected in part;
  - (iii) any disqualified documents, or the list of disqualified documents;
  - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records; or
  - (v) the list of eligible voters; or
- (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage;

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

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

58.3. The Board of Directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

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

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

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

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

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

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

## **PART 9 DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

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### **59. Countermand or abandonment of poll on death of candidate**

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

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

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

## **PART 10 ELECTION EXPENSES AND PUBLICITY**

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### **60. Election expenses**

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

### **61. Expenses and payments by candidates**

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

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

## **62. Election expenses incurred by other persons**

62.1. No person may:

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

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

## **Publicity**

### **63. Publicity about election by the corporation**

63.1. The corporation may:

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

as it considers necessary.

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

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

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

#### **64. Information about candidates for inclusion with voting information**

- 64.1. The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.
- 64.2. The information must consist of:
- (a) a statement submitted by the candidate of no more than 250 words;
  - (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility ("numerical voting code"); and
  - (c) a photograph of the candidate.

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

- 65.1. In this Part, the phrase "for the purposes of an election" means with a view to, or otherwise in connection with, promoting or procuring a candidate's election, including the prejudicing of another candidate's electoral prospects; and the phrase "for the purposes of a candidate's election" is to be construed accordingly.
- 65.2. The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

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

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#### **66. Application to question an election**

- 66.1. An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHS Improvement (Monitor).
- 66.2. An application may only be made once the outcome of the election has been declared by the returning officer.
- 66.3. An application may only be made to NHS Improvement (Monitor) by:
- (a) a person who voted at the election or who claimed to have had the right to vote; or
  - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 66.4. The application must:

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

## **PART 12 MISCELLANEOUS**

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### **67. Secrecy**

67.1. The following persons:

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

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

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

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

67.3. The returning officer is to make such arrangements as he or she thinks fit to ensure



that the individuals who are affected by this provision are aware of the duties it imposes.

**68. Prohibition of disclosure of vote**

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

**69. Disqualification**

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

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

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

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

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

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