



Great Western Hospitals
NHS Foundation Trust

**GREAT WESTERN HOSPITALS NHS
FOUNDATION TRUST**

(A PUBLIC BENEFIT CORPORATION)

CONSTITUTION

Great Western Hospitals NHS Foundation Trust Constitution

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PREAMBLE

An NHS Foundation Trust is a Public Benefit Corporation which is authorised under the National Health Service Act 2006 to provide goods and services for the purposes of the health service in England. A Public Benefit Corporation is a body corporate which is constituted in accordance with Schedule 7 of the National Health Service Act 2006. The Constitution provides, inter alia, for the Trust to have Members, Governors and Directors and determines who may be eligible for membership and how Governors and Directors are elected or appointed and defines their respective roles and powers.

1 Name

1.1 The name of the Trust is to be "Great Western Hospitals NHS Foundation Trust".

2 Principal Purpose

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

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

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

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

2.3.2 the promotion and protection of public health.

2.4 The Trust may also carry on activities other than those mentioned in paragraph 2.3 above for the purpose of making additional income available in order to better carry on its Principal Purpose.

3 Powers

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

3.2 In the exercise of its powers the Trust shall have regard to the core principles of the National Health Service ("NHS"), as set out in Appendix 1 of Annex 8.

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

3.4 Subject to any restriction contained in this Constitution or in the 2006 Act, and to paragraph 3.5 below, any of these powers may be delegated to a committee of Directors or to an Executive Director.

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

4 Other purposes

- 4.1 The purpose of the Trust is to provide goods and services, including education, training and research and other facilities for purposes related to the provision of health care, in accordance with its statutory duties.
- 4.2 The Trust may carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others.
- 4.3 The Trust may also undertake activities other than those mentioned in paragraphs 4.1 and 4.2 above. These activities must be for the purpose of making additional income available in order to carry out the Trust's Principal Purpose better.

5 Membership and constituencies

- 5.1 The Trust shall have Members, each of whom shall be a member of the following constituencies:
 - 5.2 the Public Constituency ; or
 - 5.3 the Staff Constituency.

6 Application for membership

- 6.1 An individual who is eligible to become a Member of the Trust may do so on application to the Trust as set out in paragraphs 7 and 8 below.

7 Public Constituency

- 7.1 Subject to the provisions of paragraphs 1 and 2 of Appendix 2 to Annex 8, an individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a Member of the Trust.
- 7.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the "Public Constituency".
- 7.3 The minimum number of Members in each area for the Public Constituency is specified in Annex 1.
- 7.4 An eligible individual shall become a Member upon entry to the Trust's register of Members pursuant to an application by them. The Secretary may require any individual to supply supporting evidence to confirm eligibility.
- 7.5 On receipt of an application for membership and subject to being satisfied that the applicant is eligible the Secretary shall cause the applicant's name to be entered in the Trust's register of Members.

8 Staff Constituency

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided:
- 8.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Individuals who are employed by a designated Trust Subcontractor or who are included in a designated Volunteer Scheme and who otherwise exercise functions for the purposes of the Trust may become or continue as members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the “Staff Constituency”.
- 8.4 The minimum number of members in each staff class within the Staff Constituency is specified in Annex 2.
- 8.5 An individual who is eligible to become a member of the Staff Constituency under paragraph 8.1 above and who is invited by the Trust to become a member of the Staff Constituency shall become a Member of the Trust as a member of the Staff Constituency without an application being made unless he informs the Trust that he does not wish to do so.
- 8.6 Any individual who is eligible to become a member of the Staff Constituency under paragraph 8.2 above shall become a member upon entry to the Trust's register of Members pursuant to an application by them.
- 8.7 On receipt of an application for membership as described in paragraph 8.6 above and subject to being satisfied that the applicant is eligible, the Secretary shall cause the applicant's name to be entered into the Trust's register of Members.
- 8.8 The Trust shall designate individuals as Trust Subcontractors and (or, as the case may be) Volunteer Schemes who exercise functions for the purposes of the Trust for the purpose of paragraph 8.2 above, and the Secretary shall maintain a register of Trust Subcontractors and Volunteer Schemes.
- 8.9 For the purposes of paragraphs 8.1 and 8.2 above, Chapter 1 of Part 14 of the Employments Rights Act 1996 applies for the purposes of determining whether an individual has been continuously employed by the Trust, or has continuously exercised functions for the purposes of the Trust.
- 8.10 Subject to the provisions of paragraphs 1.1 and 1.2 of Annex 2, the Staff Constituency shall be divided into 4 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

9 Restriction on Membership

- 9.1 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.
- 9.2 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.
- 9.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Appendix 2 of Annex 8.

9A Annual Members' Meeting

- 9A.1 The Trust shall hold an annual meeting of its Members ("Annual Members Meeting") which shall be open to members of the public.

10 Council of Governors – composition

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

11 Council of Governors – election of Governors

- 11.1 Elections for Elected Governors shall be conducted in accordance with the Model Rules for Elections using the alternative rules marked "FPP" (First Past the Post), as may be varied from time to time, and are attached at Annex 4.
- 11.2 A variation of the Model Rules for Elections shall not constitute a variation of the terms of this Constitution.
- 11.3 An election, if contested, shall be by secret ballot.
- 11.4 A person may not vote at an election for or stand for election as an Elected Governor unless within the specified period stated in the Model Rules for Elections he has made a declaration in the form specified in paragraphs 5.1 and/or 5.2 (as appropriate) of Appendix 4 of Annex 5 of this Constitution, setting out the particulars of his qualification to vote or stand as a member of the constituency for which the election is being held. It is an offence (other than in relation to the Staff Constituency) to knowingly or recklessly make such a declaration which is false in a material particular.

12 Council of Governors - tenure

12.1 Elected Governors

- 12.1.1 An Elected Governor may hold office for a period of up to 3 years.
- 12.1.2 An Elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 12.1.3 An Elected Governor shall be eligible for re-election at the end of his term.

12.2 Appointed Governors

- 12.2.1 An Appointed Governor shall hold office for a period of 3 years.
 - 12.2.2 An Appointed Governor shall cease to hold office if the sponsoring organisation withdraws its sponsorship of him by notice in writing to the Secretary.
 - 12.2.3 Subject to paragraph 12.2.4 below, an Appointed Governor shall be eligible for re-appointment at the end of his term.
 - 12.2.4 An Appointed Governor may hold office for a maximum of 6 consecutive years and may then not be reappointed for a further 5 years.
- 12.3 For the purposes of the tenure provisions set out in paragraphs 12.1 and 12.2 above, a "year" means a period of 12 consecutive months commencing immediately on the date of Authorisation.

13 Council of Governors – disqualification and removal

- 13.1 The following may not become or continue as a member of the Council of Governors:
- 13.1.1 a person who has been adjudged bankrupt or whose estate has been sequestered and (in either case) has not been discharged;
 - 13.1.2 a person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it;
 - 13.1.3 a person who within the preceding five years has been convicted in the British Islands of any offence and a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
 - 13.1.4 a person who within the preceding five years has been removed from the governing body under paragraph 13 of the Constitution or has resigned or been removed from the governing body as detailed in paragraph 4.12.12 of Annex 6 Standing Orders For The Practice And Procedure Of The Council Of Governors.
- 13.2 Governors must be at least 18 years of age at the date they are nominated for election or appointment.

- 13.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Appendix 1 of Annex 5.
- 13.4 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary.
- 13.5 If a Governor fails throughout a period of six consecutive months from the date of his last attendance, to attend any meeting of the Council of Governors, its Committees, Sub-Committees or Working Groups, his tenure of office is to be terminated immediately unless a two thirds majority of the other Governors are satisfied that:

13.5.1 the absence was due to a reasonable cause; and

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

The absent Governor shall be discounted during any agreed period of absence (absences agreed by the Council of Governors) and their seat shall be discounted from voting statistics; including where special voting requirements apply.

- 13.6 If a Governor is considered to have acted in a manner inconsistent with:

13.6.1 the core principles of the NHS, as set out in Appendix 1 of Annex 8; or

13.6.2 the Standing Orders for the Practice and Procedure of the Council of Governors, as set out in Annex 6 ("the Standing Orders for Governors"); or

13.6.3 the Governor's Code of Conduct; or

13.6.4 he has failed to declare an interest as required by this Constitution or the Standing Orders for Governors, or he has spoken or voted at a meeting on a matter in which he has an interest contrary to this Constitution or the Standing Orders Governors, and in this paragraph "interest" includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect, and

he is adjudged to have so acted by a majority of not less than 75% of the members of the Council of Governors present and voting at a Special Meeting of the Council of Governors then the Governor shall vacate his office immediately.

- 13.7 The Standing Orders for Governors shall provide for the process and voting requirements to be adopted in cases relating to the termination of a Governor's tenure.

13A Council of Governors – duties of Governors

- 13A.1 The general duties of the Council of Governors are:

13A.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and

13A.1.2 to represent the interests of the Members of the Trust as a whole and the interests of the public.

13A.2 The Trust must take steps to ensure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

14 Council of Governors – meetings of Governors

14.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 21.1 below) or, in his absence, the Deputy Chair (appointed in accordance with the provisions of paragraph 21.1 below), or as per paragraph 4.7.3 of annex 6, a Non-Executive Director shall chair the meeting shall preside at meetings of the Council of Governors and the person chairing the meeting shall have a second or casting vote.

14.2 Meetings of the Council of Governors shall be open to members of the public and Members of the Trust. Members of the public and Members of the Trust 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.

15 Council of Governors – standing orders

15.1 The Standing Orders for Governors are attached at Annex 6.

15A Council of Governors – referral to the Panel

15A.1 In this paragraph, “the Panel” means a panel of persons appointed by NHS Improvement to which a Governor may refer a question as to whether the Trust has failed or is failing to act in accordance with:

15A.1.1 the Constitution; or

15A.1.2 provisions made by or under Chapter 5 of the 2006 Act.

15A.2 A Governor may refer a question to the Panel only if more than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors approve the referral.

16 Council of Governors - conflicts of interest of Governors

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

16.2 The Standing Orders for 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.

17 Council of Governors – travel and other expenses

17.1 The Trust may pay travelling and other costs and expenses to members of the Council of Governors at such rates as the Trust decides from time to time.

18 Council of Governors – further provisions

18.1 Further provisions with respect to the Council of Governors are set out in Annex 5, these include:

18.1.1 Eligibility to be on the Council of Governors;

18.1.2 Council of Governors: objectives;

18.1.3 Roles and responsibilities of Governors;

18.1.4 Remuneration;

18.1.5 Vacancies;

18.1.6 Meetings;

18.1.7 Committees, sub-committees and joint committees;

18.1.8 Council of Governors: declarations.

19 Board of Directors – composition

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

19.2 The Board of Directors is to comprise:

19.2.1 a Non-Executive Director Chair; and

19.2.2 a minimum of 4 (four) and a maximum of 7 (seven) other Non-Executive Directors; and

19.2.3 a minimum of 4 (four) and a maximum of 7 (seven) Executive Directors,

PROVIDED THAT the number of Non-Executive Directors plus the Chair shall exceed the number of Executive Directors.

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

19.4 The Chief Executive shall be the Accounting Officer.

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

- 19.6 One of the Executive Directors is to be a registered medical practitioner (within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984).
- 19.7 One of the Executive Directors is to be a registered nurse or a registered midwife (within the meanings of the Nurse and Midwifery Order 2001 (SI 2002/253)).
- 19.8 In the event that the number of Non-Executive Directors (including the Chair) is equal to the number of Executive Directors, the Chair (and in his absence, the Deputy Chair), shall have a second or casting vote at meetings of the Board of Directors in accordance with the Standing Orders for the Board of Directors attached at Annex 7.
- 19.9 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.
- 19.10 Subject to the provisions of paragraphs 19.3 to 19.7 above, the Board of Directors shall determine any change in the number of Directors, PROVIDED THAT any change in the number of Directors is within the range set out in paragraph 19.2 above.

19A Board of Directors – general duty

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

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

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

20.1.1 he is a member of the Public Constituency; and

20.1.2 he is not disqualified by virtue of paragraph 24 below.

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

21.1 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.

21.2 Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

21.3 The process for appointing new Non-Executive Directors and the Chair will be as set out in paragraph 1 of Appendix 3 of Annex 8.

22 Board of Directors – appointment of Deputy Chair

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

23 Board of Directors - appointment and removal of the Chief Executive and other Executive Directors

- 23.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 23.2 The appointment of the Chief Executive is subject to the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors.
- 23.3 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

24 Board of Directors – disqualification

- 24.1 The following may not become or continue as a member of the Board of Directors:
 - 24.1.1 a person who has been adjudged bankrupt or whose estate has been sequestered and (in either case) has not been discharged;
 - 24.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
 - 24.1.3 a person who within the preceding five years has been convicted of any offence anywhere in the world and a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
 - 24.1.4 a person whose tenure of office as a chair or member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of the health service;
 - 24.1.5 a person who has had his name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list;
 - 24.1.6 a person who has 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;
 - 24.1.7 a person who is a Governor of the Trust or an executive or non-executive director or a governor of another NHS Foundation Trust, an executive or non-executive director, chair, chief executive officer of another Health Service Body or a body corporate whose business includes the provision of health care services, or which includes the provision of any service to the Trust;
 - 24.1.8 a person who is a member of a local authority Health Overview and Scrutiny Committee;
 - 24.1.9 a person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986;

- 24.1.10 a person who has failed without reasonable cause to fulfil any training requirement established by the Board of Directors;
- 24.1.11 a person who has failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Directors' Code of Conduct;
- 24.1.12 a person who is an Immediate Family Member of a Director; or
- 24.1.13 a person who is the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register.

24A Board of Directors – meetings

- 24A.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.
- 24A.2 Before holding a meeting, the Board of Directors must send a copy of the agenda for 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.
- 24A.3 Further provisions relating to meetings of the Board of Directors are set out in Standing Order 3 of Annex 7 to this Constitution.

25 Board of Directors – standing orders

- 25.1 The standing orders for the practice and procedure of the Board of Directors (“Standing Orders for the Board of Directors”) are attached at Annex 7.

26 Board of Directors - conflicts of interest of Directors

- 26.1 The duties that a Director has by virtue of being a Director of the Trust include in particular:
 - 26.1.1 A duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust (a “Conflict”).
 - 26.1.2 A duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 26.2 The duty referred to in sub-paragraph 26.1.1 above is not infringed if:
 - 26.2.1 the situation cannot reasonably be regarded as likely to give rise to a Conflict; or
 - 26.2.2 the matter has been authorised in accordance with the Constitution.
- 26.3 The duty referred to in sub-paragraph 26.1.2 above is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a Conflict.

- 26.4 In sub-paragraph 26.1.2 above and 26.10.3.5 below, “third party” means a person other than:
- 26.4.1 the Trust; or
 - 26.4.2 a person acting on its behalf.
- 26.5 If a Director has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 26.6 If a declaration under this paragraph 26 proves to be, or becomes, inaccurate or incomplete a further declaration must be made.
- 26.7 Any declaration required by this paragraph 26 must be made before the Trust enters into the transaction or arrangement.
- 26.8 This paragraph 26 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.
- 26.9 A Director need not declare an interest:
- 26.9.1 If the interest cannot reasonably be regarded as likely to give rise to a Conflict.
 - 26.9.2 If, or to the extent that, the Directors are already aware of the interest.
 - 26.9.3 If, or to the extent that, the interest concerns terms of the Director’s appointment that have been or are to be considered:
 - 26.9.3.1 by a meeting of the Board of Directors; or
 - 26.9.3.2 by a committee of the Directors appointed for that purpose under the Constitution.
- 26.10 A matter shall have been authorised for the purposes of paragraph 26.2.2 above if:
- 26.10.1 The Directors, in accordance with the requirements set out in this paragraph 26.10, authorise any matter or situation proposed to them by any Director which would, if not authorised, involve a Director (an “Interested Director”) breaching his duty under paragraph 26.1.1 above to avoid Conflicts.
 - 26.10.2 Any authorisation under this paragraph 26.10 will be effective only if:
 - 26.10.2.1 the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Directors under the provisions of this Constitution [or in such other manner as the Directors may determine];

- 26.10.2.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other Interested Director; and
 - 26.10.2.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other Interested Director's vote had not been counted.
- 26.10.3 Any authorisation of a Conflict under this paragraph 26.10 may (whether at the time of giving the authorisation or subsequently):
- 26.10.3.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised;
 - 26.10.3.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict;
 - 26.10.3.3 provide that the Interested Director shall or shall not be an eligible Director in respect of any future decision of the Directors in relation to any resolution related to the Conflict;
 - 26.10.3.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit;
 - 26.10.3.5 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a Director of the Trust) information that is confidential to a third party, he will not be obliged to disclose that information to the Board of Directors, or to use it in relation to the Trust's affairs where to do so would amount to a breach of that confidence; and
 - 26.10.3.6 permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the Directors and be excused from reviewing papers prepared by, or for, the Directors to the extent they relate to such matters.
- 26.10.4 Where the Directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict.
- 26.10.5 The Directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation in accordance with the terms of such authorisation.
- 26.10.6 A Director is not required, by reason of being a Director, to account to the Trust for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the Directors (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

26.11 Subject to paragraph 26.12 below, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chairman whose ruling in relation to any Director other than the Chairman is to be final and conclusive.

26.12 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chairman, the question is to be decided by a decision of the Directors (other than the Chairman) at that meeting, for which purpose the Chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

27 Board of Directors – remuneration and terms of office

27.1 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.

27.2 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors ("the Remuneration Committee")

28 Registers

28.1 The Trust shall have:

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

28.1.2 a register of members of the Council of Governors;

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

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

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

28.2 The Secretary shall be responsible for compiling and maintaining the registers in paragraph 28.1 and the registers may be kept in either paper or electronic form. Removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 14 days of receipt.

29 Admission to and removal from the registers

29.1 Register of Members

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

29.1.1 Part one, which shall be the register referred to in the 2006 Act, shall include the name of each Member and the constituency or class to which they belong, and shall be open to inspection by the public in accordance with paragraphs 30 and 31 below; and

29.1.2 Part two shall contain all the information from the application form and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party.

29.1.3 Notwithstanding the provisions of paragraphs 29.1.1 and 29.1.2 above, the Trust shall extract such information as it needs in aggregate to satisfy itself that the actual membership of the Trust is representative of those eligible for membership and for the administration of the provisions of this Constitution.

29.2 **Register of members of the Council of Governors**

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

29.2.1 the name of each Governor;

29.2.2 their category of membership of the Council of Governors (public, staff, local authority, other partnership organisation); and

29.2.3 an address through which they may be contacted which may be the Secretary.

29.3 **Register of interests of members of the Council of Governors**

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

29.3.1 the name of each Governor; and

29.3.2 whether he has declared any interests and, if so, the interests declared in accordance with this Constitution or the Standing Orders for Governors.

29.4 **Register of members of the Board of Directors**

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

29.4.1 the name of each Director;

29.4.2 their capacity on the Board of Directors; and

29.4.3 an address through which they may be contacted which may be the Secretary.

29.5 **Register of interests of members of the Board of Directors**

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

29.5.1 the name of each Director;

29.5.2 whether he has declared any interests; and

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

30 Registers – inspection and copies

- 30.1 The Trust shall make the registers specified in paragraphs 29.1 to 29.5 above available for inspection by members of the public, subject to the conditions set out in paragraphs 30.2 to 30.4 or as otherwise prescribed by regulations including for the avoidance of doubt, the Public Benefit Corporation (Register of Members) Regulations 2004 (SI 2004/539).
- 30.2 The Trust shall not make any part of the register specified in paragraph 29.1 above (the register of Members) available for inspection by members of the public which shows details of any Member of the Trust, if the Member so requests.
- 30.3 So far as the registers are required to be made available:
- 30.3.1 they are, subject to paragraph 30.4 below, to be available for inspection free of charge at all reasonable times; and
- 30.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 30.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

31 Documents available for public inspection

- 31.1 Subject to paragraph 31.3 below, the Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 31.1.1 a copy of the current Constitution;
- 31.1.2 a copy of the latest Annual Accounts and of any report of the Auditor on them; and
- 31.1.3 a copy of the latest Annual Report.
- 31.1A Subject to paragraph 31.3 below, the Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 31.1A.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.
- 31.1A.2 A copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
- 31.1A.3 A copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.

- 31.1A.4 A copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 31.1A.5 A copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
 - 31.1A.6 A copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHS Improvement's decision), 65KB (Secretary of State's response to NHS Improvement'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.
 - 31.1A.7 A copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 31.1A.8 A copy of any final report published under section 65I (administrator's final report).
 - 31.1A.9 A copy of any statement published under section 65J (power to extend time) or 65 KC (action following Secretary of State's rejection of final report) of the 2006 Act.
 - 31.1A.10 A copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 31.2 Any person who requests a copy of or extract from any of the documents listed in paragraphs 31.1.1 to 31.1.6 above is to be provided with a copy, or extract.
- 31.3 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

32 Auditor

- 32.1 The Trust is to have an Auditor.
- 32.2 The Council of Governors at a general meeting shall appoint or remove the Trust's Auditor but in doing so shall consider the views of the Trust's Audit Committee.
- 32.3 The Accounting Officer shall ensure that the Auditor carries out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any guidance or best practice advice issued by NHS Improvement on standards, procedures and techniques to be adopted.

33 Audit Committee

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

34 Accounts and records

- 34.1 The Trust must keep proper accounts and proper records in relation to those accounts.
- 34.2 NHS Improvement may with the approval of the Secretary of State for Health, give directions to the Trust as to the content and form of its accounts.
- 34.3 The accounts are to be audited by the Auditor.
- 34.4 The following documents will be made available to the Comptroller and Auditor General for examination at his request:
- 34.4.1 the accounts;
 - 34.4.2 any records relating to them; and
 - 34.4.3 any report of the Auditor on them.
- 34.5 The Trust shall prepare in respect of each Financial Year Annual Accounts in such form as NHS Improvement may with the approval of the Secretary of State direct.
- 34.6 NHS Improvement may with the approval of the Secretary of State for Health direct the Trust:
- 34.6.1 to prepare accounts in respect of such period or periods as may be specified in the direction; and/or
 - 34.6.2 that any accounts prepared by it by virtue of paragraph 34.6.1 above are to be audited in accordance with such requirements as may be specified in the direction.
- 34.7 In preparing its Annual Accounts or in preparing any accounts by virtue of paragraph 34.6.1 above, the Trust must comply with any directions given by NHS Improvement with the approval of the Secretary of State for Health as to:
- 34.7.1 the methods and principles according to which the Annual Accounts must be prepared; and/or
 - 34.7.2 the content and form of the Annual Accounts.
- 34.8 The Trust must:
- 34.8.1 lay a copy of the Annual Accounts, and any report of the Auditor on them, before Parliament; and
 - 34.8.2 send copies of the Annual Accounts, and any report of the Auditor on them to NHS Improvement within such a period as NHS Improvement may direct.
- 34.9 The Trust must send a copy of any accounts prepared by virtue of paragraph 34.6.1 above and a copy of any report of the Auditor to NHS Improvement within such a period as Monitor NHS Improvement may direct.

34.10 The functions of the Trust in respect of this paragraph 34 shall be delegated to the Accounting Officer.

35 Annual Report, Forward Plans and non-NHS Work

35.1 The Trust shall prepare an Annual Report and send it to NHS Improvement.

35.2 Each Annual Report must give:

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

35.2.2 information on the impact that income received by the Trust otherwise than from the fulfilment of the Principal Purpose has had on the provision by the Trust of goods and services for those purposes; and

35.2.3 such other information as may be prescribed by NHS Improvement.

35.3 The Trust shall give information as to its forward planning each Financial Year to NHS Improvement.

35.4 The Forward Plan shall be prepared by the Directors.

35.5 In preparing the Forward Plan, the Directors shall have regard to the views of the Council of Governors.

35.6 Each Forward Plan must include information about:

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

35.6.2 the income that it expects to receive from doing so.

35.7 Where a Forward Plan contains a proposal that the Trust carry on an activity of a kind mentioned in paragraph 35.6.1 above, the Council of Governors must:

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

35.7.2 notify the Directors of the Trust of its determination.

35.8 The Trust may implement a proposal to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the fulfilment of the Principal Purpose only if more than half of the members of the Council of Governors present and voting approve the implementation of the proposal.

36 Presentation of the Annual Accounts and reports to the Governors and Members

- 36.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 36.1.1 the Annual Accounts;
 - 36.1.2 any report of the Auditor on them; and
 - 36.1.3 the Annual Report.
- 36.2 The documents shall also be presented to the Members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 36.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 36.1 with the Annual Members' Meeting.

37 Instruments

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

37A Amendment of the Constitution

- 37A.1 The Trust may make amendments to its Constitution only if:
- 37A.1.1 more than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors, approve the amendments; and
 - 37A.1.2 more than half of the members of the Board of Directors present and voting at a meeting of the Board of Directors, approve the amendments.
- 37A.2 Amendments made under paragraph 37A.1 above shall take effect as soon as the conditions in that paragraph are satisfied, but the amendments shall have no effect in so far as the Constitution would, as a result of the amendments, not accord with Schedule 7 of the 2006 Act.
- 37A.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 37A.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment;
 - 37A.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment; and
 - 37A.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 Trust must take such steps as are necessary as a result.

37A.4 Amendments by the Trust to its Constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

37B Mergers etc. and significant transactions

37B.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.

37B.2 The Constitution does not contain any descriptions of the term 'significant transaction' for the purposes of section 51A of the 2006 Act and therefore, for the avoidance of doubt, no transactions or arrangements are 'significant transactions' for the purposes of section 51A of the 2006 Act.

38 Interpretation and definitions

38.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act as amended by the 2012 Act.

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

38.3 References in this Constitution to legislation include all amendments, replacements or re-enactments made and include all subordinate legislation made thereunder.

38.4 Headings are for ease of reference only and are not to affect interpretation.

38.5 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.

38.6 In this Constitution:

"2006 Act"

means the National Health Service Act 2006;

"2012 Act"

means the Health and Social Care Act 2012;

"Accounting Officer"

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

"Annual Accounts"

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

"Annual Members' Meeting"

has the meaning ascribed to it in paragraph 9A.1 of this Constitution;

"Annual Report"

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

"Appointed Governors"

means a Local Authority Governor, or an Other Partnership Governor;

"Area of the Trust"

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

"Audit Committee"

means a committee of the Board of Directors as established pursuant to paragraph 33 of this Constitution;

"Auditor"

means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph 32 of this Constitution;

"Authorisation"

means the authorisation issued to the Trust by NHS Improvement Monitor under section 35 of the 2006 Act and the term "Authorised" shall be construed accordingly;

"Board of Directors"

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

"Certificate of Clearance"

has the meaning ascribed to it in paragraph 3 of Appendix 1 of Annex 5 of this Constitution;

"Chair"

means the Chair of the Trust. The expression "the Chair" shall be deemed to include the Deputy Chair or any other Non-Executive Director appointed if the Chair and/or Deputy Chair is absent from the meeting or otherwise unavailable, and references to "Chairmanship" shall be construed accordingly;

"Chief Executive"

means the Chief Executive of the Trust;

"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;

"Conflict"

has the meaning ascribed to it in paragraph 26.1.1 of the Constitution;

"Constitution"

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

"Council of Governors"

means the Council of Governors as constituted in this Constitution, which has the same meaning as the "Board of Governors" in paragraph 7 of Schedule 7 to the 2006 Act;

"Deputy Chair"

means the Deputy Chair of the Trust appointed pursuant to paragraph 22 of this Constitution;

"Director"

means a member of the Board of Directors;

"Director's Code of Conduct"

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

"Executive Director"

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

"Elected Governor"

means a Public Governor or a Staff Governor;

"Finance Director"

means the Finance Director of the Trust;

"Financial Year"

Means a successive period of twelve months beginning with 1 April;

"Forward Plan"

means the document prepared by the Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act;

"Governor"

means a member of the Council of Governors;

"Governor's Code of Conduct"

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

"He"

for the avoidance of doubt, the gender specific pronouns "he" and "she" shall have the same meaning and be used interchangeably in this document;

"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;

"Hospital"

means those premises set out in Article 3(2) of the Swindon and Marlborough NHS Trust (Establishment) Order 1993 (SI 1993/2637), and all associated hospitals and facilities at which the Trust provides and/or manages the provision of goods and/or services including accommodation;

"Immediate Family Member"

means either:

- (a) a spouse; or
- (b) a person whose status is that of "Civil Partner" as defined in the Civil Partnerships Act 2004;

"Joint Nominations Committee"

means the committee established under paragraphs 1 and 2 of Appendix 3 of Annex 8 of this Constitution;

"Interested Director"

has the meaning ascribed to it in paragraph 26.10.1 of the Constitution;

"Local Authority Governor"

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

"Local Authority Partnership Agreement"

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

"Member"

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

"Model Rules for Elections"

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

"NHS Foundation Trust Code of Governance"

means the best practice advice published by NHS Improvement (formerly Monitor) on 29 September 2006, as may be amended, varied or replaced by NHS Improvement from time to time;

" NHS Improvement "

means the Corporate body of that name as provided by Section 61 of the 2012 Act (formerly Monitor);

"Non-Executive Director"

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

"Other Partnership Governor"

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

"Other Partnership Organisation"

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

“Panel”

has the meaning ascribed to it in paragraph 15A.1 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 7.2 of this Constitution;

"Public Governor"

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

"Regulatory Framework"

means the 2006 Act and the Constitution;

"Remuneration Committee"

means the committee established by the Trust under paragraph 27.2 of this Constitution;

"Replacement Governor"

has the meaning ascribed to it in paragraph 2.3 of Appendix 4 of Annex 5 of this Constitution;

"Reserve Governor"

has the meaning ascribed to it in paragraph 2.1 of Appendix 4 of Annex 5 of this Constitution;

"Secretary"

means the Secretary of the Trust or any other person appointed by the Trust to perform the roles and responsibilities as set out in Appendix 5 of Annex 8 of this Constitution and includes a joint, assistant or deputy secretary;

"Sex Offenders Order"

means a Sexual Offences Preventative Order made under section 104 of the Sexual Offences Act 2003, or a Risk of Sexual Harm Order made under section 123 of the Sexual Offences Act 2003;

"Sex Offenders Register"

means the Register of Sex Offenders maintained under Part I of the Sex Offenders Act 1997 (as amended by the Sexual Offences Act 2003);

"Staff Constituency"

has the meaning ascribed to it in paragraph 8.3 of this Constitution;

"Staff Governor"

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

"Trust"

means Great Western Hospitals NHS Foundation Trust;

"Trust Subcontractor"

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

"Vice-Chair"

has the meaning ascribed to it in paragraph 2.5 of Appendix 3 of Annex 8 of this Constitution;

"Voluntary Organisation"

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

"Volunteer"

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

"Volunteer Scheme"

means an arrangement designated as such by the Trust pursuant to paragraph 8.2 of the Constitution under which individuals not employed by the Trust may nevertheless exercise functions on its behalf.

ANNEX 1 – THE PUBLIC CONSTITUENCIES

(Paragraph 7)

PUBLIC CONSTITUENCIES OF THE TRUST

NAME OF CONSTITUENCY	AREA	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
Swindon	All electoral wards within the area covered by Swindon Borough Council.	700	7
Northern Wiltshire	All electoral wards within the area covered by the following Wiltshire Council Area Boards: - <ul style="list-style-type: none"> • Calne Area Board • Corsham Area Board • Chippenham Area Board • Malmesbury Area Board • Marlborough Area Board • Wootton Bassett & Cricklade Area Board 	200	2
Central Wiltshire	All electoral wards within the area covered by the following Wiltshire Council Area Boards: - <ul style="list-style-type: none"> • Bradford on Avon Area Board • Devizes Area Board • Melksham Area Board • Pewsey Area Board • Trowbridge Area Board • Westbury Area Board 	200	2
Southern Wiltshire	All electoral wards within the area covered by the following Wiltshire Council Area Boards: - <ul style="list-style-type: none"> • Amesbury Area Board • Salisbury Area Board • Southern Wiltshire Area Board • South West Wiltshire Area Board • Tidworth Area Board • Warminster Area Board 	100	1

NAME OF CONSTITUENCY	AREA	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
West Berkshire and Oxfordshire	All electoral wards in the areas covered by Oxfordshire County Council and West Berkshire Council.	100	1
Gloucestershire and Bath and North East Somerset	All electoral wards in the areas covered by Gloucestershire County Council and Bath and North East Somerset Council.	100	1
	Minimum Membership	1200	
	Public Governors		12

A map showing the electoral wards for the Wiltshire Constituencies is held by the Secretary. A list of the electoral wards within the Wiltshire constituencies is listed below: -

Parishes within the Northern Wiltshire Constituency

Aldbourne	Chippenham Without	Kingston St Michael	Preshute
Ashton Keynes	Christian Malford	Lacock	Purton
Avebury	Clyffe Pypard	Langley Burrell Without	Ramsbury
Baydon	Colerne	Latton	Savenake
Berwick Bassett	Compton Bassett	Lea and Cleverton	Seagry
Biddestone	Corsham	Leigh	Sherston
Box	Cricklade	Little Somerford	Sopworth
Braydon	Crudwell	Luckington	St Paul Malmesbury without
Bremhill	Dauntsey	Lydiard Millicent	Stanton St Quintin
Brickenborough	East Kennet	Lydiard Tregoze	Sutton Benger
Brinkworth	Easton Grey	Lyneham and Bradenstoke	Tockenham
Broad Hinton	Froxfield	Marlborough	West Overton
Broad Town	Fyfield	Marston Maisey	Winterbourne Bassett
Calne	Great Somerford	Mildenhall	Winterbourne Monkton
Calne without	Grittleton	Minety	Wootton Bassett
Castle Combe	Hankerton	Nettleton	Yatton Keynell
Charlton	Heddington	Norton	
Cherhill	Hilmarton	Oaksey	
Chilton Foliat	Hullavington	Ogbourne St Andrew	
Chippenham	Kingston Langley	Ogbourne St George	

Parishes within the Central Wiltshire Constituency

Allcannings	Easton	Melksham without	Steventon
Alton	Edington	Milton Lilbourne	Trowbridge
Atworth	Erlestoke	Monkton Farleigh	Upavon
Beechingstoke	Etchilhampton	North Bradley	Urchfont
Bishops Cannings	Grafton	North Newnton	West Ashton
Bradford on Avon	Great Bedwyn	Patney	West Lavington
Bratton	Great Hinton	Pewsey	Westbury
Bromham	Ham	Potterne	Westwood
Broughton Gifford	Heywood	Poulshot	Wilcot
Bulkington	Hilperton	Roundway	Wilsford
Burbage	Holt	Rowde	Wingfield
Buttermere	Huish	Rushall	Winsley
Charlton	Keevil	Seend	Woodborough
Cheverell Magna	Limpley Stoke	Semington	Wootton Rivers
Cheverell Parva	Little Bedwyn	Shalbourne	Worton
Chirton	Manningford	South Wraxhall	
Coulston	Marden	Southwick	
Devizes	Market Lavington	Stanton St Bernard	
Dilton Marsh	Marston	Steeple Ashton	
Easterton	Melksham	Stert	

Parishes within the Southern Wiltshire Constituency

Alderbury	Collingbourne Ducis	Kilmington	Stourton with Gasper
Allington	Collingbourne Kingston	Kingston Deverill	Stratford Toney
Alvesdiston	Compton Chamberlayne	Knook	Sutton Mandeville
Amesbury	Coombe Bissett	Landford	Sutton Veny
Ansty	Corsley	Laverstock	Swallowcliffe
Barford St Martin	Dinton	Longbridge Deverill	Teffont
Berwick St James	Donhead St Andrew	Ludgershall	Tidcombe and Fosbury
Berwick St John	Donhead St Mary	Maiden Bradley with Yarnfield	Tidworth
Berwick St Leonard	Downton	Mere	Tilshead
Bishopstone	Durnford	Milston	Tisbury
Bishopstow	Durrington	Netheravon	Tollard Royal
Bower Chalke	East Knoyle	Netherhampton	Upton Lovel
Boyton	Ebbesborne Wake	Newton Tony	Upton Soudamore
Britford	Enford	Norton Bavant	Warminster
Brixton Deverill	Everleigh	Odstock	West Dean
Broad Chalke	Figcheldean	Orcheston	West Knoyle
Bulford	Firsdawn	Pitton and Farley	West Tisbury
Burcombe Without	Fittleton	Quidhampton	Whiteparish
Chepmanslade	Fonthill Bishop	Redlynch	Wilsford Cum Lake
Chicklade	Fonthill Gifford	Salisbury	Wilton
Chilmark	Fovant	Sedgehill and Semley	Winterbourne
Chitterne	Great Wishford	Sherington	Winterbourne Stoke
Cholderton	Grimstead	Shrewton	Winterslow
Chute	Heytesbury	South Newton	Woodford
Chute Forrest	Hindon	Stapleford	Wylye
Clarendon Park	Horningsham	Steeple Langford	Zeals
Codford	Idmiston	Stockton	

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraph 8)

1 Staff Constituency

Transitional provisions

- 1.1 The Staff Constituency shall be divided into Staff classes.
- 1.2 From 1 May 2017, there shall be four classes of staff members as follows:
 - 1.2.1 The Nursing and Therapy Staff Class for those individuals who are employed by the Trust, or who are a Trust Subcontractor and who are employed as nurses, midwives, healthcare assistants or therapy staff at Great Western Hospitals NHS Trust ("**Nursing and Therapy Staff Class**");
 - 1.2.2 The Allied Health Professionals Staff Class for those individuals who are employed by the Trust, or who are a Trust Subcontractor and who are employed as allied health professional staff, ("**Allied Health Professionals Staff Class**");
 - 1.2.3 The Doctors and Dentists Staff Class for those individuals who are employed by the Trust, or who are a Trust Subcontractor and who are registered medical practitioners and registered dentists ("**Doctors and Dentists Staff Class**"); and
 - 1.2.4 The Administrators, Maintenance, Auxiliary and Volunteers Staff Class for all other individuals who are employed by the Trust, or who are Trust Subcontractors, or members of a Volunteer Scheme, and who do not fall within the preceding classes set out in paragraphs 1.2.1 to 1.2.3 above ("**Administrators, Maintenance, Auxiliary and Volunteer Staff Class**").
- 1.3 The minimum number of members required for each Staff Class listed in paragraphs 1.2.1 to 1.2.4 above shall be 100.
- 1.4 Individuals who are eligible to be a member of the Staff Constituency may not become or continue as a member of more than one Staff Class and individuals who are eligible to join more than one Staff Class shall be allocated by the Secretary in his absolute discretion to the Staff Class for which they are primarily employed by the Trust or as a Trust Subcontractor, or through a Volunteer Scheme.

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraph 10)

The composition of the Council of Governors shall be as follows:

1 Composition

1.1 The Council of Governors shall comprise:

1.1.1 **14 Public Governors;**

1.1.2 **4 Staff Governors;**

1.1.2.1 1 being elected by the Nursing and Therapy Staff Class;

1.1.2.2 1 being elected by the Allied Health Professionals Staff Class;

1.1.2.3 1 being elected by the Doctors and Dentists Staff Class; and

1.1.2.4 1 being elected by the Administrators, Maintenance, Auxiliary and Volunteers Staff Class;

1.1.3 **2 Local Authority Governors; and**

1.1.4 **4 Other Partnership Governors**

1.2 The number of Public Governors is to be more than half of the total membership of the Council of Governors.

1.3 Subject to the provisions of 1.4 below, the organisations specified as Other Partnership Organisations that may appoint members of the Council of Governors are:

1.3.1 **Oxford Brookes University, Headington Road, Oxford, OX3 0BP;** and

1.3.2 Prospect Hospice, Moormead Road, Wroughton, Swindon, SN4 9BY.

1.4 From 1 April 2013, the organisations specified as Other Partnership Organisations that may appoint members of the Council of Governors are those organisations listed in paragraphs 1.3.1 and 1.3.2 above and:

1.4.1 NHS Swindon Clinical Commissioning Group of David Murray John Building, Floor 3, Brunell Centre, Swindon, SN1 1LH; and

1.4.2 NHS Wiltshire Clinical Commissioning Group of Southgate House, Pans Lane, Devizes, Wiltshire, SN10 5EQ.

2 Appointed Governors

2.1 Local Authority Governors

2.1.1 Swindon Borough Council or its successor organisation may appoint 1 (one) Local Authority Governor by notice in writing signed by the leader of the Council or a member of the Council executive, and delivered to the Secretary.

2.1.2 Wiltshire Council or its successor organisation may appoint 1 (one) Local Authority Governor by notice in writing signed by the leader of the Council or a member of the Council executive, and delivered to the Secretary.

2.2 Other Partnerships Governors

Other Partnership Organisations may each appoint one Other Partnership Governor by notice in writing signed by the chief executive or chair of the organisation, or other senior member duly authorised by the organisation and delivered to the Secretary.

ANNEX 4 –THE MODEL RULES FOR ELECTIONS

(Paragraph 11)

Model Rules for Elections to the Council of Governors¹

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3. Computation of time

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4. Returning officer
5. Staff
6. Expenditure
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9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
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13. Signature of candidate
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21. The declaration of identity (public and patient constituencies)

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll

¹ References in this annex to "board of governors" shall bear the same meaning as "Council of Governors" in the Constitution.

- 24. Issue of voting information by returning officer
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The poll

- 27. Eligibility to vote
- 28. Voting by persons who require assistance
- 29. Spoilt ballot papers and spoilt text message votes
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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 (formerly Monitor), December 2013) or any later version of such code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

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

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

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

4. Returning Officer

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

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

5. Staff

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

6. Expenditure

6.1 The corporation is to pay the returning officer:

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

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

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

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

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

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

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

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

- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,

- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

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

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing,

as given in their nomination form.

15.3 The statement must list the candidates standing for election in alphabetical order by surname.

15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination forms

16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.

16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

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

18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:

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

19. Poll to be taken by ballot

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

20. The ballot paper

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

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

("declaration of identity")

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

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

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

Action to be taken before the poll

22. List of eligible voters

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

22.2 The list is to include, for each member:

(a) a postal address; and,

(b) the member's e-mail address, if this has been provided

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

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

23. Notice of poll

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

(a) the name of the corporation,

(b) the constituency, or class within a constituency, for which the election is being held,

(c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,

(d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,

(e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,

(f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,

(g) the address for return of the ballot papers,

(h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;

(i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,

(j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,

- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

24. Issue of voting information by returning officer

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

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

("postal voting information").

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

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

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

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

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

26. E-voting systems

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

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

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

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

- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
- (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,

- (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (v) instructions on how to vote and how to make a declaration of identity,
 - (vi) the date and time of the close of the poll, and
 - (vii) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
 - (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote,
 - (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
 - (f) prevent any voter from voting after the close of poll.

26.5

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

- (a) require a voter to
 - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) instructions on how to vote and how to make a declaration of identity,
 - (v) the date and time of the close of the poll, and
 - (vi) the contact details of the returning officer;

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

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

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

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

29. Spoilt ballot papers and spoilt text message votes

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

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

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

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

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

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

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

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

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

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

- (a) the name of the voter, and
- (b) the details of the voter ID number on the spoilt 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 and patient constituencies)

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

34. Voting procedure for remote voting by telephone

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

35. Voting procedure for remote voting by text message

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

36. Receipt of voting documents

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

37. Validity of votes

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) put the ID declaration form if required in a separate packet, and
 - (b) put the ballot paper aside for counting after the close of the poll.
- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) mark the ballot paper “disqualified”,
 - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
 - (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
 - (d) place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.
- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is

to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.

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

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

38. Declaration of identity but no ballot paper (public and patient constituency)²

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

² It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

- (e) disregard the ballot paper when counting the votes in accordance with these rules.

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

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

40. Sealing of packets

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

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

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

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

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

or

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

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

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

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

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

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

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

“*stage of the count*” means:

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

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

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

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

42. Arrangements for counting of the votes

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

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

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

43. The count

43.1 The returning officer is to:

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

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

record.

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

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

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

STV44.3 Any text voting record:

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

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

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

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

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

STV45. First stage

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

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

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

STV46. The quota

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

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

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

STV47. Transfer of votes

STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:

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

STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.

STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:

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

STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:

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

- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:
- (a) a transfer value calculated as set out in rule STV47.4(b), or
 - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,
- whichever is the less.
- STV47.8 Each transfer of a surplus constitutes a stage in the count.
- STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
 - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
- STV47.11 This rule does not apply at an election where there is only one vacancy.

STV48. Supplementary provisions on transfer

- STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:
- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
 - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.
- STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:
- (a) record the total value of the votes transferred to each candidate,
 - (b) add that value to the previous total of votes recorded for each candidate and record the new total,

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

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

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

STV49. Exclusion of candidates

STV49.1 If:

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

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

STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

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

STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.

STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had

been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.

STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).

STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.

STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.

STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.

STV49.10 The returning officer shall after each stage of the count completed under this rule:

- (a) record:
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
- (b) add that total to the previous total of votes recorded for each candidate and record the new total,
- (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
- (d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

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

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

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

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

excluded, and

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

STV50. Filling of last vacancies

- STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.
- STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.
- STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

STV51. Order of election of candidates

- STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.
- STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.
- STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP51. Equality of votes

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

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

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

FPP52.2 The returning officer is to make:

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

available on request.

STV52. Declaration of result for contested elections

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

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

STV52.2 The returning officer is to make:

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

available on request.

53. Declaration of result for uncontested elections

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

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

54. Sealing up of documents relating to the poll

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

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

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

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

the poll, or

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

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

57. Retention and public inspection of documents

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

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

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

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

58.1 The corporation may not allow:

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

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

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

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

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (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 has declared that the vote was invalid.

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

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

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

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

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

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

FPP59.5 The returning officer is to:

- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
- (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and

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

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

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

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

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1 No person may:

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

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

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

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

as it considers necessary.

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

- (a) objective, balanced and fair,

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

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

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

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

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

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

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

67. Secrecy

67.1 The following persons:

- (a) the returning officer,
- (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 papers,

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

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraph 18)

APPENDIX 1

Eligibility to be on the Council of Governors

- 1 A person may not become or continue as a Governor of the Trust if:
 - 1.1 in the case of an Elected Governor, he ceases to be a member of the constituency he represents;
 - 1.2 in the case of an Appointed Governor, the sponsoring organisation withdraws their sponsorship of him;
 - 1.3 he has within the preceding five years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
 - 1.4 he is a person whose tenure of office as the chair or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interest of the health service;
 - 1.5 he is a Director of the Trust, or a governor, executive director, non-executive director, chair, chief executive officer of another Health Service Body, or a body corporate whose business involves the provision of health care services or whose business involves the provision of goods or services to the Trust (unless they are appointed by a sponsoring organisation which is a Health Service Body);
 - 1.6 he has had his name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list;
 - 1.7 he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
 - 1.8 he has refused without reasonable cause to undertake any training which the Trust and/or Council of Governors requires all Governors to undertake;
 - 1.9 he is a member of a local authority Health Overview and Scrutiny Committee;
 - 1.10 he is the subject of a Sex Offenders Order and /or his name is included in the Sex Offenders Register;
 - 1.11 he is an occupant of the same household and/or he is an immediate family member of a Governor of the Trust;
 - 1.12 he has failed to repay (without good cause) any amount of monies properly owed to the Trust;
 - 1.13 he has failed to sign and deliver to the Secretary a statement in the form required by the Trust confirming acceptance of the Governor's Code of Conduct;

- 1.14 he has demonstrated aggressive or violent behaviour at any Hospital and following such behaviour he has been asked to leave, has been removed or excluded from any Hospital or other healthcare facility in accordance with the relevant Trust policy for withholding treatment from violent/aggressive patients;
- 1.15 he has been confirmed as a 'vexatious complainant' in accordance with the relevant Trust policy for handling complaints;
- 1.16 he has been removed as a member from another NHS Foundation Trust;
- 1.17 he is deemed to have acted in a manner contrary to the interests of the Trust;
- 1.18 he has not obtained, prior to standing for election, a Certificate of Clearance, in accordance with paragraph 3 of this Appendix 1 of Annex 5; or
- 1.19 he has made any material misstatement in the declarations made to the Trust for the purposes of obtaining a Certificate of Clearance.

2 Where a person has been elected or appointed to be a Governor and he becomes disqualified or is removed from office under paragraph 13 of the Constitution or paragraph 1.1 of this Appendix 1 of Annex 5, or paragraph 4.12.12 of Annex 6 Standing Orders For The Practice And Procedure of the Council of Governors he shall notify the Secretary in writing of such disqualification and/or (as the case may be) removal. If it comes to the notice of the Secretary at the time of his taking office or later that the Governor is so disqualified, the Secretary shall immediately declare that the person in question is disqualified and notify him in writing to that effect. Upon despatch of any such notification;

- 2.1 that person's tenure of office, if any, shall be terminated and he shall cease to act as a Governor; and
- 2.2 The Secretary shall inform the Chair of the actions taken in respect of the person in question and the reasons for such action.

Where it is agreed that a governor shall be removed from office that governor shall be immediately suspended during any appeal period at the end of which time should the governor's appeal not be successful the governor's tenure shall terminate immediately.

3 Certificates of Clearance

- 3.1 Any person wishing to stand as a candidate for Governor must obtain a Certificate of Clearance from the Secretary. The Secretary shall liaise with the Trust's Director of Workforce and Education or his designated substitute in obtaining the Certificate of Clearance. The Certificate of Clearance will require the prospective candidate to declare any criminal convictions, and the Trust will then take a view as to whether, in its discretion, those convictions disqualify the individual from exercising the function of a Governor.
- 3.2 In developing a policy for the issuing of Certificates of Clearance the Trust shall consult with the Council of Governors.
- 3.3 Any offer of appointment shall be conditional subject to a Disclosure and Barring Service check and should there be any undeclared disclosure found the governors shall be removed from office at the discretion of the Company Secretary.

APPENDIX 2

Council of Governors: objectives

- 1 The Trust shall seek to ensure, subject to the requirements of the 2006 Act, that the composition of the Council of Governors meets the following objectives:
 - 1.1 the interests of the community served by the Trust are appropriately represented and NHS core principles (as set out in Appendix 1 of Annex 8) are upheld; and
 - 1.2 the level of representation of the Public Constituency and the Staff Constituency, and the Other Partnership Organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs and, to this end, the Council of Governors:
 - 1.2.1 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the Trust's membership strategy, and
 - 1.2.2 shall from time to time, and not less than every three years, review the policy for the composition of the Council of Governors;
 - 1.2.3 when appropriate, shall propose amendments to this Constitution;
 - 1.2.4 shall provide to the Members relevant information concerning the performance and forward planning of the Trust;
 - 1.2.5 shall act in an advisory capacity when the Board of Directors has to make challenging or difficult decisions including those that affect the strategic direction of the Trust; and
 - 1.2.6 when appropriate, shall be entitled to appoint an independent advisor and a nominated non executive Director to assist the Council of Governors in their advisory role.

APPENDIX 3

Roles and Responsibilities of Governors

- 1 The roles and responsibilities of the Governors are:
 - 1.1 at a general meeting (which may be the annual meeting referred to in paragraph 3.1 of Appendix 4 of Annex 5 below):
 - 1.1.1 Subject to paragraph 21 of this Constitution, to appoint or remove the Chair and the other Non-Executive Directors. The removal of a Non-Executive Director requires the approval of three-quarters of the members of the Council of Governors;
 - 1.1.2 to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors;
 - 1.1.3 subject to paragraph 32.2 of this Constitution, to appoint or remove the Auditor;
 - 1.1.4 to be presented with the Annual Accounts, any report of the Auditor on them and the Annual Report; and / or
 - 1.1.5 to consider disputes as to membership referred to it pursuant to paragraph 2 of Appendix 4 of Annex 8.
 - 1.2 at a general meeting or otherwise:
 - 1.2.1 approve (by a majority of the Council of Governors voting) an appointment (by the Non-Executive Directors) of the Chief Executive (and Accounting Officer).
 - 1.2.2 give the views of the Council of Governors to the Directors for the purposes of the preparation (by the Directors) of the forward planning in respect of each Financial Year to be given to NHS Improvement;
 - 1.2.3 respond as appropriate when consulted by the Directors;
 - 1.2.4 to consider resolutions to remove a Governor.
 - 1.3 The Governors also have the specific role and function of:
 - 1.3.1 providing views to the Board of Directors on the strategic direction of the Trust;
 - 1.3.2 developing membership;
 - 1.3.3 representing the interests of all the Members (and not just the constituency which elected them); and
 - 1.3.4 holding the Non-Executive Directors to account in relation to the Trust's performance in accordance with the terms of the Authorisation.

- 1.4 Notwithstanding the provisions of paragraph 1.1 of Appendix 3 of Annex 5, the Governors may exercise other functions at the request of the Board of Directors.
- 1.5 The Governors are expected to bring their individual skills and knowledge to bear on the exercise of their functions, but must act collectively and not in pursuit of sectional interests or matters already reviewed and considered by the Council of Governors in the view of the Chairman.

APPENDIX 4

Council of Governors: further provisions

1 Remuneration

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

2 Vacancies

- 2.1 In the event of an Elected Governor's seat falling vacant for any reason before the end of the term of office it shall be filled by the second place candidate in the last held election for that seat provided that the second place candidate achieved at least five percent of the vote in the last held election for that seat. If that individual declines it shall be filled by the third place candidate provided that the third place candidate achieved at least five percent of the vote in the last held election for that seat (the "Reserve Governor"). If the vacancy is not filled in this way Elected Governors shall be replaced by by-elections, in accordance with the Model Rules for Election.
- 2.2 In the event that a Reserve Governor is not available a by-election shall be held unless an election is due within 6 months in which case the seat shall stand vacant until the following scheduled election.
- 2.3 In the event of an Appointed Governor's seat falling vacant for any reason before the end of the term of office, the Trust will request that the relevant Other Partnership Organisation appoint a "Replacement Governor" within 30 days. Appointed Governors shall be replaced in accordance with the processes agreed pursuant to paragraph 2.3 of Annex 3.
- 2.4 The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

3 Meetings

- 3.1 The Council of Governors is to meet at least four times per year, including an annual meeting no later than 30 September in each Financial Year. 3.2 The Secretary shall call meetings in accordance with paragraph 3.1 of Appendix 4 of Annex 5 above.
- 3.3 Any meeting of the Council of Governors requires a quorum of one third of the total number of Governors to be present with a majority of those present being Public Governors.

4 Committees, sub-committees and joint committees

- 4.1 The Council of Governors may appoint committees consisting wholly or partly of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.
- 4.2 The Council of Governors shall appoint a joint nominations committee pursuant to paragraphs 1 and 2 of Appendix 3 of Annex 8 below.

- 4.3 The Council of Governors may appoint members to serve on joint committees with the Board of Directors or committees thereof.
- 4.4 These committees, sub-committees or joint committees may call upon outside advisers to help them in their tasks, provided that the financial and other implications of seeking outside advisers have been discussed and agreed by the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph will be determined in accordance with paragraph 2.2 of Appendix 4 of Annex 8 (Dispute Resolution Procedures).

5 Council of Governors: declarations

- 5.1 The specified form of declaration referred to at paragraph 11.4 of this Constitution regarding the declaration to stand for election as an Elected Governor shall be as set out on the nomination paper referred to in the Model Rules for Elections at Annex 4 and shall state as follows:

"I, the above named candidate, consent to my nomination and agree to stand for election to the Council of Governors in the constituency indicated in Section One of this form. I also declare that I am a member of that constituency.

I, the above named candidate, declare that I am not:

- (a) a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;*
- (b) a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it*
- (c) a person who within the preceding 5 years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months (without the option of a fine) was imposed on him;*
- (d) a person who is subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986;*
- (e) excluded by any other provision detailed within the Trust's Constitution;*
- (f) An unfit and improper person and I provided at least 2 references of good character from non-family members or close acquaintances; and*
- (g) I have no criminal convictions to declare and note that a Disclosure and Barring Service check will be completed*

I confirm that to the best of my knowledge I am eligible to become a Governor of the Trust as per the eligibility criteria noted in Section 3 of the guidance notes."

- 5.2 The specified form of declaration referred to at paragraph 11.4 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 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF
THE COUNCIL OF GOVERNORS**

(Paragraph 15)

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Schedule A - Declaration to the Secretary

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1. INTRODUCTION

- 1.1 The Great Western Hospitals NHS Foundation Trust became a Public Benefit Corporation on 1 December 2008 following authorisation by NHS Improvement pursuant to the 2006 Act.
- 1.2 The principal place of business of the Trust is currently at the Great Western Hospital, Marlborough Road, Swindon, Wiltshire SN3 6BB ("Trust Headquarters").
- 1.3 The Trust is governed by the Regulatory Framework. The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Governors of the Trust to adopt Standing Orders ("SOs") for the regulation of its proceedings and business and to adhere at all times to the Governors' Code of Conduct.

2 INTERPRETATION

- 2.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these SOs shall bear the same meaning as in the Constitution.
- 2.2 The provisions of paragraphs 38.2 to 38.5 of the Constitution apply to these SOs, save that any reference to "Constitution" shall be read as a reference to these "SOs".

- 2.3 In these Standing Orders:

"Clear Day"

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

"Officer"

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

3 THE COUNCIL OF GOVERNORS

The roles and responsibilities of the Governors are set out in Appendix 3 of Annex 5 of the Constitution and have effect as if incorporated into the SOs. Certain powers and decisions may only be exercised by the Council of Governors in formal session. These powers and decisions are set out in paragraph 1 of Appendix 3 of Annex 5 of the Constitution.

4 MEETINGS OF THE COUNCIL OF GOVERNORS

4.1 Admission of the public

- 4.1.1 The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors except where it resolves by special resolution that members of the public and representatives of the press be excluded from all or part of a meeting on the grounds that:

- 4.1.1.1 any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
- 4.1.1.2 for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Council of Governors believe are special reasons for excluding the public from the meeting in accordance with the Constitution.
- 4.1.2 Nothing in these SOs shall require the Council of Governors to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Chair.

4.2 Calling meetings

- 4.2.1 Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine and there shall be at least 4 meetings in any year including:
 - 4.2.1.1 an annual meeting no later than the 30 September in each Financial Year; and
 - 4.2.1.2 any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.
- 4.2.2 The Secretary may call a meeting of the Council of Governors at any time. If the Secretary refuses to call a meeting after a requisition for that purpose, signed by at least one-third of Governors and specifying the business to be transacted at the meeting, has been presented to him, or if, without so refusing, the Secretary does not call a meeting within 6 Clear Days after such requisition has been presented to him at the Trust's Headquarters, such one-third or more of the Governors may forthwith call a meeting for the purpose of conducting that business.
- 4.2.3 The Council of Governors may invite the Chief Executive, a member of the Board of Directors or a representative of the Auditor or other advisors to attend a meeting of the Council of Governors provided that the majority of the Governors present and voting at a meeting of the Council of Governors agree.
- 4.2.4 The Council of Governors may agree that its Governors can participate in its meetings by telephone or video link. Participation in a meeting in this manner shall be deemed to be exceptional but shall constitute presence in person at the meeting for the purposes of SO 4.17 (Quorum) and eligible to vote in matters raised.

4.3 Notice of meetings and agenda

- 4.3.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or the Secretary authorised by the Chair to sign on his behalf, shall be delivered to, or sent by post to the usual place of residence of every

Governor 6 Clear Days before the meeting save in the case of emergencies.

- 4.3.2 Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and if possible the public part of the agenda, shall be displayed at the Trust's Headquarters and shall be advertised on the Trust's website at least 6 Clear Days before the meeting, save in the case of emergencies.
- 4.3.3 Want of service of the notice on any one Governor shall not affect the validity of a meeting but failure to serve such a notice on more than three Governors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 4.3.4 In the case of a meeting called by Governors in default of the Secretary in accordance with SO 4.2.2, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the requisition.
- 4.3.5 Agendas will be sent to Governors before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than 6 Clear Days before the meeting, save in the case of emergencies.
- 4.3.6 In the event of an emergency giving rise to the need for an immediate meeting, failure to comply with the notice periods referred to in SOs 4.3.1 and 4.3.5 shall not prevent the calling of or invalidate such meeting provided that every effort is made to contact members of the Council of Governors who are not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.

4.4 **Annual meeting**

- 4.4.1 In accordance with SO 4.2.1.1, the Council of Governors shall hold an annual meeting every Financial Year and shall present to that meeting:
 - 4.4.1.1 A report on the proceedings of its meetings held since the last annual meeting;
 - 4.4.1.2 A report on the progress since the last annual meeting in developing the membership strategy including the steps taken to ensure that the actual membership of the Public Constituency is representative of the persons who are eligible to be Members under the Constitution;
 - 4.4.1.3 A report on any change to the Governors which has taken place since the last annual meeting; and
 - 4.4.1.4 A report containing such comments as it wishes to make regarding the performance of the Trust and the accounts of the Trust for the preceding Financial Year and the future service development plans of the Trust.

4.5 Setting the agenda

- 4.5.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted ("Standing Items").
- 4.5.2 A member of the Council of Governors desiring a matter other than a Standing Item to be included on an agenda, including a formal motion for discussion and voting on at a meeting, shall make his request in writing to the Chair at least 10 Clear Days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 Clear Days before a meeting may be included on the agenda at the discretion of the Chair.

4.6 Petitions

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

4.7 Chair of meeting

- 4.7.1 At any Council of Governors meeting, the Chair, if present, shall preside.
- 4.7.2 If the Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Deputy Chair shall preside.
- 4.7.3 If the Deputy Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director as shall be appointed by the Council of Governors for that meeting shall preside. If a Non-Executive Director is unavailable, the meeting shall appoint from amongst those present a member to preside.
- 4.7.4 If the Chair or Deputy Chair of the Trust and a Non-Executive Director is absent or unavailable to chair the meeting, those present at the meeting shall nominate a Governor to preside at the meetings of the Council of Governors and the person chairing the meeting shall have a second or casting vote.

4.8 Motions

- 4.8.1 Where a Governor has requested inclusion of a matter on the agenda in accordance with SO 4.5.2 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this SO 4.8 shall apply in respect of the motion:
- 4.8.2 The mover of the motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.8.3 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:

- 4.8.3.1 an amendment to the motion; or
 - 4.8.3.2 the adjournment of the discussion or the meeting; or
 - 4.8.3.3 that the meeting proceed to the next business; or
 - 4.8.3.4 the appointment of an ad hoc committee to deal with a specific item of business; or
 - 4.8.3.5 that the motion be now put; or
 - 4.8.3.6 that the public be excluded from the meeting in relation to the discussion concerning the motion under SO 4.1.1.
- 4.8.4 In the case of SOs 4.8.3.3 and 4.8.3.5 above, to ensure objectivity these matters may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.
- 4.8.5 No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.
- 4.8.6 The mover of a motion shall have a maximum of five minutes to move and three minutes to reply. Once a motion has been moved, no Governor shall speak more than once or for more than three minutes.

4.9 Report from the Board of Directors

Unless otherwise agreed in writing, at each meeting of the Council of Governors, the Board of Directors through the Chair is required to report to the Council of Governors on the Trust's general progress forward and forward planning.

4.10 Chair's ruling

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

4.11 Voting

- 4.11.1 A Governor may not vote at a meeting of the Council of Governors unless, within 10 Clear Days prior to the commencement of the meeting he has made a declaration in the form specified within Schedule A of these SOs, that he is a member of the constituency which elected him and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution.
- 4.11.2 Subject to SO 4.11.4 below, every question at a meeting shall be determined by a majority of the votes of the Chair of the meeting and the Governors present and voting on the question.

- 4.11.3 Whoever is chair of the meeting of the Council of Governors shall in the case of an equality of votes on any question or proposal have a second or casting vote.
- 4.11.4 A resolution for the removal of the Chair or a Non-Executive Director shall be passed only if three-quarters of the total number of Governors vote in favour of it.
- 4.11.5 All questions put to the vote shall, at the discretion of the Chair, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 4.11.6 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.11.7 If a Governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.11.8 A Governor may only vote if present at the time of the vote on which the question is to be decided; no Governor may vote by proxy but a Governor is considered to have been present at the meeting if they took part by telephone or video link and so is therefore entitled to vote.
- 4.11.9 In certain circumstances the Chair may specify in a notice of a meeting any matter which requires approval by a written resolution and such a matter may be approved in writing provided that at least three-quarters of the Governors, and a majority of Governors who are members of the Public Constituency of the Trust, approve the resolution in writing within the timescale imposed in such a notice having regard to paragraph 13.5 above. For the avoidance of doubt, governors who are absent due to an agreed absence (as defined in paragraph 13.5) and governors not eligible to vote because of a declared interest do not count towards the voting calculation.
- 4.11.10 All decisions taken in good faith at the meeting of the Council of Governors or at any meeting of a committee shall be valid, even if it is subsequently discovered that there was a defect in the calling of the meeting or the appointment of the Governors attending the meeting or any other matter.

4.12 Special Provisions relating to termination of Governor's tenure

- 4.12.1 Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under this SO or under paragraph 13 or the provisions of Appendix 1 of Annex 5 of the Constitution, he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of the first becoming aware of those matters which render him disqualified. The Secretary shall forthwith remove him from the Register of members of the Council of Governors with immediate effect subject to any other provisions.
- 4.12.2 If it comes to the notice of the Secretary that the Governor is disqualified pursuant to SO 4.12.1, whether at the time of the Governor's appointment

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

- 4.12.3 The Chair shall be authorised to take such action as may be immediately required, including but not limited to exclusion of the Governor concerned from the meeting so that any allegation made against a Governor on the following grounds can be investigated:
- 4.12.3.1 non-compliance with the core principles of the NHS as set out in Appendix 1 of Annex 8, the Authorisation, the Governors' Code of Conduct, or the SOs; or
 - 4.12.3.2 failure to declare an interest as required by the Constitution or these SOs, or if the Governor in question has spoken or voted at a meeting on a matter in which he has an interest contrary to the Constitution or SOs in accordance with paragraph 13.6.5 of the Constitution.
- 4.12.4 Where any grounds within SO 4.12.3 are alleged, it shall be open to the Council of Governors to decide, by three-quarters of those present and voting, to lay a formal charge of non-compliance or misconduct.
- 4.12.5 The Governor in question will be notified in writing of the allegations and grounds upon which the charges referred to in SO 4.12.3 are made inviting his response within 14 calendar days. Any response the Governor in question makes should be submitted to the Chairman or the Company Secretary and not individual Governors.
- 4.12.6 The Governor may be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.
- 4.12.7 The Governors, by three-quarters majority of those present and voting and a majority of Governors who are members of the Public Constituency of the Trust, can decide whether to uphold the charge.
- 4.12.8 . Should the Governors uphold the charge in accordance with SO 4.12.7, the Governors can impose such sanctions as shall be deemed appropriate, such sanctions may include but are not limited to the issuing of a written warning as to the Governor's future conduct and consequences, to non-payment of expenses and suspension or removal of the Governor from office.
- 4.12.9 Upon disqualification, removal or termination of a Governor's office under this SO, the Secretary shall cause his name to be removed immediately from the register of members of the Council of Governors.

- 4.12.10 Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by the Governor concerned to the Dispute Resolution Procedure set out in paragraph 2.2 of Appendix 4 of Annex 8 of the Constitution within 14 days of the date upon which notice in writing of the Council of Governor's decision made in accordance with SOs 4.12.7 and 4.12.8 is communicated to the Governor concerned.
- 4.12.11 A Governor may resign from that office at any time during the term of that office by giving notice to the Secretary in writing, upon which he shall cease to hold office.
- 4.12.12 A Governor who resigns under SO 4.12.11 above or whose office is terminated under this SO or paragraph 13 of the Constitution shall not be eligible to stand for re-election to the Council of Governors for a period of five years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of whichever is later.
- 4.12.13 Where a vacancy arises on the Council of Governors, the provisions of paragraph 2 of Appendix 4 of Annex 5 of the Constitution shall apply.

4.13 Minutes

- 4.13.1 The minutes of the proceedings of a meeting shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting where they will be signed by the Chair.
- 4.13.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate.
- 4.13.3 Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.14 Suspension of Standing Orders

- 4.14.1 Except where this would contravene any provision of the Regulatory Framework or any guidance or best practice advice issued by NHS Improvement, any one or more of the SOs may be suspended at any meeting, provided that at least two-thirds of the Governors are present, there is a majority of Governors who are members of the Public Constituency, and that a majority of those present vote in favour of suspension.
- 4.14.2 A decision to suspend the SOs shall be recorded in the minutes of the meeting.
- 4.14.3 A separate record of matters discussed during the suspension of the SOs shall be made and shall be available to the Chair and Governors.
- 4.14.4 No formal business may be transacted while the SOs are suspended.

4.16 Record of attendance

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

4.17 **Quorum**

- 4.17.1 No business shall be transacted at a meeting unless at least one-third of the total number of Governors is present with a majority of those present being Public Governors.
- 4.17.2 If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for a minimum of 5 Clear Days to a maximum of 20 Clear Days and upon reconvening, those present shall constitute a quorum.
- 4.17.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest as provided in SO 7 he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

5 **LEAD GOVERNOR AND DEPUTY LEAD GOVERNOR**

- 5.1 The Governors may (in their absolute discretion) appoint a lead Governor and/or a deputy lead Governor at each annual meeting of the Council of Governors.
- 5.2 Without prejudice to the rights of any Governor to communicate directly with the Chair, the lead Governor shall be responsible for receiving from Governors and communicating to the Chair any comments, observations and concerns expressed to him by Governors other than at meetings of the Council of Governors regarding the performance of the Trust or any other serious or material matter relating to the Trust or its business.
- 5.3 The deputy lead Governor shall be responsible for supporting the lead Governor in his role and for performing the responsibilities of the lead Governor whenever he is known to be unavailable.
- 5.4 Each Governor shall communicate any comment, observation or concern which he may have to the lead Governor in the first instance and only to the deputy lead Governor if the lead Governor is known to be unavailable.
- 5.5 The lead Governor and the deputy lead Governor so appointed shall hold office until the next annual meeting of the Council of Governors but shall be eligible for re-appointment at that time.
- 5.6 Nominations for appointment as lead Governor and deputy lead Governor shall be sent out with the papers for the annual meeting of the Council of Governors. Each nomination shall be made in writing by the Governor seeking appointment and must be returned to the Trust Headquarters addressed to the Secretary to arrive 3 Clear Days before the meeting.

- 5.7 There shall be separate forms of nomination for appointment to the position of lead Governor and the position of deputy lead Governor and eligible Governors may be nominated for both positions.
- 5.8 In the event of there being two or more nominations for either appointment a secret ballot shall be held of all the Governors present at the meeting with each Governor present having one vote for each contested appointment.
- 5.9 The meeting shall adjourn while the ballot is taken and the Governor whose nomination receives the largest number of votes for each position shall be appointed.
- 5.10 In the event of an equality of votes the Chair of the meeting shall have a second or casting vote.
- 5.11 If a Governor shall receive the largest number of votes for appointment as both lead Governor and deputy lead Governor that Governor shall be appointed as lead Governor and the Governor who received the second largest number of votes for the position of deputy lead Governor shall be appointed as deputy lead Governor
- 5.12 The result of the ballot shall be announced at the meeting.

6 COMMITTEES

- 6.1 Subject to any guidance or best practice advice as may be issued by NHS Improvement, the Council of Governors may and, if directed by NHS Improvement, shall appoint committees of the Council of Governors to assist it in the proper performance of its functions under the Regulatory Framework, consisting wholly or partly of the Chair, Governors, and others.
- 6.2 A committee appointed under SO 6 may, subject to such directions as may be given by the Council of Governors, appoint sub-committee consisting wholly or partly of members of the committee.
- 6.3 These SOs, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors with the terms "Chair" to be read as a reference to the Chair of the committee, and the term "Governor" to be read as a reference to a member of the committee as the context permits.
- 6.4 Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the Regulatory Framework and any best practice advice and/or guidance issued by NHS Improvement, but the Council of Governors shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council of Governors at a formal meeting.
- 6.5 Where committees are authorised to establish sub-committees they may not delegate their powers to the sub-committee unless expressly authorised by the Council of Governors.
- 6.6 Any committee or sub-committee established under this SO 6 may call upon outside advisers to assist them with their tasks, subject to the advance agreement of the Board of Directors. Any conflict arising between the Council of Governors and the

Board of Directors under this paragraph shall be determined in accordance with the Dispute Resolution Procedure as set out at paragraph 2.2 of Appendix 4 of Annex 8 of the Constitution.

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

7 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

7.1 Declaration of interests

7.1.1 The Regulatory Framework requires each Governor to declare to the Secretary:

7.1.1.1 any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in SO 7.2.1; and

7.1.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, as described in SOs 7.2.2 and 7.2.3; and

7.1.1.3 any actual or potential family interest, direct or indirect, of which the Governor is aware, as described in SO 7.2.5.

7.1.2 Such a declaration shall be made either at the time of the Governor's election or appointment or as soon thereafter as the interest arises, but within 5 Clear Days of becoming aware of the existence of that interest, and in a form prescribed by the Secretary which is in the form included as Schedule B to these SOs.

7.1.3 In addition, if a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter.

- 7.1.4 Subject to SO 7.2.4, if a Governor has declared a pecuniary interest (as described in SOs 7.2.2 and 7.2.3) he shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the Governor's meeting minutes.
- 7.1.5 This SO 7 applies to any committee, sub-committee or joint committee of the Council of Governors and applies to any member of any such committee, sub-committee, or joint committee (whether or not he is also a Governor).
- 7.1.6 The interests of Governors in companies likely or possibly seeking to do business with the Trust should be published in the Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

7.2 Nature of interests

- 7.2.1 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by NHS Improvement:
 - 7.2.1.1 directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies); or
 - 7.2.1.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the Trust; or
 - 7.2.1.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the Trust; or
 - 7.2.1.4 a position of authority in a charity or Voluntary Organisation in the field of health and social care; or
 - 7.2.1.5 any connection with a voluntary or other organisation contracting for Trust services or commissioning Trust services; or
 - 7.2.1.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks.
- 7.2.2 A Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
 - 7.2.2.1 he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 7.2.2.2 he is a partner of, or is in the employment of, a person with whom the contract was made or is proposed to be made or

who has a direct pecuniary interest in the other matter under consideration.

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

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

7.2.3.2 of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or

7.2.3.3 of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.

7.2.4 Where a Governor:

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

7.2.4.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and

7.2.4.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class;

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

7.2.5 A family interest is an interest of an Immediate Family Member the spouse or partner or any parent, child, brother or sister of a Governor which if it were the interest of that Governor would be a personal interest or a pecuniary interest of his.

7.2.6 If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

7.3 Register of members of the Council of Governors

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

7.4 Register of interests of members of the Council of Governors

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

8 STANDARDS OF BUSINESS CONDUCT

Members of the Council of Governors shall comply with the Governors' Code of Conduct and any best practice advice and/or guidance issued by NHS Improvement. Failure to do so may result in action as defined by section 4.12.3 above.

9 APPOINTMENTS AND RECOMMENDATIONS

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

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

9.3 Every Governor shall disclose to the Chief Executive or his delegated officer any relationship between himself and a candidate of whose candidature that Governor or Officer is aware. It shall be the duty of the Chief Executive or his delegated Officer to report to the Council of Governors any such disclosure made.

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

9.5 Where the relationship to a member of the Council of Governors of the Trust is disclosed, SO 7 shall apply.

10 MISCELLANEOUS

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

10.2 These SOs including all documents having effect as if incorporated in them shall be reviewed at least every three years by the Board of Directors and the Council of Governors.

10.3 If for any reason these SOs are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the Chair and / or the Company Secretary. Once reported, provisions within paragraph 4.12 above will apply. All Governors have a duty to disclose any non-compliance with these SOs to the Chair as soon as possible'.

Schedule A

Declaration to the Secretary of Great Western Hospitals NHS Trust Foundation Trust

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

Schedule B

Prescribed Form of Declaration of Interests

Declaration to the Secretary of Great Western Hospitals NHS Foundation Trust

Date [insert]

To the Secretary of Great Western Hospitals NHS Foundation Trust

Dear [insert]

In fulfilment of the obligations imposed on me by paragraph 16 of the Constitution of the Trust and the provisions of Standing Order 7 of the Standing Orders for Governors generally, and in particular Standing Order 7.1.2, I hereby give notice to the Trust of my interest in [insert details of the nature and extent of the relevant interest(s) (e.g. pecuniary, non pecuniary, direct, indirect, actual, potential, etc.)] as of the date posted above.

I require the nature and extent of my interest(s) to be recorded in the Trust's register of interests of the members of the Council of Governors.

Yours faithfully

[name]

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

(Paragraph 25)

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1 INTRODUCTION

1.1 Statutory Framework

- 1.1.1 The Great Western Hospitals NHS Foundation Trust became a Public Benefit Corporation on 1 December 2008 following authorisation by NHS Improvement (formerly Monitor) pursuant to the 2006 Act.
- 1.1.2 The principal place of business of the Trust is at the Great Western Hospital, Marlborough Road, Swindon, Wiltshire SN3 6BB ("Trust Headquarters").
- 1.1.3 The Trust is governed by the Regulatory Framework. The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework and in particular paragraph 25 of the Constitution, requires the Board of Directors to adopt Standing Orders ("SOs") for the regulation of its proceedings and business.
- 1.1.4 As a Public Benefit Corporation, the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.
- 1.1.5 The SOs, Scheme of Delegation and SFIs provide a comprehensive business framework for the administration of the Trust's affairs, and these need to be read in conjunction with the Regulatory Framework. All Directors and Nominated Officers should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions contained within them.
- 1.1.6 The Trust shall deal with NHS Improvement in an open and co-operative manner and shall promptly notify Monitor of anything relating to the Trust of which NHS Improvement would reasonably expect prompt notice, including, without prejudice to the foregoing generality, any financial or performance thresholds which NHS Improvement may specify from time to time.
- 1.1.7 The Chair, Chief Executive or any other person giving information to the public on behalf of the Trust shall ensure that they follow the principles set out by the Committee on Standards in Public Life (the Nolan Committee, now the Wicks Committee) and that they will adhere to the principles set out within the Independent Commission's Good Governance Standard for Public Service. They will also ensure that they follow the best practice advice set out in the NHS Foundation Trust Code of Governance published by NHS Improvement.

1.2 Delegation of Powers – Scheme of Delegation

Under SO 4 (Arrangements for the Exercise of Functions by Delegation) the Board of Directors exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee of the Board of Directors appointed by virtue of SO 5 or by an Executive Director of the Trust, in each case subject to such restrictions and conditions as the Board of Directors thinks fit. Delegated Powers are covered in the Scheme of Delegation.

1A INTERPRETATION

1A.1 Save as otherwise permitted by law, at any meeting, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive and Secretary).

1A.2 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these SOs shall bear the same meaning as in the Constitution.

1A.3 The provisions of paragraphs 38.2 to 38.5 of the Constitution apply to these SOs, save that any reference to "Constitution" shall be read as a reference to these SOs.

1A.4 In these SOs:

“Clear Days”

means a day of the week not including a Saturday, Sunday or Public Holiday;

"Funds Held on Trust"

means those funds which the Trust holds at its date of Authorisation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Section 47(2)(c) of the 2006 Act. Such funds may or may not be charitable;

"Nominated Officer"

means an Officer (as defined in paragraph 2.3 of Annex 6 of the Constitution) charged with the responsibility for discharging specific tasks within the SOs, Scheme of Delegation, or the SFIs;

“Scheme of Delegation”

means the Reservation of Powers to the Board of Directors and Delegation of Powers; and

"SFIs"

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

2 THE TRUST BOARD

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 All funds received in trust shall be in the name of the Trust as corporate trustee. Directors acting on behalf of the Trust as corporate trustees are acting as quasi-trustees.
- 2.3 In relation to Funds Held on Trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust. Accountability for charitable Funds Held on Trust is to be made to the Charity Commission.
- 2.4 The Trust has the functions conferred on it by the Regulatory Framework. Accountability for non-charitable Funds held on Trust is to NHS Improvement.
- 2.5 The powers of the Trust established under the Regulatory Framework shall be exercised by the Board of Directors.
- 2.6 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. These powers and decisions are set out in the Scheme of Delegation.
- 2.7 **Composition of the Board of Directors**
 - 2.7.1 In accordance with the paragraph 19 of the Constitution, the Board of Directors is to comprise:
 - 2.7.1.1 The following Non-Executive Directors:
 - 2.7.1.2 the Chair, and a minimum of four and a maximum of seven other Non-Executive Directors; and
 - 2.7.2 a minimum of four and a maximum of seven Executive Directors, including:
 - 2.7.2.1 the Chief Executive who shall be the Accounting Officer;
 - 2.7.2.2 the Finance Director;
 - 2.7.2.3 a registered medical practitioner (within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984); and
 - 2.7.2.4 a registered nurse or midwife (within the meaning of the Nursing and Midwifery Order (SI 2002/253).
 - 2.7.3 In the event that the number of Non-Executive Directors (including the Chair) is equal to the number of Executive Directors, the Chair (and in his absence Deputy Chair) shall have a second or casting vote at meetings of the Board of Directors.

- 2.7.4 A person may only be appointed as a Non-Executive Director if:
 - 2.7.4.1 he is a member of a the Public Constituency; and
 - 2.7.4.2 he is not disqualified by virtue of paragraph 24 of the Constitution.
- 2.7.5 The validity of any act of the Board of Directors is not affected by any vacancy among the Directors or defect in the appointment of a Director.
- 2.7.6 The Board of Directors (in consultation with the Council of Governors) may appoint any independent Non-Executive Director as the "senior independent director", for such period not exceeding the remainder of his term as a Non-Executive Director, as they may specify on appointing him.
- 2.7.7 Any Non-Executive Director so appointed may at any time resign from the office of "senior independent director" by giving notice in writing to the Chair. The Board of Directors (in consultation with the Council of Governors) may thereupon appoint another independent Non-Executive Director as "senior independent director" in accordance with the provisions in SO 2.7.6.
- 2.7.8 The "senior independent director" shall perform the role set out in the best practice advice in the NHS Foundation Trust Code of Governance (2006) (issued by NHS Improvement, formerly Monitor).

2.8 Register of members of the Board of Directors

In accordance with paragraph 29.4 of the Constitution, the Trust shall keep and maintain a register of members of the Board of Directors, which shall list the names of the Directors, their capacity on the Board of Directors and an address through which they may be contacted which may be the Secretary.

2.9 Appointment and removal of the Chair and other Non-Executive Directors

- 2.9.1 The Chair and other Non-Executive Directors are to be appointed by the Council of Governors following the process set out in Appendix 3 of Annex 8 of the Constitution.
- 2.9.2 Removal of the Chair or another Non-Executive Directors shall require approval of three-quarters of the members of the Council of Governors.

2.10 Remuneration and terms of office of the Chair and Non-Executive Directors

- 2.10.1 The Chair and the Non-Executive Directors are to be appointed for a period of office determined by the Council of Governors at general meeting of the Council of Governors not exceeding 3 years.
- 2.10.2 At the general meeting of the Council of Governors referred to at SO 2.10.1, the Council of Governors shall decide the remuneration and allowances and other terms and conditions of office of the Chair and other Non-Executive Directors.

2.11 Appointment and powers of Deputy Chair

- 2.11.1 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, the Council of Governors may appoint a Non-Executive Director to be Deputy Chair for such a period, not exceeding the remainder of his term as a Non-Executive Director, as the Council of Governors may specify on appointing him.
- 2.11.2 Any Non-Executive Director so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Council of Governors. The Council of Governors may thereupon appoint another Non-Executive Director as Deputy Chair in accordance with the provisions of SO 2.11.1.
- 2.11.3 Where the Chair of the Trust has died or has ceased to hold office, or where he has been unable to perform his duties as Chair owing to illness or any other cause, the Deputy Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes his duties, as the case may be; and references to the Chair in these SOs shall, so long as there is no Chair able to perform his duties, be taken to include references to the Deputy Chair. Where both the Chair and Deputy Chair are unable to perform their duties owing to illness, conflict of interest or any other cause, another Non-Executive Director as may be appointed by the Council of Governors shall act as Chair.

2.12 Appointment and removal of Chief Executive and other Executive Directors

- 2.12.1 Subject to the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors, the Non-Executive Directors shall appoint or remove the Chief Executive.
- 2.12.2 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

2.13 Remuneration and terms of office of the Chief Executive and Executive Directors

- 2.13.1 The Trust shall establish a committee of Non-Executive Directors in accordance with SO 5 to decide the remuneration and allowances, and the other terms and conditions of office of the Chief Executive and other Executive Directors.

2.14 Disqualification

Directors are subject to the disqualification criteria included at paragraph 24 of the Constitution.

3 MEETINGS OF THE TRUST

3.1 Admission of the public and the press

- 3.1.1 Meetings of the Board of Directors shall be held in public and the public and representatives of the press shall be afforded facilities to attend such meetings of the Board of Directors but shall be required to withdraw upon the Board of Directors resolving as follows:

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

- 3.1.2 The Chair shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board of Directors business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board of Directors resolving as follows:

“That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete business without the presence of the public”.

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

3.2 Calling meetings

- 3.2.1 Subject to SO 3.2.2 below, meetings of the Board of Directors shall be held at such times and places as the Board of Directors may, in its absolute discretion, determine.

- 3.2.2 The Chair may call a meeting of the Board of Directors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of members of the Board of the Directors, and this has been presented to him, or if, without so refusing, the Chair does not call a meeting within 6 days after such requisition has been presented to him, at the Trust’s Headquarters, such one-third or more members of the Board of Directors may forthwith call a meeting for the purpose of conducting that business.

3.3 Notice of meetings

- 3.3.1 Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair, or by an Officer of the Trust authorised by the Chair to sign on his behalf, shall be delivered to every Director, or sent by post to the usual

place of residence of every Director, so as to be available to him at least 3 Clear Days before the meeting, save in the case of emergencies.

- 3.3.2 Want of service of the notice on any member of the Board of Directors shall not affect the validity of a meeting, but failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 3.3.3 In the case of a meeting called by the Directors in default of the Chair in accordance with SO 3.2.2 above, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the requisition.
- 3.3.4 In the event of an emergency giving rise to the need for an immediate meeting of the Board of Directors, failure to comply with the notice periods in SOs 3.3.1 to 3.3.4 shall not prevent the calling of, or invalidate, such a meeting provided that every effort is made to make personal contact with every Director who is not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.
- 3.3.5 Before a public meeting of the Board of Directors, a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's Headquarters and advertised on the Trust's website at least 3 Clear Days before the meeting, save in the case of emergencies.

3.4 Agendas and supporting papers

Agendas will be sent to members of the Board of Directors 3 Clear Days before the meeting and supporting papers, whenever possible, shall accompany the agenda, save in emergency giving rise to the need for an immediate meeting as set out in SO 3.3.5 above. Failure to serve the agenda and (where relevant) supporting papers on more than three members of the Board of Directors will invalidate the meeting. An agenda and supporting papers shall be presumed to have been served one day after posting.

3.5 Setting the agenda

- 3.5.1 The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Board of Directors.
- 3.5.2 A Director desiring a matter to be included on an agenda, other than a Standing Item, or a motion under SO 3.10 (emergency motion), including a formal motion for discussion and voting, shall make his request in writing to the Chair at least 10 days before the meeting. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information.

3.6 **Petitions**

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

3.7 Chair of meeting

3.7.1 At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair, if there is one and he is present, shall preside. If the Chair and Deputy Chair are absent, such Non-Executive Director as the members of the Board of Directors present shall choose, shall preside.

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

3.8 **Chair's ruling**

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

3.9 **Notices of motion**

3.9.1 Notwithstanding the provisions of SO 3.5 above, and subject to the provisions of SO 3.11 (Motions: procedure at and during a meeting) and SO 3.12 (motion to rescind a resolution) below, a member of the Board of Directors wishing to move or amend a motion shall send a written notice to the Chair.

3.9.2 The notice shall be delivered at least 10 days before the meeting. The Chair shall include in the agenda for the meeting all notices so received that are in order and permissible under these SOs. Subject to SO 3.3.3, this SO shall not prevent any motion being moved without notice on any business mentioned on the agenda for the meeting.

3.10 **Emergency motions and written motions**

3.10.1 Emergency motions

Subject to the agreement of the Chair, and subject also to the provisions of SO 3.11 (Motions: Procedure at and during a meeting), a member of the Board of Directors may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board of Directors at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

3.10.2 **Written motions**

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

3.11 **Motions: procedure at and during a meeting**

3.11.1 **Who may propose**

A motion properly notified under SO 3.9 above may be proposed by the Chair of the meeting or any member of the Board of Directors present at the meeting. It must also be seconded by another member of the Board of Directors.

3.11.2 **Contents of motions**

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

- 3.11.2.1 the reception of a report;
- 3.11.2.2 consideration of any item of business before the Board of Directors;
- 3.11.2.3 the accuracy of minutes;
- 3.11.2.4 that the Board of Directors proceed to next business;
- 3.11.2.5 that the Board of Directors adjourn;
- 3.11.2.6 that the question be now put.

3.11.3 **Amendments to motions**

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

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

3.11.3.3 If there are a number of amendments proposed and seconded to a motion, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

3.11.4 **Rights of reply to motions**

3.11.4.1 **Amendments**

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

3.11.4.2 **Substantive/original motion**

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

3.11.5 **Withdrawing a motion**

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

3.11.6 **Motions once under debate**

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

3.11.6.1.1 an amendment to the motion; or

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

3.11.6.1.3 that the meeting proceed to the next business; or

3.11.6.1.4 that the motion should be now put; or

3.11.6.1.5 the appointment of an 'ad hoc' committee to deal with a specific item of business;

- 3.11.6.1.6 (where relevant) a motion under SO 3.1.2 above resolving to exclude the public (including the press); or
- 3.11.6.1.7 that a member of the Board of Directors be not further heard.
- 3.11.6.2 In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a member of the Board of Directors who has not taken part in the debate and who is eligible to vote.
- 3.11.6.3 If a motion to proceed to the next business or that the question be now put, is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.
- 3.11.6.4 The mover of a motion shall have a maximum of 5 minutes to move and 3 minutes to reply. Once a motion has been moved, no member of the Board of Directors shall speak more than once or for more than 3 minutes.

3.12 Motion to rescind a resolution

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

3.13 Voting

- 3.13.1 Subject to SO 3.15 (Suspension of Standing Orders) or as otherwise provided under these SOs, every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.
- 3.13.2 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A

paper ballot may also be used if a majority of the Directors present so request.

- 3.13.3 If at least one-third of the members of the Board of Directors present so request, the voting (other than by paper ballot), on any question may be recorded to show how each Director present voted or abstained.
- 3.13.4 If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.13.5 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.13.6 An Officer who has been appointed formally by the Board of Directors to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

3.14 Minutes

- 3.14.1 The minutes of the proceedings of a meeting of the Board of Directors shall be drawn up by the Secretary and submitted for agreement at the next scheduled meeting of the Board of Directors.
- 3.14.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting. Minutes shall be retained in the Chief Executive's office.
- 3.14.3 Board minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public save for items discussed by the Directors following the exclusion of the public and representatives of the press under SOs 3.1.1 and 3.1.2.

3.15 Suspension of Standing Orders

- 3.15.1 Except where this would contravene any provision of the Regulatory Framework or any guidance or best practice advice issued by NHS Improvement, any one or more of the SOs may be suspended at any meeting, provided that at least two-thirds of the Directors are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.
- 3.15.2 A decision to suspend the SOs shall be recorded in the minutes of the meeting.
- 3.15.3 A separate record of matters discussed during the suspension of the SOs shall be made and shall be available to the Directors.

- 3.15.4 No formal business may be transacted while the SOs are suspended.
- 3.15.5 The Audit Risk and Assurance Committee shall review every decision to suspend the SOs.

3.17 **Record of attendance**

The names of the Directors present at a meeting of the Board of Directors shall be recorded in the minutes together with the names of any Nominated Officers, Officers, and others invited by the Chair to be in attendance, save for members of the public or representatives of the press.

3.18 **Quorum**

- 3.18.1 No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors is present including at least one Executive Director and one Non-Executive Director.
- 3.18.2 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 3.18.3 Subject to paragraphs 26.10, 26.11 and 26.12 of the Constitution, if a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict (see S O7) he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Remuneration and Terms of Service Committee).

3.19 **Meetings: electronic communication**

- 3.19.1 In this SO “communication” and “electronic communication” shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 3.19.2 A Director in electronic communication with the Chair and all other parties to a meeting of the Board of Directors or of a committee of the Directors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
- 3.19.3 A meeting at which one or more of the Directors attends by way of electronic communication is deemed to be held at such a place as the Directors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Directors attending the meeting are physically

present, or in default of such a majority, the place at which the Chair of the meeting is physically present.

- 3.19.4 Meetings held in accordance with this SO are subject to SO 3.18 (Quorum). For such a meeting to be valid, a quorum MUST be present and maintained throughout the meeting.
- 3.19.5 The minutes of a meeting held in this way must state that it was held by electronic communication and that the Directors were all able to hear each other and were present throughout the meeting.

4 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 4.1 Subject to SO 2.6, the Regulatory Framework and such guidance or best practice advice as may be given by NHS Improvement, the Board of Directors may make arrangements for the exercise of any of its functions by a committee appointed by virtue of SO 4.3 below or by an Executive Director in each case subject to such restrictions and conditions as the Board of Directors considers appropriate.

4.2 Emergency powers

The powers which the Board of Directors has retained to itself within these SOs may in emergency or for an urgent decision be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board of Directors for ratification.

4.3 Delegation to committees

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

4.4 Delegation to Nominated Officers

- 4.4.1 Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee of the Board of Directors shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate Officers to undertake the remaining functions for which he will still retain accountability to the Board of Directors.
- 4.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals, which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.
- 4.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Finance Director or

other Executive Director to provide information and advise the Board in accordance with any statutory requirements.

- 4.4.4 The arrangements made by the Board of Directors as set out in the Scheme of Delegation shall have effect as if incorporated in these SOs.

4.5 **Duty to report non-compliance with Standing Orders**

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

5 **COMMITTEES**

5.1 **Appointment of committees**

- 5.1.1 Subject to SO 2.6, the Regulatory Framework and such guidance or best practice advice issued by NHS Improvement, the Board of Directors may and, if directed by NHS Improvement, shall appoint committees of the Trust consisting wholly or partly of Directors or wholly of persons who are not Directors of the Trust.
- 5.1.2 A committee appointed under SO 5.1.1 may, subject to such guidance and/or best practice advice as may be issued by NHS Improvement or the Board of Directors, appoint sub-committees consisting wholly or partly of Directors (whether or not they are Directors of the Trust in question) or wholly of persons who are not Directors of the Trust.
- 5.1.3 The SOs, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees (and any sub-committees appointed under SO 5.1.2) established by the Board of Directors, in which case the term "Chair" is to be read as a reference to the Chair of the committee (or sub-committee) as the context permits, and the term "member" is to be read as a reference to a member of the committee also as the context permits.
- 5.1.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide in accordance with any legislation and/or regulations and such guidance or best practice advice issued by NHS Improvement. Such terms of reference shall have effect as if incorporated into the SOs.
- 5.1.5 Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board of Directors.
- 5.1.6 The Board of Directors shall approve the appointments to each of the committees, which it has formally constituted. Where the Board of Directors determines, and regulations permit, that persons, who are neither Directors nor Officers, shall be appointed to a committee the terms

of such appointment shall be within the powers of the Board of Directors as defined by the Regulatory Framework. The Board of Directors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses.

5.1.7 The committees established by the Board of Directors are:

5.1.7.1 Audit Risk and Assurance Committee;

5.1.7.2 Remuneration Committee; and

5.1.7.3 Mental Health Act and Mental Capacity Act Committee

5.1.8 The terms of reference of those committees shall be agreed by the Board of Directors.

5.1.9 Notwithstanding the provisions of SO 5.1.7 above, the Board of Directors may establish other committees from time to time at its discretion.

5.2 Confidentiality

5.2.1 A member of a committee (including sub-committees or joint committees) shall not disclose a matter dealt with by, or brought before the committee, sub-committee or joint committee without its permission until the committee, sub-committee or joint committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.

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

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

6.1 The Board of Directors will cooperate with the Council of Governors as far as possible in order to comply with the Regulatory Framework in all respects and in particular in relation to the following matters which are set out specifically within the Constitution:

6.1.1 The Directors, having regard to the views of the Council of Governors, are to prepare Forward Plan in respect of each Financial Year to be given to NHS Improvement;

6.1.2 The Directors are to present to the Council of Governors at a general meeting the Annual Accounts, any report of the Auditor on them, and the Annual Report;

6.2 The Annual Report is to give:

- 6.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its Public Constituency is representative of those eligible for such membership; and
- 6.2.2 any other information which NHS Improvement requires.
- 6.3 In order to comply with the Regulatory Framework in all respects and in particular in relation to the matters which are set out above, the Council of Governors may request that a matter which relates to paragraphs 35 and 36 of the Constitution is included on the agenda for a meeting of the Board of Directors.
- 6.4 If the Council of Governors so desires such a matter as described within SO 6.3 to be included on an agenda item, they shall make their request in writing to the Chair at least 10 days before the meeting of the Board of Directors, subject to SO 3.3. The Chair shall decide whether the matter is appropriate to be included on the agenda. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.

7 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS OF THE MEMBERS OF THE BOARD OF DIRECTORS

- 7.1 Subject to paragraphs 26.8 and 26.9 of the Constitution members of the Board of Directors are required to declare:
 - 7.1.1 any pecuniary interest in any contract, proposed contract or other matter which is under consideration or is to be considered by the Board of Directors; and
 - 7.1.2 any interests including but not limited to any personal or family interests which are relevant and material to the business of the Trust,

irrespective of whether those interests are direct or indirect, actual or potential.
- 7.2 All members of the Board of Directors must declare such interests as soon as the Director in question becomes aware of it. Any members of the Board of Directors appointed subsequently to the date of Authorisation must do so on appointment.
- 7.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time, setting out any interests required to be declared outside a meeting in accordance with the Constitution or the SOs and delivering it to the Secretary on appointment or as soon thereafter as the interest arises, but within 5 Clear Days of becoming aware of the existence of a relevant and material interest.
- 7.4 In addition, if a Director is present at a meeting of the Board of Directors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting, and as soon as practicable after its commencement, disclose the fact and he must then withdraw from the meeting and play no part in the relevant discussion and he shall not vote on any question with respect to the matter. The requirements of this SO 7.4 are subject to paragraphs 26.8, 26.9 and 26.10 of the Constitution.
- 7.5 If a Director has declared a pecuniary interest in accordance with SO 7.9 below, he shall not take part in the consideration or discussion of the matter in respect of which an interest has been disclosed and shall be excluded from the meeting whilst

that proposed contract is under consideration. At the time the interests are declared, they should be recorded in the Director's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.

- 7.6 Subject to paragraphs 26.8 and 26.9 of the Constitution and any guidance or best practice advice issued by NHS Improvement, interests which should be regarded as "relevant and material" for the purposes of these SOs are:
- 7.6.1 directorships, including non-executive directorships held in private companies or public listed companies (with the exception of those of dormant companies);
 - 7.6.2 ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the Trust;
 - 7.6.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the Trust;
 - 7.6.4 a position of authority in a charity or Voluntary Organisation in the field of health and social care;
 - 7.6.5 any connection with a voluntary or other organisation contracting for Trust services or commissioning Trust services;
 - 7.6.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks.
- 7.7 Members of the Board of Directors who hold directorships in companies likely or possibly seeking to do business with the Trust should be published in the Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.
- 7.8 Subject to paragraphs 26.8 and 26.9 of the Constitution a Director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 7.8.1 he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 7.8.2 he is a partner of, or is in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 7.9 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 7.9.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; or

7.9.2 of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

7.10 Where a Director:

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

7.10.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and

7.10.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class.

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

7.11 In the case of persons living together, the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of the Constitution and the SOs to be also an interest of the other.

7.12 If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

7.13 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 of Schedule 7 of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this SO.

7.14 SO 7 applies to any committee, sub-committee or joint committee of the Board of Directors and applies to any member of any such committee, sub-committee or joint committee (whether or not he is also a Director).

7.15 Register of interests of the members of the Board of Directors

7.15.1 The register of interests of the members of the Board of Directors shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with the Constitution or these SOs.

7.15.2 In accordance with SO 7.3 above, it is the obligation of the Director to inform the Secretary in writing within 5 Clear Days of becoming aware of the existence of a relevant or material interest. The Secretary must then amend the register of interests of members of the Board of Directors upon

receipt of new or amended information as soon as is practical and, in any event, within 14 days of receipt.

- 7.15.3 The register of interests of the members of the Board of Directors will be available to the public in accordance with paragraph 30 of the Constitution.

8 STANDARDS OF BUSINESS CONDUCT

8.1 Policy

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

8.2 Interest of Directors and Officers in contracts

- 8.2.1 If it comes to the knowledge of Director or an Officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Chief Executive or Secretary of the fact that he is interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

- 8.2.2 A Director or Officer must also declare to the Chief Executive or Secretary any other employment or business or other relationship of his, or of an Immediate Family Member, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust in accordance with SO 7. The Trust shall require such interests to be recorded in the register interests of members of the Board of Directors.

- 8.2.3 The provisions of this SO 8.2 are subject to paragraphs 26.8 and 26.9 of the Constitution.

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

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

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

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

8.4 Relatives of Directors or Officers

- 8.4.1 Directors and Officers shall bear in mind that candidates for any staff appointment shall when making an application disclose in writing whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 8.4.2 Directors and Officers shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that Director or Officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- 8.4.3 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) must disclose to the Secretary whether they are related to any other member of the Board of Directors or holder of any office in the Trust.
- 8.4.4 Where the relationship to an Officer or another Director to a Director of the Trust is disclosed, SO 7 shall apply.

8.5 External consultants

SO8 will apply equally to all external consultants or other agents acting on behalf of the Trust.

9 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

9.1 Custody of Seal

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

9.2 Sealing of documents

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

9.3 **Register of sealing**

The Secretary shall make an entry of every sealing (numbered consecutively) in a book maintained for that purpose, and shall ensure that each entry is signed by the persons who shall have approved and authorised the document and those who attested the seal. The Secretary shall make a report of all sealings to the Audit Risk and Assurance Committee at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

10 SIGNATURE OF DOCUMENTS

10.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.

10.2 The Chief Executive or his Nominated Officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors or committee of the Board of Directors to which the Board of Directors has delegated appropriate authority in accordance with the SOs.

11 MISCELLANEOUS

11.1 Standing Orders to be given to Directors and Nominated Officers

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

11.2 Documents having the standing of Standing Orders

The SFIs and the Scheme of Delegation shall have the effect as if incorporated into these SOs.

11.3 Review of Standing Orders

The SOs shall be reviewed at least every three years by the Board of Directors. The requirement for review extends to all documents having the effect as if incorporated into these SOs.

ANNEX 8 - FURTHER PROVISIONS

(Paragraphs 3, 7, 9, 13 and 21)

APPENDIX 1

NHS Core Principles

1 NHS Core Principles

- 1.1 The NHS will provide a universal service for all based on clinical need, not ability to pay.
- 1.2 The NHS will provide a comprehensive range of services.
- 1.3 The NHS will shape its services around the needs and preferences of individual patients, their families and their carers.
- 1.4 The NHS will respond to different needs of different populations.
- 1.5 The NHS will work continuously to improve the quality of services and to minimise errors.
- 1.6 The NHS will support and value its staff.
- 1.7 The NHS will work together with others to ensure a seamless service for patients.
- 1.8 The NHS will help keep people healthy and work to reduce health inequalities.
- 1.9 The NHS will respect the confidentiality of individual patients and provide open access to information about services, treatment and performance.

2 Representative Membership

- 2.1 The Trust shall at all times strive to ensure that, taken as a whole, its actual membership of the public constituencies is representative of those eligible for membership. To this end:
 - 2.1.1 The 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 year.
 - 2.1.2 The Trust shall present to each annual meeting of the Council of Governors:
 - 2.1.2.1 a report on steps taken to secure that, taken as a whole, the actual membership of its constituencies and the classes of constituencies is representative of those eligible for such membership;
 - 2.1.2.2 the progress of the membership strategy;
 - 2.1.2.3 any changes to the membership strategy.

3 Co-operation with health service and other bodies

- 3.1 In exercising its functions the Trust shall co-operate with Health Service Bodies and any local authority with which the Trust has a Local Authority Partnership Agreement.
- 3.2 Notwithstanding the provisions of paragraph 3.1 above, the Trust shall co-operate with any specific third party body that it has a duty (statutory, contractual, or otherwise) to co-operate with.

4 Respects for rights of people

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

APPENDIX 2

Membership

1 Disqualification from membership of the Trust

- 1.1 A person may not be a Member of the Trust if they are under 12 years of age.
- 1.2 A person may not become or remain a member if they do not meet the requirements of eligibility under this Constitution
- 1.3 A person may not become a member of the Trust if they have been removed from membership by the Council of Governors within the preceding 5 years.
- 1.4 Where the Trust is on notice that a Member may be disqualified from membership, or may no longer be eligible to be a Member the Secretary shall give the Member 14 days written notice to show cause why his name should not be removed from the Trust's register of Members. On receipt of any such information supplied by the Member, the Secretary may, if he considers it appropriate, remove the Member from the register of Members. Any dispute about entitlement to membership will be resolved in accordance with the procedure set out at paragraph 2.1 of Appendix 4 of this Annex.
- 1.5 All Members of the Trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a Member.

2 Expulsion from membership of the Trust

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 on the following grounds:-

- 2.1 if they have demonstrated aggressive or violent behaviour at any Hospital and following such behaviour he has been asked to leave, has been removed or excluded from any Hospital or other healthcare facility in accordance with the relevant Trust policy for withholding treatment from violent/aggressive patients;
- 2.2 if they have been confirmed as a 'vexatious complainant' in accordance with the relevant Trust policy for handling complaints;
- 2.3 if they have been removed as a member from another NHS Foundation Trust; or
- 2.4 if they are deemed to have acted in a manner contrary to the interests of the Trust.
- 2.5 The following procedure is to be adopted:
 - 2.5.1 Any Member may complain to the Secretary that another Member has acted in a way which would justify expulsion in accordance with paragraphs 2.1 to 2.4 of this Appendix 2 to Annex 8.
 - 2.5.2 If a complaint is made, the Council of Governors may itself consider the complaint, having taken such steps as it considers appropriate, to ensure that each Member's point of view is heard and may either:

- 2.5.2.1 dismiss the complaint and take no further action; or
- 2.5.2.2 arrange for a resolution to expel the Member complained of to be considered at the next meeting of the Council of Governors.

3 Termination of Membership

3.1 A Member shall cease to be a Member on:

- 3.1.1 death;
- 3.1.2 resignation by notice in writing to the Secretary;
- 3.1.3 ceasing to fulfil the requirements of paragraphs 7 or 8 of this Constitution, as the case may be; or
- 3.1.4 being disqualified pursuant to paragraph 1 above, or being expelled pursuant to paragraph 2 above.

APPENDIX 3

Board of Directors – further provisions

1 Joint Nomination Committee

- 1.1 For the purpose of appointing a Chair and Non Executive Directors of the Trust the Council of Governors together with the Board of Directors shall appoint a Joint Nominations Committee (the "Committee") which shall be responsible for:
 - 1.1.1 nominating suitable candidates to the Council of Governors for appointment to the Chairmanship or office of Non-Executive Director; and
 - 1.1.2 nominating suitable candidates to the Non-Executive Directors for appointment as the Chief Executive.

2 Membership

- 2.1 The Committee shall be made up of the Chair of the Trust, 4 Governors of whom at least 2 shall be Public Governors and 2 Non-Executive Directors of the Trust.
- 2.2 If the number of Governors prepared to serve on the Committee is greater than the numbers of places available, the Committee members will be selected by ballot among all Governors.
- 2.3 The Non-Executive Director members shall be appointed to the Committee by the Chair.
- 2.4 Members may serve on the Committee for as long as they continue to serve as Governors or Directors but may resign at any time. In the event of a resignation, a replacement from the appropriate category will be appointed to the Committee, if necessary after a ballot.
- 2.5 The Committee must elect one of the Elected Governor Committee members to act as the "Vice-Chair" of the Committee. The Vice-Chair of the Committee may serve in that capacity for as long as he continues to serve on the Committee, but he may resign as Vice-Chair at any time.

3 Meetings

- 3.1 Meetings of the Committee must be held at least once in every year.
- 3.2 Meetings of the Committee will be held in private.
- 3.3 Meetings of the Committee will be chaired by the Chair of the Trust or in his absence the Vice-Chair. However, in the case of the appointment of non-executive directors or the chairperson, a governor should chair the committee. The person chairing the meeting shall have a second or casting vote in the event that any ballot results in an equality of votes.
- 3.4 The Chair should not chair the Committee, or attend any meetings of the Committee when it is dealing with the nomination of a successor to the Chairmanship.

- 3.5 A Non-Executive Director member (save for the Chair) of the Committee should not attend any meetings of the Committee when it is dealing with the nomination of his successor.
- 3.6 The Chief Executive may be invited to attend meetings of the Committee in an advisory capacity.
- 3.7 A quorum will comprise the Chair (or, where required pursuant to paragraph 3.3 above, the Deputy Chair) or, in their absence, the Vice-Chair and two other members always provided that at least one of those attending shall be an Elected Governor.
- 3.8 The Secretary of the Trust shall provide secretarial services to the Committee including keeping a record of all meetings and decisions made.

4 Nominations

- 4.1 Prior to the time when it becomes necessary for the Council of Governors to appoint a person to the Chairmanship of the Trust or the position of Non-Executive Director of the Trust, the Committee must nominate a suitable candidate for the position to the Council of Governors for approval at a full meeting of the Council of Governors. In the event that the Committee is unable to identify a single candidate it may nominate not more than two candidates for any position for the Council of Governors to consider.
- 4.2 When the Chair or a Non-Executive Director reaches the end of their current term and being eligible wish to be reappointed, the Committee may nominate the individual for such reappointment without competition subject to the Committee taking into account the result of any review of the individual's performance during their term of office and the balance of skills required on the Board of Directors.
- 4.3 Where the Committee chooses not to nominate an individual for reappointment or where the individual is not eligible for reappointment, the Committee must conduct an open competition ensuring the existence of a formal, rigorous and transparent procedure to identify and select a suitable candidate for nomination to the Council of Governors for appointment.
- 4.4 A Non-Executive Director who despite being eligible is not nominated for reappointment may seek selection in the open competition.
- 4.5 Before making any nomination whether for reappointment or initial appointment, the Committee should evaluate the performance of the individual seeking re-appointment during their term, the balance of qualifications, skills, knowledge and experience on the Board of Directors and, in light of this evaluation, prepare a description of the role and capabilities required for any particular appointment. When considering candidates for the Chairmanship, the Committee should take into consideration the time commitment required.
- 4.6 The Council of Governors shall appoint a committee of Governors to advise the Council of Governors and/or the Committee on the remuneration and allowances, and other terms and conditions of office of the Non-Executive Directors, including the Chair, in accordance with paragraph 27.1 of this Constitution.

- 4.7 The Committee may obtain advice from and/or use the services of firms or individuals who have relevant expertise and can assist with recruitment and/or selection of suitable candidates. The costs of so doing will be borne by the Trust and must be agreed with the Chief Executive in advance.
- 4.8 The Committee should at all times have regard for NHS Improvement's NHS Foundation Trust Code of Governance.

5 Review

The provisions of this Appendix 3 will be reviewed by the Trust at least every 3 years beginning with the date on which the Trust is authorised by NHS Improvement (formerly) as an NHS Foundation Trust.

APPENDIX 4

Further Provisions – general

1 Indemnity

- 1.1 Members of the Council of Governors and Board of Directors 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 Trust.
- 1.2 The Trust may take out insurance either through the NHS Litigation Authority or otherwise in respect of directors and officers liability, including liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

2 Dispute Resolution Procedures

- 2.1 In the event of any dispute about the entitlement to membership the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the Member or applicant (as the case may be) is aggrieved at the decision of the Secretary he may appeal in writing within 14 days of the Secretary's decision to the Council of Governors whose decision shall be final.
- 2.2 In the event of dispute between the Council of Governors and the Board of Directors or between a Governor and the Council of Governors:
 - 2.2.1 in the first instance the Chair on the advice of the Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;
 - 2.2.2 if the Chair is unable to resolve the dispute he shall appoint a special 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;
 - 2.2.3 if the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

3 Amendment of the Constitution

- 3.1 The Trust may make amendments to this Constitution.
- 3.2 No proposals for amendment of this Constitution will be approved unless more than half of the members of the Board of Directors who vote and more than half of the members of the Council of Governors who vote approve the change.

4 Dissolution of the Trust

- 4.1 The Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the provisions of the 2006 Act.

APPENDIX 5

The Role and Responsibilities of the Secretary

- 1 Notwithstanding the specific functions of the Secretary, as set out in this Constitution, the Secretary will be expected to:
 - 1.1 Ensure good information flows within the Board of Directors and its committees and between senior management and the Council of Governors;
 - 1.2 Ensure that the procedures of the Board of Directors (as set out in this Constitution and the Standing Orders for Directors) are complied with;
 - 1.3 Ensure that the procedures of the Council of Governors (as set out in this Constitution and the Standing Orders for Governors) are complied with;
 - 1.4 Advise the Board of Directors and the Council of Governors (through the Chair or the Deputy Chair, as the case may be) on all governance matters; and
 - 1.5 Be available to give advice and support to individual Directors and assistance with professional development.