

AUTHORISATION

of

Birmingham Community Healthcare NHS Trust

(pursuant to section 35 of the National Health Service Act 2006)



Signature:.....

A handwritten signature in black ink, written over a dotted line. The signature appears to be 'A. Smith'.

30 March 2016

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Authorisation

1. Monitor, in exercise of the powers conferred by section 35 of the National Health Service 2006, and all other powers exercisable by Monitor, hereby authorises Birmingham Community Healthcare NHS Trust to become an NHS Foundation Trust.
2. This Authorisation shall come into force on 1 April 2016.
3. This Authorisation is not assignable.

AUTHORISATION
of
Birmingham Community Healthcare NHS Trust
Schedule

The Constitution (and Annexures)

Birmingham Community Healthcare NHS Foundation Trust

Constitution

Version approved by Trust Board 29th October 2015

**Birmingham Community Healthcare
NHS Foundation Trust Constitution**

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1. **Interpretation and definitions**

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

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

References to any statute or statutory provision shall be deemed to include any instrument, order, regulation or direction issued under it and shall be construed to include a reference to the same as it may have been, or may from time to time be, amended, modified, consolidated, re-enacted or replaced.

References to any statutory body or public organisation shall be deemed to include any successor body or bodies which may from time to time assume all or substantially all of the functions of that original statutory body.

the 2006 Act is the National Health Service Act 2006.

the 2012 Act is the Health and Social Care Act 2012.

Annual Members' Meeting is defined in paragraph 10 of the constitution.

Authorisation is the authorisation issued by Monitor under Section 35 of the 2006 Act.

constitution means this constitution and all annexes to it.

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

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

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

2. Name

The name of the foundation trust is Birmingham Community Healthcare NHS Foundation Trust (the Trust).

3. Principal purpose

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

4. Powers

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

5. Membership and constituencies

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

- 5.1 a public constituency; and
- 5.2 a staff constituency.

6. Application for membership

An individual who is eligible to become a member of the Trust may do so on application to the Trust. An individual who is eligible for membership of the staff constituency may become a member automatically upon invitation in accordance with the provisions of paragraph 8.5 of this constitution.

7. Public Constituency

7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.

7.2 Those individuals who live in an area specified 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.

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 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

8.3 The Staff Constituency shall be divided into 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.

8.4 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

Automatic membership by default – staff

8.5 An individual who is:

8.5.1 eligible to become a member of the Staff Constituency, and

8.5.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

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 An individual must be at least 16 years old to become a member of the Trust.

9.4 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 Annex 8 – Further Provisions.

10. Annual Members' Meeting

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

10.2 Further provisions about the Annual Members' Meeting are set out in Annex 9 – Annual Members' Meeting.

11. Council of Governors – composition

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

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

11.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

12. Council of Governors – election of governors

12.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.

12.2 The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the Trust’s Authorisation are attached at Annex 4.

12.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 45 of the constitution (amendment of the constitution).

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

13. Council of Governors - tenure

13.1 All governors elected following the first election carried out in accordance with paragraphs 13.2 and 13.3 below, may hold office for a period of up to 3 years.

13.2 The first election to the Council of Governors for the public governors shall, in order that future elections shall occur on a phased basis, be conducted in such a way as to result in the initial terms of office for those governors set out below:

A	2	Initial public governors for the South Birmingham area will serve a term of office of three years
B	2	Initial public governors for the South Birmingham area will serve a term of office of two years
C	2	Initial public governors for the Central and West Birmingham

		area will serve a term of office of three years
D	2	Initial public governors for the Central and West Birmingham area will serve a term of office of two years
E	2	Initial public governors for the Birmingham East and North area will serve a term of office of three years
F	2	Initial public governors for the Birmingham East and North area will serve a term of office of two years

13.3 The initial governors in each of the categories set out in paragraph 13.2 shall be selected by the number of votes cast on the following basis:

13.3.1 the number of governors specified in rows A,C and E of the table in paragraph 13.2 shall serve a three year term, being those governors who gain the highest number of votes in each of the three constituency areas specified (being an aggregate total of six governors);

13.3.2 the number of governors specified in rows B, D and F of the table in paragraph 13.2 shall serve a two year term, being those governors who gain the next highest number of votes in each of the three constituency areas specified after those governors referred to in paragraph 13.3.1 (being an aggregate total of six governors); and

13.3.3 the returning officer (as referred to in Annex 4) will undertake this selection.

13.4 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.

13.5 An elected governor shall be eligible for re-election at the end of his term.

13.6 An appointed governor may hold office for a period of up to 3 years.

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

13.8 An appointed governor shall be eligible for re-appointment at the end of his term.

14. Council of Governors – disqualification and removal

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

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

14.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986),

14.1.3 a person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it;

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

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

14.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.

14.4 Provisions for the removal of governors are set out in Annex 5.

15. Council of Governors- duties of governors

15.1 The general duties of the Council of Governors are –

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

15.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

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

16. Council of Governors – meetings of governors

16.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 25.1 or paragraph 26.1 below) or, in his absence the vice chair (appointed in accordance with the provisions of paragraph 27 below), shall preside at meetings of the Council of Governors.

16.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

16.3 For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

17. Council of Governors – standing orders

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

18. Council of Governors – referral to the Panel

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

18.1.1 to act in accordance with its constitution, or

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

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

19. Council of Governors - conflicts of interest of governors

If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

20. Council of Governors – travel expenses

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

21. Council of Governors – further provisions

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

22. Board of Directors – composition

22.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

22.2 The Board of Directors is to comprise:

22.2.1 a non-executive Chair;

22.2.2 up to six (6) other non-executive directors; and

22.2.3 up to six (6) executive directors,

such that at any time at least half of the Board of Directors (excluding the Chair) shall be Non-Executive Directors.

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

22.4 The Chief Executive shall be the Accounting Officer.

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

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

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

23. Board of Directors – general duty

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

24. Board of Directors – qualification for appointment as a non-executive director

A person may be appointed as a non-executive director only if –

24.1 he is a member of the Public Constituency, or

24.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and

24.3 he is not disqualified by virtue of paragraph 30 below.

25. Board of Directors – appointment and removal of Chair and other non-executive directors

25.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other non-executive directors.

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

25.3 The initial Chair and the initial non-executive directors are to be appointed in accordance with paragraph 26 below.

26. Board of Directors – appointment of initial Chair and initial other non-executive directors

- 26.1 The Council of Governors shall appoint the Chair of the applicant NHS Trust as the initial Chair of the Trust, if he wishes to be appointed.
- 26.2 The power of the Council of Governors to appoint the other non-executive directors of the Trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the Trust any of the non-executive directors of the applicant NHS Trust (other than the Chair) who wish to be appointed.
- 26.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 24 above (other than disqualification by virtue of paragraph 30 below) do not apply to the appointment of the initial Chair and the initial other non-executive directors in accordance with the procedures set out in this paragraph.
- 26.4 An individual appointed as the initial Chair or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chair or (as the case may be) non-executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

27. Board of Directors – appointment of vice chair

- 27.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a vice chair.
- 27.2 The Board of Directors shall, following consultation with the Council of Governors, appoint one of the non-executive directors as senior independent director to act in accordance with Monitor's NHS Foundation Trust Code of Governance. The senior independent director could be the vice chair.

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

- 28.1 The non-executive directors shall appoint or remove the Chief Executive.
- 28.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.

28.3 The initial Chief Executive is to be appointed in accordance with paragraph 29 below.

28.4 A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

29. Board of Directors – appointment and removal of initial Chief Executive

29.1 The non-executive directors shall appoint the chief officer of the applicant NHS Trust as the initial Chief Executive of the Trust, if he wishes to be appointed.

29.2 The appointment of the chief officer of the applicant NHS Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.

30. Board of Directors – disqualification

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

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

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

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

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

30.1.5 a person who, in the case of a Non-Executive Director other than the initial Non-Executive Directors, no longer satisfies paragraph 24 (if applicable);

30.1.6 a person whose tenure of office as a Chair or as a member or Director of a health service body has been terminated on the

grounds that his appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

30.1.7 a person who has had his name removed from a practising list by a direction under any applicable legislation or has otherwise been disqualified or suspended from any healthcare profession, and has not subsequently had his name included in such a list or had his qualification re-instated or suspension lifted (as applicable);

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

30.1.9 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;

30.1.10 a person who is a member of a local authority Health Overview and Scrutiny Committee;

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

30.1.12 a person who has failed without reasonable cause to fulfil any training requirement established by the Board of Directors;

30.1.13 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;

30.1.14 a person who is the spouse, partner, parent or child of a member of the Board of Directors (including the Chair) of the Trust; or

30.1.15 a person who is the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register.

30.2 The Board of Directors may exercise its discretion to allow any individual to become or continue as a member of the Board of Directors in respect of

any matter that would otherwise bar such membership under paragraphs 30.1.5 to 30.1.14 (inclusive).

31. Board of Directors – meetings

31.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

31.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

32. Board of Directors – standing orders

The standing orders for the practice and procedure of the Board of Directors are attached at 07.

33. Board of Directors - conflicts of interest of directors

33.1 The duties that a director of the Trust has by virtue of being a director include in particular –

33.1.1 a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust; and

33.1.2 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.

33.2 The duty referred to in sub-paragraph 33.1.1 is not infringed if –

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

33.2.2 the matter has been authorised in accordance with the constitution.

33.3 The duty referred to in sub-paragraph 33.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

33.4 In sub-paragraph 33.1.2, “third party” means a person other than –

- 33.4.1 the Trust; or
 - 33.4.2 a person acting on its behalf.
- 33.5 If a director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the director must declare the nature and extent of that interest to the other directors.
- 33.6 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 33.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 33.8 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 33.9 A director need not declare an interest –
- 33.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 33.9.2 if, or to the extent that, the directors are already aware of it;
 - 33.9.3 if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –
 - 33.9.3.1 by a meeting of the Board of Directors, or
 - 33.9.3.2 by a committee of the directors appointed for the purpose under the constitution.
- 33.10 A matter shall be authorised for the purposes of paragraph 33.2.2 if:
- 33.10.1 the Board of Directors by majority disapplies the provision of the constitution which would otherwise prevent a director from being counted as participating in the decision-making process;
 - 33.10.2 the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 33.10.3 the director's conflict of interest arises from a permitted cause (as determined by the Board of Directors from time to time).

34. Board of Directors – remuneration and terms of office

- 34.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive directors.
- 34.2 The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

35. Registers

The Trust shall have:

- 35.1 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;
- 35.2 a register of members of the Council of Governors;
- 35.3 a register of interests of governors;
- 35.4 a register of directors; and
- 35.5 a register of interests of the directors.

36. Admission to and removal from the registers

- 36.1 The Secretary shall ensure that the name of any individual who is accepted as a member of the Trust under the provisions of this constitution is added to the register of members.
- 36.2 The Secretary shall ensure the removal from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this constitution.

37. Registers – inspection and copies

- 37.1 The Trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

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

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

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

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

37.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

38. Documents available for public inspection

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

38.1.1 a copy of the current constitution;

38.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and

38.1.3 a copy of the latest annual report.

38.2 The 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:

38.2.1 a copy of any order made under section 65D (appointment of trust special administrator, 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;

38.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;

38.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;

- 38.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
- 38.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
- 38.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
- 38.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- 38.2.8 a copy of any final report published under section 65I (administrator's final report) of the 2006 Act;
- 38.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
- 38.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 38.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 38.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

39. Auditor

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

40. Audit committee

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

41. Accounts

- 41.1 The Trust must keep proper accounts and proper records in relation to accounts.
- 41.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 41.3 The accounts are to be audited by the Trust's auditor.
- 41.4 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 41.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

- 42.1 The Trust shall prepare an Annual Report and send it to Monitor.
- 42.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 42.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 42.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 42.5 Each forward plan must include information about -
 - 42.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
 - 42.5.2 the income it expects to receive from doing so.

42.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 42.5.1, the Council of Governors must –

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

42.6.2 notify the directors of the Trust of its determination.

42.7 Where the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England it may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

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

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

43.1.1 the annual accounts

43.1.2 any report of the auditor on them

43.1.3 the annual report.

43.2 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.

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

44. Instruments

44.1 The Trust shall have a seal.

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

45. Amendment of the constitution

45.1 The Trust may make amendments of its constitution only if –

45.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments, and

45.1.2 more than half of the members of the Board of Directors of the Trust voting approve the amendments.

45.2 Amendments made under paragraph 45.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

45.3 Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –

45.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and

45.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.

45.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

45.5 Amendments by the Trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor'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.

46. Mergers etc. and Significant transactions

46.1 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.

46.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.

46.3 In this paragraph 46, the following words have the following meanings:

“Significant transaction” means a transaction which meets any one of the tests below:

46.3.1 the gross asset test; or

46.3.2 the income test; or

46.3.3 the gross capital test (relating to acquisitions or divestments).

The gross asset test:

46.3.4 is met if the assets which are the subject of the transaction exceed 25% of the gross assets of the Trust;

The income test:

46.3.5 is met if, following the completion of the relevant transaction, the income of the Trust will increase or decrease by more than 25%;

The gross capital test:

46.3.6 is met if the gross capital of the company or business being acquired or divested represents more than 25% of the capital of the trust following completion (where “gross capital” is the market value of the relevant company or business’s shares and debt securities, plus the excess of current liabilities over current assets, and the Trust’s capital is determined by reference to its balance sheet);

46.3.7 for the purposes of calculating the tests in this paragraph 46.2, figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.

A transaction:

46.3.8 is any agreement (including an amendment to an agreement) entered into by the Trust in respect of the acquisition of or merger with a business or services or the disposal of a business or service;

46.3.9 excludes a transaction in the ordinary course of business (including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Trust;

46.3.10 excludes any agreement or changes to healthcare services carried out by the Trust following a reconfiguration of services led by the commissioners of such services; and

46.3.11 excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset the Trust.

47. Procedures and Protocols

The Board of Directors shall adopt such procedures and protocols as it shall deem to be appropriate for the good governance of the Trust from time to time.

48. Indemnity

48.1 Members of the Board of Directors and Council of Governors 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 of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

48.2 The Trust may purchase and maintain for members of the Board of Directors and Council of Governors insurance in respect of directors' and officers' liability, including, without limitation, liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

ANNEX 1 THE PUBLIC CONSTITUENCY

Public Constituency Area	Electoral Area	Minimum Number of Members
South Birmingham	Bartley Green Billseley Bournville Brandwood Edgbaston Hall Green Harborne Kings Norton Longbridge Moseley and Kings Heath Northfield Quinton Selly Oak Weoley	300
Central and West Birmingham	Aston Handsworth Wood Ladywood Lozells and East Handsworth Nechells Oscott Soho Sparkbrook Springfield Perry Barr	300

Public Constituency Area	Electoral Area	Minimum Number of Members
Birmingham East and North	Acocks Green Bordesley Green Erdington Hodge Hill Kingstanding Shard End Sheldon South Yardley Stechford and Yardley North Stockland Green Sutton Four Oaks Sutton New Hall Sutton Trinity Sutton Vesey Tyburn Washwood Heath	300
West Midlands Region	Herefordshire Shropshire Staffordshire Warwickshire Worcestershire West Midlands (excluding Birmingham)	100
Total		1,000

ANNEX 2 THE STAFF CONSTITUENCY

The Staff Constituency is divided into four (4) classes. Staff shall be eligible for membership of the class within the Staff Constituency shown in the table below.

Staff Constituency class	Description	Minimum Number of Members
Medical, Dental and Nursing	Staff who are employed as doctors, dentists or nurses	150
Healthcare Assistants and Support Staff	Staff who are employed as healthcare assistants or support staff	150
Scientific, Therapeutic and Technical Staff / AHP & Healthcare Scientists	Staff who are employed as scientific, therapeutic or technical staff, or AHP or healthcare scientists.	100
Other	Staff who are employed by the Trust in roles other than those specified in other Staff Constituency classes	100
Total		500

ANNEX 3 COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors shall comprise twenty-three(23) governors as set out in the table below:

1. Elected Governors

Constituency	Area/Class	Number of Governors
Public	South Birmingham	4
	Central and West Birmingham	4
	Birmingham East and North	4
	West Midlands Region	1
Staff	Medical, Dental and Nursing	2
	Healthcare Assistants and Support Staff	2
	Scientific, Therapeutic and Technical Staff / Allied Health Professionals and Healthcare Scientists	1
	Other	1
Total		19

2. Appointed Governors

Representative Status	Representative of	Number of Governors
Required by Statute	Birmingham City Council Local Authority	1
Partnership/stakeholder organisation	University of Birmingham	1
Partnership/stakeholder organisation	Birmingham Voluntary Services Council	1
Partnership/stakeholder organisation	West Midlands Police	1
Total		4

ANNEX 4 THE MODEL ELECTION RULES 2014

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1. Interpretation

Part 2 Timetable

2. Timetable
3. Computation of time

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Part 1 Interpretation

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

“corporation” means the public benefit corporation subject to this constitution;

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

“the regulator” means the Independent Regulator for NHS foundation trusts; and

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

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

“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;

“method of polling” means voting either by post, internet, text message or telephone

“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.

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

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

3. Computation of time

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

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

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

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

Part 3 Returning Officer

4. Returning Officer

- 4.1 Subject to rule 66, 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 66, 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

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

9. Nomination of candidates

9.1 Each candidate must nominate themselves on a single nomination paper.

9.2 The returning officer:

- (a) is to supply any member of the corporation with a nomination paper, and
- (b) is to prepare a nomination paper for signature at the request of any member of the corporation, but it is not necessary for a nomination to be on a form supplied by the returning officer and it can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

10.1 The nomination paper must state the candidate's:

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

11. Declaration of interests

11.1 The nomination paper must state:

- (a) any financial interest that the candidate has in the corporation, and

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

12. Declaration of eligibility

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

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

13. Signature of candidate

13.1 The nomination paper 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.

14. Decisions as to the validity of nomination

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

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

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

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

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

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

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 paper.

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, and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing, as given in their nomination paper.

- 15.3 The statement 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 papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers

- 16.1 The corporation is to make the statement of the candidates and the nomination papers 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 person requests a copy or extract of the statement of candidates or their nomination papers, the corporation is to provide that member with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

- 18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

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

Part 5 Contested elections

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 if eligible voters, within a constituency, or class within a constituency, may, subject to rule 19.4, cast their vote by any combination of the methods of polling.
- 19.4 The corporation may decide if eligible voters, within a constituency or class within a constituency, for whom an e-mail mailing address is included in the list of eligible voters may only cast their votes by, one or more, e-voting methods of polling.
- 19.5 If the corporation decides to use an e-voting method of polling then they and the returning officer must satisfy themselves that:
- (a) if internet voting is being used, the internet voting system to be used for the purpose of the election is configured in accordance with these rules and that it will accurately record the internet voting record of any voter who chooses to cast their vote using the internet voting system.
 - (b) if telephone voting is being used, the telephone voting system to be used for the purpose of the election is configured in accordance with these rules and that it will accurately record the telephone voting record of any voter who choose to cast their vote using the telephone voting system.

- (c) if text message voting is being used, the text message voting system to be used for the purpose of the election is configured in accordance with these rules and that it will accurately record the text voting record of any voter who choose to cast their vote using the text message voting system.

20. The ballot paper

20.1 The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

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 voters and voter ID number if e-voting is a method of polling,
- (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.

Action to be taken before the poll

21. List of eligible voters

21.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is

being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

21.2 The list is to include, for each member, a postal mailing address and if available an e-mail address, where their voting information may be sent.

21.3 The corporation may decide if the voting information is to be sent only by e-mail to those members, in a particular constituency or class within a constituency, for whom an e-mail address is included in the list of eligible voters.

22. Notice of poll

22.1 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) the methods of polling by which votes may be cast at the election by a constituency or class within a constituency as determined by the corporation in rule 19 (3).
- (f) the address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the uniform resource locator (url) where, if internet voting is being used, the polling website is located.
- (h) the telephone number where, if telephone voting is being used, the telephone voting facility is located,
- (i) the telephone number or telephone short code where, if text message voting is being used, the text message voting facility is located,

- (j) the address and final dates for applications for replacement voting information, and
- (k) the contact details of the returning officer.

23. Issue of voting information by returning officer

23.1 As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following voting information:

- (a) by post to each member of the corporation named in the list of eligible voters and on the basis of rule 21 able to cast their vote by post:
 - (i) a ballot paper
 - (ii) information about each candidate standing for election, pursuant to rule 61 of these rules,
 - (iii) a covering envelope
- (b) by e-mail or by post, to each member of the corporation named in the list of eligible voters and on the basis of rule 19.4 able to cast their vote only by an e-voting method of polling:
 - (i) instructions on how to vote
 - (ii) the eligible voters voter ID number
 - (iii) information about each candidate standing for election, pursuant to rule 61 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.
 - (iv) contact details of the returning officer.

23.2 The documents are to be sent to the mailing address or e-mail address for each member, as specified in the list of eligible voters.

24. The covering envelope

24.1 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. E-voting systems

- 25.1 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").
- 25.2 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").
- 25.3 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").
- 25.4 The provision of the polling website and internet voting system, will:
 - (a) require a voter, to be permitted to vote, to enter his voter ID number;
 - (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.
 - (c) prevent a voter voting for more candidates than he is entitled to at the election;
 - (d) create a record ("the internet voting record") that is stored in the internet voting system in respect of each vote cast using the internet of-

- (i) the voter ID number used by the voter;
 - (ii) the candidate or candidates for whom he has voted; and
 - (iii) the date and time of his vote, and
- (e) if their vote has been cast and recorded, provide the voter with confirmation
 - (f) prevent any voter voting after the close of poll.

25.5 The provision of a telephone voting facility and telephone voting system, will:

- (a) require a voter to be permitted to vote, to enter his voter ID number;
- (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.
- (c) prevent a voter voting for more candidates than he is entitled to at the election;
- (d) create a record ("the telephone voting record") that is stored in the telephone voting system in respect of each vote cast by telephone of-
 - (i) the voter ID number used by the voter;
 - (ii) the candidate or candidates for whom he has voted; and
 - (iii) the date and time of his vote
- (e) if their vote has been cast and recorded, provide the voter with confirmation;
- (f) prevent any voter voting after the close of poll.

25.6 The provision of a text message voting facility and text messaging voting system, will:

- (a) require a voter to be permitted to vote, to provide his voter ID number;
- (b) prevent a voter voting for more candidates than he is entitled to at the election;
- (c) create a record ("the text voting record") that is stored in the text messaging voting system in respect of each vote cast by text message of:
 - (i) the voter ID number used by the voter;
 - (ii) the candidate or candidates for whom he has voted; and
 - (iii) the date and time of his vote
- (d) if their vote has been cast and recorded, provide the voter with confirmation;
- (e) prevent any voter voting after the close of poll.

The poll

26. Eligibility to vote

26.1 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.

27. Voting by persons who require assistance

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

27.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as they consider necessary to enable that voter to vote.

28. Spoilt ballot papers

- 28.1 If a voter has dealt with their 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.
- 28.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if they can obtain it.
- 28.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless satisfied as to the voter’s identity.
- 28.4 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) is satisfied as to the voter’s identity, 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 spoilt ballot paper.

29. Lost voting information

- 29.1 Where a voter has not received their voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 29.2 The returning officer may not issue replacement voting information for lost voting information unless they:
- (a) are satisfied as to the voter’s identity,
 - (b) have no reason to doubt that the voter did not receive the original voting information.
- 29.3 After issuing replacement voting information, the returning officer shall enter in a list (“the list of lost ballots”):
- (a) the name of the voter
 - (b) the details of the unique identifier of the replacement ballot paper, and
 - (c) if applicable, the voter ID number of the voter.

30. Issue of replacement voting information

- 30.1 If a person applies for replacement voting information under rule 28 or 29, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 28.3 or 29.2, they are also satisfied that that person has not already voted in the election.

Polling by internet, telephone or text

31. Procedure for remote voting by internet

- 31.1 To cast their vote using the internet the voter must gain access to the polling website by keying in the url of the polling website provided in the voting information,
- 31.2 When prompted to do so, the voter must enter their voter ID number.
- 31.3 If the internet voting system authenticates the voter ID number the system must give the voter access to the polling website for the election in which the voter is eligible to vote.
- 31.4 To cast their vote the voter may then key in a mark on the screen opposite the particulars of the candidate or candidates for whom they wish to cast their vote.
- 31.5 The voter must not be able to access the internet voting facility for an election once their vote at that election has been cast.

32. Voting procedure for remote voting by telephone

- 32.1 To cast their vote by telephone the voter must gain access to the telephone voting facility by calling the designated telephone number provided on the voter information using a telephone with a touch-tone keypad.
- 32.2 When prompted to do so, the voter must enter their voter ID number using the keypad.
- 32.3 If the telephone voting facility authenticates the voter ID number, the voter must be prompted to vote in the election.

32.4 When prompted to do so the voter may then cast his vote by keying in the code of the candidate or candidates, allocated in accordance with rule 61 of these rules, for whom they wish to vote.

32.5 The voter must not be able to access the telephone voting facility for an election once their vote at that election has been cast.

33. Voting procedure for remote voting by text message

33.1 To cast their vote by text the voter must gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided on the voter information.

33.2 The text message sent by the voter must contain their voter ID number and the code for the candidate or candidates, allocated in accordance with rule 61 of these rules, for whom they wish to vote.

33.3 The text message sent by the voter must be structured in accordance with the instructions on how to vote contained in the voter information.

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

34. Receipt of voting documents

34.1 Where the returning officer receives a:

- (a) covering envelope, or
- (b) any other envelope containing a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 35 and 36 are to apply.

34.2 The returning officer may open any covering envelope for the purposes of rules 35 and 36, 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.

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

35. Validity of votes

35.1 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.

35.2 Where the returning officer is satisfied that rule 35.1 has been fulfilled, the ballot paper is to be put aside for counting after the close of the poll.

35.3 Where the returning officer is not satisfied that rule 35.1 has been fulfilled, they should:

- (a) mark the ballot paper "disqualified",
- (b) record the unique identifier on the ballot paper in a list (the "list of disqualified documents"); and
- (c) place the document or documents in a separate packet.

35.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet, telephone or text voting record has been received by the returning officer before the close of the poll.

36. De-duplication of votes

36.1 Where a combination of the methods of polling are being used, 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 an election.

36.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in an election they shall:

- (a) only accept as duly returned the first vote received that contained the duplicated voter ID number

- (b) mark as “disqualified” all other votes containing the duplicated voter ID number

36.3 Where a ballot paper is “disqualified” under this rule the returning officer shall:

- (a) mark the ballot paper “disqualified”,
- (b) record the unique identifier and voter id number on the ballot paper in a list (the “list of disqualified documents”); and
- (c) place the ballot paper in a separate packet.

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

- (a) mark the record as “disqualified”,
- (b) record the voter ID number on the record in a list (the “list of disqualified documents”.
- (c) disregard the record when counting the votes in accordance with these Rules.

37. Sealing of packets

37.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 35 and 36, the returning officer is to seal the packets containing:

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the list of spoiled ballot papers,
- (c) the list of lost ballots
- (d) the list of eligible voters, and
- (e) complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage.

Part 6 Counting the votes

Note: the following rules describe how the votes are to be counted manually but it is expected that appropriately audited vote counting software will be used to count votes where a combination of methods of polling is being used and votes are contained as electronic e-voting records and ballot papers.

STV38. Interpretation of Part 6

STV38.1 In Part 6 of these rules:

“ballot” 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:

(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 STV46,

“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 STV43,

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

"transfer value" means the value of a transferred vote calculated in accordance with rules STV44.4 or STV44.7.

39. Arrangements for counting of the votes

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

40. The count

40.1 The returning officer is to:

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

40.2 The returning officer, while counting and recording the number of votes 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 a voter's voter ID number.

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

STV41. Rejected ballot papers

STV41.1 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.

STV41.2 The returning officer is to endorse the word "rejected" on any ballot paper which under this rule is not to be counted.

STV41.3 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule STV41.1

FPP41. Rejected ballot papers

FPP41.1 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 FPP41.2 and FPP41.3, be rejected and not counted.

FPP41.2 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.

FPP41.3 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.

FPP41.4 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 FPP41.2 and FPP 41.3, endorse the words "rejected in part" on the ballot paper and indicate which vote or votes have been counted.

FPP41.5 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.

STV42. First stage

STV42.1 The returning officer is to sort the ballots into parcels according to the candidates for whom the first preference votes are given.

STV42.2 The returning officer is to then count the number of first preference votes given on ballots for each candidate, and is to record those numbers.

STV42.3 The returning officer is to also ascertain and record the number of valid ballots.

STV43. The quota

STV43.1 The returning officer is to divide the number of valid ballots by a number exceeding by one the number of members to be elected.

STV43.2 The result, increased by one, of the division under rule STV43.1 (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").

STV43.3 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 STV44.1 to STV44.3 has been complied with.

STV44. Transfer of votes

STV44.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballots 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 ballots for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV44.2 The returning officer is to count the number of ballots in each parcel referred to in rule

STV44.3 The returning officer is, in accordance with this rule and rule STV45, to transfer each sub-parcel of ballots referred to in rule STV44.1(a) to the candidate for whom the next available preference is given on those papers.

STV44.4 The vote on each ballot transferred under rule STV44.3 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 ballots on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

STV44.5 Where at the end of any stage of the count involving the transfer of ballots, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballots 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 ballots for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV44.6 The returning officer is, in accordance with this rule and rule STV45, to transfer each sub-parcel of ballots referred to in rule STV44.5(a) to the candidate for whom the next available preference is given on those ballots.

STV44.7 The vote on each ballot transferred under rule STV44.6 shall be at:

- (a) a transfer value calculated as set out in rule STV44.4(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.

STV44.8 Each transfer of a surplus constitutes a stage in the count.

STV44.9 Subject to rule STV44.10, the returning officer shall proceed to transfer transferable ballots until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

STV44.10 Transferable ballots 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.

STV44.11 This rule does not apply at an election where there is only one vacancy.

STV45. Supplementary provisions on transfer

STV45.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballots 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 ballots 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 ballots of the candidate on whom the lot falls shall be transferred first.

STV45.2 The returning officer shall, on each transfer of transferable ballots under rule STV44:

- (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.

STV45.3 All ballots transferred under rule STV44 or STV45 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 or, as the case may be, all the ballots in that sub-parcel.

STV45.4 Where a ballot is so marked that it is unclear to the returning officer at any stage of the count under rule STV44 or STV45 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot as a non-transferable vote; and votes on a ballot 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.

STV46. Exclusion of candidates

STV46.1 If:

- (a) all transferable ballots which under the provisions of rule STV44 (including that rule as applied by rule STV46.11 and this rule) are required to be transferred, have been transferred, and
 - (b) subject to rule STV47, 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 STV46.12 applies, the candidates with the then lowest votes).

STV46.2 The returning officer shall sort all the ballots on which first preference votes are given for the candidate or candidates excluded under rule STV46.1 into two sub-parcels so that they are grouped as:

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

STV46.3 The returning officer shall, in accordance with this rule and rule STV45, transfer each sub-parcel of ballots referred to in rule STV46.2 to the candidate for whom the next available preference is given on those ballots.

STV46.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

STV46.5 If, subject to rule STV47, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballots, if any, which had been transferred to any candidate excluded under rule STV46.1 into sub-parcels according to their transfer value.

STV46.6 The returning officer shall transfer those ballots in the sub-parcel of transferable ballots with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballots (thereby passing over candidates who are deemed to be elected or are excluded).

STV46.7 The vote on each transferable ballot transferred under rule STV46.6 shall be at the value at which that vote was received by the candidate excluded under rule STV46.1.

STV46.8 Any ballots on which no next available preferences have been expressed shall be set aside as non-transferable votes.

STV46.9 After the returning officer has completed the transfer of the ballots in the sub-parcel of ballots with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballots with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV46.1.

STV46.10 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.

STV46.11 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 STV44.5 to STV44.10 and rule STV45.

STV46.12 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.

STV46.13 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.

STV47. Filling of last vacancies

STV47.1 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.

STV47.2 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.

STV47.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

STV48. Order of election of candidates

STV48.1 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 STV44.10.

STV48.2 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.

STV48.3 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.

STV48.4 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.

FPP48. Equality of votes

FPP48.1 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

FPP49. Declaration of result for contested elections

FPP49.1 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 they have 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 Chair of the NHS Trust, or
 - (ii) in any other case, to the Chair of the corporation; and
- (c) give public notice of the name of each candidate whom they have declared elected.

FPP49.2 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 FPP41.5, available on request.

STV49. Declaration of result for contested elections

STV49.1 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 they have 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 Chair of the NHS Trust, or
 - (ii) in any other case, to the Chair of the corporation, and
- (c) give public notice of the name of each candidate who they have declared elected.

STV49.2 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 STV41.1, available on request.

50. Declaration of result for uncontested elections

50.1 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 they have declared elected to the Chair of the corporation, and
- (c) give public notice of the name of each candidate who they have declared elected.

Part 8 Disposal of documents

51. Sealing up of documents relating to the poll

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

- (a) the counted ballot papers,
- (b) the ballot papers endorsed with "rejected in part",

- (c) the rejected ballot papers, and
- (d) the statement of rejected ballot papers.
- (e) the complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage.

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

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the list of spoiled ballot papers,
- (c) the list of lost ballots,
- (d) the list of eligible voters, and
- (e) the complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage.

51.3 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.

52. Delivery of documents

52.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 51, the returning officer is to forward them to the chair of the corporation.

53. Forwarding of documents received after close of the poll

53.1 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 voter information is made too late to enable new ballot papers to be issued,

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

54. Retention and public inspection of documents

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

54.2 With the exception of the documents listed in rule 55.1, 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.

54.3 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

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

55.1 The corporation may not allow the inspection of, or the opening of any sealed packet containing –

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers, or
- (d) the list of eligible voters,

- (e) the complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage by any person without the consent of the Regulator.

55.2 A person may apply to the Regulator to inspect any of the documents listed in rule 55.1, and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

55.3 The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (d) production or opening, and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

55.4 On an application to inspect any of the documents listed in rule 55.1:

- (a) in giving its consent, the regulator, and
- (b) making the documents available for inspection, the corporation, must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –
 - (i) that their vote was given, and
 - (ii) that the regulator has declared that the vote was invalid.

Part 9 Death of a candidate during a contested election

FPP56. Countermand or abandonment of poll on death of candidate

FPP56.1 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.

FPP56.2 Where a new election is ordered under rule FPP56.1, 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.

FPP56.3 Where a poll is abandoned under rule FPP56.1(a), rules FPP56.4 to FPP56.7 are to apply.

FPP56.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 35 and 36, and is to make up separate sealed packets in accordance with rule 37.

FPP56.5 The returning officer is to:

- (a) count and record the number of ballot papers that have been received, and
- (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.
- (c) seal up the electronic copies of records that have been received referred to in rule 25 held in a device suitable for the purpose of storage.

FPP56.6 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.

FPP56.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP56.4 to FPP56.6, the returning officer is to deliver them to the Chair of the corporation, and rules 54 and 55 are to apply.

STV56. Countermand or abandonment of poll on death of candidate

STV56.1 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) ballots 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) ballots 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.

STV56.2 The ballots which have preferences recorded for the candidate who has died are to be sealed with the other counted ballots pursuant to rule 51.1(a).

Part 10 Election expenses and publicity

57. Election expenses

57.1 Any expenses incurred, or payments made, for the purposes of an election which to the regulator under Part 11 of these rules.

58. Expenses and payments by candidates

58.1 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.

59. Election expenses incurred by other persons

59.1 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 their family any money or property (whether 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.

59.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 60 and 61.

Publicity

60. Publicity about election by the corporation

60.1 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.

60.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 61, 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, the expense of the electoral prospects of one or more other candidates.

60.3 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.

61. Information about candidates for inclusion with voting information

61.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 23 of these rules.

61.2 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 polling method, the numerical voting code, allocated by the returning officer, to each candidate, for the purpose of recording votes on the telephone voting facility or the text message voting facility, and
- (c) a photograph of the candidate.

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

62.1 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.

62.2 The provision by any individual of their own services voluntarily, on their 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

63. Application to question an election

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

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

63.3 An application may only be made to the Regulator by:

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

63.4 The application must:

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

63.5 The application must be presented in writing within 21 days of the declaration of the result of the election.

63.6 If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

63.7 The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.

63.8 The determination by the person or persons nominated in accordance with rule 63.7 shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency including all the candidates for the election to which the application relates).

63.9 The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 Miscellaneous

64. Secrecy

64.1 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 voter 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.

64.2 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.

64.3 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.

65. Prohibition of disclosure of vote

65.1 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.

66. Disqualification

66.1 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.

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

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

- (a) the delivery of the documents in rule 23, or
- (b) the return of the ballot papers and declarations of identity,

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

ANNEX 5 ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

Eligibility and Disqualification of Governors

1. Further provisions as to the circumstances in which a person may not become or continue as a member of the Council of Governors are set out below.
- 1.1. A person may not become a governor of the Trust, and if already holding such office will immediately cease to do so, if:
 - 1.1.1. they are the spouse, partner, parent or child of a member of the Board of Directors (including the Chair) of the Trust;
 - 1.1.2. they are a member of a local authority's Health Overview and Scrutiny Committee;
 - 1.1.3. they are a governor or director of another NHS Foundation Trust or other NHS body;
 - 1.1.4. they are the subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
 - 1.1.5. being a member of the staff constituency, they have a current and unexpired written warning which has been imposed following disciplinary action by the Trust or the predecessor Trust, arising out of their employment with the predecessor Trust. For the avoidance of doubt, a member will not be precluded from eligibility as a Governor by reason of his suspension or in the event that he is the subject of an ongoing disciplinary procedure and/or fact finding investigation. Spent disciplinary warnings will not preclude eligibility to be a governor;
 - 1.1.6. being a member of the public constituency, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors;
 - 1.1.7. on the basis of disclosures obtained through an application to the Criminal Records Bureau, they are not considered suitable by the Trust's director responsible for human resources;

- 1.1.8. they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirements to register under current legislation coming into force.
- 1.2. Any such member of the Council of Governors, or prospective member as the case may be, shall notify the Secretary of any bar to his membership of the Council of Governors under the foregoing paragraphs of this Annex on becoming aware of such a bar provided that the Board of Directors may exercise its discretion to allow any such individual to become or continue as a member of the Council of Governors in respect of any matter that would otherwise bar such membership under the foregoing paragraphs of this Annex.

2. Termination of Office and Removal of Governors

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

- 2.1. they resign by notice in writing to the Secretary;
- 2.2. they fail to attend three (3) consecutive meetings, unless the other governors are satisfied that:
 - 2.2.1. the absences were due to reasonable causes;
 - 2.2.2. they will be able to start attending meetings of the Council of Governors again within such a period as the other governors consider reasonable.
- 2.3. in the case of an elected governor, they cease to be a member of the constituency or class or area of the constituency by which they were elected which for the avoidance of doubt includes in respect of a Public Governor a governor moving their principal residence from one area within the Public Constituency to another;
- 2.4. in the case of an appointed governor, the appointing organisation terminates the appointment;
- 2.5. they are expelled from membership of the Trust;
- 2.6. they have refused without reasonable cause to undertake any training which the Trust requires all governors to undertake;

- 2.7. they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the Code of Conduct;
- 2.8. they act in a manner detrimental to the Trust;
- 2.9. they fail to disclose a disclosable interest;
- 2.10. they are responsible for a substantive breach of confidentiality in relation to any confidential information of the Trust.

3. Expenses and Remuneration of Governors

- 3.1. The Trust may reimburse governors for travelling and other costs and expenses incurred in carrying out their duties as the Board of Directors decides.
- 3.2. The Trust may at its discretion decide to reimburse the cost and expense of a governor's carer arrangements necessarily and reasonably incurred in the governor carrying out their duties
- 3.3. In respect of a staff governor who is an employee of the Trust, the Secretary shall seek to facilitate such employee's reasonable participation as a Staff Governor during normal working hours to the extent reasonably necessary for the performance of their duties as a staff governor (including reasonable time off from his contractual duties) and shall not make any corresponding deduction from salary.
- 3.4. Governors shall not receive remuneration from the Trust with respect to the performance of their duties as Governors otherwise than as set out in paragraphs 3.1, 3.2 and 3.3.

4. Vacancies on the Council of Governors

- 4.1. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply:
 - 4.1.1. where a vacancy arises amongst the appointed governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office;
 - 4.1.2. where the vacancy arises amongst the elected governors, the Council of Governors shall be at liberty either:

- 4.1.2.1. to call an election within four months to fill the seat for the remainder of the term of office of the governor who is being replaced (unless they are in the last year of their term of office, in which case the seat may be left vacant until the next election due in respect of that seat is held);
or
 - 4.1.2.2. to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next election due in respect of that seat is held, at which time the seat will fall vacant and be subject to election for any unexpired period of the term of office of the governor who is being replaced.
- 4.2. For the avoidance of doubt, no provision in this paragraph 4 shall operate in such a way as to subvert the phased basis on which elections to the Council of Governors occur pursuant to the terms of this constitution and the replacement of any governor pursuant to this paragraph 4 shall be undertaken in such a way as to preserve the phased basis on which elections to the Council of Governors occur pursuant to the terms of the constitution.

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

1. Meetings of the Council of Governors

1.1. Admission of the Public and the Press

All meetings of the Council of Governors are to be open to members of the public unless two thirds of the members of the Council of Governors present decide otherwise in relation to all or part of the meeting for reasons of commercial confidentiality or other special reasons. The Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

1.2. Calling and Notice of Meetings

- (i) The Council of Governors is to meet a minimum of three times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days' written notice of the date and place of every meeting of the Council of Governors to all governors. Notice will also be published on the Trust's website and in the Trust's membership newsletter if practicable.
- (ii) Meetings of the Council of Governors may be called by the Secretary, the Chair, or by five governors (including at least two elected governors and two appointed governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all governors as soon as possible after receipt of such a request and will call a meeting on at least fourteen, but not more than twenty eight, days' notice. Notice by post, delivery in person, fax or email shall constitute written notice.

1.3. Chair of the Meeting

In accordance with paragraph 16 of the Constitution, the Chair of the Board of Directors or, in his absence, the vice chair of the Board of Directors,

shall preside at meetings of the Council of Governors. If the chair and vice chair are absent, or are disqualified from participating, then the governors present shall choose by majority which public governor present shall preside for that part of the meeting.

1.4. Quorum

No business shall be transacted at a meeting of the Council of Governors unless at least one third of the Council of Governors is present, a majority of whom must be public governors.

1.5. Voting

Questions arising at a meeting of the Council of Governors shall be decided by a majority of votes. In case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.

1.6. Committees

The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions. The Council of Governors may appoint governors and may invite directors and other persons to attend and advise committees. The Council of Governors may, through the Secretary, request that external advisors assist them or any committee they appoint in carrying out its duties. Such committees established by the Council of Governors may meet in private for reasons of commercial confidentiality or other special reasons if the members of the committee so decide.

1.7. Confidentiality

In the event of the Council of Governors, or any committee established by the governors, meeting in private for all or part of a meeting, governors shall not disclose outside of the Council of Governors meetings the contents of the papers, discussions or minutes of the items taken in private.

2. Disclosure of interests

Governors shall declare any pecuniary, personal or family interest, 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. A family interest will include those of a governor's spouse or partner. Any governors appointed subsequently shall declare such interests on appointment or election.

Such interests include:

- (i) Directorships, including non-executive directorships held in private companies, public limited companies or public benefit corporations (with the exception of those of dormant companies).
- (ii) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- (iii) Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
- (iv) A position of trust or fiduciary duty in a charity or voluntary organisation in the field of health and social care.
- (v) Any connection with a voluntary or other organisation contracting for NHS services.
- (vi) Any other commercial interest in the decision before the meeting.

The following exceptions shall not be treated as interests:

- (i) an employment contract with the Trust held by a staff governor;
- (ii) an employment contract with a local authority held by a local authority governor;
- (iii) an employment contract with a partnership organisation held by a partnership governor.

3. Declaring interests

- 3.1. At the time governors' interests are declared, they shall be recorded in the Council of Governors' minutes and entered on a register of interests of governors to be maintained by the Secretary. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring.

- 3.2. During the course of a Council of Governors meeting, if a conflict of interest is established, the governor concerned shall disclose the fact, and withdraw from the meeting and play no part in the relevant discussion or decision.
- 3.3. If a governor has any doubt about the relevance of an interest, he should discuss it with the Chair or Secretary who shall advise him on whether or not to disclose the interest.

4. Code of Conduct

All members of the Council of Governors are required to comply with any Code of Conduct for governors adopted by the Council of Governors or the Board of Directors from time to time.

5. Additional Provisions

The Board of Directors may establish additional protocols and procedures for the operation of the Council of Governors as appropriate.

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

1. Appointments to the Board of Directors

1.1. Appointment of the Chair and Non-Executive Directors

The governors at a general meeting of the Council of Governors shall, subject to the other provisions of the Constitution, appoint or remove the Chair of the Trust and the other non-executive directors. Any re-appointment of a non-executive director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with any procedures the Board of Directors may approve from time to time.

1.2. Appointment of the Chief Executive and other Executive Directors

The Chief Executive is appointed by the non-executive directors subject to the approval of the Council of Governors. A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint the other executive directors.

1.3. Appointment and Powers of the vice chair

The governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors to be vice chair of the Board of Directors. If the chair is unable to discharge his/her office as chair of the Trust for whatever reason, the vice chair of the Board of Directors shall be acting chair of the Trust.

2. Meetings of the Board of Directors

2.1. Calling and Notice of Meetings

- (i) Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days' written notice of the date and place of every meeting of the Board of Directors to all directors.
- (ii) Meetings of the Board of Directors may be called by the Secretary, the chair, or by two or more Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary

shall send a written notice to all directors as soon as possible after receipt of such a request and shall call a meeting on at least fourteen but not more than twenty eight days' notice.

2.2. Chair of the Meeting

- (i) At any meeting of the Board of Directors, the chair of the Board of Directors, if present, shall preside. If the chair is absent from the meeting the vice chair, if there is one and he/she is present, shall preside. If the chair and vice chair are absent, then the non-executive Directors present shall choose which non-executive director present shall preside.
- (ii) If the chair is absent temporarily on the grounds of a declared conflict of interest, the vice chair, if present, shall preside. If the chair and vice chair are absent, or are disqualified from participating, then the remaining non-executive directors present shall choose which non-executive Director present shall preside.

2.3. Quorum

No business shall be transacted at a meeting unless at least one third of the directors is present including not less than one non-executive director and one executive director.

2.4. Voting

Questions arising at a meeting of the Board of Directors shall be decided by a majority of votes. In the case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.

3. Committees and Delegation

- 3.1. The Board of Directors may delegate any of its powers to a committee whose membership is composed entirely of such Directors or to an Executive Director, in each case subject to such restrictions and conditions as the Board of Directors thinks fit from time to time.
- 3.2. The Board of Directors shall have various committees which will advise it, including in relation to audit, nominations and remuneration.

- 3.3. Each such committee, and any sub-committee, shall have such terms of reference and powers as the Board of Directors shall determine from time to time.

4. Disclosure of interests

Directors shall declare any pecuniary, personal or family interest, whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Board of Directors. A family interest will include those of a director's spouse or partner. Any directors appointed subsequently shall declare such interests on appointment.

Such interests include:

- (i) Directorships, including non-executive directorships held in private companies, public limited companies or public benefit corporations (with the exception of those of dormant companies).
- (ii) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- (iii) Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
- (iv) A position of trust or fiduciary duty in a charity or voluntary organisation in the field of health and social care.
- (v) Any connection with a voluntary or other organisation contracting for NHS services.
- (vi) Any other commercial interest in the decision before the meeting.

5. Declaring interests

- 5.1. At the time directors' interests are declared, they should be recorded in the Board of Directors' minutes and entered on a register of interests of directors to be maintained by the Secretary. Any changes in interests should be declared at the next Board of Directors' meeting following the change occurring.

- 5.2. During the course of a Board of Directors' meeting, if a conflict of interest is established, the director concerned shall disclose the fact, and withdraw from the meeting and play no part in the relevant discussion or decision.
- 5.3. If a director has any doubt about the relevance of an interest, he should discuss it with the Chair or Secretary who shall advise him on whether or not to disclose the interest.

6. Additional Provisions

The Board of Directors may establish additional protocols and procedures for the operation of the Board of Directors, and the economic, effective and efficient operation and good governance of the Trust generally from time to time as appropriate.

ANNEX 8 FURTHER PROVISIONS

1. Disqualification from membership

- 1.1 A person may not become or remain a member of the Trust if the following apply:
- 1.1.1 they do not meet the requirements of eligibility under this Constitution. It is the responsibility of each member to ensure his eligibility at all times;
 - 1.1.2 they have been removed from membership by the Council of Governors within the preceding five years;
 - 1.1.3 the Trust considers that they have caused substantial detriment to the Trust in terms of patient safety, financial loss or adverse impact on reputation of the Trust
 - 1.1.4 during the five years prior to their application, they have demonstrated aggressive or violent behaviour towards any person working for the Trust or a health service body and following such behaviour they have been removed or excluded from any hospital or Trust site or other health service body under either the Trust's or other health service body's policy for withholding treatment for violent/aggressive patients, or equivalent;
 - 1.1.5 they have been confirmed as a 'vexatious complainant' in accordance with the Trust's complaints handling policy;
 - 1.1.6 the Council of Governors has reasonable cause to believe that by becoming or remaining a member of the Trust, a person is likely to:
 - 1.1.6.1 prejudice the ability of the Trust to fulfill its principal purpose or other of its purposes under the Constitution or otherwise discharge its duties and functions;
 - 1.1.6.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services;
 - 1.1.6.3 adversely affect public confidence in the goods or services provided by the Trust; or

1.1.6.4 otherwise bring the Trust into disrepute.

- 1.2 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 their name should not be removed from the 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.
- 1.3 Any dispute about membership entitlement shall be resolved by the Secretary; for further details refer to 3.1.
- 1.4 All members of the Trust shall be under a duty to notify the Secretary of any change in their circumstances which may affect entitlement to membership.

2. Expulsion from membership

- 2.1 A member may be expelled by a resolution approved by not less than two thirds of the whole number of the Council of Governors present if they are deemed to have acted in a manner contrary to the interests of the Trust.
- 2.2 The following procedure is to be adopted:
 - 2.2.1 any member may complain to the Secretary that another member has acted in a way which would justify expulsion in accordance with 3.1 above;
 - 2.2.2 if a complaint is made, the Council of Governors may itself consider the complaint, having taken such steps as it considers appropriate, to ensure that each member's point of view is heard and may either:
 - 2.2.2.1 dismiss the complaint and take no further action; or
 - 2.2.2.2 arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors

3. Dispute Resolution Procedures

- 3.1 *Membership* - In the event of any dispute about membership entitlement, the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the member or applicant is aggrieved

at the decision of the Secretary, he may appeal in writing within 14 (fourteen) days of the Secretary's decision to the Council of Governors whose decision shall be final.

3.2 *Governor* - In the event of any dispute about eligibility and disqualification of a governor, the dispute shall be referred to the Council of Governors, whose decision shall be final.

3.3 *Boards* - In the event of any dispute between the Board of Directors and Council of Governors or between a governor and the Council of Governors:

3.3.1 in the first instance, the Chair, on the advice of the Secretary, and other advice the Chair may obtain, shall seek to resolve the issue;

3.3.2 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 with a view to resolving the dispute. The special committee may include an advisor from another foundation trust;

3.3.3 if the recommendations (if any) of the special committee are unsuccessful, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

ANNEX 9 ANNUAL MEMBERS' MEETING

1. MEMBERS' MEETINGS

- 1.1. The Trust shall hold a members' meeting for all members (called the "Annual Members' Meeting") within six months of the end of each financial year of the Trust.
- 1.2. Any members' meeting other than the Annual Members' Meeting shall be called a "Special Members' Meeting".
- 1.3. Both Annual Members' Meetings and any Special Members' Meetings shall be open to all members of the Trust, members of the Council of Governors and members of the Board of Directors, together with representatives of the Trust's auditors, and to members of the public. The Trust may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend any such meeting.
- 1.4. The Board of Directors may convene an Annual Members' Meeting or a Special Members' Meeting when it thinks fit. The Council of Governors may request the Board of Directors to convene a members' meeting.
- 1.5. The Board of Directors (or at least one member thereof) shall present to the members at the Annual Members' Meeting:
 - 1.5.1. the annual accounts;
 - 1.5.2. any report of the auditor on them;
 - 1.5.3. the annual report.
- 1.6. The Trust shall give notice of all members' meetings:
 - 1.6.1. by notice in writing to all members;
 - 1.6.2. by notice prominently displayed at the Trust's headquarters and at all of the Trust's hospitals;
 - 1.6.3. by notice on the Trust's website; and
 - 1.6.4. to the Council of Governors, the Board of Directors, and to the Trust's auditors,

stating whether the meeting is an Annual Members' Meeting or a Special Members' Meeting including the time, date, place of the meeting, and the business to be dealt with at the meeting at least 14 working days before the date of the relevant members' meeting (or, in the case of an Annual Members' Meeting, at least 21 working days before the date of the relevant meeting).

- 1.7. An accidental omission to give notice of a members' meeting or to send, supply or make available any document or information relating to the meeting, or the non-receipt of any such notice, document or information by a person entitled to receive any such notice, document or information shall not invalidate the proceedings at that meeting.
- 1.8. The Chair or in his absence the Vice Chair shall preside at all members' meetings of the Trust. If neither the Chair nor the Vice Chair is present, the governors present shall elect one of their number to act as Chair and if there is only one governor present and willing to act that person shall be Chair. If no governor is willing to act as Chair or if no governor is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to act as Chair.
- 1.9. The quorum for a members' meeting shall be 8 (eight) members present and entitled to vote. If a quorum is not present within thirty minutes from the time appointed for the meeting, the meeting shall stand adjourned for a minimum of seven days until such time as the Board of Directors determine.
- 1.10. The Chair may, with the consent of a members' meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn a members' meeting from time to time and from place to place or for an indefinite period.
- 1.11. A resolution put to the vote of a members' meeting shall be decided on a show of hands.
- 1.12. No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.

- 1.13. If the Board of Directors, in its absolute discretion, considers that it is impractical or unreasonable for any reason to hold a members' meeting at the time, date or place specified in the notice calling that meeting, it may move and/or postpone the general meeting to another time, date and/or place.
- 1.14. In the case of a members' meeting is adjourned or postponed for 14 days or more, at least seven working days' notice shall be given specifying the time and place of the adjourned members' meeting and the general nature of the business to be transacted. Otherwise, it shall not be necessary to give any such notice.
- 1.15. The Board of Directors may make any arrangement and impose any restriction it considers appropriate to ensure the security of a members' meeting.
- 1.16. The Board of Directors shall cause minutes to be made and kept, in writing, of all proceedings at members' meetings.