

Constitution

**Oxford Health
NHS Foundation Trust**

TABLE OF CONTENTS

Paragraph		Page
1	Definitions	C4
2	Name	C7
3	Principal purpose	C7
4	Other purposes	C7
5	Powers	C7
6	Commitments	C7
7	Framework	C8
8	Members	C8
	Membership constituencies	C8
	Public constituency	C9
	Staff constituency	C10
	Patients' constituency	C10
	Disqualification for membership	C11
	Termination of membership	C12
	Voting at Council of Governors Elections	C13
	Members Meetings	C13
9	Council of Governors	C13
	Public Governors	C15
	Patient governors	C15
	Staff Governors	C16
	Commissioner Governors	C16
	Local Authority Governors	C16
	University Governor	C16
	Partnership Organisation Governors	C16
	Tenure of Governors	C17
	Termination of tenure	C17
	Disqualification	C20
	Notice of disqualification	C21
	Vacancies	C21

	Remuneration	C23
	Expenses	C23
	Roles and responsibilities of the Council of Governors	C23
	Meetings of Governors	C23
	Committee and sub-committees	C25
	Conflicts of interest of governors	C25
10	Board of Directors	C25
	Disqualification	C28
11	Roles and responsibilities of the Board of Directors	C29
12	Meetings of Directors	C30
13	Conflicts of Interest of Directors	C30
14	Indemnity	C32
15	Registers	C33
16	Documents available for public inspection	C34
17	Auditor	C35
18	Accounts	C35
19	Annual report, forward plans and non-NHS work	C36
20	Meeting of the Council of Governors to consider annual accounts and report	C38
21	Instruments	C38
22	Dispute resolution procedures	C38
23	Amendment of the Constitution	C39
24	Mergers, acquisitions, separations and dissolution	C39
25	Significant transactions	C39

Paragraph		Page
ANNEX 1	THE PUBLIC CONSTITUENCY	C41
ANNEX 2	THE STAFF CONSTITUENCY	C42
ANNEX 3	THE PATIENTS' CONSTITUENCY	C43
ANNEX 4	COMPOSITION OF COUNCIL OF GOVERNORS	C44
ANNEX 5	THE MODEL RULES FOR ELECTIONS	C45

ANNEX 6	STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS	C102
ANNEX 7	STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS	C120

1 Definitions

1.1 Interpretation and definitions

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this constitution shall bear the same meaning as in the 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.

“the 2006 Act” is the National Health Service Act 2006 (as amended by the 2012 Act).

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

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

“Chair” means the Chair of the Trust.

“Council of Governors” or **“Council”** means the Council of Governors as constituted in accordance with this Constitution.

“Dispute Resolution Procedure” is the dispute resolution procedure to be established by the Trust.

“Governor” means a person who is a Member of the Council of Governors.

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

“health service body” means an NHS foundation trust or any of the bodies listed in Section 9(4) of the 2006 Act.

“Returning Officer” means the person referred to in paragraph 4 of Annex 5.

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

“Provider Licence” means the licence issued by Monitor to the Trust under Chapter 3 of Part 3 of the 2012 Act.

“Regulatory Framework” means the 2006 Act, the 2012 Act, this Constitution and the Provider Licence.

“voluntary organisation” is a body, other than a public or local authority, the activities of which are not carried on for profit.

2 Name

- 2.1** The name of the Foundation Trust is Oxford Health 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.

4 Other purposes

- 4.1** The Trust may provide goods and services for any purpose related to:

- 4.1.1** the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
- 4.1.2** the promotion and protection of public health.

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

5 Powers

- 5.1** The Trust shall have all the powers of an NHS Foundation Trust as set out in the 2006 Act.

6 Commitments

- 6.1** The Trust shall exercise its functions effectively, efficiently, economically and in a transparent manner.

- 6.2** In exercising its functions the Trust shall co-operate with health service bodies, Voluntary Organisations and social care providers and commissioners.

- 6.3** In conducting its affairs, the Trust shall respect the rights of members of the community it serves, its employees and people dealing with the Trust.

- 6.4** In conducting its affairs the Trust shall have regard to the need to provide information to members and to conduct its affairs in an open and accessible way.

7 Framework

- 7.1** The Trust shall have three Membership Constituencies, a Council of Governors and a Board of Directors.
- 7.2** The Board of Directors shall exercise the powers of the Trust. Any of these powers may be delegated to a committee of Directors or to Executive Directors.
- 7.3** The Council of Governors shall be made up of both elected and appointed Governors.
- 7.4** The Membership Constituencies shall elect certain of their Members to the Council of Governors in accordance with this Constitution and other members of the Council of Governors shall be appointed by various bodies which are also set out in this Constitution.
- 7.5** The Council of Governors shall fulfil those functions imposed on it by the 2006 Act and by this Constitution

8 Members

8.1 The Membership Constituencies

- 8.1.1** The Trust shall have members, each of whom shall be a member of one of the following constituencies:
- a. a public constituency
 - b. a staff constituency; and
 - c. a patients' constituency
- 8.1.2** An individual may become a Member by application to the Trust in accordance with this constitution or, where so provided for in this constitution, by being invited by the Trust to become a Member of a Staff Class of the Staff Constituency in accordance with paragraph 8.3.1.1.e below.
- 8.1.3** Where an individual applies to become a Member the Trust shall consider his application for membership as soon as reasonably practicable following its receipt and unless he is ineligible or is disqualified from membership the Trust Secretary shall cause his

name to be entered forthwith in the Register of Members and he shall thereupon become a member.

- 8.1.4** Where an individual is invited by the Trust to become a Member in accordance with paragraph 8.3.1.1.e below he shall automatically become a Member and shall have his name entered on the Register of Members following the expiration of 28 days after the giving of that invitation unless within that period he has informed the Trust that he does not wish to be a Member.
- 8.1.5** An individual shall become a Member on the date upon which his name is entered on the Register of Members and he shall cease to be a Member upon the date that his name is removed from the Register of Members as provided for in this constitution.
- 8.1.6** The Trust shall take steps to secure that, taken as a whole, the actual membership of the Public Constituency and Patients' Constituency is representative of those eligible for such membership.
- 8.1.7** In deciding which areas are to be areas for public constituencies, or in deciding whether there is to continue to be a Patients' Constituency, the Trust shall have regard to the need for those eligible for such membership to be representative of those to whom the Trust provides services.

8.2 Public Constituency

- 8.2.1** Members who are Members of the Public Constituency shall be individuals who:
 - a. live in an Area of the Trust as specified in Annex 1;
 - b. are not eligible to become a Member of the Staff Constituency and are not Members of any other constituency;
 - c. are not disqualified from membership under paragraph 8.5;
 - d. have applied to the Trust to become a Member; and were at least 12 years of age at the date of their application to become a Member; and
 - e. whose name has been entered on the Register of Members as a Member of the Public Constituency in accordance with paragraph 8.1.3 above.
- 8.2.2** An individual shall be deemed to live in an Area of the Trust if his name appears on the Electoral Roll current at the date of his application to become a Member at an address within the Area of the Trust or is otherwise accepted by the Trust as living in the Area of the Trust.
- 8.2.3** The minimum number of members in each area for the Public Constituency is specified in Annex 1.

8.3 Staff Constituency

8.3.1 Members who are Members of the Staff Constituency shall be individuals who:

8.3.1.1 Are employed under a contract of employment with the Trust, provided:

- a. They are 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
- b. They have been continuously employed by the Trust under a contract of employment for at least 12 months; or
- c. They exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust. Such individuals may become or continue as members of the staff constituency provided they have exercised these functions continuously for a period of at least 12 months.

8.3.1.2 Are not disqualified for membership under paragraph 8.5 below; and

8.3.1.3 Have accepted an invitation to become a Member of the relevant Class of the Staff Constituency applicable to them as defined in Annex 2 and whose name has been entered on the Register of Members in accordance with 8.1.4 above.

8.3.2 Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purpose of determining whether an individual has been continuously employed by the Trust or has continuously exercised functions for the purpose of the Trust for the purpose of paragraphs 8.3.1.1.b and 8.3.1.1.c above.

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

8.3.4 The Staff Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

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

8.3.6 A person who is eligible to be a Member of the Staff Constituency shall not become or continue as a Member of any constituency other than the Staff Constituency and shall not become or continue as a Member of more than one Staff Class.

8.4 Patients' Constituency

8.4.1 Members who are Members of the Patients' Constituency shall be individuals who:

8.4.1.1 Have attended any of the Trust's services as a patient within the 5 years immediately preceding the date of an application by the patient to become a member of the Trust; or

8.4.1.2 Are the regular carer of a patient who has attended any of the Trust's services within the 5 years immediately preceding the date of an application by the carer to become a member of the Trust; and does not provide care for that patient:

a. By virtue of a contract of employment or other contract;
or

b. As a volunteer for a voluntary organisation; and

8.4.1.3 are not eligible to become a Member of the Staff Constituency and are not Members of any other constituency;

8.4.1.4 are not disqualified for membership under paragraph 8.5; and

8.4.1.5 have applied to the Trust to become a Member; and were at least 12 years of age at the date of their application to become a Member.

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

8.4.3 The Patients' Constituency shall be divided into 3 descriptions of individuals who are eligible for membership of the Patients' Constituency, each description of individuals being specified within Annex 3 and being referred to as a class within the Patients' Constituency.

8.4.4 The minimum number of members in each class of the Patients' Constituency is specified in Annex 3.

8.5 Disqualification for Membership

8.5.1 An individual shall not become or continue as a Member if:

a. he is ineligible under paragraphs 8.2, 8.3 or 8.4 above to be a Member;

b. he dies; or

c. his membership is terminated under paragraph 8.6 below.

8.5.2 It shall be the responsibility of each Member to ensure his eligibility at all times and not the responsibility of the Trust to do so on his behalf. A Member who becomes aware of his ineligibility shall inform the Trust as soon as practicable and that Member's name shall be removed from the Register of Members forthwith and he shall thereupon cease to be a Member.

- 8.5.3** Where the Trust has grounds to believe that a Member or Applicant may not be eligible under paragraph 8.2, 8.3 or 8.4 for Membership or that grounds may exist for him to be disqualified for Membership under this paragraph 8.5 the Trust Secretary may carry out reasonable enquiries to establish the substance or otherwise of those grounds.
- 8.5.4** Where the Trust Secretary considers that there may be grounds for concluding that a Member or Applicant is ineligible or that grounds may exist for him to be disqualified for Membership he shall advise that Member or Applicant of those reasons in summary form and invite representations from the Member or Applicant within 21 days or such other longer period as the Trust Secretary may in his absolute discretion determine. Any representations received shall be considered by the Trust Secretary and he shall make a decision on the Member's or Applicant's eligibility or disqualification as soon as reasonably practicable and notice of that decision shall be given to the Member or Applicant within 14 days of the decision being made.
- 8.5.5** If no representations are received within the said period of 21 days or longer period (if any) permitted under the preceding paragraph, the Trust Secretary shall be nonetheless entitled to proceed and make a decision on the Member's or Applicant's eligibility or disqualification notwithstanding the absence of any such representations from him.
- 8.5.6** If the Trust Secretary decides that a Member is ineligible or disqualified from membership and has given notice to that Member in accordance with paragraph 8.5.4 above, that Member's name shall be removed from the Register of Members and he shall thereupon cease to be a Member.
- 8.5.7** Any decision made under this paragraph 8.5 to disqualify a Member or to declare a Member or Applicant ineligible may be referred by the Member or Applicant concerned to the Dispute Resolution Procedure under paragraph 22.

8.6 Termination of Membership

- 8.6.1** A Member shall cease to be a Member if he:
- a. resigns by giving notice in writing to the Trust Secretary;
 - b. ceases to fulfill the requirements of paragraph 8.2, 8.3 or 8.4;
 - c. is disqualified under paragraph 8.5.
- 8.6.2** The Council of Governors may also terminate the membership of a Member by a resolution if in the reasonable opinion of the Council of Governors the Member:
- a. is the maker, or has procured the making, or has otherwise been involved in making, vexatious complaints to or about the Trust, its officers or staff

- b. has conducted himself in a manner which has caused or is likely to cause material prejudice to the best interests of the Trust;
- c. has been violent towards Trust staff or has been banned from any Trust Hospital for inappropriate behaviour towards Trust staff, patients or other visitors to the Trust.

8.6.3 In all cases where an individual ceases to be entitled to be a Member, the Trust Secretary shall cause his name to be forthwith removed from the Register of Members and he shall thereupon cease to be a Member.

8.6.4 If the Member is also a Governor, the provisions of paragraph 9.15.4 apply to any proposal to terminate his membership.

8.6.5 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors voting at a General Meeting of the Council of Governors.

8.7 Voting at Council of Governors Elections

8.7.1 A Member shall not vote at an election for a Public Governor or a Patient Governor (as the case may be) unless within the specified period he has made a declaration in the specified form stating the particulars of his qualification to vote as a Member of that constituency or Class within that constituency (as the case may be) for which an election is being held. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.

8.7.2 The form and content of the declaration and the period for making such a declaration which are to be specified for the purposes of paragraph 8.7.1 above shall be specified and published by the Trust from time to time and shall be so published not less than 56 days prior to an election.

8.8 Members Meetings

8.8.1 The Trust shall hold a members meeting (called the annual members meeting) within nine months of the end of each financial year. The annual members meeting shall be open to members of the public. The Trust may combine a General Meeting of the Council of Governors with the annual members meeting.

9 Council of Governors

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

- 9.2** The Chair appointed in accordance with Paragraph 9.21.1.a below (or in his absence or in the event of a conflict of interest the Vice Chair or such other person as is appointed in accordance with paragraph 9.22.2 below) shall preside at meetings of the Council of Governors.
- 9.3** The composition of the Council of Governors is specified in Annex 4.
- 9.4** The aggregate number of Public Governors and Patient Governors shall be more than half the total membership of the Council of Governors.
- 9.5** No person shall be eligible to be elected or appointed (as may be the case) as a Governor in accordance with the terms of this Constitution unless at the date of their nomination for election or upon the date of their appointment (as the case may be) they have attained the age of 18 years.
- 9.6** 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 4.

9.7 Public Governors

- 9.7.1** Members of the Public Constituency may elect any of their number to be a Public Governor.
- 9.7.2** If contested, the election shall be by secret ballot using the single transferable voting method in accordance with the electoral system specified at Annex 5 or as otherwise may be specified in regulations made by the Secretary of State from time to time (“the Election Scheme”).
- 9.7.3** The Election Scheme (including the specified forms of and periods for declarations to be made by candidates standing for office as a Governor or by Members as a condition of voting and the process if the election is uncontested) is set out in Annex 5.
- 9.7.4** A person may not stand for election to the Council of Governors as a Public Governor unless, within the period specified in Annex 5, he has made a declaration in the form specified in that Part of that Annex that he is a Member of the Public Constituency and is not prevented from being a Governor by paragraph 8 of Schedule 7 to the 2006 Act or by any provision of the Constitution. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.
- 9.7.5** Paragraph 8.7 (“Voting at Council of Governors Elections”) applies.

9.8 Patient Governors

- 9.8.1** Subject to the provisions of paragraph 9.8.5 below, members of a Class of the Patients' Constituency may elect any of their number to be a Patient Governor for that Class.
- 9.8.2** If contested, the election shall be by secret ballot using the single transferable voting method in accordance with the Election Scheme.
- 9.8.3** The Election Scheme (including the specified forms of and periods for declarations to be made by candidates standing for office as a Governor and by Members as a condition of voting and the process if the election is uncontested) is set out in Annex 5.
- 9.8.4** A person may not stand for election to the Council of Governors as a Patient Governor unless, within the period specified in Annex 5, he has made a declaration in the form specified in that Annex stating of which Class within the Patients' Constituency he is a Member and that he is not prevented from being a Governor by paragraph 8 of Schedule 7 to the 2006 Act or by any provision of the Constitution. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.
- 9.8.5** Notwithstanding paragraph 9.8.1 above, a Patient and his primary carer shall not both be eligible to stand for election as a Patient Governor at the same election nor shall they be eligible to stand for

election if in consequence their respective terms of office if elected would or may coincide wholly or in part.

9.8.6 Paragraph 8.7 (“Voting at Council of Governors Elections”) applies.

9.9 Staff Governors

9.9.1 Members of a Staff Class within the Staff Constituency may elect any of their number to be a Staff Governor for that Staff Class.

9.9.2 If contested, the election shall be by secret ballot using the single transferable voting method in accordance with the Election Scheme.

9.9.3 The Election Scheme, (including the specified forms of and periods for declarations to be made by candidates standing for office as a Governor, or by Members as a condition of voting and the process if the election is uncontested) is set out in Annex 5.

9.10 Commissioner Governors

9.10.1 The Commissioner Governors are to be appointed by (1) Oxfordshire Clinical Commissioning Group and (2) Chiltern Clinical Commissioning Group. The Chair of the Trust shall invite the Chairs of the commissioners each to appoint one such Governor. The absence of any such invitation shall not preclude any such commissioner from appointing its Commissioner Governor.

9.11 Local Authority Governors

9.11.1 The Local Authority Governors shall be appointed by (1) the Buckinghamshire County Council and by (2) the Oxfordshire County Council. The Chair of the Trust shall invite the Leaders of the Councils each to appoint one such Local Authority Governor. The absence of any such invitation shall not preclude any such Local Authority from appointing its Local Authority Governor.

9.12 University Governor

9.12.1 One University Governor shall be appointed by Oxford Brookes University. The Chair of the Trust shall invite the University Vice-Chancellor to appoint one University Governor. The absence of any such invitation shall not preclude the University from appointing its University Governor.

9.13 Partnership Organisation Governors

9.13.1 The Trust shall invite Buckinghamshire Mind to nominate one of its members who have an interest in mental health to represent the partner for the purposes of this Constitution.

9.13.2 The Trust shall invite Age UK Oxfordshire to nominate one of its members who have an interest in mental health or community health to represent the partner for the purposes of this Constitution.

9.13.3 The Trust shall invite Buckinghamshire Healthcare NHS Trust to nominate one of its members who have an interest in healthcare to represent the partner for the purposes of this Constitution.

9.13.4 The Trust shall invite Oxford University Hospitals NHS Trust to nominate one of its members who have an interest in healthcare to represent the partner for the purposes of this Constitution.

9.14 Tenure of Governors

9.14.1 An Elected Governor:

- a. Shall hold office for a period of up to 3 years;
- b. Shall be eligible for re-election at the end of that period;
- c. Shall not hold office for more than 2 consecutive terms;
- d. Shall cease to hold office if he ceases to be a Member of the Constituency or class by which he was elected.

9.14.2 An Appointed Governor:

- a. Shall hold office for a period of up to 3 years;
- b. Shall be eligible for re-appointment at the end of that period;
- c. Shall not hold office for more than 2 consecutive terms;
- d. Shall cease to hold office if the organisation which appointed him withdraws its appointment of him.

9.14.3 Governors shall cease to be Governors if their tenure of office as Governors is terminated under paragraph 9.15 below or they are disqualified from being a Governor under paragraph 9.16 below.

9.15 Termination of Tenure

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

9.15.2 The Council of Governors may resolve to terminate a Governor's tenure of office as such if he fails to attend two consecutive meetings of the Council of Governors, unless the other Governors are satisfied that:

- a. the absences were due to reasonable causes; and
- b. the Governor will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable.

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

- a. is disqualified under paragraph 9.16 below;
- b. has knowingly or recklessly made a false declaration for any purpose provided for in this Constitution or in the 2006 Act;
- c. is the maker, or has procured the making, or has otherwise been involved in making, vexatious complaints to or about the Trust, its officers or staff;
- d. has conducted himself in a manner which has caused or is likely to cause material prejudice to the best interests of the Trust;
- e. has been violent towards Trust staff or has been banned from any Trust Hospital for inappropriate behaviour towards Trust staff, patients or other visitors to the Trust;
- f. has conducted himself in a manner which has caused or is likely to cause material prejudice to the proper conduct of the Council of Governors affairs;
- g. has conducted himself in a manner inconsistent with his continued membership of the Council of Governors;
- h. has contravened the Regulatory Framework, Code of Conduct or Governors' Standing Orders;
- i. has failed to confirm acceptance of the Code of Conduct;
- j. is in litigation with the Trust; or

9.15.4 Termination of a Governor's tenure of office pursuant to paragraph 9.15.2 and 9.15.3 above shall only be on the recommendation of the Chair and shall require the approval of at least two-thirds of Governors voting. The Governor concerned shall not be eligible to participate in such a vote and must leave the meeting whilst it takes place.

9.15.5 The Trust's Chief Executive may terminate a Governor's appointment as such if they consider him unsuitable on the basis of disclosures obtained from the Disclosure and Barring Service.

9.15.6 A Governor whose tenure of office terminates under this paragraph 9.15 shall not be eligible for reappointment or to stand for re-election to the Council of Governors for a period of three years from the date of termination of his office or the date upon which any appeal against his removal from office is disposed of, whichever is the later, unless a resolution is passed under paragraph 9.15.10 reversing the earlier resolution of the Council of Governors to terminate that Governor's term of office

9.15.7 Upon a Governor resigning under paragraph 9.15.1 above or upon termination of his tenure of office under paragraphs 9.15.2, 9.15.3 or 9.15.5 above he shall cease to be a Governor and his name

shall be removed from the Register of Governors notwithstanding any reference to the Dispute Resolution Procedure under paragraph 22 below.

- 9.15.8** Any decision of the Council of Governors to terminate a Governor's tenure of office under paragraphs 9.15.2, 9.15.3 or 9.15.5 may be referred by the Governor to the Dispute Resolution Procedure at paragraph 22 below within 12 days of the date of the notice of the resolution being given to the Governor.
- 9.15.9** Where a Governor's term of office is terminated under paragraphs 9.15.2, 9.15.3 or 9.15.5 the provisions of paragraph 9.18 below shall apply save that if a decision to terminate a Governor's term of office is referred by that Governor to the said Dispute Resolution Procedure then the provisions of paragraph 22 shall also apply.
- 9.15.10** Where a decision to terminate a Governor's term of office is referred to the said Dispute Resolution Procedure and the outcome of that referral is a recommendation that the Governor shall be restored to his office as a Governor that recommendation shall then require the approval of at least two thirds of the Governors present at a meeting of the Council of Governors convened for that purpose and if the Council of Governors then resolves to reverse its earlier decision and restore the Governor to his said office that Governor shall thereupon be restored to that office and to the Register of Governors.

9.16 Disqualification

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

- a. in the case of a Staff Governor, Public Governor or Patient Governor he ceases to be a Member of the constituency or the Class of a constituency by which he was elected;
- b. in the case of any other Governor the appointing organisation withdraws its appointment of him or the appointing organisation itself is dissolved or otherwise ceases to exist;
- c. a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- d. 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;
- e. 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;
- f. a Director of the Trust, or a governor or director of a health service body (unless they are appointed as a Governor of the Trust by an appointing organisation which is a health service body);
- g. the spouse, partner, parent or child of a Director of the Trust;
- h. a member of a local authority's Overview and Scrutiny Committee covering health matters;
- i. a member of staff who is suspended from duties (may be temporary suspension subject to the outcome of investigation);
- j. a person who is detained under any section of the Mental Health Act 1983 or subject to a Home Office Restriction Order (this may be temporary);
- k. a person who has been dismissed from a health service body within the last two years, other than by redundancy;
- l. a person whose tenure of office as a chairman or as a member, governor, director or equivalent of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest; or
- m. an 'unfit person' as defined in the Trust's Provider Licence (as may be amended from time to time).

9.17 Notice of disqualification

9.17.1 Where an individual has been elected or appointed to be a Governor and he becomes disqualified for appointment he shall notify the Trust Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which render him disqualified.

9.17.2 If it comes to the notice of the Trust Secretary that the Governor is disqualified, whether at the time of the Governor's appointment or later, the Trust Secretary shall immediately inform the Council of Governors of this disqualification and shall give notice to the Governor concerned that he has done so.

9.18 Vacancies

9.18.1 Where a Governor's membership of the Council of Governors ceases for one of the reasons set out in paragraph 9.15 or 9.16 the Governors shall be replaced in accordance with paragraphs 9.18.2 to 9.18.5 below.

9.18.2 Where an elected Governor ceases to hold office during their term of office, and if an election is not due within the next [3] months the Trust shall offer the first reserve candidate the opportunity to assume the vacant office for the unexpired balance of the retiring Member's term of office. If that candidate does not accept to fill the vacancy it will then be offered to the next reserve candidate and so on until the vacancy is filled.

9.18.3 The first reserve candidate shall be the highest polling candidate amongst those candidates neither elected as a Governor in the last election for the relevant class in a Constituency nor appointed as a Governor in the relevant class pursuant to this process in paragraphs 9.18.2 and 9.18.3, being eligible. The next reserve candidate is the next highest polling candidate after the last candidate to be offered the opportunity to fill the vacancy, being eligible.

9.18.4 If no reserve candidate is available or willing to fill the vacancy, an election will then be held in accordance with the Model Rules of Election save that if an election is due to be held within 9 months of the vacancy having arisen the office will stand vacant until the next scheduled election unless by so doing this causes the aggregate number of Governors who are Public Governors and Patient Governors to be less than half the total membership of the Council of Governors. In that event an election will be held in accordance with the Model Rules of Election as soon as reasonably practicable.

9.18.5 A Governor elected to replace a Governor whose tenure has terminated under paragraph 9.15 or 9.16 shall be appointed subject to 9.14.1 and for the unexpired balance of the retiring Governor's term of office.

9.18.6 The Returning Officer under the Model Rules of Election shall maintain a record of votes cast at each election under the Model Rules of Election for the above purposes and the Returning Officer shall conduct or shall oversee the conducting of the process set out in paragraphs 9.18.4 and 9.18.5 above.

9.18.7 No proceedings of a Council of Governors shall be invalidated by any vacancy in its membership or any defect in the appointment or election of any Council member.

9.19 Remuneration

9.19.1 Governors shall not receive remuneration for acting as Governors.

9.20 Expenses

9.20.1 The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust. These are to be published in the Trust's annual report.

9.21 Roles and responsibilities of the Council of Governors

9.21.1 The Council of Governors shall:

- a. hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors; and
- b. represent the interests of the members of the Trust as a whole and the interests of the public.

9.21.2 The rights and duties of the Council of Governors shall be:

- a. at a General Meeting:
 - i. to appoint or remove the Chair and the other non-executive Directors of the Trust. The removal of a non-executive Director under this sub-paragraph shall require the approval of three-quarters of the Council of Governors;
 - ii. to approve the appointment of the Chief Executive of the Trust by the non-executive Directors;
 - iii. to decide the remuneration and allowances and the other terms and conditions of office of the non-executive Directors;
 - iv. to appoint or remove the Trust's auditor; and
 - v. to receive and to consider the Trust's annual accounts, any auditor's reports on those annual accounts and the annual report from the Board of Directors.
- b. to be consulted by the Board of Directors regarding the information to be given to Monitor as to the Trust's forward planning in respect of each Financial Year and to give its views

to the Board of Directors for the purposes of the preparation by the Board of Directors of the document containing such information which is to be given to the Monitor;

- c. to make proposals to the Board of Directors in relation to the services and goods provided by the Trust in accordance with its principal purpose;
- d. to respond and provide assistance as appropriate when consulted by the Board of Directors in accordance with this Constitution;
- e. to receive a report from the Chief Executive of the Trust no less often than once each Financial Year;
- f. to exercise such other powers and to discharge such other duties as may be conferred upon the Council of Governors by this Constitution; and
- g. to require one or more Directors to attend a meeting of the Council of Governors for the purpose 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); and
- h. to approve any merger, acquisition, separation or dissolution application in respect of the Trust before the application is made to Monitor.

9.21.3 If Monitor has appointed a panel for advising governors, a Governor may refer a question to that panel as to whether the Trust has failed or is failing to act in accordance with this Constitution or Chapter 5 of the 2006 Act. A Governor may only refer a question under this paragraph if more than half of the members of the Council of Governors voting approve the referral

9.22 Meetings

9.22.1 The Council of Governors, in consultation with the Board of Directors, shall adopt Standing Orders for its practice and procedure and in particular for its procedure at meetings (including General Meetings).

9.22.2 The Chair of the Trust or in his absence or in the event of a conflict of interest the Vice-Chair shall preside at meetings of the Council of Governors. If the Chair and Vice-Chair are absent, or have withdrawn due to a conflict of interest as provided for in paragraph 9.22.3 below, such other non-executive Director as the Board of Directors shall choose in accordance with Standing Orders shall preside. The person who presides shall be entitled to exercise a casting vote where the number of votes for and against a motion is equal.

9.22.3 If any matter for consideration at a meeting of the Council of Governors relates to the conduct or interests of the Chair or Vice-

Chair or the conduct or interests of the non-executive Directors as a class neither the Chair, Vice-Chair nor any of the non-executive Directors (as the case may be) shall preside over that period of the meeting during which the matter is under consideration and shall withdraw from the meeting throughout that period. The Governors present at the meeting shall then elect one of their number to preside during that period and that person shall be entitled to exercise a second or casting vote where the number of votes for and against a motion is equal.

- 9.22.4** The public and representatives of the Press shall be afforded facilities to attend all formal meetings of the Council of Governors but shall be required to withdraw upon the Council of Governors resolving as follows: "That the representatives of the Press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which will be prejudicial to the public interest".
- 9.22.5** The Council of Governors shall meet not less than three times each Financial Year.
- 9.22.6** At a General Meeting to take place before the end of September of each year the Council of Governors shall receive and consider the Trust's annual accounts, any report of the auditor on them and the Trust's annual report.
- 9.22.7** A Governor elected to the Council of Governors by the Public Constituency, or the Patients' Constituency may not vote at a meeting of the Council of Governors unless within the previous 12 months he has made a declaration in the form specified at paragraph 9.22.8 stating the constituency of which he is a Member and that he is not prevented from being a Member of the Council of Governors by paragraph 7 of Schedule 7 to the 2006 Act, or otherwise under this Constitution.
- 9.22.8** The form referred to in paragraph 9.22.7 above shall be as referred to in the relevant section of Annex 5 or as may be otherwise determined by the Trust from time to time.

9.23 Committees and Sub-Committees

9.23.1 The Council of Governors may appoint committees consisting of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee. So far as reasonably practicable the membership composition of such committees or sub-committees shall reflect the relative numerical proportions which Governors bear to one another on the Council of Governors. For the avoidance of doubt the Council of Governors may not delegate any of its powers or functions to a committee.

9.23.2 Committees or sub-committees appointed under paragraph 9.23.1 may request the Board of Directors to provide outside advisors to help them in their tasks.

9.24 Conflicts of interest of Governors

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

9.24.2 The Trust shall maintain a Register of Governors' Interests.

10 Board of Directors

10.1 The Trust shall have a Board of Directors, which shall consist of both executive and non-executive directors, appointed in accordance with this Constitution and the 2006 Act.

10.2 The Board of Directors shall comprise:

- a. a non-executive Chair
- b. between 6 and 7 other non-executive Directors
- c. the Chief Executive
- d. the Finance Director
- e. between 3 and 5 other executive directors.

10.3 The Executive Directors shall include one person who is the Chief Executive, one person who is the Finance Director, one person who is a registered medical practitioner or registered dentist and one of whom shall

be a registered nurse or registered midwife. The Executive Directors shall each hold office for a period in accordance with the terms and conditions of office decided by the Non-Executive Directors.

10.4 Only a Member of the Public Constituency or Patients' Constituency or an individual nominated by the University of Oxford may be appointed as a non-executive Director.

10.5 Subject to paragraph 10.5.6 and 10.5.7 below, non-executive Directors shall be appointed in accordance with a process of open competition. The process is intended to be consistent with current best practice as laid down by the NHS Foundation Trust Code of Governance or other appropriate guidance and shall be as follows:

10.5.1 When a vacancy arises or is scheduled to arise within 6 months, an appointments panel ("The Panel") shall be convened consisting of the Chair (or his nominee), three members of the Council of Governors, two non-executive Directors of the Board of Directors and a suitably qualified independent advisor. A quorum of the Panel shall be four and shall include the Chair (or his nominee), not less than one member of the Council of Governors and not less than one non-executive Director of the Board of Directors, plus the independent advisor. For the appointment of the Chair, the existing Chair may not be a member of the Panel.

10.5.2 The Panel shall consult the Chair and Chief Executive regarding the particular skills, qualifications or experience which in their opinion would be desirable for any non-executive Director to possess who may be appointed.

10.5.3 The Panel shall, having regard to the opinions of the Chair and Chief Executive, draw up a specification for the required candidate(s) and advertise the vacancy. It may use any other search procedures it considers appropriate.

10.5.4 The Panel shall select candidates to shortlist and interview and shall present the details of not more than two candidates to the Council of Governors together with a recommendation as to which candidate it considers the most suitable for appointment and the reason for their recommendation.

10.5.5 The Council of Governors shall then consider the recommendation and may appoint the recommended candidate or may remit the matter back to the Panel until a candidate acceptable to the Council of Governors is recommended. If more than one candidate is presented at the same time, the Council of Governors shall vote to select a single candidate or no candidate by secret ballot.

10.5.6 Notwithstanding the foregoing, the Council of Governors shall be entitled to reappoint a non-executive Director at the end of his term of office if in its opinion it is in the best interests of the Trust to do so but subject always to the provisions of paragraph 10.5.8

- 10.5.7** Notwithstanding the foregoing, the Council of Governors shall be entitled to appoint one non-executive Director nominated by the University of Oxford in accordance with a process agreed by the Council of Governors.
- 10.5.8** Subject to the foregoing, the Chair and the non-executive Directors shall be appointed for a period of office of three years in the first instance at a general meeting of the Council of Governors. A second term of three years may be served, following a recommendation from the Chair to the Council of Governors at a general meeting based on satisfactory appraisals. A third term of three years may be served, subject to broader review taking into account the needs of the Board and the Trust. The maximum period of office of any Non-Executive Director shall not exceed nine years.
- 10.6** Subject to the provisions of paragraph 9.21 above in relation to the appointment and removal of the Chair, the Chair shall be appointed in accordance with a process of open competition as follows:
- 10.6.1** The Council of Governors shall create a duly authorised committee consisting of one Public Governor, one Staff Governor, two Patient Governors (one from a service user class and one from a carers' class), one Partnership Organisation Governor and an independent assessor.
- 10.6.2** That committee shall seek candidates whom they consider appropriate against a job description as agreed by the Council of Governors to be appropriate for the post of Chair.
- 10.6.3** The committee shall select candidates to shortlist and interview and shall present the details of the candidate they consider to be the most appropriate to the Council of Governors.
- 10.6.4** The Council of Governors shall then consider the recommendation and may appoint the recommended candidate or may remit the matter back to the committee until a candidate acceptable to the Council of Governors is appointed. If more than one candidate is presented at the same time, the Council of Governors shall vote to select a single candidate or no candidate by secret ballot; and
- 10.6.5** The Council of Governors shall thereupon formally convey its decision to the successful candidate.
- 10.6.6** Notwithstanding the foregoing the Council of Governors shall be entitled to reappoint the Chair at the end of his term of office if in its opinion it is in the best interests of the Trust to do so but subject to the provisions of paragraph 10.5.8.
- 10.7** The validity of any act of the Trust shall not be affected by any vacancy among the Directors nor by any defect in the appointment of any Director

10.8 Disqualification

10.8.1 A person may not be a Director of the Trust if they:

- a. Have been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- b. Have made a composition or arrangement with, or granted a Trust deed for, his creditors and have not been discharged in respect of it;
- c. Have, within the preceding five years, 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;
- d. Are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
- e. Are subject to a disqualification order made under the Company Directors Disqualification Act 1986;
- f. Have had their tenure as a chair or member or director or equivalent of a health service body terminated on the grounds that their appointment is not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
- g. Have been dismissed within the preceding two years otherwise than by reason of redundancy from any paid employment with a health service body;
- h. Are a member of the Council of Governors, or a governor or director of a health service body;
- i. they are a member of a local authority's Overview and Scrutiny Committee covering health matters;
- j. in the case of a non-executive Director, they are no longer a member of the Public Constituency or the Patient's Constituency or no longer exercising functions for the University of Oxford;
- k. in the case of a non-executive Director, they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors;
- l. they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors; or
- m. they are an 'unfit person' as defined in the Trust's Provider Licence (as may be amended from time to time).

11 Roles and Responsibilities of the Board of Directors

- 11.1** The powers of the Trust shall be exercisable by the Board of Directors on its behalf.
- 11.2** Any of those powers may be delegated to a committee of Directors or to an executive Director.
- 11.3** A committee of non-executive Directors established as an audit committee shall monitor, review and carry out such monitoring, reviewing and other functions as are appropriate.
- 11.4** The non-executive Directors shall appoint or remove the Chief Executive (and Accounting Officer). The appointment of a Chief Executive (but not his removal) shall require the approval of the Council of Governors.
- 11.5** The removal of the Chief Executive shall be conducted in accordance with the Trust's Standing Orders which shall require the giving of at least 7 days notice of any resolution to remove the Chief Executive and that resolution must then be passed by a majority of at least two-thirds of all non-executive Directors including the Chair.
- 11.6** A Committee of the Chair, the Chief Executive and the other non-executive Directors shall appoint or remove the executive Directors.
- 11.7** 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 executive Directors.
- 11.8** The Board of Directors shall give information as to its forward planning in respect of each Financial Year to Monitor. The Board of Directors shall prepare a document containing that information for submission to Monitor and shall have regard to the views of the Council of Governors when preparing it.
- 11.9** The Board of Directors shall present to the Council of Governors at a General Meeting the Trust's annual accounts, any report of the auditor on them, and the Trust's annual report.

12 Meetings of Directors

- 12.1** The Board of Directors shall adopt Standing Orders from time to time covering the proceedings and business of its meetings. These shall include setting a quorum for meetings, both of executive and non-executive Directors.
- 12.2** The proceedings of the Board of Directors shall not be invalidated by reason of any vacancy in its membership or any defect in a Director's appointment.
- 12.3** In the absence of the Chair, the Board of Directors shall be chaired by the Vice-Chair.

13 Conflicts of Interest of Directors

- 13.1** The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 13.1.1** 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 Foundation Trust.
 - 13.1.2** 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.
- 13.2** The duty referred to in sub-paragraph 13.1.1 is not infringed if:
- 13.2.1** The situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 13.2.2** The matter has been authorised in accordance with the constitution.
- 13.3** The duty referred to in sub-paragraph 13.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 13.4** In sub-paragraph 13.1.2, "third party" means a person other than:
- 13.4.1** The Trust; or
 - 13.4.2** A person acting on its behalf.
- 13.5** 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.
- 13.6** If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

- 13.7** Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 13.8** 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.
- 13.9** A Director need not declare an interest –
- 13.9.1** If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 13.9.2** If, or to the extent that, the Directors are already aware of it;
 - 13.9.3** If, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered:
 - a. By a meeting of the Board of Directors; or
 - b. By a committee of the Directors appointed for the purpose under the Constitution.
- 13.10** Any Director who declares an interest in a matter as defined above shall :
- 13.10.1** withdraw from the meeting and play no part in the relevant discussion or decision and
 - 13.10.2** not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 13.11** Details of any such interest shall be recorded in the register of the interests of Directors.
- 13.12** Any Director who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Directors and (in the case of a non-executive Director) by the requisite majority of the Council of Governors.
- 13.13** The Board of Directors shall adopt Standing Orders specifying the arrangements for excluding Directors from discussion or consideration of a proposed contract or other matter as appropriate where the Director has declared any interest required to be disclosed under this paragraph 13 (a **'relevant and material interest'**).
- 13.14** The Trust shall maintain a Register of Directors’ Interests.
- 13.15** Interests which shall be regarded as “relevant and material” and which for the avoidance of doubt should be declared and shall be included in the

Register of Directors' Interests are set out in the Standing Orders at: 8.2.1 – 8.2.1.8.

- 13.16** If a Director has a doubt about the relevance or materiality of any interest this shall be discussed with the Chair and Trust Secretary.
- 13.17** It is the obligation of the Director to inform the Trust Secretary in writing within 7 days of becoming aware of the existence of a relevant or material interest and the Trust Secretary shall thereupon amend the Register within three working days of having received the said written notification from the Director.
- 13.18** Directors' directorships of companies within paragraph 13.15 above or in companies likely or possibly seeking to do business with the National Health Service within paragraph 13.15 shall be published in the Annual Report of the Trust and this information shall be kept up to date for inclusion in succeeding Annual Reports.
- 13.19** If during the course of a meeting of the Board of Directors a conflict of interest is established or is reasonably considered to have arisen the Director concerned shall withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt this includes voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest exists, the majority of Directors present and voting at the meeting shall resolve the issue, with the Chair having a second or casting vote in accordance with the provisions of this Constitution.
- 13.20** The Register of Directors' Interests shall be kept up to date by means of an annual review of the Register, by the Trust Secretary during which, any changes of interest declared during the preceding 12 months shall be incorporated, subject always to the provisions of this paragraph 13.
- 13.21** The Register of Directors' Interests shall be subject to the provisions of paragraphs 15 and 16 below and the Chair shall take reasonable steps to bring the existence of the Register of Directors' Interests to the attention of the local population and to publicise arrangements for viewing it.

14 Indemnity

- 14.1** Any Governor, Director or Secretary of the Trust who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her functions, save where the person has acted recklessly. Any costs arising in this way will be met by the Trust.

The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Council of Governors and the Board of Directors and the Secretary.

- 14.2** It is a requirement of this indemnity that in the event of any claim or threat of a claim, whether oral or written, whenever made against a Governor or a Director to which the indemnity is relevant, the Trust Secretary should be advised immediately and such information and any documents relevant to the claim passed to the Trust Secretary so that the matter can be dealt with on their behalf. This may include, if necessary, the instructing of solicitors to act for and represent the Governor or Director or Secretary or any other person at the Trust's expense.

15 Registers

- 15.1** The Trust shall have:

15.1.1 a Register of Members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;

15.1.2 a Register of Governors;

15.1.3 a Register of Governors' Interests;

15.1.4 a Register of Directors; and

15.1.5 a Register of Directors' Interests.

- 15.2** The information to be included in the above registers shall be such as shall comply with the requirements of the 2006 Act, any subordinate legislation made under it and the provisions of this Constitution.

- 15.3** The Trust shall ensure that the Trust Secretary (or such other person as the Trust may provide) shall maintain the above Registers to reflect the current position at all times and that entries are added or deleted as appropriate to achieve this and in particular that Members shall be removed from the Register of Members if:

15.3.1 the Member is no longer eligible or is disqualified;

15.3.2 the Member dies; or

15.3.3 the Member fails or declines to confirm their wish to continue as a Member when requested to do so by the Council of Governors or the Council of Governors resolves to terminate the Membership of that Member under this Constitution.

- 15.4** The Trust shall make the Registers specified in paragraph 15.1 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

15.5 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 Patients' Constituency; or any other member of the Trust, if he so requests. So far as the Registers are required to be made available: they are to be available for inspection free of charge at all reasonable times; and a person who requests a copy of or extract from the Registers is to be provided with a copy or extract. If the person requesting a copy or extract is not a Member of the Foundation Trust, the Trust may impose a reasonable charge for doing so.

16 Documents available for public inspection

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

16.1.1 a copy of the current Constitution;

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

16.1.3 a copy of the latest Annual Report.

16.2 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:

16.2.1 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;

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

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

16.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;

16.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;

16.2.6 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;

16.2.7 a copy of any statement published or provided under section 65G

(consultation plan) of the 2006 Act;

16.2.8 a copy of any final report published under section 65I (administrator's final report);

16.2.9 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

16.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

16.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.

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

17 Auditor

17.1 The Trust shall have an Auditor and shall provide the Auditor with every facility and all information which he may reasonably require for the purposes of his functions under the 2006 Act.

17.2 The Council of Governors shall appoint or remove the Auditor at a General Meeting of the Council of Governors.

17.3 A person may only be appointed Auditor if he (or in the case of a firm each of its members) is a member of one or more of the bodies referred to in paragraph 23(4) of Schedule 7 to the 2006 Act.

17.4 The auditor shall carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.

18 Accounts

18.1 The Trust must keep proper accounts and proper records in relation to the accounts. Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

18.2 The accounts are to be audited by the Trust's Auditor.

- 18.3** The following documents shall be made available to the Comptroller and Auditor General for examination at his request:
- 18.3.1** the accounts;
 - 18.3.2** any records relating to them; and
 - 18.3.3** any report of the auditor on them.
- 18.4** 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.
- 18.5** The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 18.6** The Trust must:
- 18.6.1** lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
 - 18.6.2** once it has done so, send copies of those documents to Monitor.
- 19 Annual Report, forward plans and non-NHS work**
- 19.1** The Trust shall prepare Annual Reports and send them to Monitor.

- 19.2** The reports shall give:
- 19.2.1** information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its Public Constituency and the Patients' Constituency is representative of those eligible for such membership;
 - 19.2.2** information on any occasions in the period to which the report relates on which the Council of Governors exercised its power under paragraph 9.21.2g of this Constitution;
 - 19.2.3** information on the Trust's policy on pay and on the work of the Trust's remuneration committee and such other procedures as the Trust has on pay;
 - 19.2.4** information on the remuneration of the directors and on the expenses of the governors and the directors;
 - 19.2.5** information on the impact that income received by the Trust otherwise than from the provision of goods and services for the purpose of the health service in England has had on the provision by the Trust of goods and services for those purposes; and
 - 19.2.6** any other information Monitor requires.
- 19.3** The Trust shall comply with any decision Monitor makes as to:
- 19.3.1** the form of the reports;
 - 19.3.2** when the reports are to be sent to it; and
 - 19.3.3** the periods to which the reports are to relate.
- 19.4** The Trust shall give information as to its forward planning in respect of each Financial Year to Monitor. This information shall be prepared by the Directors who, in accordance with paragraph 11.8 above, shall have regard to the views of the Council of Governors in preparing the document containing that information for submission to Monitor.
- 19.5** Each forward plan must include information about:
- 19.5.1** 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
 - 19.5.2** the income it expects to receive from doing so.
- 19.6** Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in 19.5.1 the Council of Governors must:
- 19.6.1** 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
 - 19.6.2** notify the Directors of its determination.

19.7 If 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 health service in England it may implement the proposal only if more than half of the members of the Council of Governors voting approve its implementation.

20 Meeting of Council of Governors to consider annual accounts and reports

20.1 The following documents are to be presented to the Council of Governors at a General Meeting of the Council of Governors:

20.1.1 the Annual Accounts;

20.1.2 any report of the Auditor on them; and

20.1.3 the Annual Report.

20.2 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.

21 Instruments

21.1 The Trust shall have a Common Seal which shall not be affixed except under the authority of the Board of Directors.

21.2 A document purporting to be duly executed under the Trust's Common Seal or to be signed on its behalf shall be received in evidence and, unless the contrary is proven, taken to be so executed or signed.

22 Dispute Resolution Procedures

22.1 Dispute resolution procedures shall operate in the following circumstance:

22.1.1 for disputes involving Members in relation to matters of eligibility and disqualifications, the dispute shall be referred to a committee of the Council of Governors the composition of which is determined by the Chair;

22.1.2 for disputes with Governors in relation to matters of eligibility, disqualifications and termination of tenure, the dispute shall be referred to the Chair with advice from the Trust Secretary and others; and

22.1.3 for other disputes, such as between the Governors and the Board of Directors, the procedure set out in SO 10.3 of the Board of Directors will be followed.

23 Amendment of the Constitution

- 23.1** The Trust may make amendments of its constitution only if:
- 23.1.1** More than half of the members of the Council of Governors voting approve the amendments, and
 - 23.1.2** More than half of the members of the Board of Directors voting approve the amendments.
- 23.2** Amendments made under paragraph 23.1 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.
- 23.3** Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 23.3.1** At least one member of the Council of Governors must attend the next annual members meeting and present the amendment, and
 - 23.3.2** The Trust must give the members an opportunity to vote on whether they approve the amendment.
- 23.4** 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.
- 23.5** 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.

24 Mergers, acquisitions, separations and dissolution

- 24.1** More than half of the members of the Council of Governors must approve any application for any of the following before the application is made to Monitor:
- 24.1.1** the dissolution of the Trust and another NHS foundation trust or an NHS trust and the establishment of a new NHS foundation trust;
 - 24.1.2** the acquisition by the Trust of another NHS foundation trust or an NHS trust;
 - 24.1.3** the acquisition of the Trust by another NHS foundation trust;
 - 24.1.4** the dissolution of the Trust and the establishment of two or more new NHS foundation trusts; or
 - 24.1.5** the dissolution of the Trust.

25 Significant transactions

- 25.1** The constitution does not contain any descriptions of the term 'significant transaction' for the purposes of section 51A of the 2006 Act (Significant Transactions).

26 Registered Office

26.1 The Trust's registered office is at 4000 John Smith Drive, Oxford Business Park South, Oxford, OX4 2GX or such other place as the Board of Directors shall decide.

27 Notices

27.1 Any notice required by this constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.

27.2 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

ANNEX 1 – THE PUBLIC CONSTITUENCY

Areas for a public constituency	minimum number of members
The County of Oxfordshire ¹	50
The County of Buckinghamshire ²	50
Rest of England & Wales ³	20

¹ Consisting of the local authority electoral area of the Oxfordshire County Council.

² Consisting of the local authority electoral area of the Buckinghamshire County Council.

³ Consisting of all other local authority electoral areas in England and Wales not already covered by the local authority areas in Oxfordshire and Buckinghamshire.

ANNEX 2 – THE STAFF CONSTITUENCY

Class (descriptions of individuals)	minimum number of members
Adult Services (all disciplines)	50
Older Peoples Services (all disciplines)	50
Children & Young Peoples Services (all disciplines)	50
Corporate Services (all disciplines)	50

ANNEX 3 – THE PATIENTS’ CONSTITUENCY

Class (descriptions of individuals)	minimum number of members
Service users: Buckinghamshire & Other Counties	20
Service users: Oxfordshire	20
Carers	20

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

Elected governors		
<i>Constituency</i>	<i>Class</i>	<i>No of governors</i>
Public	Buckinghamshire	4
	Oxfordshire	7
	Rest of England & Wales	1
Patient	Service Users: Buckinghamshire & Other Counties	2
	Service Users: Oxfordshire	2
	Carers	3
Staff	Adult Services	2
	Older Peoples Services	4
	Children & Young Peoples Services	2
	Corporate Services	1
Sub total elected		28
Appointed governors		
Oxfordshire Clinical Commissioning Group		1
Chiltern Clinical Commissioning Group		1
Oxford University Hospitals NHS Trust		1
Buckinghamshire Healthcare NHS Trust		1
Oxfordshire County Council		1
Buckinghamshire County Council		1
Oxford Brookes University		1
Voluntary / Community Organisations		
- Buckinghamshire Mind (1
- Age UK Oxfordshire		1
Sub total appointed		9
Total number of governors		37

ANNEX 5 – THE MODEL RULES FOR ELECTIONS

PART 1: INTERPRETATION

1. Interpretation

PART 2: TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

PART 3: RETURNING OFFICER

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (public and patient constituencies)

Action to be taken before the poll

22. List of eligible voters

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

The poll

27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers and spoilt text message votes
30. Lost voting information
31. Issue of replacement voting information
32. ID declaration form for replacement ballot papers (public and patient constituencies)
33. Procedure for remote voting by internet
34. Procedure for remote voting by telephone
35. Procedure for remote voting by text message

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

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

PART 6: COUNTING THE VOTES

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

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

PART 8: DISPOSAL OF DOCUMENTS

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

- 59. Countermand or abandonment of poll on death of candidate

PART 10: ELECTION EXPENSES AND PUBLICITY

Expenses

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

Publicity

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

PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES

- 66. Application to question an election

PART 12: MISCELLANEOUS

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

PART 1: INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

“*council of governors*” means the council of governors of the corporation;

“*declaration of identity*” has the meaning set out in rule 21.1;

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

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

“*e-voting information*” has the meaning set out in rule 24.2;

“*ID declaration form*” has the meaning set out in Rule 21.1;
“internet voting record” has the meaning set out in rule 26.4(d);

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

“*lead governor*” means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (Monitor, December 2013) or any later version of such code.

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

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

“*Monitor*” means the corporate body known as Monitor as provided by section 61 of the 2012 Act;

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the
Final day for delivery of nomination forms to returning officer	Not later than the twenty eighth day before the day of the close of the
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of
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
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 69, the returning officer for an election is to be appointed by the corporation.

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

5. Staff

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

6. Expenditure

6.1 The corporation is to pay the returning officer:

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

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

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

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

12. Declaration of eligibility

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

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

13. Signature of candidate

13.1 The nomination form must be signed and dated by the candidate,

in a manner prescribed by the returning officer, indicating that:

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

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

14. Decisions as to the validity of nomination

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

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

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

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

- 14.3 The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- 14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

- 15.1 The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2 The statement must show:
- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing,
- as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4

available for inspection by members of the corporation free of charge at all reasonable times.

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

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

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

- (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

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

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

("declaration of identity")

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

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

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

Action to be taken before the poll

22. List of eligible voters

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

22.2 The list is to include, for each member:

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

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

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

23. Notice of poll

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

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

24. Issue of voting information by returning officer

24.1 Subject to rule 24.3, as soon as is reasonably practicable on or

after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:

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

("postal voting information").

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

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

("e-voting information").

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

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

for the purposes of the poll.

24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members

in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.

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

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

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

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

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

26. E-voting systems

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

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

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

these rules referred to as “the text message voting facility”).

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

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

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

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

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

26.6 The returning officer shall ensure that the text message voting

facility and text messaging voting system provided will:

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

29. Spoilt ballot papers and spoilt text message votes

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

text message vote, the returning officer shall enter in a list (“the list of spoiled text message votes”):

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

30. Lost voting information

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

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

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

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

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

31. Issue of replacement voting information

31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election,

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

31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list (“the list of tendered voting information”):

- (a) the name of the voter,
- (b) the unique identifier of any replacement ballot paper issued under this rule;
- (c) the voter ID number of the voter.

32. ID declaration form for replacement ballot papers (public and patient constituencies)

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.

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

33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.

33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.

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

34. Voting procedure for remote voting by telephone

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

35. Voting procedure for remote voting by text message

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

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

36. Receipt of voting documents

- 36.1 Where the returning officer receives:
- (a) a covering envelope, or
 - (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,

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

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

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

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

37. Validity of votes

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

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

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

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

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

37.4 An internet, telephone or text message vote shall not be taken to

be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.

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

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

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

38. Declaration of identity but no ballot paper (public and patient constituency)⁴

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

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

39. De-duplication of votes

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

⁴ It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

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

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

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

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

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

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

40. Sealing of packets

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

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

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

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

PART 6: COUNTING THE VOTES

41. Interpretation of Part 6

41.1 In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

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

or

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

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

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

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

being ignored); and

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

“*quota*” means the number calculated in accordance with rule 46,

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

“*stage of the count*” means:

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

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

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

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

42. Arrangements for counting of the votes

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

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

- (a) the board of directors and the council of governors of the

corporation have approved:

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

43. The count

43.1 The returning officer is to:

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

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

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

44. Rejected ballot papers and rejected text voting records

44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,

- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

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

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

44.3 Any text voting record:

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

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

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

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

45. First stage

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

46. The quota

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

47. Transfer of votes

- 47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:
- (a) according to next available preference given on those ballot documents for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.

- 47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule 47.1.
- 47.3 The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.4 The vote on each ballot document transferred under rule 47.3 shall be at a value (“the transfer value”) which:
- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
 - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- 47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- 47.6 The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.7 The vote on each ballot document transferred under rule 47.6 shall be at:
- (a) a transfer value calculated as set out in rule 47.4(b), or
 - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

- 47.8 Each transfer of a surplus constitutes a stage in the count.
- 47.9 Subject to rule 47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- 47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
 - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
- 47.11 This rule does not apply at an election where there is only one vacancy.

48. Supplementary provisions on transfer

- 48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:
- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
 - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.
- 48.2 The returning officer shall, on each transfer of transferable ballot documents under rule 47:

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

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

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

49. Exclusion of candidates

49.1 If:

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

the returning officer shall exclude from the election at that stage

the candidate with the then lowest vote (or, where rule 49.12 applies, the candidates with the then lowest votes).

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

(a) ballot documents on which a next available preference is given, and

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

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

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

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

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

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

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

49.9 After the returning officer has completed the transfer of the ballot

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

49.10 The returning officer shall after each stage of the count completed under this rule:

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

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

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

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

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

and

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

50. Filling of last vacancies

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

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

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

51. Order of election of candidates

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

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

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

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

falls shall be deemed to have been elected first.

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

52. Declaration of result for contested elections

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

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

52.2 The returning officer is to make:

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

available on request.

53. Declaration of result for uncontested elections

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

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

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

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

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

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

57. Retention and public inspection of documents

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

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

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

58. Application for inspection of certain documents relating to an

election

58.1 The corporation may not allow:

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

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

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

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

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

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

58.4 On an application to inspect any of the documents listed in rule 58.1 the board of directors of the corporation must:

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

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

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

59. Countermand or abandonment of poll on death of candidate

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

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

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

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1 No person may:

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

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

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

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

as it considers necessary.

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

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

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

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

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

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

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

66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

PART 12: MISCELLANEOUS

67. Secrecy

67.1 The following persons:

- (a) the returning officer,
- (b) the returning officer's staff,

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

69.1 A person may not be appointed as a returning officer, or as staff of

the returning officer pursuant to these rules, if that person is:

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

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

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

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

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

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

CONTENTS:

1. INTRODUCTION

2. DEFINITIONS

3. THE COUNCIL OF GOVERNORS

4. MEETINGS OF THE COUNCIL OF GOVERNORS

Admission of the Public

Calling Meetings

Notice of Meetings

Annual Meeting

Setting the Agenda

Petitions

Chair of Meeting

Agenda Proposals

Chair's Ruling

Voting

Special Provisions relating to termination of Governors' Tenure

Minutes

Suspension of Standing Orders

Variation and Amendment of Standing Orders

Record of Attendance

Quorum

5. COMMITTEES

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

7. STANDARDS OF BUSINESS CONDUCT

8. APPOINTMENTS AND RECOMMENDATIONS

9. MISCELLANEOUS

SCHEDULE A: DECLARATION FORM FOR GOVERNORS

1 INTRODUCTION

- 1.1 The Oxford Health NHS Foundation Trust (the “**Trust**”) is a statutory body which became a public benefit corporation on 1 April 2008 following its approval as an NHS Foundation Trust by Monitor pursuant to the National Health Service Act 2006 (the “**2006 Act**”).
- 1.2 The principal place of business of the Trust is at 4000 John Smith Drive, Oxford Business Park South, Oxford, OX4 2GX.
- 1.3 The Trust is governed by the 2006 Act, the 2012 Act its Constitution and its Provider Licence granted by Monitor (together the “**Regulatory Framework**”). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Governors of the Trust to adopt Standing Orders for the regulation of its proceedings and business and the Code of Conduct is incorporated as part of these Standing Orders and applies to all Governors.

2 DEFINITIONS

- 2.1 In these Standing Orders:

2006 Act means the National Health Service Act 2006.

2012 Act means the Health and Social Care Act 2012.

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

Chair means the Chair of the Board appointed in accordance with the Constitution to ensure that the Board and the Council successfully discharge their overall responsibilities for the Trust as a whole. The expression “**the Chair**” shall be deemed to include the Vice-Chair or such other person so appointed if the Chair is absent from a meeting or is otherwise unavailable.

Chief Executive means the chief executive officer of the Trust appointed in accordance with the Constitution.

Clear Day means a day of the week not including Saturday, Sunday or a public holiday.

Code of Conduct means the Code of Conduct of the Council of Governors which is incorporated as part of these Standing Orders.

Constitution means the Constitution of the Trust.

Council means the Council of Governors of the Trust as constituted in accordance with the Constitution.

Vice-Chair means the Non-Executive Director appointed by the Board of Directors to take on the Chair's duties if the Chair is absent or unavailable for any reason.

Governor means a Governor of the Trust elected or appointed as provided by the Constitution to sit on the Council of Governors, but which does not include the Chair.

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

Non-Executive Director means a member of the Board appointed as a non-executive director in accordance with the Constitution.

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

Regulatory Framework means the 2006 Act, 2012 Act the Constitution and the Trust's Provider Licence.

Standing Orders or **SOs** means these Standing Orders of the Council of Governors.

Trust Secretary means a person appointed by the Trust in accordance with the Constitution to be the Trust Secretary to act independently of the Council of Governors to provide advice on corporate governance issues to the Council and the Chair and monitor the Trust's compliance with the Regulatory Framework and these Standing Orders.

2.2 Words importing the masculine gender include the feminine gender and vice versa.

3 THE COUNCIL OF GOVERNORS

3.1 Certain powers and decisions may only be exercised by the Council in formal session. These powers and decisions are set out in the Constitution and have effect as if incorporated into the Standing Orders. A list of these powers is contained in paragraph 9.21 of the Constitution.

4 MEETINGS OF THE COUNCIL OF GOVERNORS

4.1 Admission of the Public

The public and representatives of the Press shall be afforded facilities to attend all formal meetings of the Council except where it resolves:

- 4.1.1 That members of the public and representatives of the Press be excluded from the remainder of a meeting having regard to the confidential nature of the business to be transacted or as a result of any publicity which would be prejudicial to the Trust or its business or any of its employees or service users or carers or contractors, to the extent that the Council believes that in the circumstances these are special reasons for excluding the public from the meeting in accordance with the Constitution; and/or
- 4.1.2 That in the interests of public order the meeting adjourn for a period to be specified in such resolution to enable the Council to complete business without the presence of the public.
- 4.1.3 Nothing in these Standing Orders shall require the Council to allow members of the public and representatives of the Press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council.

4.2 Calling Meetings

- 4.2.1 Meetings of the Council shall be held at such times and places as the Council may determine and there shall be at least 4 meetings in any year including an annual meeting and any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.
- 4.2.2 The Chair, or in the individual's absence the Vice-Chair, may call a meeting of the Council at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of the Governors and specifying the business to be transacted at the meeting, has been presented to them, or if, without so refusing, the Chair does not call a meeting within 7 Clear Days after such requisition has been presented to them at the Trust's Headquarters, such one third or more of the Governors may forthwith call a meeting for the purpose of conducting that business.

4.3 Notice of Meetings

- 4.3.1 Before each meeting of the Council, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer authorised by the Chair to sign on the individual's behalf, shall be delivered to, or sent by post to the usual place of residence of every Governor, so as to be available to them at least 5 Clear Days before the meeting save in the case of emergencies.
- 4.3.2 Want of service of the notice on any one Governor shall not affect the validity of a meeting but failure to serve such a notice on more than three Governors will invalidate the meeting.
- 4.3.3 In the case of a meeting called by Governors in default of the Chair, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the requisition.
- 4.3.4 Agendas will be sent to Governors before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than 5 Clear Days before the meeting, save in the case of emergencies.

4.4 Annual Meeting

- 4.4.1 The Council shall hold an annual meeting of the Council in every calendar year so that there is no more than fifteen calendar months between one meeting and the next and shall present to that meeting:
 - 4.4.1.1 A report on the proceedings of its meetings held since the last annual meeting;
 - 4.4.1.2 A report on the progress since the last annual meeting in developing the membership strategy including the steps taken to ensure that the actual membership is fully representative of the persons who are eligible to be members under the Constitution;
 - 4.4.1.3 A report on any change to the Governors which has taken place since the last annual meeting; and
 - 4.4.1.4 A report containing such comments as it wishes to make regarding the performance of the Trust and the accounts of the Trust for its financial year just ended

and the future service development plans of the Trust.

4.5 Setting the Agenda

- 4.5.1 The Council may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.5.2 A Governor desiring a matter to be included on an agenda, including a formal proposition for discussion and voting on at a meeting, shall make the individual's request in writing to the Chair at least 10 Clear Days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 Clear Days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.5.3 A matter may be included on the agenda and a proposition may be moved only if it relates to an issue arising from and relevant to the role and responsibilities of the Council which are set out in 9.21 of the Constitution.

4.6 Petitions

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

4.7 Chair of Meeting

- 4.7.1 At any Council meeting, the Chair, if present, shall preside.
- 4.7.2 If the Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Vice-Chair shall preside.
- 4.7.3 If the Vice-Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, a Non-Executive Director as shall be appointed by the Board shall preside.

4.8 Agenda Proposals

Where a Governor has requested inclusion of a matter on the agenda in accordance with Standing Order 4.5.2 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this Standing Order 4.8 shall apply in respect of the proposition:

- 4.8.1 The mover of the proposition shall have a right of reply at the close of any discussion on the proposition or any amendment thereto.
- 4.8.2 When a proposition is under discussion or immediately prior to discussion it shall be open to a Governor to move:
 - 4.8.2.1 an amendment to the proposition;
 - 4.8.2.2 the adjournment of the discussion or the meeting;
 - 4.8.2.3 that the meeting proceed to the next business;
 - 4.8.2.4 the appointment of an ad hoc committee to deal with a specific item of business;
 - 4.8.2.5 that the proposition now be put;
 - 4.8.2.6 that the public be excluded from the meeting in relation to the discussion concerning the proposition under Standing Order 4.1.1.
- 4.8.3 In the case of sub-paragraphs 4.8.2.3 and 4.8.2.5 above, to ensure objectivity these matters may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.
- 4.8.4 No amendment to the proposition shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the proposition.
- 4.8.5 The mover of a proposition shall have a maximum of five minutes to move and three minutes to reply. Once a proposition has been moved, no Governor shall speak more than once or for more than three minutes.

4.9 **Chair's Ruling**

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

4.10 **Voting**

- 4.10.1 A Governor may not vote at a meeting of the Council unless, within 7 Clear Days prior to the commencement of the

meeting the individual has made a declaration in the form specified within Schedule A of these Standing Orders, that, where relevant, the individual is a Member of the Public or Patients' Constituency which elected them or the Staff Constituency as the case may be and is not prevented from being a Member of the Council by paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution.

4.10.2 Subject to clause 4.10.4 below, every question at a meeting shall be determined by a majority of the votes of the Chair of the meeting and the Governors present and voting on the question.

4.10.3 Whoever is Chair of the meeting of the Council shall in the case of an equality of votes on any question or proposition have a casting vote.

4.10.4 A resolution:

4.10.4.1 for the removal of the Chair or a Non-Executive Director shall be passed only if three quarters of the total number of Governors vote in favour of it;

4.10.4.2 to terminate a Governor's tenure of office shall be passed only if three quarters of the total number of Governors vote in favour of it;

4.10.4.3 to approve any merger, acquisition, separation or dissolution shall be passed only if more than half of the total number of Governors vote in favour of it;

4.10.4.4 to propose an amendment to these Standing Orders shall be passed only if more than half of the total number of Governors vote in favour of it.

4.10.5 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.

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

4.10.7 If a Governor so requests, the individual's vote shall be recorded by name upon any vote (other than by paper ballot).

4.10.8 A Governor may only vote if present at the time of the vote on which the question is to be decided; no Governor may vote by proxy.

4.11 Suspension or Termination of Office of a Governor

- 4.11.1 The Chair shall be authorised to take such urgent action as may in his view be required, including the exclusion of the Governor concerned from a meeting, so that any allegation made against a Governor that any of the circumstances set out in paragraph 9 of the Constitution relating to the disqualification or removal of a Governor are applicable.
- 4.11.2 Where any grounds within this clause are alleged, it shall be open to the Council to decide, by a simple majority of those present and voting, to lay a formal charge of non-compliance or misconduct.
- 4.11.3 The Governor in question will be notified in writing of the allegations, detailing the specific behaviour which is alleged, and inviting and considering the individual's response within a defined appropriate and reasonable timescale.
- 4.11.4 The Governor may be invited to address the Council in person if the matter cannot be resolved satisfactorily through correspondence.
- 4.11.5 The Governors, by a simple majority of those present and voting can decide whether to uphold the charge of non-compliance or misconduct detrimental to the Trust.
- 4.11.6 The Governors can impose such sanctions as shall be deemed appropriate and as shall be in accordance with the Constitution. Such sanctions will range from the issuing of a written warning as to the Governor's future conduct and consequences, non-payment of expenses and removal of the Governor from office. For the avoidance of doubt any resolution to terminate the tenure of the Governor may only be passed in accordance with paragraph 9.15.4 of the Constitution.

4.12 Minutes

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

4.13 Suspension of Standing Orders

- 4.13.1 Except where this would contravene any statutory provision or any direction made by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Governors are present, there is a majority of Governors who are members of the public constituency of the Trust, and that a majority of those present vote in favour of suspension.
- 4.13.2 A decision to suspend the Standing Orders shall be recorded in the Minutes of the meeting.
- 4.13.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Governors.
- 4.13.4 No formal business may be transacted while Standing Orders are suspended.
- 4.13.5 Any suspension of Standing Orders will promptly be reported to the Audit Committee.

4.14 Amendment of Standing Orders

- 4.14.1 These Standing Orders may be amended only if and to the extent that the Board after consultation with the Council so decide. The Board shall consider a request for amendment of these Standing Orders if:
 - 4.14.1.1 a notice of proposal under Standing Order 4.5.2 has been given; and
 - 4.14.1.2 no fewer than half the total number of Governors voted in favour of amendment; and
 - 4.14.1.3 at least two thirds of the total number of Governors were present at the meeting; and
 - 4.14.1.4 the amendment proposed does not contravene a statutory provision or direction made by Monitor.

4.15 Record of Attendance

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

4.16 Quorum

- 4.16.1 No business shall be transacted at a meeting unless at least one third of the total number of Governors, including at least 5 Governors who are members of either the Public Constituency or the Patients' Constituency, are present
- 4.16.2 If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for 5 Clear Days and upon reconvening, those present shall constitute a quorum.
- 4.16.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest as provided in Standing Order 6 the individual shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the Minutes of the meeting. The meeting must then proceed to the next business.

5 COMMITTEES

- 5.1 Subject to such directions and guidance as may be issued by Monitor, the Council may and, if directed by Monitor, shall appoint committees of the Council to assist it in the proper performance of its functions under the Constitution and the Regulatory Framework, consisting wholly or partly of the Chair and Governors. For the avoidance of doubt the Council may appoint a committee of the Council to act as a joint special committee with a committee of the Board for the purpose of resolving disputes between the Council and the Board in accordance with the Dispute Resolution Procedure set out in the Standing Orders for the practice and procedure of the Board of Directors, as may be varied from time to time, as attached at Annex 8 of the Constitution.
- 5.2 A committee appointed under Standing Order 5 may, subject to such directions as may be given by Monitor or the Council, appoint sub-committees consisting wholly or partly of members of the committee.
- 5.3 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council with the term "Chair" to be read as a reference to the Chair of the committee and the term "Governor" to be read as a reference to a Member of the committee as the context permits.

- 5.4 Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council shall decide and shall be in accordance with the Regulatory Framework and any direction or guidance issued by Monitor but the Council shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council at a formal meeting. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 Where committees are authorised to establish sub-committees they may not delegate their duties to the sub-committee unless expressly authorised by the Council.
- 5.6 The Council shall approve the appointments to each of the committees which it has formally constituted.
- 5.7 Where the Council is required to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Council, such appointments shall be made in accordance with applicable statute and regulations and with guidance issued by Monitor.
- 5.8 Where the Council determines that persons who are neither Governors, nor members of the Board nor Officers of the Trust, shall be appointed to a committee, the terms of such appointment shall be determined by the Council subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Board or Monitor.

6 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

6.1 Declaration of Interests

- 6.1.1 The Regulatory Framework and the Constitution require each Governor to disclose to the other Governors:
 - 6.1.1.1 any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in Standing Order 6.2.1; and
 - 6.1.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, as described in Standing Orders 6.2.2 and 6.2.3; and
 - 6.1.1.3 any actual or potential family interest, direct or indirect, of which the Governor is aware, as described in Standing Order 6.2.5.

- 6.1.2 Such a declaration shall be made either at the time of the Governor's election or appointment or as soon thereafter as the interest arises, but within 5 Clear Days of becoming aware of the existence of that interest, and in such manner as the Trust Secretary may prescribe from time to time.
- 6.1.3 In addition, if a Governor is present at a meeting of the Council and has an interest of any sort in any matter which is the subject of consideration, the individual shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter.
- 6.1.4 Subject to Standing Order 6.2.4, if a Governor has declared a pecuniary interest (as described in Standing Orders 6.2.2 and 6.2.3) the individual shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the Governor's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 6.1.5 This Standing Order 6 applies to any committee, sub-committee or joint committee of the Council and applies to any member of any such committee, sub-committee, or joint committee (whether or not the individual is also a Governor).
- 6.1.6 The interests of Governors in companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

6.2 Nature of Interests

6.2.1 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by Monitor:

6.1.1.1 directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies); or

6.1.1.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or

- 6.1.1.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS; or
 - 6.1.1.4 a position of authority in a charity or voluntary organisation in the field of health and social care; or
 - 6.1.1.5 any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or
 - 6.1.1.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks; or
 - 6.1.1.7 interests in pooled funds that are under separate management; or
 - 6.1.1.8 the like interests of their spouse or partner or close relative or other associated person.
- 6.1.2 A Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 6.1.2.1 the individual, or a nominee of the individual's, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 6.1.2.2 the individual is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 6.1.3 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 6.1.3.1 of the individual's membership of a company or other body, if the individual has no beneficial interest in any securities of that company or other body; or

- 6.1.3.2 of an interest in any company, body or person with which the individual is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or
 - 6.1.3.3 of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.
- 6.1.4 An interest in the securities of a company or other body shall for the purposes of subparagraph 6.2.3.2 above be regarded as remote or insignificant if:
- 6.1.4.1 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
 - 6.1.4.2 if the share capital is of more than one class, the total nominal value of shares of any one class in which the individual has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class.
- 6.1.5 A family interest is an interest of the spouse or partner or any parent, child, brother or sister of a Governor which if it were the interest of that Governor would be a personal interest or a pecuniary interest of the individual's.
- 6.1.6 If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair and Trust Secretary. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including General Practitioners should also be considered.

6.3 **Register of Interests**

The Trust Secretary shall keep a Register of Governors' Interests which shall contain the names of each Governor, whether the individual has declared any interest, and if so, the interest declared.

7 **STANDARDS OF BUSINESS CONDUCT**

- 7.1 Each Governor shall comply with the Trust's Code of Conduct and any guidance and directions issued by Monitor.

8 APPOINTMENTS AND RECOMMENDATIONS

- 8.1 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this paragraph of this Standing Order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.
- 8.2 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 8.3 Candidates for any staff appointment under the Trust shall, when making such an application, disclose in writing to the Trust whether they are related to any Governor or the holder of any office within the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.
- 8.4 The Chair and every Governor shall disclose to the Chief Executive or the individual's delegated officer any relationship between themselves and a candidate of whose candidature that Governor or Officer is aware. It shall be the duty of the Chief Executive or the individual's delegated officer to report to the Council any such disclosure made.
- 8.5 On appointment, each Governor should disclose to the Council whether they are related to any other Governor or holder of any office in the Trust.
- 8.6 Where the relationship to another Governor is disclosed, Standing Order 6 shall apply.

9 MISCELLANEOUS

- 9.1 The Trust Secretary shall provide a copy of these Standing Orders to each Governor and endeavour to ensure that each Governor understands the individual's responsibilities within these Standing Orders.
- 9.2 These Standing Orders including all documents having effect as if incorporated in them shall be reviewed annually by the Board and the Council.

- 9.3 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Council for action or ratification. All Governors have a duty to disclose any non-compliance with these Standing Orders to the Chair as soon as possible.

Schedule A

Declaration to the Trust Secretary of Oxford Health NHS Foundation Trust.

I hereby declare that I am at the date of this declaration a Member of the [Public/Staff/Patients'] constituency, and I am not prevented from being a member of the Council of Governors by reason of any provision in the Constitution.

[Or

I hereby declare that at the date of this declaration I am not prevented from being a member of the Council of Governors by reason of any provision in the Constitution.]

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

Table of contents

Clause heading and number

- 1. INTERPRETATION**
- 2. THE BOARD OF DIRECTORS: COMPOSITION OF MEMBERSHIP,
TENURE AND ROLE MEMBERS OF THE BOARD**
- 3. MEETINGS OF THE BOARD**
- 4. ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY
DELEGATION**
- 5. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES**
- 6. INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE BOARD
OF GOVERNORS**
- 7. OVERLAP WITH OTHER TRUST POLICY STATEMENT/PROCEDURES,
REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS**
- 8. DUTIES AND OBLIGATIONS OF MEMBERS OF THE BOARD AND
SENIOR MANAGERS UNDER THE STANDING ORDERS AND STANDING
FINANCIAL INSTRUCTIONS**
- 9. CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF
DOCUMENTS**
- 10. MISCELLANEOUS**

INTRODUCTION – REGULATORY FRAMEWORK

The Oxford Health NHS Foundation Trust (the “**Trust**”) is a statutory body which became a public benefit corporation on 1 April 2008 following its approval as an NHS Foundation Trust by Monitor pursuant to the National Health Service Act 2006 (the “**2006 Act**”).

The principal place of business of the Trust is at Chancellor Court, 4000 John Smith Drive, Oxford Business Park South, Oxford OX4 2GX.

The Trust is governed by the 2006 Act, the 2012 Act, its Constitution and its Provider Licence granted by Monitor (together the “**Regulatory Framework**”). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Directors of the Trust to adopt Standing Orders for the regulation of certain of its proceedings and business.

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

1. INTERPRETATION

Save as otherwise permitted by law, at any meeting the Chair shall be the final authority on the interpretation of Standing Orders (on which the Chair should be advised by the Chief Executive or Trust Secretary) and the Chair’s decision shall be final and binding except in case of manifest error.

Any expression to which a meaning is given in the National Health Service Act 2006 and other Acts relating to the National Health Service or any other regulations made under such Acts shall have the same meaning in this interpretation and in addition:

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

“**2012 Act**” means the Health and Social Care 2012

“**Accounting Officer**” means the officer responsible and accountable for the funds entrusted to the Trust. The individual shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.

“**Board of Directors**” and (unless the context otherwise requires) “**Board**”, means the Board of Directors as constituted by the Constitution.

“**Chair**” means the person appointed in accordance with the Constitution to ensure that the Board of Directors and the Council of Governors successfully discharge their overall responsibilities for the Trust as a whole. The expression “**the Chair**” shall be deemed to include the Vice-

Chair or such other person so appointed if the Chair is absent from the meeting or is otherwise unavailable.

“Chief Executive” means the chief executive officer of the Trust appointed in accordance with the Constitution.

“Constitution” means the constitution of the Trust as authorised by Monitor.

“Council of Governors” means the Council of Governors of the Trust as constituted by the Constitution.

“Executive Director” means a Member of the Board appointed as an executive director in accordance with the Constitution.

“Finance Director” means the chief finance officer of the Trust appointed in accordance with the Constitution.

“Funds held on Trust” means those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept pursuant to powers derived under the 2006 Act. Such funds may or may not be charitable.

“Monitor” means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.

“Member of the Board” means an Executive Director or Non-Executive Director (including for the avoidance of doubt the Chair) or both, as the context requires.

“Non-Executive Director” means a member of the Board appointed as a non-executive director in accordance with the Constitution.

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

“Regulatory Framework” means the 2006 Act, the 2012 Act, the Constitution and the Trust’s Provider Licence.

“Scheme of Reservation and Delegation” means the document containing the Reservation of Powers to the Board and the Scheme of Delegation for the Trust.

“Senior Independent Director” means the senior independent Non-Executive Director appointed by the Board in consultation with the Council of Governors.

“Standing Financial Instructions” or **“SFIs”** means the Standing Financial Instructions.

“Standing Orders” or **“SOs”** means these Standing Orders of Directors.

“Trust Secretary” means a person appointed by the Trust in accordance with the Constitution to act independently of the Board, to provide advice on corporate governance issues to the Board and the Chair and monitor the Trust’s compliance with the Regulatory Framework and these Standing Orders.

“Vice-Chair” means the Non-Executive Director appointed by the Board of Directors to take on the Chair’s duties if the Chair is absent or unavailable for any reason.

2. **THE BOARD OF DIRECTORS: COMPOSITION OF MEMBERSHIP, TENURE AND ROLE OF MEMBERS OF THE BOARD**

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 All funds received in trust shall be held in the name of the Trust as corporate trustee. In relation to Funds held on Trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 2.3 The Trust has the functions conferred on it by its Provider Licence issued by Monitor. Members of the Board acting on behalf of the Trust as corporate trustees are acting as quasi-trustees. Accountability for charitable Funds held on Trust is to the Charity Commission. Accountability for non-charitable Funds held on Trust is only to Monitor.
- 2.4 The Trust has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in the Scheme of Reservation and Delegation which has effect as if incorporated into the Standing Orders.

2.5 **Composition of the Membership of the Board**

- 2.5.1 The composition of the Board will be in accordance with the Constitution and will include:
- 2.5.2 The Chair and a maximum of seven other Non-Executive Directors; and
- 2.5.3 A maximum of seven Executive Directors, one of whom shall be the Chief Executive, one of whom shall be the Finance Director, one of whom shall be a registered medical practitioner or a registered dentist and one of whom shall be a registered nurse or registered midwife.

2.6 **Appointment of the Chair and other Non-Executive Directors**

- 2.6.1 The Chair and the other Non-Executive Directors are appointed by the Council of Governors in accordance with the Constitution.

2.7 **Appointment of the Vice-Chair**

- 2.7.1 The Board of Directors at a general meeting may appoint one of the Non-Executive Directors to be Vice-Chair, for such period not exceeding the remainder of the individual's term as a Non-Executive Director as they may specify on appointing them.

2.7.2 Any Non-Executive Director so appointed may at any time resign from the office of Vice-Chair by giving notice in writing to the Chair. The Board of Directors may thereupon appoint another Non-Executive Director as Vice-Chair in accordance with the provisions of SO 2.7.1.

2.8 Appointment of Senior Independent Director

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

2.8.2 Any Non-Executive Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Board (in consultation with the Council of Governors) may thereupon appoint another independent Non-Executive Director as Senior Independent Director in accordance with the provisions of SO 2.8.1.

2.9 Appointment of the Executive Directors

2.9.1 The Chief Executive is appointed by the Non-Executive Directors in accordance with the Constitution. The appointment of the Chief Executive will be subject to the approval of the Council of Governors.

2.9.2 The other Executive Directors are appointed by a committee consisting of the Chair, the other Non-Executive Directors and the Chief Executive in accordance with the Constitution.

2.10 Terms of Office of Members of the Board

2.10.1 The regulations setting out the period of tenure of office of the Non-Executive Directors and for the disqualification of any members of the Board are contained in the paragraphs 10.5.8 and 10.8 of the Constitution respectively.

2.11 Role of Members of the Board

2.11.1 The Board will function as a corporate decision-making body. Executive and Non-Executive Directors will be full and equal members of the Board. Their role as members of the Board will be to consider the key strategic and

managerial issues facing the Trust in carrying out its statutory and other functions.

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

2.11.2 Executive Directors

Executive Directors shall exercise their authority within the terms of these Standing Orders and Standing Financial Instructions and the Scheme of Reservation and Delegation and the Regulatory Framework.

2.11.3 Chief Executive

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

2.11.3.2 The individual is the Accounting Officer and shall be responsible for ensuring the discharge of obligations under all relevant financial directions and guidance issued by Monitor or any other relevant body, including the NHS Foundation Trust Accounting Officer Memorandum issued in April 2005 and any additional or replacement document in relation to the role of the Accounting Officer and the Regulatory Framework.

2.11.4 Finance Director

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

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

2.11.5 Non-Executive Directors

2.11.5.1 The Non-Executive Directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust.

2.11.5.2 They may, however, exercise collective authority when acting as members of or when chairing a committee of the Trust which has delegated powers.

2.11.6 Chair

2.11.6.1 The Chair shall be responsible for the operation of the Board of Directors (and Council of Governors), and chair all Board of Directors (and Council of Governors) meetings when present. The Chair must comply with his terms of appointment and with these Standing Orders.

2.11.6.2 The Chair shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board in a timely manner with all the necessary information and advice being made available to the Board to inform the debate and ultimate resolutions.

2.11.7 Vice-Chair

2.11.7.1 If the Chair dies or ceases to hold office, or is unable to perform his duties as Chair owing to illness, conflict of interest or any other cause, the Vice-Chair shall act as Chair and perform the Chair's duties until a new Chair is appointed or the existing Chair resumes his duties, as the case may be.

2.11.8 Senior Independent Director

The Senior Independent Director shall perform the role set out in "The NHS Foundation Trust Code of Governance" issued by Monitor as may be amended from time to time.

2.12 Joint Executive Directors

2.12.1 The post of an Executive Director may be held by two individuals on a job-share basis (provided that the executive positions of doctor and nurse cannot be shared between the two professions) except for the statutory directors described in paragraphs 16(1) and 16(2) of Schedule 7 of the 2006 Act.

2.12.2 Where such an arrangement is in force, both individuals shall be able to attend a meeting of the Board provided that at any meeting of the Board they may only count as one individual for the purposes of SO 3.12 'Quorum' and

may only exercise one vote between them for the purposes of SO 3.11 'Voting'. Where the two individuals disagree as to how to vote at a Board meeting, then no vote shall be cast.

2.13 Disqualification

2.13.1 All members of the Board will be subject to the disqualification criteria included at paragraph 10.8 of the Constitution.

3 MEETINGS OF THE BOARD

3.1 Calling Meetings

- 3.1.1 Ordinary meetings of the Board shall be held at regular intervals at such times and places as the Board may determine.
- 3.1.2 The Chair may call a meeting of the Board at any time.
- 3.1.3 One third or more members of the Board may requisition a meeting in writing. If the Chair refuses, or fails, to call a meeting within seven days of a requisition being presented, the members signing the requisition may forthwith call a meeting.

3.2 Notice of Meetings and the Business to be transacted

- 3.2.1 Before each meeting of the Board, a written notice of the meeting, specifying the business proposed to be transacted at it, shall be delivered to every member of the Board, or sent by post to the usual place of residence of such member of the Board, so as to be available to them at least seven days before the meeting.
- 3.2.2 The notice referred to in SO 3.2.1 shall be signed by the Chair or by an Officer authorised by the Chair to sign on the individual's behalf. Lack of service of such a notice on any member of the Board shall not affect the validity of a meeting.
- 3.2.3 In the case of a meeting called by members of the Board in default of the Chair calling the meeting, those members of the Board shall sign the notice, and no business shall be transacted at the meeting other than that specified in the notice or emergency motions allowed under SO 3.8.
- 3.2.4 Failure to serve such a notice on more than three members of the Board will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

3.3 Agenda and Supporting Papers

- 3.3.1 The Board may determine that certain matters shall appear on every agenda for a meeting of the Trust and shall be addressed prior to any other business conducted. Such matters may be identified within these

SOs or, following subsequent resolution, shall be listed in an Appendix to the SOs.

3.3.2 A member of the Board desiring a matter to be included on an agenda shall make the individual's request in writing to the Chair at least ten clear days before the meeting. The request should include appropriate supporting information. Requests made less than ten clear days before a meeting may be included on the agenda at the discretion of the Chair.

3.3.3 Save in an emergency, the agenda will be sent to every member of the Board no less than six days before the meeting and supporting papers, whenever possible, shall accompany the agenda.

3.3.4 Before holding a meeting, the Board will send a copy of the agenda of the meeting to the Council of Governors.

3.4 **Petitions**

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

3.5 **Chair of Meeting**

3.5.1 At any meeting of the Board, the Chair, if present, shall preside. If the Chair is absent from the meeting, the Vice-Chair (if the Board has appointed one), if present, shall preside.

3.5.2 If the Chair and Vice-Chair are absent, such Non-Executive Director as the members of the Board present shall choose shall preside.

3.5.3

3.6 **Chair's ruling**

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

3.7 Notices of Motion

3.7.1 Subject to the provisions of SO 3.9 'Motions: Procedure at and during a meeting' and SO 3.10 'Motion to Rescind a Resolution', a member of the Board wishing to move a motion shall send a written notice to the Chair.

3.7.2 The notice shall be delivered at least ten clear days before the meeting. The Chair shall include in the agenda for the meeting all notices so received that are in order and permissible under these Standing Orders. Subject to SO 3.2.3, this Standing Order shall not prevent any motion being moved without notice on any business mentioned on the agenda for the meeting.

3.8 Emergency Motions

3.8.1 Subject to the agreement of the Chair, and subject also to the provision of SO 3.9 'Motions: Procedure at and during a meeting', a member of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include or not to include the item shall be final.

3.9 Motions: Procedure at and during a meeting

3.9.1 Who may propose

A motion may be proposed by the Chair of the meeting or any member of the Board present. It must also be seconded by another member of the Board.

3.9.2 Contents of motions

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

3.9.2.1 the reception of a report;

3.9.2.2 consideration of any item of business before the Board;

3.9.2.3 the accuracy of minutes;

3.9.2.4 that the Board proceed to next business;

3.9.2.5 that the Board adjourn;

3.9.2.6 that the question be now put.

3.9.3 Amendments to motions

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

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

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

3.9.4 Rights of reply to motions

3.9.4.1 Amendments

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

3.9.4.2 Substantive/original motion

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

3.9.5 Withdrawing a motion

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

3.9.6 Motions once under debate

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

3.9.6.1.1 an amendment to the motion;

3.9.6.1.2 the adjournment of the discussion, or the meeting;

3.9.6.1.3 that the meeting proceed to the next business;

3.9.6.1.4 that the question should be now put;

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

3.9.6.1.6 that a member be not further heard.

3.9.6.2 In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a member of the Board who has not taken part in the debate and who is eligible to vote.

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

3.10 Motion to Rescind a Resolution

3.10.1 Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the member of the Board who gives it and also the signature of three other members of the Board, and before considering any such motion of which notice shall have been given, the Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation.

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

3.11 Voting

3.11.1 Save as provided in SO 3.13 'Suspension of Standing Orders', SO 3.14 'Waiver of Standing Orders' and SO 3.15 'Variation and Amendment of Standing Orders', every question put to a vote at a meeting shall be

determined by a majority of the votes of members of the Board present and voting on the question.

- 3.11.2 In the case of an equal vote, the Chair or such other person presiding at the meeting shall have a second, and casting vote.
- 3.11.3 At the discretion of the Chair all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.
- 3.11.4 If at least one-third of the members of the Board present so request, the voting on any question may be recorded to show how each member of the Board present voted or abstained (other than by paper ballot).
- 3.11.5 If a member of the Board so requests, the individual's name shall be recorded by name upon any vote (other than by paper ballot).
- 3.11.6 In no circumstances may an absent member of the Board vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.11.7 An Officer who has been formally appointed to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy shall be entitled to exercise the voting rights of the Executive Director at a Board meeting.
- 3.11.8 An Officer attending a Board meeting to represent an Executive Director member during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director.
- 3.11.9 An Officer's status when attending a Board meeting shall be recorded in the minutes.

3.12 **Quorum**

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

- 3.12.2 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 3.12.3 If a member of the Board has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see SO 8) that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 3.12.4 The requirement in SO 3.12.1 above for a least one Executive Director to form part of the quorum shall not apply where the Executive Directors are all excluded from a meeting. The requirement in SO 3.12.1 above for at least one Non-Executive Director to form part of the quorum shall not apply where the Non-Executive Directors are all excluded from a meeting.

3.13 Suspension of Standing Orders

- 3.13.1 Except where this would contravene any statutory provision or guidance issued by Monitor or the rules relating to the Quorum (SO 3.12), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension. The reason for the suspension shall be recorded in the Board's minutes.
- 3.13.2 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and members of the Board.
- 3.13.3 No formal business may be transacted while Standing Orders are suspended.
- 3.13.4 The Audit Committee shall review every decision to suspend Standing Orders.

3.14 Waiver of Standing Orders

- 3.14.1 Except where this would contravene any statutory provision or any guidance issued by Monitor or the

rules relating to the Quorum (SO 3.12), any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the whole number of the members of the Board are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of waiver.

3.14.2 A decision to waive Standing Orders shall be recorded in the minutes of the meeting and a separate record of matters discussed relating to the waiver of Standing Orders shall be made and shall be available to the Chair and members of the Board.

3.14.3 The Audit Committee shall review every decision to waive Standing Orders.

3.15 **Variation and amendment of Standing Orders**

3.15.1 These Standing Orders shall be amended only if:

3.15.1.1 a notice of motion under SO 3.7 has been given; and

3.15.1.2 no fewer than half the total of the Non-Executive Directors vote in favour of amendment; and

3.15.1.3 at least two-thirds of the whole number of the members of the Board are present; and

3.15.1.4 the variation proposed does not contravene a statutory provision or guidance issued by Monitor.

3.16 **Record of Attendance**

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

3.17 **Minutes**

3.17.1 The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they shall be signed by the Chair or other person presiding at it.

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

3.17.3 Minutes shall be circulated in accordance with the wishes of members of the Board. Where providing a record of a public meeting, the minutes shall be made available to the public. As soon as practicable after holding a meeting, the Board shall send a copy of the minutes of the meeting to the Council of Governors.

4 ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION

4.1 Delegation of Functions to Committees, Officers or other bodies

4.1.1 Subject to the Regulatory Framework and such guidance, if any, as may be given by Monitor, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by a committee or sub-committee appointed by virtue of SO 5 below or by an Executive Director, in each case subject to such restrictions and conditions as the Board thinks fit.

4.2 Emergency Powers and urgent decisions

4.2.1 The powers which the Board has reserved to itself within these Standing Orders (SO 2.4) may in emergency or for an urgent decision be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Board for noting.

4.3 Delegation to Committees

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

4.4 Delegation to Officers

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

4.4.2 The Chief Executive shall prepare a Scheme of Reservation and Delegation identifying his proposals which shall be considered and approved by the Board, subject to any amendment agreed during the

discussion. The Chief Executive may periodically propose amendments to the Scheme of Reservation and Delegation which shall be considered and approved by the Board.

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

4.5 **Schedule of Matters Reserved to the Board and Scheme of Delegation**

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

4.6 **Duty to report non-compliance with Standing Orders and Standing Financial Instructions**

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

5 APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

5.1 Appointment of Committees and Sub-Committees

5.1.1 Subject to paragraph 7.2 of the Constitution and such directions and guidance as may be issued by Monitor from time to time, the Board may appoint committees of the Board consisting of one or more members of the Board.

5.1.2 A committee appointed under this SO may, subject to such directions and guidance as may be given by Monitor or the Board, appoint sub-committees.

5.2 Applicability of Standing Orders and Standing Financial Instructions to Committees and Sub-Committees

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

5.3 Delegation of powers by Committees to Sub-Committees

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

5.4 Terms of Reference of Committees

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

5.5 Approval of Appointments to Committees

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

5.6 Appointments for Statutory Functions

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

5.7 Committees established by the Board

5.7.1 The committees established by the Board are:

5.7.1.1 Audit Committee;

5.7.1.2 Remuneration and Nominations Committee;

5.7.1.3 Finance and Investment Committee;

5.7.1.4 Integrated Governance Committee;

5.7.1.5 Charitable Funds Committee; and

5.7.1.6 where so required, a committee to act as a joint special committee with a committee of the Council of Governors for the purpose of resolving disputes between the Council and the Board in accordance with the Dispute Resolution Procedure set out in Standing Order 10.3.

5.8 Other Committees and Sub-Committees

5.8.1 The Board may also establish such other committees and sub-committees as required to discharge the Board's responsibilities.

5.9 Confidentiality

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

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

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

- 6.1 The Board will cooperate with the Council of Governors as far as possible in order to comply with the Regulatory Framework in all respects and in particular in relation to matters set out in the Constitution including those referred to in SOs 6.2 and 6.3 below.
- 6.2 The Members of the Board, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to Monitor.
- 6.3 The members of the Board are to present to the Council of Governors at a general meeting the annual accounts, any report of the auditor on them, and the annual report.
- 6.4 The annual reports are to give:
 - 6.4.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its Public Constituency and the Patients' Constituency is representative of those eligible for such membership;
 - 6.4.2 information on any occasions in the period to which the report relates on which the Council of Governors exercised its power under paragraph 9.21.2g of the Constitution;
 - 6.4.3 information on the Trust's policy on pay and on the work of the Trust's remuneration committee and such other procedures as the Trust has on pay;
 - 6.4.4 information on the remuneration of the directors and on the expenses of the governors and the directors;
 - 6.4.5 information on the impact that income received by the Trust otherwise than from the provision of goods and services for the purpose of the health service in England has had on the provision by the Trust of goods and services for those purposes; and
 - 6.4.6 any other information Monitor requires.
- 6.5 In order to comply with the Regulatory Framework in all respects and in particular in relation to the matters which are set out above, the Council of Governors may request that a matter which relates to annual accounts or forward planning is included on the agenda for a meeting of the Board.

- 6.6 If the Council of Governors so desires such a matter as described within SO 6.5 to be included on an agenda, they shall make their request in writing to the Chair at least 14 clear days before the meeting of the Board, subject to SO 3.2. The Chair shall decide whether the matter is appropriate to be included on the agenda. Requests made less than 14 days before a meeting may be included on the agenda at the discretion of the Chair.

7 OVERLAP WITH OTHER TRUST POLICY STATEMENTS/ PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS

7.1 Policy statements: general principles

7.1.1 The Board will from time to time agree and approve policy statements / procedures which will apply to all or specific groups of staff employed by the Trust. The decisions to approve such policies and procedures will be recorded in an appropriate Board minute and will be deemed, where appropriate, to be an integral part of the Trust's Standing Orders and Standing Financial Instructions.

7.2 Specific Policy statements

7.2.1 notwithstanding the application of SO 7.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following Policy statements which shall have effect as if incorporated in these Standing Orders:

7.2.1.1 the Trust's Standards of Business Conduct and Conflicts of Interest Policy for staff; and

7.2.1.2 the Staff Disciplinary and Appeals Procedures adopted by the Trust.

7.3 Standing Financial Instructions

7.3.1 Standing Financial Instructions adopted by the Board in accordance with the all financial regulations, directions and guidance issued by Monitor and any other relevant body shall have effect as if incorporated in these Standing Orders.

7.4 Specific guidance

7.4.1 Notwithstanding the application of SO 7.1 above, these Standing Orders and Standing Financial Instructions must be read in accordance with the following:

7.4.1.1 Caldicott Reports 1997 and 2013;

7.4.1.2 Human Rights Act 1998; and

7.4.1.3 Freedom of Information Act 2000.

8 DUTIES AND OBLIGATIONS OF MEMBERS OF THE BOARD AND SENIOR MANAGERS UNDER THE STANDING ORDERS AND STANDING FINANCIAL INSTRUCTIONS

8.1 Declaration of Interests

8.1.1 The Regulatory Framework and the Constitution require each member of the Board to disclose to the other members of the Board 'relevant and material' interests in accordance with paragraph 13 of the Constitution, including:

8.1.1.1 any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in Standing Order 8.2.1; and

8.1.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, as described in Standing Orders 8.2.2 and 8.2.3; and

8.1.1.3 any actual or potential family interest, direct or indirect, of which the member is aware, as described in Standing Order 8.2.5.

8.1.2 A declaration made pursuant to SO 8.1.1 shall be made as soon as the member of the Board becomes aware of the interest and in any event within 5 days of becoming aware of the interest. The declaration shall be made by completing and signing a form, as prescribed by the Trust Secretary from time to time.

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

8.1.4 This Standing Order 8 applies to any committee or sub-committee of the Board and applies to any member of any such committee or sub-committee (whether or not the individual is also a member of the Board).

8.1.5 The interests of members of the Board in companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

8.2 Nature of Interests

- 8.2.1 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by Monitor:
- 8.2.1.1 directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies); or
 - 8.2.1.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or
 - 8.2.1.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS; or
 - 8.2.1.4 a position of authority in a charity or voluntary organisation in the field of health and social care; or
 - 8.2.1.5 any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or
 - 8.2.1.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks; or
 - 8.2.1.7 interests in pooled funds that are under separate management; or
 - 8.2.1.8 the like interests of their spouse or partner or close relative or other associated person.
- 8.2.2 Subject to SO 8.2.3 and SO 8.2.4, a member of the Board shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 8.2.2.1 the individual, or a nominee of the individual's, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct

pecuniary interest in the other matter under consideration; or

8.2.2.2 the individual is a partner of, or is in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

8.2.3 A member of the Board shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

8.2.3.1 of the individual's membership of a company or other body, if the individual has no beneficial interest in any securities of that company or other body; or

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

8.2.4 Where a member of the Board:

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

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

8.2.4.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which the individual has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, the member of the Board shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to the individual's duty to disclose the individual's interest.

- 8.2.5 A family Interest is an interest of the spouse or partner or any parent, child, brother or sister of a member of the Board which if it were the interest of that member of the Board would be a personal interest or a pecuniary interest of the individual's.
- 8.2.6 Any remuneration, compensation or allowances payable to a member of the Board by virtue of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 8.2.7 If members of the Board have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including General Practitioners should also be considered.

8.3 Exclusion in proceedings of the Board

- 8.3.1 Subject to SO 8.2.4, if a member of the Board has disclosed an interest pursuant to SO 8.1.1 to the other members of the Board, the individual shall not take part in the consideration or discussion of the matter or vote on any question with respect to it. At the time the interests are declared, they should be recorded in the Board's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 8.3.2 During the course of a Board meeting, if a conflict of interest is established, the Board member concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 8.3.3 The Board may exclude any Executive Director from a meeting of the Board where the remuneration and terms of office of that Executive Director are being discussed.

8.4 Register of Interests

- 8.4.1 The Trust Secretary will ensure that a Register of Directors' Interests is established to record formally declarations of interests of members of the Board. In particular the Register will include details of all directorships and other relevant and material interests disclosed by members of the Board pursuant to SO 8.1.1.

- 8.4.2 These details will be kept up to date by means of no less than a quarterly review of the Register in which any changes to interests declared during the preceding three months will be incorporated.
- 8.4.3 The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of local residents and to publicise arrangements for viewing it.
- 8.4.4 In establishing, maintaining, updating and publicising the Register, the Trust shall comply with all guidance issued from time to time by Monitor.
- 8.4.5 Copies of extracts of the Register must be provided to members of the Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the Register.

8.5 Standards of Business Conduct

- 8.5.1 Members of the Board and Officers must comply with the national guidance contained in HSG(93)5 'Standards of Business Conduct for NHS Staff' and the Code of Conduct for NHS Managers (2002) and any directions and guidance issued by Monitor or any other relevant body from time to time. In addition, members of the Board and Officers should at all times comply with the principles and standards of public life set out by the Committee on Standards in Public Life and any other relevant bodies. The following provisions should be read in conjunction with these documents and principles.
- 8.5.2 If an Officer comes to know that the Trust has entered into or proposes to enter into a contract in which he or any person connected with him (as defined in SO 8.2.5) has any pecuniary interest, actual or potential, direct or indirect, the Officer shall declare their interest by giving notice in writing of such fact to the Trust Secretary as soon as practicable.
- 8.5.3 An Officer should also declare to the Trust Secretary any other employment or business or other relationship of the individual's, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict, with the interests of the Trust.

8.5.4 The Trust requires interests, employment or relationships declared to be entered in a register of interests of staff.

8.6 Canvassing of and recommendations by Members of the Board in Relation to Appointments

8.6.1 Canvassing of members of the Board or members of any committee of the Board directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.

8.6.2 A member of the Board shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a member of the Board from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

8.6.3 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

8.7 Relatives of Members of the Board or Officers

8.7.1 Candidates for any staff appointment under the Trust shall, when making an application, disclose in writing to the Trust whether they are related to any member of the Board or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.

8.7.2 Every member of the Board and any Officer shall disclose to the Chief Executive any relationship between themselves and a candidate of whose candidature that member of the Board or Officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.

8.7.3 On appointment, members of the Board (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Board whether they are related to any other member of the Board or holder of any office in the Trust.

8.7.4 Where a relationship is disclosed under SO 8.7.3, SO 8.3 'Exclusion in proceedings of the Board' shall apply.

8.8 **External Consultants**

8.8.1 SOs 8.5 to 8.7 will apply equally to all external consultants or other agents acting on behalf of the Trust. The Scheme of Reservation and Delegation should be adhered to at all times.

9 CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS

9.1 Custody of Seal

9.1.1 The Common Seal of the Trust shall be kept by the Chief Executive or a nominated Officer in a secure place.

9.2 Sealing of Documents

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

9.3 Register of Sealing

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

9.4 Signature of Documents

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

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

10 MISCELLANEOUS

10.1 **Standing Orders to be given to Members of the Board and Officers**

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

10.1.2 New designated Officers shall be informed in writing and shall receive copies where appropriate in Standing Orders.

10.2 **Review of Standing Orders**

Standing Orders shall be reviewed annually by the Board. The requirement for review extends to all documents having the effect as if incorporated in the Standing Orders.

10.3 **Dispute Resolution Procedure**

10.3.1 In the event of dispute between the Council of Governors and the Board of Directors:

10.3.1.1 in the first instance the Chair on the advice of the Trust Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;

10.3.1.2 if the Chair is unable to resolve the dispute the individual shall refer the dispute to the Trust Secretary who shall appoint a joint special committee constituted as a committee of the Board of Directors and a committee of the Council of Governors, both comprising equal numbers, to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute;

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