

University Hospitals Dorset NHS Foundation Trust Constitution

Final Version

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1 Interpretation and definitions

- 1.1 Unless otherwise stated, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.
- 1.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 1.3 References in this Constitution to legislation include all amendments, replacements or re-enactments made or any regulations, statutory guidance or directions made under it.
- 1.4 References to Clauses and paragraph numbers are references to clauses and paragraphs of this Constitution unless the context provides otherwise.
- 1.5 Headings are for ease of reference only and are not to affect interpretation.
- 1.6 If there is a conflict between the provisions of this Constitution and the provisions of any document referred to herein then the provisions of this Constitution shall prevail unless the law requires otherwise.
- 1.7 In this Constitution:

"2006 Act"	means the National Health Service Act 2006;
"2012 Act"	means the Health and Social Care Act 2012;
"Accounting Officer"	means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;
"Annual Meeting"	is defined in Clause 10 of this Constitution;
"Appointed Governors"	means the CCG Governor, the Local Authority Governors and the Partnership Governors;
"Area for a Public Constituency"	means each of the areas specified as an area for a Public Constituency in Annex 1;
"Area of the Trust"	means the area consisting of all the areas specified in Annex 1 Error! Reference source not found. as an Area for a Public Constituency;
"Board of Directors"	means the Board of Directors of the Trust as constituted in accordance with this Constitution and referred to in Clause 21 of this Constitution and "Board" shall be construed accordingly;
"CCG"	means a Clinical Commissioning Group established in accordance with Chapter A2 of Part 2 of the 2006 Act;

"CCG Governor"	means a member of the Council of Governors appointed in accordance with the provisions of this Constitution by the CCG specified in Annex 3;
"Chairman"	means the chairman of the Trust appointed in accordance with Clause 21 of this Constitution;
"Chief Executive"	means the Chief Executive (and Accounting Officer) of the Trust appointed in accordance with Clause 26 of this Constitution;
"Company Secretary"	means the Company Secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust;
"Constituencies"	means the Public Constituencies and the Staff Constituency;
"Constitution"	means this Constitution of University Hospitals Dorset NHS Foundation Trust and all annexes to it;
"Council of Governors"	means the Council of Governors of the Trust as constituted in accordance with this Constitution;
"Director"	means a director on the Board of Directors;
"Elected Governors"	means the Public Governors and the Staff Governors collectively;
"Executive Director"	means an Executive Director of the Trust;
"Director of Finance"	means the person who from time to time is appointed by the Trust to discharge the usual functions of its chief finance officer;
"Financial Year"	means a period of 12 months ending with 31 March in any year;
"Governors' Meetings"	means a meeting of the Governors;
"Governor"	means a member of the Council of Governors, being either an Elected Governor or an Appointed Governor;
"Initial Governor"	means an initial Governor of the Trust who has been elected to office for a period that is determined in accordance with Annex 10;
"Interim Directors"	means the individuals who were executive or non-executive directors of the Predecessor Trusts

	immediately prior to their dissolution
“Lead Governor”	means one Governor appointed by the Council of Governors to communicate directly with Monitor in certain circumstances;
“Local Authorities”	means those Councils specified in Annex 2, all of which are Councils for an area which includes the whole or part of the Area of the Trust, and “Local Authority” shall be construed accordingly;
“Local Authority Governor”	means a member of the Council of Governors appointed by a Local Authority in accordance with the provisions of this Constitution and as specified in Annex 3;
“Member”	means a Member of the Trust as determined in accordance with Clause 6 and Annex 8 of this Constitution;
“Membership”	means membership of the Trust through being a Member of one of its Constituencies;
“Monitor”	means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act, which operates with the National Health Service Trust Development Authority as NHS Improvement;
“Model Election Rules”	means the model form rules for the conduct of elections published from time to time by NHS Providers;
“NHS Foundation Trust Code of Governance”	means the Code of Governance published by Monitor in July 2014 or such similar or further guidance as Monitor may publish from time to time;
“Nominations Committee”	means the Nominations, Remuneration and Evaluation Committee established by the Council of Governors in accordance with Annex 519 of Annex 5;
“Non-Executive Director”	means a Non-Executive Director of the Trust including the Chairman;
“Partnership Governor”	means a member of the Council of Governors appointed by a Partnership Organisation specified in Annex 3;
“Partnership Organisations”	means those organisations designated as partnership organisations for the purposes of this Constitution specified in Annex 3;
“Predecessor Trusts”	means Poole Hospital NHS Foundation Trust and Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust which were dissolved by order of Monitor on [date] under section 56 of the 2006 Act;

“Public Governor”	means a member of the Council of Governors elected by the Members of the Public Constituency;
“Public Constituencies”	means that part of the Trust’s membership consisting of Members living in an Area of a Public Constituency;
“Secretary of State”	means the Secretary of State for Health and Social Care;
“Senior Independent Director”	means the Non-Executive Director appointed by the Board of Directors in accordance with Clause 3.1.1 of Annex 7 of this Constitution;
“Staff Classes”	means the classes of the Staff Constituency as specified in Annex 2;
“Staff Constituency”	means that part of the Trust’s membership consisting of the staff of the Trust and other persons as more particularly provided for in Clause 8 of this Constitution and which is divided into the staff classes as specified in 2;
“Staff Governor”	means a member of the Council of Governors elected by a Staff Class;
“Trust”	Means University Hospitals Dorset Hospitals NHS Foundation Trust;
“Trust’s Hospital”	means any premises used by the Trust for the provision of goods and services for the purposes of the health service in England falling within the definition of “hospital” in Section 275 of the 2006 Act;
“Vice Chairman”	means the Vice Chairman of the Trust;
“Voluntary Organisation”	means a body, other than a public or local authority, the activities of which are not carried on for profit.

2 Name

The name of the foundation trust is University Hospitals Dorset NHS Foundation Trust.

3 Principal purpose

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

- 3.3 The Trust may provide goods and services for any purposes related to:
 - 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - 3.3.2 the promotion and protection of public health.
- 3.4 The Trust may also carry on activities other than those mentioned in the above Clause for the purpose of making additional income available in order better to carry on its principal purpose.

4 Powers

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

5 Membership and Constituencies

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

- 5.1 a Public Constituency; or
- 5.2 the Staff Constituency.

6 Application for membership

- 6.1 An individual who is eligible to become a Member of the Trust may do so on application to the Trust, save as provided for in Clause 8 of this Constitution.
- 6.2 Applications for Membership shall be dealt with by the Trust in accordance with the provisions of Annex 8.

7 Public Constituency

- 7.1 An individual who lives in an area specified in Annex 1 as an Area for a Public Constituency may become or continue as a Member of the Trust.
- 7.2 Those individuals who live in an area specified as an Area for a Public Constituency are referred to collectively as a Public Constituency.
- 7.3 The minimum number of members in each area for a Public Constituency is specified in Annex 1.
- 7.4 Further provisions relating to Membership of the Public Constituencies are set out in Annex 7.

8 Staff Constituency

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided:
- 8.1.1 that individual is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 8.1.2 that individual has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Individuals who exercise functions for the purposes of the Trust, other than under a contract of employment with the Trust, may become or continue as Members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 8.3 Those individuals who are eligible for Membership of the Trust by reason of the previous provisions of this Clause 8 of the Constitution are referred to collectively as the Staff Constituency.
- 8.4 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.
- 8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.
- 8.6 An individual who is:
- 8.6.1 eligible to become a member of the Staff Constituency, and
- 8.6.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate Staff Class within the Staff Constituency,
- shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless the individual informs the Trust otherwise.
- 8.7 The process by which an individual shall be invited to become a member of the Staff Constituency shall be in accordance with the provisions of Annex 8.

9 Restriction on membership

- 9.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 9.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.

- 9.3 An individual must be at least 16 years old to become a member of the Trust.
- 9.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 8 – Further Provisions.

10 Annual Meeting

- 10.1 The Trust shall hold an annual meeting of its members (the Annual Meeting). The Annual Meeting shall be open to members of the public.
- 10.2 Further provisions about the Annual Meeting are set out in Annex 8 - Annual Meeting.

11 Council of Governors - composition

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

12 Council of Governors - election of Governors

- 12.1 Elections for Elected Governors of the Council of Governors shall be conducted in accordance with the Model Election Rules using the first past the post voting method and the Model Election Rules shall be construed accordingly.
- 12.2 The Model Election Rules as published from time to time by NHS Providers form part of this Constitution. The Model Election Rules current at the date of their adoption under this Constitution are included in Annex 9.
- 12.3 A subsequent variation of the Model Election Rules by NHS Providers, or any other subsequent body with authority to do so, shall not constitute a variation of the terms of this Constitution for the purposes of Clause 41. For the avoidance of doubt, the Trust cannot amend the Model Election Rules.
- 12.4 An election, if contested, shall be by secret ballot.

13 Council of Governors - tenure

- 13.1 An Elected Governor shall hold office for a period of up to three years.

- 13.2 An Elected Governor shall cease to hold office if that Governor ceases to be a member of the constituency or class by which that Governor was elected.
- 13.3 An Elected Governor shall be eligible for re-election at the end of that Governor's term.
- 13.4 An Appointed Governor shall hold office for a period of three years.

14 Council of Governors - disqualification and removal

- 14.1 The following may not become or continue as a member of the Council of Governors:
 - 14.1.1 a person who has been made bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 14.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part7A of the Insolvency Act 1986);
 - 14.1.3 a person who has made a composition or arrangement with, or granted a Trust deed for that person's creditors and has not been discharged in respect of it;
 - 14.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on that person;
 - 14.1.5 a person who is subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986;
 - 14.1.6 Disclosure and Barring Service checks (or any other checks required by the Trust from time to time as being consistent with its licence conditions or good governance arrangements) have not been undertaken concerning that person or that the results received by the Trust are not acceptable in all respects by the Trust.
- 14.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 14.3 Further provisions as to the circumstances in which an individual may not become or may be removed as a member of the Council of Governors are set out in Annex 4.

15 Council of Governors - duties of Governors

- 15.1 The general duties of the Council of Governors are:
 - 15.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and
 - 15.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

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

16 Council of Governors - meetings of Governors

- 16.1 Subject to paragraph 7 of the Standing Orders for the Council of Governors at Annex 5 of the Constitution the Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of Clause 24 of this Constitution) or, in the Chairman's absence the Vice Chairman appointed in accordance with the provisions of Clause 25 of this Constitution, shall preside at meetings of the Council of Governors.
- 16.2 Meetings of the Council of Governors shall be open to members of the public save that members of the public may be excluded from a meeting for special reasons, examples of which are provided in Annex 4.
- 16.3 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Director's performance), the Council of Governors may require one or more of the Directors to attend a meeting.

17 Council of Governors - standing orders

The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 5.

18 Council of Governors - conflicts of interest of Governors

- 18.1 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 the Governor becomes aware of it.
- 18.2 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.

19 Council of Governors – travel expenses

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

20 Council of Governors - further provisions

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

21 Board of Directors - composition

- 21.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.
- 21.2 The Board of Directors is to comprise:
 - 21.2.1 a non-executive Chairman (who shall have a casting vote);
 - 21.2.2 No more than seven other Non-Executive Directors; and
 - 21.2.3 No more than eight Executive Directors.
- 21.3 One of the Executive Directors shall be the Chief Executive.
- 21.4 The Chief Executive shall be the Accounting Officer.
- 21.5 One of the Executive Directors shall be the Director of Finance.
- 21.6 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 21.7 One of the Executive Directors is to be a registered nurse or a registered midwife.

22 Board of Directors - general duty

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

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

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

- 23.1 that person is a member of the Public Constituency; or
- 23.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, that person exercises functions for the purposes of that university; and
- 23.3 that person is not disqualified by virtue of Clause 27 of this Constitution.

24 Board of Directors - appointment and removal of Chairman and other Non-Executive Directors

- 24.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other Non-Executive Directors.
- 24.2 Removal of the Chairman or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

25 Board of Directors - appointment of Vice Chairman

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a Vice Chairman of the Trust.

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

26.1 A committee consisting of the Chairman and the other Non-Executive Directors shall appoint or remove the Chief Executive.

26.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.

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

27 Board of Directors - disqualification

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

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

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

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

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

27.5 a person who falls within the further grounds for disqualification set out in Annex 7.

28 Board of Directors - meetings

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

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

29 Board of Directors - Standing Orders

The Standing Orders for the practice and procedure of the Board of Directors are attached at Annex 7.

30 Board of Directors - conflicts of interest of Directors

- 30.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
 - 30.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust;
 - 30.1.2 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.
- 30.2 The duty referred to in Clause 30.1.1 is not infringed if:
 - 30.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 30.2.2 the matter has been authorised in accordance with the Constitution
- 30.3 The duty referred to in Clause 31.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 30.4 In Clause 30.1.2, “third party” means a person other than:
 - 30.4.1 the Trust, or
 - 30.4.2 a person acting on its behalf.
- 30.5 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.
- 30.6 If a declaration under this Clause proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 30.7 Any declaration required by this Clause must be made before the Trust enters into the transaction or arrangement.
- 30.8 This Clause 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.
- 30.9 A Director need not declare an interest:
 - 30.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 30.9.2 if, or to the extent that, the Directors are already aware of it;
 - 30.9.3 if, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered:
 - 30.9.3.1 by a meeting of the Board of Directors, or

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

31 Board of Directors - Remuneration and Terms of Office

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

32 Registers

The Trust shall have:

- 32.1 a register of members showing, in respect of each member, the constituency to which the member belongs and, where there are classes within it, the class to which that member belongs;
- 32.2 a register of members of the Council of Governors;
- 32.3 a register of interests of Governors;
- 32.4 a register of Directors; and
- 32.5 a register of interests of the Directors.

33 Registers – inspection and copies

- 33.1 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if the member so requests.
- 33.2 So far as the registers are required to be made available:
 - 33.2.1 they are to be available for inspection free of charge at all reasonable times; and
 - 33.2.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 33.3 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

34 Documents available for public inspection

- 34.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
 - 34.1.1 a copy of the current Constitution;

- 34.1.2 a copy of the latest annual accounts and of any report of the auditor on them;
- 34.1.3 a copy of the latest annual report;
- 34.2 The Trust shall also make available 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:
 - 34.2.1 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;
 - 34.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 34.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 34.2.4 a copy of any draft report published under Section 65F (administrator's draft report) of the 2006 Act;
 - 34.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
 - 34.2.6 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;
 - 34.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 34.2.8 a copy of any final report published under section 65I (administrator's final report);
 - 34.2.9 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;
 - 34.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 34.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 34.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

35 Auditor

- 35.1 The Trust shall have an auditor.

35.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

36 Audit Committee

The Trust shall establish a committee of at least three Non-Executive Directors (at least one of whom has recent and relevant financial experience) as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

37 Accounts

37.1 The Trust must keep proper accounts and proper records in relation to the accounts.

37.2 The Secretary of State may with the approval of Treasury give directions to the Trust as to the content and form of its accounts.

37.3 The accounts are to be audited by the Trust's auditor.

37.4 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.

37.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

38 Annual report and forward plans and non-NHS work

38.1 The Trust shall prepare an annual report and send it to Monitor.

38.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.

38.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.

38.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.

38.5 Each forward plan must include information about:

38.5.1 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

38.5.2 the income it expects to receive from doing so.

38.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in Clause 38.5.1 the Council of Governors must:

38.6.1 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

38.6.2 notify the Directors of the Trust of its determination.

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

39 Presentation of the annual accounts and reports to the Governors and Members

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

39.1.1 the annual accounts

39.1.2 any report of the auditor on them

39.1.3 the annual report.

39.2 The documents shall also be presented to the members of the Trust at the Annual Meeting by at least one member of the Board of Directors in attendance.

39.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of Clause 39.1 with the Annual Meeting.

40 Instruments

40.1 The Trust shall have a seal.

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

41 Amendment of the Constitution

41.1 The Trust may make amendments of its Constitution only if:

41.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments, and

41.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.

41.2 Amendments made under Clause 41.1 take effect as soon as the conditions in that Clause 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.

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

41.3.1 At least one member of the Council of Governors must attend the next Annual Meeting and present the amendment, and

- 41.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.

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.

- 41.4 Amendments by the Trust of its Constitution are to be notified by 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.

42 Mergers, etc and Significant Transactions

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

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

- 42.3 **"Significant Transaction"** means:

- 42.3.1 the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 25% of the value of the Trust's gross assets before the acquisition; or

- 42.3.2 the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 25% of the value of the Trust's gross assets before the disposition; or

- 42.3.3 a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 25% of the value of the Trust's gross assets before the transaction.

- 42.4 For the purpose of this Clause 42:

- 42.4.1 "gross assets" means the total of fixed assets and current assets;

- 42.4.2 in assessing the value of any contingent liability for the purposes of Clause 42.3.3, the Directors:

- 42.4.2.1 must have regard to all circumstances that Directors know, or ought to know, affect or may affect, the value of the contingent liability; and

- 42.4.2.2 may rely on estimates of the contingent liability that are reasonable in the circumstances; and

- 42.4.2.3 may take account of the likelihood of the contingency occurring.

- 42.4.3 A statutory transaction under Clause 42.1 is not a significant transaction for the purposes of Clause 42.2.

43 Indemnity

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

44 Validity of actions

No defect or deficiency in the appointment or composition of the Council of Governors or the Board of Directors shall affect the validity of any decision or action taken by them.

45 Interim Directors

Annex 10 makes provision for how the Interim Directors shall exercise the functions of the Trust on its behalf until such time as the Board of Directors is appointed in accordance with this Constitution.

Annex 1– The Public Constituencies

Name of the Public Constituency	Area of the Public Constituency	Minimum number of Members	Number of Governors to be elected
Bournemouth	<p>The following electoral wards:</p> <ul style="list-style-type: none"> • Boscombe East & Pokesdown • Boscombe West • Bournemouth Central • East Cliff & Springbourne • East Southbourne & Tuckton • Kinson • Littledown & Iford • Moordown • Muscliff & Strouden Park • Queen’s Park • Redhill & Northbourne • Talbot & Branksome Woods • Wallisdown & Winton West • West Southbourne • Westbourne & West Cliff • Winton East 	50	6
Christchurch, East Dorset and Rest of England	<p>The following electoral wards and all electoral wards in the rest of England not included in any other Area for the Public Constituency set out in this table:</p> <ul style="list-style-type: none"> • Burton & Grange • Christchurch Town • Commons • Highcliffe & Walkford • Mudeford, Stanpit & West Highcliffe • Colehill & Wimborne Minster East • Corfe Mullen • Cranborne & Alderholt • Cranborne Chase • Ferndown North • Ferndown South • St Leonards & St Ives • Stour & Allen Vale • Verwood • West Moors & Three 	50	5

	<ul style="list-style-type: none"> Legged Cross • West Parley • Wimborne 		
Poole and the Rest of Dorset	<p>The following electoral wards:</p> <ul style="list-style-type: none"> • Alderney & Bourne Valley • Bearwood & Merley • Broadstone • Canford Cliffs • Canford Heath • Creekmoor • Hamworthy • Newtown & Heatherlands • Oakdale • Parkstone • Penn Hill • Poole Town • Beacon • Beaminster • Blackmore Vale • Blandford • Bridport • Chalk Valleys • Charminster St Mary's • Chesil Bank • Chickerell • Crossways • Dorchester East • Dorchester Poundbury • Dorchester West • Eggardon • Gillingham • Hill Forts & Upper Tarrants • Littlemoor & Preston • Lyme & Charmouth • Lytchett Matravers & Upton • Marshwood Vale • Melcombe Regis • Portland • Puddletown & Lower Winterborne • Radipole • Rodwell & Wyke • Shaftesbury Town • Sherborne East • Sherborne Rural • Sherborne West • South East Purbeck • Stalbridge & Marnhull • Sturminster Newton • Swanage • Upwey & Broadwey • Wareham 	50	6

	<ul style="list-style-type: none">• Westham• West Purbeck• Winterborne Broadmayne• Winterborne North• Yetminster	&	
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Annex 2 – THE STAFF CONSTITUENCY

Classes within the Staff Constituency	Minimum number of Members	Number of Governors to be elected
Medical and Dental	4	1
Allied Health Professions, Scientific and Technical	4	1
Nursing, Midwifery and Healthcare Assistants	4	1
Administrative, Clerical and Management	4	1
Estates and Ancillary Services	4	1

Annex 3– Composition of Council of Governors

1 Majority of Public Governors

- 1.1 The aggregate number of Public Governors must be more than half of the total number of members of the Council of Governors.
- 1.2 The Council of Governors shall comprise of Governors who are:
 - 1.2.1 elected by the respective Constituencies in accordance with the provisions of this Constitution; or
 - 1.2.2 appointed in accordance with paragraph 2 of this Annex.

2 Bodies entitled to appoint a member of the Council of Governors

- 2.1 NHS Dorset CCG shall be entitled to appoint one Governor in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude NHS Dorset CCG from appointing its Governor provided the appointment is duly made in accordance with the CCG's own internal processes.
- 2.2 Dorset Council and Bournemouth, Christchurch and Poole Council shall be entitled to appoint one Governor each in accordance with the process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude the said local authority from appointing its Governor.
- 2.3 The Trust shall nominate Bournemouth University and University Hospitals Dorset NHS Foundation Trust Volunteers Group to be designated as Partnership Organisations for the purposes of this Constitution. Bournemouth University and the University Hospitals Dorset NHS Foundation Trust Volunteers Group shall be entitled to appoint one Governor each in accordance with a process agreed by it with the Trust. The absence of any process of appointment agreed with the Trust shall not preclude the said Partnership Organisation from appointing its Governor provided that appointment is duly made in accordance with the University's and the volunteer group's own internal processes.

3 Policy on Composition of the Council of Governors

- 3.1 The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:
 - 3.1.1 it has regard to the need for those eligible for membership of the Trust to be representative of those to whom the Trust provides services;
 - 3.1.2 the interest of the community served by the Trust are appropriately represented;
 - 3.1.3 the level of representation of the Public Constituency and the classes of the Staff Constituency and the Partnership Organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs;
 - 3.1.4 the actual membership of the Public Constituency is representative of those eligible for such membership pursuant to section 61 of the 2006 Act;and to this end, the Council of Governors:
 - 3.1.5 shall at all times maintain a policy for the composition of the Council of Governors which takes into account the membership strategy; and

3.1.6 shall from time to time and not less than every three years review the policy for the composition of the Council of Governors; and

3.1.7 when appropriate shall propose amendments to the Constitution.

Electing/Appointing Body		Number of Governors	Total
1	Public Constituencies		17
	1.1 Bournemouth	6	
	1.2 Christchurch, East Dorset and Rest of England	5	
	1.3 Poole and Rest of Dorset	6	
2	Staff Constituencies		5
	2.1 Medical and Dental	1	
	2.2 Allied Health Professionals, Scientific and Technical	1	
	2.3 Nursing, Midwifery and Healthcare Assistants	1	
	2.4 Administrative, Clerical and Management	1	
	2.5 Estates and Ancillary Services	1	
3	Appointed Governors		5
	3.1 NHS Dorset CCG	1	
	3.2 Dorset Council	1	
	3.3 Bournemouth, Christchurch and Poole Council	1	
	3.4 University Hospitals Dorset NHS Foundation Trust Volunteers Group	1	
	3.5 Bournemouth University	1	
Total number of Governors		27	27

Annex 4 – Additional Provisions – Council of Governors

1 Terms of Office

1.1 A Governor shall be:

1.1.1 elected or appointed for a term of three years;

1.1.2 shall be eligible for re-election or re-appointment at the end of that term but may not serve as a Governor for more than a total of nine consecutive years. Years of office are consecutive unless there is a break of at least one year between them.

2 Eligibility to be on the Council of Governors

2.1 A person may not become or continue as a governor, and if already holding such office will immediately cease to do so if:

2.1.1 any of the grounds contained in Clause 14 of the Constitution apply to that person;

2.1.2 they cease to be a member of the Trust constituency they were elected to or, in the case of an Appointed Governor, if the body which appointed that person withdraws its appointment at any time;

2.1.3 they are a member of a committee which has, any role on behalf of a local authority to scrutinise and review health matters including a local authority's scrutiny committee covering health matters;

2.1.4 they have, within the preceding two years been lawfully dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;

2.1.5 they are a person whose term of office as the chairman or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the NHS, including non-attendance at meetings or non-disclosure of a pecuniary interest;

2.1.6 they have had their name removed by a direction under Part 7 of the 2006 Act from any list prepared under Chapter 6 of that Act and has not subsequently had his name included in such a list and in addition, for example GMC, GDC, NMC;

2.1.7 they have failed to make, or has falsely made, any declaration as required to be made under Section 60 of the 2006 Act;

2.1.8 they are subject to a direction made under the Education Act 2011 or the Safeguarding Vulnerable Groups Act 2006;

2.1.9 they are subject to a Sexual Offenders Order under the Sexual Offences Act 2003 or other relevant legislation;

2.1.10 they have been previously removed as a Governor of the Trust, or been removed as a governor of another NHS foundation trust;

2.1.11 they have received a written warning from the Trust for verbal and/or physical abuse towards Trust staff, patients, relatives or visitors;

- 2.1.12 they have been determined by the Trust as a vexatious or persistent litigant or complainant with regard to the Trust's affairs and nine years have not passed since the date of lifting of such determination;
- 2.1.13 the person is a member of a Staff Class and any professional registration relevant to his eligibility to be a member of that Staff Class has been suspended for a continuous period of more than six months;
- 2.1.14 they were at any time eligible to be a member of the Staff Constituency during the period they are or were a member of a Public Constituency;
- 2.1.15 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
- 2.1.16 they are a Director of the Trust, or a governor or director of another NHS body or of an independent/private sector healthcare provider. (These restrictions do not apply to Appointed Governors);
- 2.1.17 they are a person who is not a fit and proper person as defined by regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and/or condition G4 of the Trust's provider licence.
- 2.1.18 their term of office was terminated pursuant to paragraph 3 of this Annex;

3 Termination of office and removal of a Governor

- 3.1 A person holding office as a Governor shall immediately cease to do so if:
 - 3.1.1 they cease to fulfil the requirements of paragraph 2 above;
 - 3.1.2 they resign by notice in writing to the Company Secretary;
 - 3.1.3 they fail to attend two consecutive meetings of the Council of Governors, unless the Council of Governors is satisfied that:
 - (a) the absences were due to reasonable causes; and
 - (b) they will be able to start attending meetings of the Council of Governors again within such periods as is considered reasonable by the Council of Governors;
 - 3.1.4 in the case of an Elected Governor, they cease to be a member of the constituency or class of constituency by which they were elected;
 - 3.1.5 in the case of an Appointed Governor, the appointing Partnership Organisation terminates the appointment, the appointing Partnership Organisation ceases to exist or they withdraw themselves as the Appointed Governor representative;
 - 3.1.6 they have refused, without reasonable cause, to undertake training which the Council of Governors requires all Governors to take;
 - 3.1.7 they have failed to sign and deliver to the Company Secretary a statement in the form required by the Company Secretary confirming acceptance of the code of conduct for Governors.

- 3.2 A Governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting at a meeting of the Council of Governors on the grounds that:
- 3.2.1 they have committed a material breach of any code of conduct applicable to Governors of the Trust; and/or
 - 3.2.2 they have acted in a manner detrimental to the interests of the Trust, and/or
 - 3.2.3 the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor. Circumstances where it may not be appropriate for an individual to continue as a Governor include the circumstances set out in paragraph 3.3;
- 3.3 The Council of Governors may remove a Governor in accordance with paragraph 3.2 where the Council of Governors finds that their continuing as a Governor would or would be likely to:
- 3.3.1 prejudice the ability of the Trust to fulfil its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or
 - 3.3.2 prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or
 - 3.3.3 adversely affect public confidence in the goods and services provided by the Trust; or
 - 3.3.4 otherwise bring the Trust into disrepute or is detrimental to the interest of the Trust; or
 - 3.3.5 not in the best interests of the Trust for that person to continue in office as a Governor; or
 - 3.3.6 fail to comply in a material way with the values and principles of the NHS or the Trust.
- 3.4 Upon a Governor resigning under paragraph 3.1.2 of this Annex or upon the Council of Governors resolving to terminate a Governor's tenure of office in accordance with the above provisions that Governor shall cease to be a Governor and their name shall be removed from the register of Governors.
- 3.5 The decision of the Council of Governors to terminate the tenure of office of the Governor concerned shall not take effect until the later of:
- 3.5.1 seven days after the date of decision; or
 - 3.5.2 where the Governor applies for the decision to be referred to an independent assessor, the date on which the independent assessor determines the matter.
- 3.6 The Governor in question will be permitted to appeal any decision of the Council of Governors to terminate that Governor's tenure of office made in accordance with Annex 4 paragraph 3.4 in writing, within 28 days of the date upon which notice of the decision is received, for that decision to be referred to an independent assessor.
- 3.7 On receipt of an application under paragraph 3.6 above the Council of Governors and the applicant Governor will co-operate in good faith to agree on the appointment of the

independent assessor. If the parties fail to agree on the identity of the independent assessor within twenty-one days of the date upon which the application is received by the Council of Governors, then the Council of Governors shall request the Chartered Institute of Arbitrators to nominate an independent assessor.

3.8 The independent assessor will consider the evidence and conclude whether the decision to remove the Governor was reasonable or otherwise.

3.9 The independent assessor's decision will be binding on the parties. If the independent assessor finds that the decision of the Council of Governors to remove the Governor was not reasonable, the decision of the Council of Governors will be rescinded.

The Trust shall bear the independent assessor's costs unless the independent assessor determines that such costs shall be shared between the Trust and the Governor.

3.10 The Standing Orders adopted by the Council of Governors may contain provisions governing its procedure for termination under these provisions and for a Governor to appeal against the decision terminating their tenure of office.

3.11 A Governor:

3.11.1 who resigns or whose tenure of office is terminated under paragraph 3.1 of this Annex shall not be eligible to stand for re-election for a period of six years from the date of their resignation or removal from office; or

3.11.2 whose tenure is terminated under paragraph 3.2 of this Annex shall not be eligible to stand for re-election for a period of nine years from the date of their removal from office or the date upon which any appeal against their removal from office is disposed of whichever is the later.

3.11.3 not less than twenty percent of the Governors may, where the process leading to the possible removal of a Governor has been initiated, require the appointment of an independent assessor to consider the evidence and advise as to the appropriateness of removal. It will also be available to the Chairman to initiate any such independent assessment at any time.

3.12 Where a person has been elected or appointed to be a Governor and that person becomes disqualified from that appointment that individual shall notify the Trust in writing of such disqualification as soon as practicable and in any event within fourteen days of first becoming aware of those matters which rendered the individual disqualified.

3.13 If it comes to the notice of the Trust that a Governor is disqualified, the Trust shall immediately declare Governor disqualified and shall give the Governor notice in writing to that effect as soon as practicable.

3.14 Upon the giving of notice under paragraphs 3.12 and 3.13 of this Annex, that person's tenure of office as a Governor shall thereupon be terminated and the individual shall cease to be a Governor and the individual's name shall be removed from the Register of Governors.

4 Vacancies

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

- 4.1.1 in the case of an Appointed Governor, the Company Secretary shall request that the appointing Partnership Organisation appoints a replacement to hold office for the remainder of the term of office; and
- 4.1.2 in the case of an Elected Governor, elections for a new governor shall take place as soon as practicable subject to the provisions of paragraphs 4.2 and 4.3 of this Annex.
- 4.2 Where an Elected Governor ceases for whatever reason to hold office within twelve months of that Elected Governor's election:
 - 4.2.1 the Trust shall offer the candidate who was ranked next highest in the last election for the constituency, class or Staff Class (as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office of Governor for the unexpired balance of the former Governor's term of office; or
 - 4.2.2 if that candidate does not accept that invitation in a timely manner it shall be offered to that candidate who was next highest ranked in the last said election until the vacancy is filled; but if no other candidate stood for election or there are no remaining candidates who stood for election to that office or no candidate accepts the Trust's invitation in accordance with the above provisions within such time as the Trust may in its absolute discretion decide, the Trust shall hold an election for the vacancy as soon as reasonably practicable thereafter; or
 - 4.2.3 carry the vacancy until the next scheduled election takes place.
- 4.3 Notwithstanding the above provisions of this paragraph 4 of this Annex, where the termination of a Governor's term of office causes the total number of Public Governors to be equal to or fewer than the other Governors of the Trust then an election for that vacant office shall be held as soon as reasonably practicable.
- 4.4 No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

5 Roles and Responsibilities of the Council of Governors

- 5.1 The statutory duties of the Council of Governors are provided in Clause 15 of the Constitution.
- 5.2 The Council of Governors and each Governor shall act in the best interests of the Trust at all times and with proper regard to the provisions of the NHS Foundation Trust Code of Governance and the Trust's code of conduct for Governors.
- 5.3 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

6 Remuneration of Governors

- 6.1 Governors are not to receive remuneration.
- 6.2 The Trust will pay travelling expenses to Governors in accordance with Clause 19 of the Constitution.

7 Declarations

7.1 A member of a Public Constituency standing for election as Governor must make a declaration for the purposes of Section 60 of the 2006 Act in the form specified below stating the particulars of that member's qualification to vote as a member and that they are not prevented from being a member of the Council of Governors by virtue of any provisions of this Constitution. It is an offence to knowingly or recklessly make a statement or declaration which is false in a material particular.

7.2 The specified form of declaration shall be set out on the nomination form referred to in the Model Election Rules at Annex 9 and shall state as follows:

I, the above named candidate, consent to my nomination and agree to stand for election. I confirm that, to the best of my knowledge, the information provided on (or with) this form is accurate. I also agree to abide by the University Hospitals Dorset NHS Foundation Trust code of conduct for Governors and the NHS core principles.

I declare that I am resident at the address given and that to the best of my knowledge I am eligible to stand for election to the Council of Governors for the area named overleaf. I declare that I am not debarred from standing by any of the provisions detailed in Section 1 of the guidance notes and the Exclusion and Disqualification criteria also detailed in the guidance notes supplied with this nominations paper. I understand if any declaration on this form is later found to be false I will, if elected, lose my seat on the Council of Governors and may have my membership withdrawn.

7.3 A Governor elected to the Council of Governors by a Public Constituency or a Staff Class within the Staff Constituency may not vote at a meeting of the Council of Governors unless, within the period since that Governor's election, that Governor has made a declaration in the form specified in paragraph 7.4 of this Annex stating of which class of constituency that Governor is a member and that the Governor is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or by virtue of any provisions of this Constitution.

7.4 The specified form of declaration referred to in paragraph 7.3 of this Annex shall state as follows:

I declare that I am a Member of the Public Constituency or Staff Class of the Staff Constituency and am eligible to vote at a meeting of the Council of Governors. I declare that I am not debarred from voting by any of the provisions detailed in paragraph 8 of Schedule 7 to the 2006 Act or by virtue of any provisions of this Constitution.

8 Appointment of Lead Governor

8.1 The Council of Governors shall appoint one of the Governors to be Lead Governor of the Council of Governors via a process agreed with the Council of Governors and the Company Secretary.

Annex 5 – Standing Orders for the Practice and Procedure of the Council of Governors

FOREWORD

This document provides a regulatory and business framework for the conduct of the Council of Governors.

1 Interpretation and definitions

1.1 These Standing Orders are the standing orders referred to in Clause 17 of the Constitution. If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.

1.2 In these Standing Orders, the following expressions have the following meanings:

Meeting means a duly convened meeting of the Council of Governors;

Other terms defined in the Constitution shall have the same meaning in these Standing Orders.

2 Composition of the Council of Governors

The composition of the Council of Governors shall be as set out in Annex 3 of the Constitution.

3 Appointment of the Chairman and Non-Executive Directors

The Chairman and Non-Executive Directors are appointed by the Council of Governors in accordance with Clause 24 of the Constitution.

4 Terms of Office of the Chairman and Non-Executive Directors

The provisions governing the period of tenure of office of the Chairman and the Non-Executive Directors are contained in Clause 31 of the Constitution.

5 Appointment of Vice Chairman of the Board and of the Council of Governors

5.1 The Council of Governors shall appoint a Vice Chairman in accordance with Clause 25 of the Constitution.

5.2 Any Non-Executive Director so appointed may at any time resign from the office of Vice-Chairman by giving notice in writing to the Chairman (in Chairman's capacity of Chair of Board and Chair of Council of Governors). The Council of Governors may thereupon appoint another Non-Executive Director as Vice Chairman in accordance with Clause 25 of the Constitution.

5.3 The Vice-Chairman may preside at meetings of the Council of Governors in the following circumstances:

5.3.1 when there is a need for someone to have the authority to chair any meeting of the Council of Governors when the Chairman is not present;

5.3.2 when the remuneration, allowances and other terms and conditions of the Chairman are being considered;

- 5.3.3 when the appointment of the Chairman is being considered, should the current Chairman be a candidate for reappointment;
- 5.3.4 on occasions when the Chairman declares a pecuniary interest that prevents that person from taking part in the consideration or discussion of a matter before the Council of Governors.

MEETINGS OF THE COUNCIL OF GOVERNORS

6 Admission of the Public

The Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors resolves that the public be excluded from the meeting, whether for the whole or part of the proceedings on the grounds that publicity would be prejudicial to the public interest or the interests of the Trust by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business to be transacted or the proceedings. The Chairman may also exclude any member of the public from a Meeting of the Council of Governors if that individual is interfering with or preventing the proper conduct of the Meeting.

7 Chairman of Meetings

The Chairman of the Trust, or in that person's absence, the Vice Chairman is to preside at Meetings of the Council of Governors. If the Chairman is absent from a Meeting or temporarily absent on the grounds of a declared conflict of interest the Vice Chairman shall preside. If the Chairman and Vice Chairman are absent from the Meeting or absent temporarily on the grounds of a declared conflict of interest, such Non-Executive Director as the governors present shall choose shall preside. If the person presiding has a conflict of interest in relation to the business being discussed the Lead Governor will chair that part of the meeting.

8 Calling Meetings

- 8.1 The Council of Governors will meet at least four times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Company Secretary shall give at least seven days' written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published on the Trust's website. Seminars, workshops or similar events involving Governors are not to be treated as Meetings of the Council of Governors.
- 8.2 Meetings of the Council of Governors are called by the Company Secretary or by the Chairman or by ten governors (including at least two Public or Staff Governors and two Appointed Governors) who give written notice to the Company Secretary specifying the business to be carried out. The Company Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Company Secretary shall call a Meeting within at least seven, but not more than 28 days, to discuss the specified business. If the Company Secretary fails to call such a Meeting within seven clear days, then the Chairman or ten Governors, whichever is the case, shall call such a Meeting.

9 Agendas and Papers

- 9.1 An agenda, copies of any questions on notice and/or motions on notice to be considered at the relevant Meeting and any supporting papers shall be sent to each Governor so as

to arrive with each Governor normally no later than 7 days in advance of each Meeting. Minutes of the previous meeting will be circulated with these papers for approval and this will be a specific agenda item.

- 9.2 The Council of Governors may determine that certain matters shall appear on every agenda for a Meeting of the Council of Governors and shall be addressed prior to any other business being conducted.
- 9.3 A Governor desiring a matter to be included on an agenda shall specify the question or issue to be included in request in writing to the Chairman or Company Secretary at least fourteen 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 fourteen clear days before the Meeting may be included on the agenda at the discretion of the Chairman. Receipt of such matters via electronic means is acceptable.

10 **Notices of Motion**

- 10.1 A Governor desiring to move or amend a motion shall send a written notice thereof at least fourteen clear days before the Meeting to the Chairman or Secretary, who shall insert in the agenda for the Meeting all notices so received subject to the notice being permissible under the appropriate regulations. For the purposes of this Standing Order 10 receipt of any such motions via electronic means is acceptable. All motions received by the Chairman or Company Secretary will be acknowledged by the Company Secretary in writing to the Governors who have signed or transmitted the same. This paragraph shall not prevent any motion being moved during the Meeting, without notice on any business mentioned on the agenda in accordance with Standing Order 11 of this Annex, subject to the Chairman's discretion.
- 10.2 Motions must be about matters for which the Council of Governors has a responsibility or which affect the area covered by the Trust.

11 **Motions without Notice**

- 11.1 The following motions may be moved without notice:
- 11.1.1 to change the order of business in the agenda for the Meeting;
 - 11.1.2 to refer a matter discussed at a Meeting to an appropriate body or individual;
 - 11.1.3 to appoint a group arising from an item on the agenda for the Meeting;
 - 11.1.4 to receive reports or adopt recommendations made by the Board of Directors;
 - 11.1.5 to withdraw a motion;
 - 11.1.6 to amend a motion;
 - 11.1.7 to proceed to the next business on the agenda;
 - 11.1.8 that the question now be put;
 - 11.1.9 to adjourn a debate;

- 11.1.10 to adjourn the Meeting;
- 11.1.11 to suspend a particular Standing Order contained within these Standing Orders (provided that any Standing Orders may only be suspended if at least one half of the aggregate number of Governors are present at the Meeting in question and provided also that the Standing Order in question may only be suspended for the duration of the Meeting in question);
- 11.1.12 to exclude the public and press from the Meeting in question (the motion shall be “To exclude the press and public from the remainder of the Meeting, owing to the confidential nature of the business to be transacted”);
- 11.1.13 to not hear further from a Governor, or to exclude them from the Meeting in question (if a Governor persistently disregards the ruling of the Chairman or behaves improperly or offensively or deliberately obstructs business, the Chairman, in its absolute discretion, may move that the Governor in question be not heard further at the Meeting in question. If seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chairman may move that either the Governor leaves the meeting room or that the Meeting in question is adjourned for a specified period. If seconded, the motion will be voted on without discussion);
- 11.1.14 to give the consent of the Council of Governors to any matter where its consent is required pursuant to the Constitution.

12 **Motion to Rescind a Resolution**

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall be in writing and shall bear the signature of the Governor who gives it and also the signature of four other Governors. When any such motion has been disposed of by the Council of Governors, it shall not be competent for any Governor to propose a motion to the same effect within six months.

13 **Questions from Governors**

- 13.1 A Governor may ask a question through the Chairman without notice upon a report from an Executive Director or other Officer of the Trust when that item is being received or under consideration by the Council of Governors.
- 13.2 Questions relating to matters other than those under report may be asked with due notice. For the avoidance of doubt, questions on notice must be given in writing (including email) to the Company Secretary at least fourteen days in advance of the Meeting. If the question is urgent and with the agreement of the person to whom the question is being put, the content of the question may be given to the Company Secretary by 10.00am on the day of the Meeting (if the Meeting is scheduled for the afternoon) or by 2.00pm on the preceding day (if the Meeting is scheduled for the morning). Urgent is defined as a matter that will adversely affect the Trust in the next seven days.

14 **Chairman's Ruling**

- 14.1 Statements of Governors made at Meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the Meeting on questions of order, relevancy, regularity and any other matters shall be observed at the Meeting.
- 14.2 Save as permitted by law, at any Meeting the person presiding shall be the final authority on the interpretation of Standing Orders (on which that person should be advised by the Chief Executive).

15 **Voting/Decision-Making**

- 15.1 Save as otherwise provided in the Constitution and/or the 2006 Act and/or the 2012 Act, and these Standing Orders if the Chairman so determines or if a Governor requests, questions at a Meeting shall be determined by a majority of the votes of the Governors present and voting on the question.
- 15.2 At the Meeting of the Council of Governors a vote shall be decided on a show of hands, the result being declared by the Chairman and recorded in the minutes. The entry in the minutes shall confirm the result without recording the number of proportion in favour or against the motion unless a request is made under Standing Order 15.8. Every Governor shall have one vote whether voting in person.
- 15.3 A paper ballot may be used if a majority of the Governors present so request. If a paper ballot is used, it shall be taken at such time and place and in such a manner as the Chairman of the Meeting shall direct and the result of the ballot shall be deemed to be the resolution of the Meeting at which the ballot was demanded. The demand for a ballot shall not prevent the continuance of a Meeting for the transaction of any business other than the question on which a ballot has been demanded.
- 15.4 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.
- 15.5 No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.
- 15.6 If a Governor so requests, that Governor's vote shall be recorded by name upon any vote (other than by paper ballot).
- 15.7 All decisions taken in good faith at a Meeting of the Council of Governors shall be valid even if it is discovered subsequently that there was a defect in the calling of the Meeting, or the appointment of the Governors attending the Meeting.

16 **Attendance**

The names of the Chairman and Governors present at the meeting shall be recorded in the minutes. Governors who are unable to attend a meeting shall notify the Company Secretary in advance of the Meeting so that their apologies may be recorded.

17 **Quorum**

- 17.1 No business shall be transacted at a Meeting of the Council of Governors unless at least nine of the Council of Governors are present and that those present include at least one Staff Governor, seven Public Governors and one Appointed Governor.
- 17.2 A Governor who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Governor will count towards the quorum of the Meeting. If a Governor has declared a pecuniary interest in any matter, the Governor must leave the Meeting room, and will not count towards the quorum of the Meeting, during the consideration, discussion and voting on the matter. 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.
- 17.3 Subject to Standing Orders in relation to interests, any director or their nominated representatives shall have the right to attend Meetings of the Council of Governors and, subject to the overall control of the Chairman, to speak to any item under consideration.

18 **Minutes**

- 18.1 The minutes of the proceedings of a Meeting shall be drawn up and submitted for agreement at the next ensuing Meeting where they will be signed by the person presiding at it. The approved minutes will be conclusive evidence of the events of the Meeting and retained by the Company Secretary.
- 18.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next Meeting.

COMMITTEES

19 **Committees**

- 19.1 The Council of Governors may not delegate any of its functions or powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its role. The Council of Governors may, through the Company Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.
- 19.2 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors.
- 19.3 Each committee and sub-committee shall have such terms of reference and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with any guidance issued by Monitor and any legislation or applicable guidance issued by the Secretary of State.
- 19.4 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 Council of Governors or shall otherwise have concluded on that matter.
- 19.5 A Governor or a member of a committee shall not disclose any matter reported to the Council of Governors or otherwise dealt with by the committee, notwithstanding that the

matter has been reported or action has been concluded, if the Council of Governors or the committee shall resolve that it is confidential.

- 19.6 The Council of Governors shall establish the Non-Executive Director Nomination, Evaluation and Remuneration Committee to advise the Council of Governors on its functions in relation to the appointment of the Chairman and non-executive directors as further described in Standing Orders 19.8 and 19.9 below.
- 19.7 The Council of Governors shall resolve in a general meeting to appoint such candidate or candidates (as the case may be) as it considers appropriate and on reaching its decision it shall have regard to the Board of Directors and of the Nomination, Remuneration and Evaluation Committee as to the suitability of the available candidates.
- 19.8 The role of the Nomination Evaluation and Remuneration Committee shall be as follows:
- 19.8.1 to determine the criteria of process for the selection of candidates for office as Chairman or other Non-Executive Director of the Trust having first consulted with the Board of Directors as to these matters and having regard to such views as may be expressed by the Board of Directors;
- 19.8.2 to seek by way of open advertisements and other means candidates for office and to assess, shortlist and select for interview such candidates as are considered appropriate and in doing so the committee shall be at liberty to seek advice and assistance from persons other than members of the committee or of the Council of Governors such as external organisations recognised as experts at appointment to identify the skills and experience required of Chairman and Non-Executive Directors;
- 19.8.3 to make recommendations to the Council of Governors as to potential candidates for appointment as Chairman or other Non-Executive Director, as the case may be.
- 19.9 The Nomination, Evaluation and Remuneration Committee shall:
- 19.9.1 on a regular and systematic basis monitor the performance of the Chairman and other Non-Executive Directors and make reports thereon to the Council of Governors from time to time when requested to do so or when in the opinion of the committee the results of such monitoring ought properly to be brought to the attention of the Council of Governors; and
- 19.9.2 consider and make recommendations to the Council of Governors as to the remuneration and allowances and other terms and conditions of office of the Chairman and Non-Executive Directors;
- 19.9.3 review the structure, size and composition of the Board of Directors from time to time and to make any recommendation to the Council of Governors.

DECLARATIONS OF INTEREST AND REGISTER OF INTERESTS

20 Declaration of Interests

- 20.1 In accordance with Clause 18 of the Constitution, Governors are required to declare formally any direct or indirect pecuniary interest and any other interest which is relevant and material to the business of the Trust. The responsibility for declaring an interest is solely that of the Governor concerned.

- 20.2 A Governor must declare to the Company Secretary:
- 20.2.1 any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, and
 - 20.2.2 any interests (personal or family or loyalty interests) which are relevant and material to the business of the Trust.
- 20.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Company Secretary from time to time, setting out any interests required to be declared in accordance with the Constitution or these Standing Orders and delivering it to the Company Secretary within twenty eight days of a Governor's election or appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. If the Governor is in any doubt whether an interest should be disclosed, they should discuss the position with the Chairman or Company Secretary. The Company Secretary shall amend the register of interests within three working days of receipt of notification.
- 20.4 If a Governor is present at a Meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, the Governor 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 and, if the Governor has declared a pecuniary interest, the Governor shall not take part in the consideration or discussion of the matter. The provisions of this Standing Order are subject to Standing Order 20.7 of this Annex.
- 20.5 A material interest is:
- 20.5.1 any directorship of a company including non-executive directorships held in limited companies (with the exception of dormant companies);
 - 20.5.2 any interest or position in any firm, company, business, which in connection with the matter has or is likely to have a trading or commercial relationship with the Trust;
 - 20.5.3 any interest in a voluntary or other organisation providing health and social care services to the National Health Service;
 - 20.5.4 any interest held by a Governor or a spouse/partner in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust;
 - 20.5.5 a position of authority in a charity or voluntary organisation in the field of health and social care;
 - 20.5.6 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.
 - 20.5.7 research funding/grants that may be received by an individual or their department;
 - 20.5.8 interests in pooled funds that are under separate management.
- 20.6 Subject to any other provision of this Constitution, a Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

20.6.1 the Governor or a nominee of the Governor, 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

20.6.2 the Governor 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.

20.7 The exceptions which shall not be treated as material interests are as follows:

20.7.1 membership of a company or other body, if the Governor has no beneficial interest in any securities of that company or other body;

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

20.7.3 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:

(a) 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

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

20.7.4 an employment contract held by Staff Governors;

20.7.5 an Appointed Governor's employment contract with their appointing organisation;
or

20.7.6 any travelling or other expenses or allowances payable to a Governor in accordance with this Constitution.

20.8 In the case of an interest that falls within paragraph 20.7.3 the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to the Governor's duty to disclose the interest.

20.9 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Standing Orders to be also an interest of the other.

21 **Conflict of Interest**

During the course of a Council of Governors Meeting, if a conflict of interest is disclosed the Governor concerned shall withdraw from the Meeting and take no further part in the matter under discussion.

22 Register of Interests

- 22.1 The Company Secretary shall record any declarations of interest made in a register of interests kept in accordance with Clause 32.3 of the Constitution. Any interest declared at a Meeting shall also be recorded in the minutes of the Meeting.
- 22.2 The register will be available for inspection by members of the public free of charge at all reasonable times. A person who requests it is to be provided with a copy or extract from the register.
- 22.3 In establishing, maintaining, updating and publicising the register, the Trust shall comply with all guidance issued from time to time by Monitor.

STANDARDS OF BUSINESS CONDUCT

23 Standards of business conduct

- 23.1 In relation to their conduct as a Governor of the Trust, each Governor must comply with the Constitution, the Trust's code of conduct for Governors, the NHS Foundation Trust Code of Governance, the requirements of the law and any guidance issued by Monitor.
- 23.2 Governors will confirm their agreement to adhere to the Trust's code of conduct for Governors by signing a copy annually and returning it to the Company Secretary.
- 23.3 Canvassing of Directors or Governors or of any members of any committee of the Trust directly or indirectly for any appointment by the Trust shall disqualify the candidate for such appointment.
- 23.4 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment, but 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.

24 Interest of Governors in Contracts

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

STANDING ORDERS

25 Suspension of Standing Orders

- 25.1 Except where this would contravene any statutory provision or any direction made by Monitor, any one of the Standing Orders may be suspended at any Meeting, provided that at least two-thirds of the Council of Governors are present, including one Public Governor and one Staff Governor, and that a majority of those present vote in favour of suspension.
- 25.2 A decision to suspend Standing Orders shall be recorded in the minutes of the Meeting.

25.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and the members of the Council of Governors.

25.4 No formal business may be transacted while Standing Orders are suspended.

26 **Variation and Amendment of Standing Orders**

These Standing Orders may only be amended in accordance with Clause 41 of the Constitution.

27 **Review of Standing Orders**

These Standing Orders shall be reviewed annually by the Council of Governors. The requirement for review extends to all documents having effect as if incorporated in these Standing Orders.

Annex 6 - Governors and Directors: Communication and Conflict

1 **Summary**

This Annex describes the processes intended to ensure a successful and constructive relationship between the Council of Governors and the Board of Directors. It emphasises the importance of informal and formal communication, and confirms the formal arrangements for communication within the Trust. It suggests an approach to informal and formal communications between the Council of Governors and the Board of Directors.

2 **Informal Communications**

2.1 Informal and frequent communication between the Governor and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides.

2.2 The Chairman shall use reasonable endeavours to encourage effective informal methods of communication including:

2.2.1 participation of the Board of Directors in the induction, orientation and training of Governors;

2.2.2 development of special interest relationships between Non-Executive Directors and Governors;

2.2.3 discussions between Governors and the Chairman and/or the Chief Executive and/or Directors through the office of the Chief Executive or a nominated officer;

2.2.4 involvement in membership recruitment and briefings at public events organised by the Trust.

3 **Formal Communication**

3.1 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively.

3.2 Formal communications initiated by the Council of Governors and intended for the Board of Directors will be conducted as follows:

3.2.1 specific requests by the Council of Governors will be made through the Chairman to the Board of Directors;

3.2.2 any Governor has the right to raise specific issues to be put to the Board of Directors at a Meeting of the Council of Governors through the Chairman but if the Chairman declines to raise any such issue the said Governor may nonetheless still raise it provided two thirds of the Governors present approve the request to do so. The Chairman shall then raise the matter with the Board of Directors and provide the response to the Council of Governors;

3.2.3 joint meetings will take place between the Council of Governors and the Board of Directors as and when appropriate as determined by the Chairman (in the capacity as the Chairman of both the Board of Directors and the Council of Governors).

- 3.3 The Board of Directors may request the Chairman to seek the views of the Council of Governors on such matters as the Board of Directors may from time to time determine.
- 3.4 Communications between the Council of Governors and the Board of Directors may occur with regard to, but shall not be limited to:
 - 3.4.1 the Board of Directors proposals for the strategic direction and the annual business plan;
 - 3.4.2 the Board of Directors' proposals for developments;
 - 3.4.3 Trust performance;
 - 3.4.4 involvement in service reviews and evaluation relating to the Trust's services; and
 - 3.4.5 proposed changes, plans and developments for the Trust other than may be covered by paragraph Annex 87.6 of this Annex.
- 3.5 The Board of Directors shall also present to the Council of Governors the Annual Accounts, Annual Report and Auditor's Report in accordance with the terms of this Constitution and of the 2006 Act.
- 3.6 The following formal methods of communication may also be used as appropriate with the consent of both the Council of Governors and the Board of Directors:
 - 3.6.1 attendance by the Directors at a Meeting of the Council of Governors;
 - 3.6.2 provision of formal reports or presentations by Executive Directors to a Meeting of the Council of Governors;
 - 3.6.3 inclusion of appropriate minutes for information on the agenda of a Meeting of the Council of Governors;
 - 3.6.4 reporting the views of the Council of Governors to the Board of Directors through the Chairman or Vice Chairman.
- 4 Other Communication
 - 4.1 The Governors are welcomed to public meetings of the Board of Directors. There is an item on each agenda "Questions from the Governors". These are requested by the Chairman, enabling individual Governors to put questions to the Board. Verbal responses will be supplied as far as is reasonable at the time of the meeting and reported in the minutes of the meeting. The Chairman has discretion to manage this item in the light of other Board business. It is also a matter for Governors as to whether the question is for a formal Board Meeting or can be raised through the informal route. Board time is set aside for informal discussion between individual Governors and Board Members prior to commencement of the public meetings. Shortly following a Board of Directors' meeting a briefing meeting takes place with the Chairman and Governors with the purpose of informing the Governors as far as reasonable about the discussions conducted under the private session of the Board of Directors meetings. Executive and Non-Executive Directors may attend these briefings to support the Chairman and impart further information if required. The chairmen of the committees of the Board of Directors may also attend meetings or briefings annually to discuss the work of the sub-committees to assist the Council of Governors in their duty to hold the Non-Executive Directors individually and collectively to account for the performance of the Board.

5 **Dispute Resolution Procedure**

- 5.1 The Council of Governors adopts a policy to proactively engage with the Board of Directors in those circumstances where they have concerns. The Council of Governors is encouraged to ensure its interaction and relationship with the Board of Directors is appropriate and effective.
- 5.2 The Lead Governor shall be the first point of contact when Governors wish to seek advice and/or raise issues and who acts as the Council of Governors lead representative to the Chairman on Governor matters.
- 5.3 In the event of a dispute arising between the Council of Governors and the Board of Directors, the Chairman (or Vice-Chairman if the dispute involves the Chairman) will endeavour to resolve the dispute informally, through discussions within the Council of Governors.
- 5.4 Within twenty-eight days of the Council of Governors or the Board of Directors resolving that a dispute exists with the other, the Company Secretary shall call a joint meeting to be held as soon as reasonably practicable within three months of the resolution. The joint meeting shall be held under the Trust's Board of Directors' Standing Orders, but the provisions of the Standing Orders of the Council of Governors in relation to interests shall apply to Governors attending the joint meeting as they apply to a Council of Governors meeting.
- 5.5 The joint meeting shall be chaired by the Chairman and the agenda shall be agreed with the Chief Executive. The joint meeting shall either recommend to each of the constituents a formula for resolving the dispute which each shall receive and consider formally as soon as practicable, or, if possible, shall agree the relevant issues and the possible ways forward.
- 5.6 If either constituent resolves to refer the issue to mediation, the Lead Governor and a second nominated Governor on behalf of the Council of Governors and the Chief Executive and the Vice-Chairman of the Board of Directors shall meet within twenty eight days of such resolution to agree a mediator. In default of agreement, either constituent may resolve to refer the dispute for resolution by Monitor.
- 5.7 On the satisfactory completion of this disputes process the Board of Directors or Council of Governors, as appropriate, shall implement any agreed actions.
- 5.8 The existence of the dispute shall not prejudice the duty of the Board of Directors in the exercise of the Trust's powers on its behalf.
- 5.9 Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing Monitor that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors and that the Trust is not meeting the conditions of its provider licence. The Lead Governor will act as the conduit between the Council of Governors and Monitor.

Annex 7– Standing Orders for the Practice and Procedure of the Board of Directors

FOREWORD

This document, together with the Standing Financial Instructions provides a regulatory framework for the business conduct of the Trust

All Executive and Non-Executive Directors should be aware of the existence of this document and, where necessary, be familiar with the detailed provisions.

SECTION A: INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

1 Interpretation and definitions

- 1.1 Save as otherwise permitted by law, at any Board of Directors' meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Chief Executive or Company Secretary).
- 1.2 Wherever the title Chief Executive, Director or other Nominated Officer is used in these Standing Orders, it should be deemed to include such other officers who have been duly authorised to represent them in their absence.
- 1.3 Any expression to which a meaning is given in the 2006 Act, as amended by the 2012 Act, and other Acts relating to the National Health Service or in the Financial Regulations made under the Acts shall have the same meaning in these Standing Orders.
- 1.4 Other items defined in the Constitution shall have the same meaning in these Standing Orders.

Commissioning	means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources.
Committee	means a committee or sub-committee created and appointed by the Board of Directors.
Committee Members	means persons formally appointed by the Board to sit on or to chair specific committees.
Contracting and procuring	means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.
Funds held on trust	shall mean those funds which the Trust holds on date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept under powers derived under section 51 of the 2006 Act. Such funds may or may not be charitable.
Nominated Officer	means an Officer charged with the responsibility for

discharging specific tasks within Standing Orders and Standing Financial Instructions.

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

SFIs means Standing Financial Instructions.

SOs means Standing Orders.

SECTION B:STANDING ORDERS

2 Introduction

2.1 Statutory Framework

2.1.1 University Hospitals Dorset NHS Foundation Trust (the Trust) is a public benefit corporation which came into existence on xxx following the grant of an application by Monitor pursuant to section 56 of the 2006 Act and the [Poole Hospital NHS Foundation Trust and The Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust (Dissolution and Transfer of Property and Liabilities) Order 2020] effective from [DATE]. .

2.1.2 The functions of the Trust are conferred by 2006 Act and the Trust will exercise its functions in accordance with the terms of its provider licence (No. xxx) and all relevant legislation and guidance.

2.1.3 The principal places of business of the Trust are:

- (a) Poole Hospital
- (b) Royal Bournemouth Hospital, and
- (c) Christchurch Hospital

2.1.4 As a statutory body, the Trust has specified powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property on behalf of patients.

2.2 NHS Framework

2.2.1 The Constitution requires the Trust to adopt Standing Orders for the regulation of its proceedings and business. This document, together with Standing Financial Instructions (SFIs) and Scheme of Delegation set out the responsibilities of individuals.

2.3 Delegation of Powers

2.3.1 All business shall be conducted in the name of the Trust. The business of the Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Trust, subject to any contrary provisions of the 2006 Act given effect by the Constitution.

2.3.2 The Board 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 of Powers'. Those powers which it has delegated to Directors are also contained in the Scheme of Reservation and Delegation of Powers.

2.4 **Funds held on Trust**

2.4.1 All funds received in trust shall be 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.

2.4.2 Directors acting on behalf of the Trust as a corporate trustee 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.

3 **The Board of Directors**

3.1 **Composition of the Membership of the Board**

3.1.1 In accordance with Clause 21 of the Constitution, the composition of the Board shall be:

- (a) a non-executive Chairman; (Chairman to have a casting vote to ensure majority)
- (b) a minimum of seven other Non-Executive Directors (one of which may be nominated as the Senior Independent Director);
- (c) a minimum of eight Executive Directors including:
 - (i) the Chief Executive (Accounting Officer).
 - (ii) the Director of Finance.
 - (iii) a registered medical practitioner, or, a registered dental practitioner.
 - (iv) a registered nurse or registered midwife.

3.2 **Terms of Office of the Directors**

3.2.1 The Chairman and Non-Executive Directors shall be appointed for a term of office of up to three years.

3.2.2 The Chairman and Non-Executive Directors may be appointed to serve a further term of up to three years (depending on satisfactory performance) and subject to the provisions of the 2006 Act in respect of removal of a Director.

3.2.3 The Chairman and Non-Executive Directors may in exceptional circumstances serve longer than 6 years subject to annual re-appointment and subject to external competition if recommended by the Board and approved by the Council of Governors.

3.2.4 The provisions governing the remuneration, allowances, term of office and other terms and conditions of office for the Chairman and Non-Executive Directors are set out in Clause 31.1 of the Constitution.

3.2.5 The provisions governing the remuneration, allowances, term of office and other terms and conditions of office for the Chief Executive and other Executive Directors is set out in Clause 31.2 of the Constitution.

3.3 Appointment and Powers of Vice-Chairman

3.3.1 Subject to Standing Order 3.3.2 the Council of Governors may appoint a Non-Executive Director to be Vice-Chairman, for such period, not exceeding the remainder of that individual's term as a Non-Executive Director of the Trust, as they may specify on appointment.

3.3.2 Any Non-Executive Director so appointed may at any time resign from the office of Vice-Chairman by giving notice in writing to the Chairman (in the Chairman's capacity as Chair of the Board and the Council of Governors). The Council of Governors may thereupon appoint another Non-Executive Director as Vice-Chairman in accordance with the provisions of Standing Order 3.3.1.

3.3.3 Where the Chairman of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chairman owing to illness or any other cause, the Vice-Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes their duties, as the case may be; and references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform those duties, be taken to include references to the Vice-Chairman.

3.4 Appointment and Role of the Senior Independent Director

3.4.1 The Senior Independent Director (**SID**) is a role that is undertaken by one of the Trust's Non-Executive Directors. The SID should be available to all stakeholders, particularly Governors and Members, should they have concerns which they feel unable to resolve via normal channels, such as through contact with the Chairman or Chief Executive, or in circumstances in which such contact would be inappropriate.

3.4.2 The Board shall (following consultation with the Council of Governors) appoint one of the Non-Executive Directors as the SID for such a period not exceeding the remainder of the individual's term of office as a Non-Executive Director.

3.4.3 The SID shall maintain sufficient contact with Governors to understand their issues and concerns.

3.4.4 In accordance with a process to be agreed between the Chairman and Council of Governors, the SID will lead in the process for evaluating the performance of the Chairman.

3.4.5 The SID shall lead a meeting of the Non-Executive Directors at least annually without the Chairman to evaluate the Chairman's performance, as part of the process agreed with the Council of Governors for appraising the Chairman.

3.5 **Joint Directors**

Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for Executive Directorship or in relation to which an Executive Director is to be appointed jointly, those persons shall count for the purpose of these Standing Orders as one person (save that the Executive Director positions of registered medical practitioner or registered dentist and registered nurse or registered midwife cannot be shared between the two professions). Where such an arrangement is in force, both individuals may attend or take part in meetings of the Board provided that they may only count as one individual for the purposes of the quorum and may only exercise one vote between them. Where two individuals disagree as to how to vote at a Board meeting, then no vote shall be cast. If only one individual attends the meeting they can cast the vote on behalf of both. The presence of either or both persons shall count as the presence of one person for the purposes of quorum.

3.6 **Roles and responsibilities**

3.6.1 All the powers of the Trust are exercisable by the Board of Directors, a committee of the Board of Directors or an Executive Director.

3.6.2 The Board of Directors will function as a unitary Board. The Board is collectively responsible for discharging the powers and for the performance of the Trust. Executive and Non-Executive Directors will have joint responsibility for every decision of the Board regardless of their individual skills or status.

3.6.3 The Board will function as a corporate decision-making body and Non-Executive Directors and Executive Directors will be full and equal Board members. 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. In exercising these functions the Board will consider guidance from the NHS Foundation Trust Code of Governance as amended or replaced from time to time.

3.6.4 **Executive Directors**

Executive Directors shall exercise their authority within the terms of the Constitution these Standing Orders, the Standing Financial Instructions and the Scheme of Delegation.

3.6.5 **Chief Executive**

The Chief Executive shall be responsible for the overall performance of the Trust. The individual is the **Accounting Officer** and shall be responsible for ensuring the discharge of obligations under any financial directions and in guidance issued by Monitor or any other relevant body.

3.6.6 **Chief Finance Officer**

The Chief Finance Officer shall be responsible for the provision of financial advice to the Trust and to its Directors and for the supervision of financial control and accounting systems. The individual shall be responsible along with the Chief Executive for ensuring the discharge of obligations under any relevant financial directions.

3.6.7 **Non-Executive Directors**

The Non-Executive Directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust. They may however, exercise collective authority when acting as Directors of or when chairing a Committee of the Trust which has delegated powers.

3.6.8 **Chairman**

- (a) The Chairman shall be responsible for the leadership and operation of the Board (and Council of Governors) and chair all Board (and Council of Governors) meetings when present. The Chairman has certain delegated executive powers. The Chairman must comply with the terms of appointment, the Constitution and with these Standing Orders.
- (b) The Chairman shall take responsibility either directly or indirectly for the Non-Executive Director's induction, their portfolios of interests and assignments, and their performance.
- (c) The Chairman 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.

3.7 **Lead Roles for Directors**

The Chairman will ensure that the designation of lead roles or appointments of Board Directors to such lead roles as required by the Department of Health and Social Care or as set out in any statutory or other guidance will be made in accordance with that guidance or statutory requirement (e.g. appointing a lead Board member with responsibilities for Infection Control or Child Protection Services etc.).

4 **Board of Directors: Disqualification**

- 4.1 In addition to the grounds of disqualification set out in Clause 27 of the Constitution, a person may also not be or continue as a Director or Chairman of the Trust if:
 - 4.1.1 they are a member of the Council of Governors, or a governor of another NHS Foundation Trust;
 - 4.1.2 they are a director, or hold an equivalent role, of another NHS body except with the approval of the Board of Directors and in the case of a Non-Executive Director, with the approval of the Council of Governors;
 - 4.1.3 they are a member of a committee which has, any role on behalf of a local authority to scrutinise and review health matters including a local authority's scrutiny committee covering health matters;
 - 4.1.4 they are the spouse, partner, parent or child of a member of the Board of Directors;

- 4.1.5 in the case of a Non-Executive Director, they no longer satisfy relevant appointment requirements;
- 4.1.6 they are a person whose tenure of office as a chairman or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 4.1.7 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, by the coming to an end of fixed term contract or through ill health, from any paid employment with a health service body;
- 4.1.8 information revealed by a Disclosure and Barring Service check is such that it would be inappropriate for them to become or continue as a Director on the grounds that this would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
- 4.1.9 they are subject to an unexpired disqualification order made under the Company Directors Disqualification Act 1986;
- 4.1.10 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; or
- 4.1.11 they have refused to sign and deliver to the Company Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors;
- 4.1.12 in the case of an Executive Director, they are no longer employed by the Trust.

5 Meetings of the Board of Directors

5.1 Admission of the Public and the Press

- 5.1.1 Meetings of the Board of Directors shall be open to members of the public and representatives of the press unless the Board of Directors decides otherwise in relation to all or part of the meeting for reasons of commercial confidentiality or on other proper grounds. The Chairman may exclude any member of the public from a meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting.
- 5.1.2 In the event that the public and press are admitted to all or part of a Board meeting pursuant to Standing Order 5.1.1 above, the Chairman (or Vice-Chairman if one has been appointed) or the person presiding over the meeting shall give such directions as they think fit with regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Trust's business shall be conducted without interruption and disruption, and the public will be required to withdraw upon the Trust Board resolving that in the interests of public order the meeting adjourn for the period to be specified to enable the Board to complete its business without the presence of the public.
- 5.1.3 Matters to be dealt with by the Board following the exclusion of representatives of the press, and other members of the public, as provided

in Standing Order 5.1.1 above shall be confidential to the Directors of the Board.

- 5.1.4 The Chairman, Directors and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Trust, without the express permission of the Trust. This prohibition shall apply equally to the content of any discussion during the Board meeting which may take place on such reports or papers.

5.2 Calling Meetings

- 5.2.1 Ordinary meetings of the Board of Directors shall be held at regular intervals at such times and places as the Board of Directors may determine.

- 5.2.2 Meetings of the Board of Directors are called by the Company Secretary, or by the Chairman, or by four Directors who give written notice to the Company Secretary specifying the business to be carried out. The Company Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Company Secretary shall call a meeting within at least 14 but not more than 28 days to discuss the specific business. If the Company Secretary fails to call such a meeting within seven clear days, the Chairman or four Directors, whichever is the case, shall call such a meeting. The Chairman of the Trust may call a meeting of the Board at any time.

5.3 Notice of Meetings and the Business to be Transacted

- 5.3.1 Before each meeting of the Board a written notice specifying the business proposed to be transacted shall be delivered to every Director, or sent by post to the usual place of residence of each Director, so as to be available to Directors at least three clear days before the meeting. Want of service of such a notice on any Director shall not affect the validity of a meeting.

- 5.3.2 In the case of a meeting called by Directors in default of the Chairman calling the meeting, the notice shall be signed by those Directors.

- 5.3.3 No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under Standing Order 6.1

- 5.3.4 A Director desiring a matter to be included on an agenda shall make a request in writing to the Chairman 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 days before a meeting may be included on the agenda at the discretion of the Chairman.

- 5.3.5 In the event that a meeting of the Board is to be held in public pursuant to Standing Order 5.1 a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's principal offices at least three clear days before the meeting.

5.4 Agenda and Supporting Papers

5.4.1 The agenda will be sent to Directors six days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three clear days before the meeting, save in emergency.

5.4.2 Before holding a meeting, the Board of Directors will send a copy of the agenda (but not supporting papers) to the Council of Governors.

5.5 **Petitions**

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

5.6 **Notices of Motion**

5.6.1 Subject to the provision of Standing Orders 5.6.3 and 5.6.4, a Director of the Board wishing to move a motion shall send a written notice to the Chief Executive who will ensure that it is brought to the immediate attention of the Chairman.

5.6.2 The notice shall be delivered at least 10 clear days before the meeting. The Chief Executive shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

5.6.3 A motion or amendment once moved and seconded can be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.

5.6.4 Notice of motion to amend or 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 Director who gives it also the signature of four other Directors. When any such motion has been disposed of by the Board of Directors, it shall not be competent for any Director other than the Chairman to propose a motion to the same effect within six months; however, the Chairman may do so if they consider it appropriate.

5.6.5 The mover of a Motion shall have a right of reply at the close of any discussion on the Motion or any amendment thereto.

5.6.6 When a Motion is under discussion, or immediately prior to discussion, it shall be open to a Director to move:

- (a) an amendment to the Motion;
- (b) the adjournment of the discussion or meeting;
- (c) that the meeting proceed to the next business;
- (d) the appointment of an ad-hoc committee to deal with a specific item of business;

(e) that the Motion now be put.

5.6.7 No amendment to the Motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the Motion.

5.7 Chairman of Meeting

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

5.7.2 If the Chairman and Vice-Chairman are absent, such Non-Executive Director as the Directors present shall choose shall preside.

5.8 Chairman's Ruling

Statements of Directors made at meetings of the Trust shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

5.9 Voting

5.9.1 Every question/decision put to a vote at a meeting shall be determined by a majority of the votes of Chairman and Directors present and voting on the question and, in the case of an equality of votes, the person presiding shall have a second or casting vote. However, no resolution shall be passed if it is opposed by all the Non-Executive Directors or by all of the Executive Directors present.

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

5.9.3 If at least one-third of the Directors present so request, the voting on any question may be recorded so as to show how each Director present voted or did not vote (except when conducted by paper ballot).

5.9.4 If a Director so requests, that Director's vote shall be recorded by name upon any vote (other than by paper ballot).

5.9.5 In no circumstances may an absent Director vote by proxy. This does not prohibit an absent Director recording their vote with the Company Secretary in the election of the Senior Independent Director. Absence is defined as being absent at the time of the vote.

5.9.6 An Officer who has been formally appointed by the Board of Directors to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director.

5.9.7 An Officer attending the Board meeting to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

5.9.8 For the voting rules relating to joint Directors see Standing Order 3.5.

5.10 Record of Attendance

The names of the Chairman and Directors present at the meeting shall be recorded.

5.11 Quorum

5.11.1 No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of voting Directors are present, including at least one Non-Executive Director and one Executive Director.

5.11.2 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum. If the Chairman or Director 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 Standing Order 8.1) 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.

5.12 Minutes

5.12.1 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 person presiding at it. The approved minutes will be conclusive evidence of the events of the meeting.

5.12.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate.

5.12.3 As soon as practicable after holding a meeting, the Board of Directors shall send a copy of the minutes of the meeting to the Council of Governors. Where providing a record of a public meeting the minutes shall be made available to the public.

6 Arrangements for the exercise of functions

6.1 Emergency Powers and Urgent Decisions

The powers which the Board has retained to itself within these Standing Orders (see Standing Order 2.3.2) may in emergency or for an urgent decision be exercised by the Chief Executive and the Chairman after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the Board of Directors for ratification.

6.2 Delegation to Officers

- 6.2.1 Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate Executive Directors / Officers to undertake the remaining functions for which the Chief Executive will still retain accountability to the Board of Directors.
- 6.2.2 The Chief Executive shall prepare a Scheme of Delegation identifying proposals which shall be considered and approved by the Board of Directors, subject to any amendment agreed during discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board of Directors as indicated above.
- 6.2.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Director of Finance or other Executive Directors to provide information and advise the Board of Directors in accordance with the Constitution, the Trust's provider licence or any statutory or Department of Health and Social Care requirements or provisions required by Monitor. Outside these requirements the role of the Director of Finance shall be accountable to the Chief Executive for operational matters.
- 6.2.4 The Trust shall have a Trust Executive Group (with supporting sub-groups as deemed necessary by the Chief Executive) with delegated responsibility of the Chief Executive who may choose to review the structure at any stage.

6.3 Appointment of Committees

- 6.3.1 The Board of Directors may appoint Committees of the Board of Directors, consisting wholly of the Chairman and Directors of the Trust.
- 6.3.2 The Trust shall determine the membership and terms of reference of Committees and shall if it requires to, receive and consider reports of such Committees.

6.4 Applicability of Standing Orders and Standing Financial Instructions to Committees

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 established by the Board. In which case the term "Chairman" is to be read as a reference to the Chairman of other committee as the context permits, and the term "member" is to be read as a reference to a member of other Committee also as the context permits. (There is no requirement to hold meetings of Committees established by the Board in public).

6.5 Terms of Reference

Each such Committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the

Board shall decide and shall be in accordance with any legislation and regulation, or any guidance issued by Monitor.

6.6 Delegation of Powers by Committees to Sub-Committees

Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board of Directors.

6.7 Approval of Appointments to Committees

The Board shall approve the appointments to each of the Committees which it has formally constituted.

6.8 Appointments for Statutory Functions

Where the Board is required to appoint persons to a Committee and/or to undertake statutory functions and where such appointments are to operate independently of the Board such appointment shall be made in accordance with any applicable regulations and directions.

6.9 Committees Established by the Board

6.9.1 The Committees established by the Board are:

(a) Audit Committee

As laid down in the Constitution and the 2006 Act, a committee of Non-Executive Directors will be established and constituted to provide the Board with an independent and objective review on its financial systems, financial information and compliance with laws, guidance, and regulations governing the NHS. The Audit and Governance Terms of Reference will be approved by the Board and reviewed on a periodic basis.

(b) Finance and Performance Committee

The Committee is responsible for scrutinising the detailed financial reports and making recommendations to ensure the robust use of financial resources. The Committee will review the substance of the Annual Plan and revenue and capital budgets.

(c) Appointment and Remuneration Committee

As laid down in the Constitution and the 2006 Act, it is for a committee consisting of the Chairman, Chief Executive and the Non-Executive Directors to appoint or remove the other Executive Directors. As laid down in the Constitution and the 2006 Act a committee of Non-Executive Directors will be established to decide the remuneration and allowances of, and other terms and conditions of the Executive Directors. The Appointment and Remuneration Committee Terms of Reference will be approved by the Board and reviewed on a periodic basis.

(d) **Other Committees**

The Board of Directors may also establish such other Committees as required to discharge the Board of Director's responsibilities in relation to quality, finance and performance.

6.9.2 The Board of Directors may elect to change the Committees of the Board of Directors, as necessary, without requirement to amend these Standing Orders.

7 Confidentiality

7.1 A Director or appointee of a working group shall not disclose a matter dealt with, by, or brought before, the relevant committee or working group without its permission until the committee or working group has reported to the Board of Directors or shall otherwise have concluded on that matter.

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

8 Declaration of Interests and Register of Interests

8.1 Declaration of Interests

8.1.1 In accordance with Clause 30 of the Constitution the Chairman and Directors shall declare interests which are relevant and material to the Board of Directors, whether that interest is direct or indirect. All existing Directors and the Chairman should declare such interests. Any Directors or Chairman appointed subsequently should do so on appointment.

8.1.2 Any Director who fails to disclose any interest required to be disclosed under this section must permanently vacate their office if required to do so by the majority of the remaining Directors and (in the case of a Non-Executive Director) by the requisite majority of the Council of Governors.

8.1.3 Interests which should be regarded as "relevant and material" are:

- (a) outside employment and other engagements, outside of formal employment arrangements, including any directorships or non-executive director roles;
- (b) any shareholdings and other ownership interests in any publicly listed, private or not-for-profit company, business, partnership or consultancy which is doing, or might be reasonably expected to do, business with the Trust;
- (c) any interest in an organisation providing health and social care services to the National Health Service;
- (d) a position of authority in another NHS organisation or commercial, charity, voluntary, professional, statutory or other organisation in the field of health and social care;

- (e) any patents and other intellectual property rights held, which are, or might be reasonably expected to be related to items to be procured or used by the Trust;
- (f) research funding/grants that may be received by an individual or their department;
- (g) any clinical private practice.

8.1.4 If Directors have any doubt about the relevance of an interest, this should be discussed with the Chairman or with the Company Secretary.

8.1.5 At the time a Director's interests are declared, they should be reported in the minutes. Any changes in interest should be declared at the next Board of Directors' meeting following the change occurring.

8.1.6 Directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. This information should be kept up to date for inclusion in succeeding Annual Reports.

8.1.7 Interests to be declared include those of close family members and relatives, close friends and associates and business partners where Directors know (or could be reasonably expected to know) about these.

8.2 **Conflicts of Interest**

8.2.1 During the course of a Board meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision and shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

8.2.2 A conflict of interest is defined as a set of circumstances by which a reasonable person would consider that an individual's ability to apply judgement or act, in the context of delivering, commissioning, or assuring taxpayer funded health and care services is, or could be, impaired or influenced by the interest they hold.

8.3 **Register of Interests**

8.3.1 The Chief Executive will ensure that a register of interests is established to record formally declarations of interests of Directors and Committee and sub-committee members. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by both Executive and Non-Executive Directors.

8.3.2 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.

8.3.3 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 **Disability of Directors in Proceedings on account of Pecuniary Interest**

- 8.4.1 Subject to the following provisions of this Standing Order, if the Chairman or a Director of the Board has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 8.4.2 The Board of Directors may exclude the Chairman or a member of the Board from a meeting of the Board while any contract, proposed contract or other matter in which that member has a pecuniary interest is under consideration.
- 8.4.3 The Board of Directors, as it may think fit, may remove any disability imposed by this Standing Order in any case in which it appears to the Board of Directors that, in the interests of the Trust, the disability shall be removed. Such action shall have the support of more than half of the Directors present at the meeting (including two Executive and two Non-Executive Directors).
- 8.4.4 Any remuneration, compensation or allowance payable to the Chairman or a Director shall not be treated as a pecuniary interest for the purpose of this Standing Order.

9 Standard of Business Conduct

9.1 Policy

All staff should comply with the Trust's Constitution and NHS England's guidance "Managing Conflicts of Interest in the NHS" (1 June 2017) as updated or replaced from time to time.

9.2 Interest of officers in contracts

- 9.2.1 If it comes to the knowledge of a Director or Officer (the term office in this instance includes all staff, consultants, contractors and Governors) of the Trust that a contract in which they have any pecuniary interest, direct or indirect, the officer shall declare their interest by giving notice in writing of such fact to the Chief Executive or the Company Secretary as soon as practicable. In the case of married persons, civil partners or persons living together as partners, the interests of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 9.2.2 A Director or Officer should also declare to the Chief Executive any other employment or business or other relationship of that Director or Officer, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Trust will require interests, employment or relationships so declared to be entered in a register of interests of staff.

9.3 Canvassing of and recommendations by Directors in relation to appointments

Canvassing of Directors of the Trust or of members of any Committee of the Trust 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. Directors of the Trust 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 Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

9.4 Relatives of members or officers

9.4.1 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 or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render that individual liable to instant dismissal.

9.4.2 The Chairman and every Director and Officer of the Trust shall disclose to the Trust Board any relationship between himself and a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.

9.4.3 On appointment, a Director or the Chairman (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other member or holder of any office under the Trust.

9.4.4 Where the relationship to a member of the Trust is disclosed, the Standing Order headed 'Disability of Chairman and members in proceedings on account of pecuniary interest' (Standing Order 8.4) shall apply.

10 Custody of Seal and Sealing of Documents

10.1 Custody of Seal

The common seal of the Trust shall be kept by the Company Secretary in a secure place.

10.2 Sealing of Documents

Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two Executive Directors, not also from the originating department, and shall be attested by them.

10.3 Register of Sealing

10.3.1 An entry of every sealing shall be made and numbered consecutively by the Company Secretary. A report of all sealing shall be made to the Board of Directors annually.

10.3.2 The seal should be used to execute deeds (e.g. conveyances of land) or where otherwise required by law.

10.4 Signature of Documents

10.4.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any Executive Director.

10.4.2 The Chief Executive, or the Director of Finance or other Executive Directors shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors or any Committee or sub-committee to which the Board of Directors has delegated appropriate authority.

11 Standing Orders

11.1 Standing Orders to be given to Directors and Officers

It is the duty of the Chief Executive to ensure that existing Directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of the Standing Orders and Standing Financial Instructions.

11.2 Suspension of Standing Orders

11.2.1 Except where this would contravene any provision of the Constitution or authorisation of any statutory provision or any direction made by Monitor, or the rules relating to the quorum (Standing Order 5.11), 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 Directors of the Board are present (including at least one Executive Director and one Non-Executive Director) and that at least two-thirds of those Directors present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Board minutes.

11.2.2 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and Directors of the Trust.

11.2.3 No formal business may be transacted while Standing Orders are suspended.

11.2.4 The Audit Committee shall review every decision to suspend Standing Orders.

11.3 Amendment of Standing Orders

These Standing Orders shall not be varied except in accordance with Clause 41 of the Constitution.

11.4 Review of Standing Orders

The Standing Orders shall be reviewed annually by the Board of Directors.

Annex 8 – Further Provisions

1 Eligibility for Membership

- 1.1 The Trust shall at all times ensure that taken as a whole its actual membership is representative of those eligible for membership. The Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time.
- 1.2 An individual shall be eligible for Membership of the Trust provided:
 - 1.2.1 the individual is sixteen years of age at the date of application or invitation to become a Member (as the case may be); and
 - 1.2.2 the individual is otherwise eligible for Membership pursuant of the terms of this Constitution.
- 1.3 For the purposes of determining whether an individual lives in an area specified as an area for Public Constituency, an individual shall be deemed to do so if:
 - 1.3.1 That person's name appears on the electoral roll at an address within the said area and the Trust has no reasonable cause to conclude that the individual is not living at that address; or
 - 1.3.2 the Trust is otherwise satisfied that the individual lives in the said area.
- 1.4 An individual who is a Member of a Public Constituency shall cease to be eligible to continue as a Member if that individual ceases to live in the area of the Public Constituency of which the individual is a Member save as may otherwise be provided in paragraph 1 of this Annex.
- 1.5 Where a Member of a Public Constituency ceases to live permanently in an area for a Public Constituency of which that individual is a Member that individual shall forthwith advise the Trust that that individual is no longer eligible to continue as a Member and the Trust shall forthwith remove the individual's name from the Register of Members unless the Trust is satisfied that the individual concerned lives in some other Area for a Public Constituency of the Trust. Where the Trust is satisfied that such an individual continues to live in an Area for a Public Constituency of the Trust it shall, if the individual so requests, thereafter treat that individual as a Member of that other Public Constituency and amend the Register of Members accordingly provided the Trust has given that individual not less than fourteen days' notice of its intention to do so.
- 1.6 Where a Member ceases to live temporarily in an Area for a Public Constituency of which the individual is a Member, the Trust may permit that individual nonetheless to remain on the Register of Members for that Area for a Public Constituency if it is for good cause satisfied that the absence is of a temporary duration only and that the Member will either return to live in an Area for a Public Constituency of which that Member is a Member or will live in some other part of the Area of the Trust in which case the provisions of paragraph 1.5 of this Annex shall apply as appropriate.
- 1.7 A Member of a Staff Class will cease to be eligible to be a Member of that Staff Class if they no longer meet the eligibility requirements of Clause 8 of the Constitution and of Annex 2.

- 1.8 Where an individual is a Member by virtue of their eligibility to be a Member of a Staff Class and they cease to be eligible for membership of that Staff Class but are eligible for membership of some other Staff Class then the Trust may give notice to that Member of its intention to transfer the individual to that other Staff Class on the expiration of a period of time or upon a date specified in the said notice and shall after the expiration of that notice or date amend the Register of Members accordingly.

2 Application for Membership

- 2.1 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 Clause 8 of the Constitution.

- 2.2 Where an individual wishes to apply to become a Member of the Trust, the following procedure shall apply:

2.2.1 the Trust shall upon request supply the individual with a form of application for Membership in a form determined by the Trust;

2.2.2 upon receipt of the said form of application duly completed and signed by the applicant (or in the Trust's discretion signed on behalf of the applicant) the Trust shall as soon as is reasonable practicable and in any event within ten working days of receipt of the duly completed form consider the same;

2.2.3 unless the applicant is ineligible for Membership or is disqualified from Membership, the Trust shall cause the individual's name to be entered forthwith on the Trust's Register of Members and shall give notice in writing to the applicant of that fact;

2.2.4 upon the applicant's name being entered on the Trust's Register of Members the individual shall thereupon become a Member;

2.2.5 the information to be included in the Trust's Register of Members shall include the following details relating to that Member:

(a) full name and title;

(b) date of birth;

(c) full postal address;

(d) home telephone number (if any);

(e) email address (if any);

(f) the constituency of which the individual is a Member;

(g) the date upon which the individual became a Member;

(h) gender and ethnicity.

- 2.3 Where an individual is to be invited by the Trust to become a Member, the following procedure shall apply:

- 2.3.1 the Trust shall take all reasonable steps to satisfy itself that the individual is eligible to become a Member of the Staff Class of the Staff Constituency relevant to the individual before inviting the individual to become a Member of the Trust and that it has all the information needed to complete the Register of Members in accordance with paragraph 2.2.5 of this Annex;
- 2.3.2 the Trust having so satisfied itself, it shall thereupon invite that individual to become a Member pursuant to Clause 6 of the Constitution and if necessary shall request the individual to provide such further information, if any, as it may need to complete the necessary entry in the Register of Members;
- 2.3.3 unless the individual has within fourteen days of the date upon which the Trust dispatches its invitation to the individual to become a Member advised the Trust that the individual does not wish to become a Member, the Trust shall thereupon enter that individual's name on the Register of Members and the individual shall thereupon become a Member provided that the Trust has been provided with the information, if any, requested pursuant to paragraph 2.2.5 of this Annex to enable it to complete the relevant entry in the Register of Members;
- 2.3.4 if the individual has failed to provide the information requested by the Trust within fourteen days of being invited by the Trust to provide it in accordance with paragraph 2.2.5 of this Annex, the Trust shall give notice in writing to the applicant that the information has not been provided and that unless and until the information is provided that individual's name shall not be entered on the Register of Members.
- 2.4 No individual who is ineligible or disqualified from Membership shall be entered or remain on the Register of Members.
- 2.5 For the avoidance of doubt, an individual shall become a Member on the date upon which the individual's name is entered on the Trust's Register of Members and shall cease to be a Member upon the date on which the individual's name is removed from the Register of Members as provided for in this Constitution.
- 2.6 The Trust shall procure that the Register of Members and all other Registers to be maintained in accordance with this Constitution or in accordance with the 2006 Act are regularly reviewed and updated and that the Register of Members in particular is reviewed and updated as appropriate and no less often than every twenty-eight days.

3 Disqualification from Membership

- 3.1 A person may not become or continue to as a member of the Trust if:
 - 3.1.1 within the last five years they have shown aggressive or violent behaviour towards Trust staff which has resulted in a warning letter being sent in accordance with the Trust's Policy for the Management of Violence and Aggression;
 - 3.1.2 they have been confirmed as an unreasonable or persistent complainant in accordance with the relevant Trust policy for handling complaints; or

3.1.3 they have been removed as a member from another NHS Foundation Trust.

4 Termination of Membership

4.1 A Member shall cease to be a Member if:

4.1.1 they resign by notice to the Company Secretary;

4.1.2 they die;

4.1.3 they are expelled from Membership under this Constitution;

4.1.4 they are disqualified from Membership under this Constitution;

4.1.5 if it appears to the Company Secretary they no longer wish to be a Member of the Trust, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to establish that they wish to continue to be a Member of the Trust;

4.1.6 they cease to be entitled under this Constitution to be a member of the Public Constituency or of any of the classes of the Staff Constituency.

5 Expulsion from Membership

5.1 A Member may be expelled by a resolution approved by not less than two-thirds of the Council of Governors present and voting at a general meeting of the Council of Governors. The following procedure is to be adopted:

5.1.1 any Member may complain to the Company Secretary that another Member of the Trust has acted in a way detrimental to the interests of the Trust.

5.1.2 if a complaint is made, the Council of Governors will consider the complaint having taken such steps as it considers appropriate to ensure that each Member's point of view is heard and may either:

(a) dismiss the complaint and take no further action; or

(b) for a period not exceeding twelve months suspend the rights of the member of the Trust complained of to attend Members' Meetings and vote under the Constitution; or

(c) arrange for a resolution to expel the Member of the Trust complained of to be considered at the next General Meeting of the Council of Governors.

5.1.3 if a resolution to expel a Member of the Trust is to be considered at a General Meeting of the Council of Governor, details of the complaint must be sent to the Member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.

5.1.4 at the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the Member complained of may wish to place before them.

5.1.5 if the Member complained of fails to attend the meeting without reasonable cause the meeting may proceed in that Member's absence.

5.2 A person expelled from Membership will cease to be a Member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.

5.3 No person who has been expelled from Membership is to be re-admitted except by a resolution carried by not less than two-thirds of the members of the Council of Governors present and voting at a general meeting of the Council of Governors.

6 Disputes

6.1 Where an individual is held by the Trust to be ineligible and/or disqualified from Membership of the Trust and disputes the Trust's decision in this respect, the matter shall be referred to the Chief Executive (or such other officer of the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.

6.2 The Chief Executive (or a nominated representative) shall:

6.2.1 review the original decision having regard to any representations made by the individual concerned and such other material, if any, as the Chief Executive considers appropriate;

6.2.2 then either confirm the original decision or make some other decision as appropriate based on the evidence which the Chief Executive has considered; and

6.2.3 communicate his decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.

6.3 Notwithstanding paragraphs 5.1 and 6.2 an independent assessor may be appointed (as if it had been a possible removal pursuant to and using the process set out in paragraph 6.2) to consider the evidence and advise on whether this justified disqualification under the terms of the Constitution.

6.4 In the event that the independent assessor appointed pursuant to paragraph 6.3 advises that the evidence justifies the disqualification, the original decision to disqualify shall stand. If however the independent assessor advises that there is at least reasonable doubt that the evidence justified disqualification, the matter shall be put to the Council of Governors to decide whether to uphold the disqualification or not (such decision requiring support of not less than three quarters of the Governors present and voting at a meeting of the Council of Governors convened for that purpose). If the Council of Governors does not uphold the disqualification, then such disqualification shall not stand and the individual subject to the proposed disqualification shall remain a Member of the Trust.

6.5 Pending a decision of the independent assessor or the Council of Governors as referred to in paragraph 6.4, the individual shall (without prejudice to the outcome of such review process) not be able to exercise any right or powers of Member.

7 Annual Meeting

7.1 The Trust shall hold an Annual Meeting within eight months of the end of each Financial Year of the Trust.

- 7.2 Any Members' meetings other than the Annual Meeting shall be called "**Special Meetings**". Annual Meetings and Special Meetings are referred to in this paragraph 7 as "**Annual Meetings**".
- 7.3 Annual Meetings shall be open to all Members of the Trust, members of the Council of Governors and the Board of Directors, representatives of the Trust's financial auditors and to members of the public. The Trust may invite representatives of the media, and any experts or advisors, whose attendance they consider to be in the best interests of the Trust to attend an Annual Meeting. The Chairman may also exclude any member of the public from an Annual Meeting if they are interfering with or preventing the proper conduct of the meeting.
- 7.4 All Annual Meetings are to be convened by the Company Secretary by order of the Council of Governors.
- 7.5 The Trust shall make provision for the Annual Meeting to be held at a Hospital of the Trust or a venue close to a Hospital of the Trust.
- 7.6 The Board of Directors shall present at the Annual Meeting:
- 7.6.1 the annual accounts;
 - 7.6.2 any report of the external Auditor on them;
 - 7.6.3 the annual report; and
 - 7.6.4 forward planning information for the next Financial Year.
- 7.7 The Council of Governors shall present to the Annual Meeting:
- 7.7.1 a report on steps taken to secure that (taken as a whole) the actual membership is representative of those eligible for such Membership;
 - 7.7.2 the progress of the Membership strategy;
 - 7.7.3 any proposed changes to the policy for the composition of the Council of Governors and of the Non-Executive Directors;
 - 7.7.4 the results of the election and appointment of Governors any other reports or documentation it considers necessary or otherwise required by Monitor or the 2006 Act (to be commenced by the Company Secretary).
- 7.8 The Trust shall give notice of all Annual Meetings:
- 7.8.1 by notice in writing to all Members;
 - 7.8.2 by notice prominently displayed at the Trust's main address and at all of the Trust's principal places of business;
 - 7.8.3 by notice on the Trust's website at least seven clear days before the date of the meeting;
 - 7.8.4 to the Council of Governors and the Board of Directors, and to the Trust's auditors stating whether the meeting is an Annual or Special Meeting giving the time, date and place of the meeting and indicating the business to be dealt with at the meeting.

- 7.9 The Chairman or in their absence the Vice Chairman shall preside at all Annual Meetings of the Trust. If neither the Chairman nor the Vice Chairman is present, the Lead Governor shall act as Chairman at all Annual Meetings of the Trust. If neither is present, the members of the Council of Governors present shall elect a Governor from the elected Constituencies (public and staff) to be Chairman and if there is only one such Governor present and willing to act they shall be Chairman.
- 7.10 Before an Annual Meeting can do business there must be a quorum present. Except where this Constitution says otherwise, a quorum is 20 Members present. If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of Members present during the meeting is to be a quorum.
- 7.11 A resolution put to the vote at an Annual Meeting shall be decided upon by a poll.
- 7.12 Every Member present and every Member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chairman of the meeting is to have the second or casting vote.
- 7.13 The result of any vote will be declared by the Chairman and recorded in the minutes. The minutes will be conclusive evidence of the result of the vote.
- 7.14 Minutes of the proceedings of an Annual Meeting shall be prepared and submitted to be read and for agreement at the next Annual Meeting where they will be considered to have been signed by the person presiding at it. The approved minutes will be conclusive evidence of the events of the meeting.

Annex 9– Model Election Rules

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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, which operates with the National Health Service Trust Development Authority as NHS Improvement.”;

“numerical voting code” has the meaning set out in rule 55.2(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 National Health Service Act 2006 have the same meaning in these rules as in that Schedule.

Part 2 – Timetable for election

2. Timetable

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

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

3. Computation of time

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

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

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

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

Part 3 – Returning officer

4. Returning officer

4.1 Subject to rule 60, 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 60, 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 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 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 or 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, and
- (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 postal address although an e-mail address may also be provided for the purpose of the 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 paper must state:

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

and if the candidate has no such interests, the form 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 is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and
- (b) for a member of the public constituency of the particulars of his 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,
- (c) their declaration of interests as required under rule 11, is true and correct, and
- (d) 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 paper is invalid,
- (c) receives satisfactory proof that the candidate has died, or
- (d) receives a written request by the candidate of their withdrawal from candidacy.

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

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

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

as given in their nomination form

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

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

16. Inspection of statement of nominated candidates and nomination papers

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

16.2 If a member of the corporation requests a copy or extract of the statements of candidates or their nomination forms, the corporation is to provide that person 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 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 has not marked or returned any other voting paper in the election, and
- (c) the particulars of his qualification to vote as a member of the constituency or class within the constituency or 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 declaration of identity with his 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 members email address, if this has been provided

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

- 22.3 The corporation may decide that the e-voting information is to be sent only by 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 documents 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 documents 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 52 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 55 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 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 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 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 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 is entitled to at the election;
- (c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (ii) the candidate or candidates for whom the voter has voted; and
 - (iii) the date and time of the voter's vote
- (d) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (e) prevent any voter from voting after the close of poll.

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

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

29. Spoilt ballot papers and spoilt text message votes

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

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 can obtain it.

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

- (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 text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.
- 29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):
- (a) the name of the voter, and
 - (b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
 - (c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter’s identity,
 - (b) has no reason to doubt that the voter did not receive the original voting information,
 - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list (“the list of lost ballot documents”):
- (a) the name of the voter

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

31. Issue of replacement voting information

31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed 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 under this rule, the returning officer shall enter in a list ("the list of tendered ballot papers"):

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

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

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

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 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.

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

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)

38.1 Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to:

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

39. De-duplication of votes

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

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

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

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

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

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

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

40. Sealing of packets

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

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declarations forms if required,
- (c) the list of spoiled ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

Part 6 - Counting the votes

41. Arrangements for counting of the votes

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

41.2 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.

42. The count

42.1 The returning officer is to:

- (a) count and record the number of :
 - (i) ballot papers that have been returned, and
 - (ii) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
- (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 41.2(ii) where vote counting software is being used

42.2 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.

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

43. Rejected ballot papers and rejected text voting records

43.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the

- other ballot papers to prevent them from being reproduced,
- (b) on which votes are given for more candidates than the voter is entitled to vote,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

shall, subject to rules 43.2 and 43.3, be rejected and not counted.

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

43.3 A ballot paper on which a vote is marked:

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

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

43.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules 43.2 and 43.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

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

- (a) does not bear proper features that have been incorporated into the ballot paper,

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

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

43.6 Any text voting record:

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

shall, subject to rules 43.7 and 43.8, be rejected and not counted.

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

43.8 A text voting record on which a vote is marked:

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

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

43.9 The returning officer is to:

- (a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and
- (b) in the case of a text voting record on which any vote is counted under rules 43.7 and 43.8, endorse the words “rejected in part” on the text

voting record and indicate which vote or votes have been counted.

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

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

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

44 Equality of votes

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

Part 7 – Final proceedings in contested and uncontested elections

45 Declaration of result for contested elections

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

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the Aintree Hospital NHS Foundation

Trust by section 33(4) of the 2003 Act, to the chairman of the NHS Trust, or

(ii) in any other case, to the chairman of the corporation; and

(c) give public notice of the name of each candidate whom he or she has declared elected.

45.2 The returning officer is to make:

(a) the total number of votes given for each candidate (whether elected or not), and

(b) the number of rejected ballot papers under each of the headings in rule 43.5,

(c) the number of rejected text voting records under each of the headings in rule 43.10

available on request.

46. Declaration of result for uncontested elections

46.1 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

47. Sealing up of documents relating to the poll

47.1 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 papers 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

47.2 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.

47.3 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.

48. Delivery of documents

48.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49 , the returning officer is to forward them to the chair of the corporation.

49. Forwarding of documents received after close of the poll

Where:

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

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

50. Retention and public inspection of documents

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

50.2 With the exception of the documents listed in rule 51.1, 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.

50.3 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.

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

51.1 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

- (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 regulator.

51.2 A person may apply to the regulator to inspect any of the documents listed in rule 51.1 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.

51.3 The board of directors of the corporations 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.

51.4 On an application to inspect any of the documents listed rule 51.1 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 the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

52. Countermand or abandonment of poll on death of candidate

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

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

52.2 Where a new election is ordered under rule 52.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

52.3 Where a poll is abandoned under paragraph (52.1)(a), paragraphs (52.4) to (52.7) are to apply.

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

52.5 The returning officer is to:

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

ensure that complex 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,

52.6 The returning officer is to endorse on each packet a description of:

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

52.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (52.4) to (52.6), the returning officer is to deliver them to the chairman of the corporation, and rules 50 and 51 are to apply.

Part 10 – Election expenses and publicity

Election expenses

53. Election Expenses

53.1 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 to the regulator under Part 11 of these rules.

52. Expenses and payments by candidates

52.1 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.

53. Election expenses incurred by other persons

53.1 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.

53.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 56 and 57.

Publicity

54. Publicity about election by the corporation

54.1 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.

54.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 57, must be:

- (a) objective, balanced and fair,

- (b) (as far as the information provided by the candidates so allows) 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.

54.3 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.

55. Information about candidates for inclusion with voting information

55.1 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.

55.2 The information must consist of:

- (a) a statement submitted by the candidate of no more than 250 words, and
- (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

if supplied by the candidate.

56. Meaning of "for the purposes of an election"

56.1 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.

56.2 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

57. Application to question an election

57.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor or the purpose of seeking a referral to the independent election arbitration panel (IEAP).

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

57.3 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.

57.4 The application must:

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

57.5 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.

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

57.7 Monitor shall delegate the determination of an application to a person or persons to be nominated for the purpose of the regulator.

57.8 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.

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

Part 12 – Miscellaneous

58. Secrecy

58.1 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 a ballot paper 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.

58.2 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.

58.3 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.

59. Prohibition of disclosure of vote

59.1 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.

60. Disqualification

60.1 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.

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

61.1 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 and declarations of identity,

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

Annex 10 - Transitional Provisions

1 Interim Directors

- 1.1 The Interim Directors shall exercise the functions of the Trust on its behalf until such time as the Board of Directors is appointed in accordance with this Constitution.
- 1.2 The Interim Directors shall comply with this Constitution in exercising the functions of the Trust as if they were the Directors.
- 1.3 This Constitution shall apply to the Interim Directors as if they were the Directors.

2 Initial Governors

- 2.1 The term of office for the Initial Governors will commence on the date notified to them by the Trust in writing and shall be for the terms set out below. Any Initial Governor who is elected to serve a further term of office thereafter will serve a term of office of three years.
- 2.2 For the Poole and Rest of Dorset Public Constituency, the three Governors that poll the highest number of votes will serve a term of office of three years. The three Governors polling the next highest number of votes will serve a term of two years.
- 2.3 For the Bournemouth Public Constituency, the three Governors that poll the highest number of votes will serve a term of office of three years. The three Governors polling the next highest number of votes will serve a term of two years.
- 2.4 For the Christchurch, East Dorset and Rest of England Public Constituency, the three Governors that poll the highest number of votes will serve a term of office of three years. The two Governors polling the next highest number of votes will serve a term of two years.
- 2.5 The Governors elected to represent the Staff Constituency shall draw lots to determine their term of office. Three of these Staff Governors shall serve a term of three years and two shall serve a term of two years.
- 2.6 Where a Governor has been elected unopposed, the length of their term of office will be determined by a lot so as to secure that there is an appropriate balance of Governors serving two and three year terms.
- 2.7 All Appointed Governors shall have an initial term of three years.
 - 2.7.1 Until such time as the Initial Governors are elected, the Appointed Governors shall be responsible for holding the Non-Executive Directors individually and collectively to account for their performance as a Board.
 - 2.7.2 Before holding a meeting, the Interim Directors must send a copy of the agenda of the meeting to the Appointed Governors. As soon as practicable after holding a meeting, the Interim Directors must send a copy of the minutes of the meeting to the Appointed Governors.
 - 2.7.3 The Appointed Governors may hold a meeting for the purpose of exercising their general duty to hold the Interim Non-Executive Directors

individually and collectively to account for their performance. The Company Secretary shall, at the request of at least two Appointed Governors, call a meeting of the Appointed Governors and shall provide at least ten (10) days' written notice of any such meeting. The meeting shall be quorate provided that at least three Appointed Governors are in attendance. One of the Interim Non-Executive Directors shall preside at any meeting of the Appointed Governors.

- 2.7.4 Meetings of the Appointed Governors shall be held in accordance with Clause 16 of the Constitution and paragraphs 7-18 of the Standing Orders for the Council of Governors.
- 2.7.5 The Appointed Governors shall declare any interests that they may have in accordance with Clause 18 of the Constitution and the Standing Orders for the Council of Governors.