Mersey Care NHS
NHS Foundation Trust

MERSEY CARE NHS FOUNDATION TRUST

(A PUBLIC BENEFIT CORPORATION)

CONSTITUTION

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Version 5

Striving for perfect care
for those we serve

Mersey Care NHS
NHS Foundation Trust

CONSTITUTION

Further information about this document:

Document name	**Foundation Trust Constitution**
Document summary	**As a Public Benefit Corporation, Mersey Care NHS Foundation Trust is required to have a Constitution outlining how the Foundation Trust conducts its business and holds its meetings, including the Council of Governors (and committees) and the Board of Directors (and committees)**
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To be read in conjunction with	**Standing Financial Instructions** **Scheme of Delegation** **Council of Governors Code of Conduct (contained within the Governor's Handbook)**
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CONSTITUTION OF

MERSEY CARE NHS FOUNDATION TRUST

A PUBLIC BENEFIT CORPORATION

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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.

1.2.1. **the 2006 Act** is the National Health Service Act 2006.

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

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

1.2.4. **Annual Members' Meeting** is defined in Paragraph 12 of the constitution.

1.2.5. **Appointed Governor** means a governor appointed by one of the appointing organisations listed in Paragraph 2.4 of Annex 4.

1.2.6. **the Board** means the Board of Directors.

1.2.7. **Constitution** means this constitution and all annexes to it.

1.2.8. **Lead Governor** means the governor appointed by the Council of Governors to fulfil the role described at Paragraph 11 of Annex 6 below.

1.2.9. the **MHA** means the Mental Health Act 1983.

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

1.2.11. **NHS Commissioning Board** is the body corporate established pursuant to Section 1H of the 2006 Act, known as NHS England.

1.2.12. **NHS England** is the NHS Commissioning Board.

1.2.13. **Partnership Organisation** means an organisation specified in paragraph 2.4.2 of Annex 4 who may appoint an 'Appointed Governor'

1.2.14. **Public Governor** means a governor elected by the members of one of the Public Constituencies.

1.2.15. **Risk Assessment Framework** means the guidance of the same name published by Monitor in August 2015.

1.2.16. **Service User and Carer Governor** means a governor elected by the members of the Service User and Carer Constituency.

1.2.17. **Service User and Carer Assembly** means an assembly established by the trust for engaging with service users and carers who want to hear about the trust's services, know more about the trust and listen to or take part in discussions and debates on mental health issues. Members of the assembly are responsible for electing the members of the Standing Committee of the Service User and Carer Assembly.

1.2.18. **Staff Governor** means a governor elected by the members of one of the classes of the Staff Constituency.

1.2.19. the **trust** means Mersey Care NHS Foundation Trust.

1.2.20. **Trust Secretary** means the secretary of the trust or any other person appointed to perform the duties of the secretary including a secretarial assistant.

2. NAME

2.1. The name of the foundation trust is Mersey Care 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 principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

3.3. The trust may provide goods and services for any purposes related to –

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

3.3.2. the promotion and protection of public health

3.4. The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order to better carry on its principal purpose.

4. POWERS

4.1. The powers of the trust are set out in the 2006 Act.

4.2. All the powers of the trust shall be exercised by the Board of Directors on behalf of the trust.

4.3. Subject to paragraph 4.4 below, any of these powers may be delegated to a committee of directors or to an executive director.

4.4. The Board of Directors may authorise any three or more persons each of whom is neither:

4.4.1. an executive director of the trust; nor

4.4.2. an employee of the trust;

to exercise the powers conferred on the trust by Section 25 of the MHA.

5. MEMBERSHIP AND CONSTITUENCIES

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

5.1.1. a public constituency

5.1.2. a staff constituency

5.1.3. a service user and carer 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.

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 for a public constituency are referred to collectively as a Public Constituency.

7.3. The minimum number of members in each Public Constituency is specified in Annex 1.

8. STAFF CONSTITUENCY

8.1. An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided:

8.1.1. he/she is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

8.1.2. he/she 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, otherwise 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 are referred to collectively as the Staff Constituency.

8.4. The Staff Constituency shall be divided into 7 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.

9. AUTOMATIC MEMBERSHIP BY DEFAULT – STAFF

9.1. An individual who is:

9.1.1. eligible to become a member of the Staff Constituency, and

9.1.2. invited by the trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

10. SERVICE USER AND CARER CONSTITUENCY

10.1. An individual who has, within the period specified below, attended any of the trust's premises as either a patient or as the carer of a patient may become a member of the trust.

10.2. The period referred to above shall be the period of 3 years immediately preceding the date of an application by the patient or carer to become a member of the trust.

10.3. Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Service User and Carer Constituency.

10.4. An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Service User and Carer Constituency.

10.5. The minimum number of members of the Service User and Carer Constituency is specified in Annex 3.

11. RESTRICTION ON MEMBERSHIP

11.1. An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.

11.2. An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.

11.3. An individual must be at least 14 years old to become a member of the trust.

11.4. 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 10 (Further Provisions – Members).

12. ANNUAL MEMBERS' MEETING

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

12.2. Further provisions about the Annual Members' Meeting are set out in Annex 10.

13. THE COUNCIL OF GOVERNORS – COMPOSITION

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

13.2. The composition of the Council of Governors is specified in Annex 4.

13.3. The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

14. THE COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS

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

14.2. 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 the trust's authorisation are attached at Annex 5.

14.3. A subsequent variation of the Model Election Rules by NHS Providers shall not constitute a variation of the terms of this constitution for the purposes of paragraph 47 of the constitution (amendment of the constitution).

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

14.5. A Member may not vote at an election for a Public or Service User and Carer Governor unless within the specified period he/she has made a declaration in the specified form that he/she is a Member of the Public or Service User and Carer Constituency and stating the particulars of his qualification to vote as a Member of that Membership Constituency for which an election is being held. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.

14.6. The form and content of the declaration and the period for making such a declaration for the purposes of paragraph 14.5 above shall be specified and published by the Trust from time to time and shall be so published not less than 14 days prior to an election.

14.7. Governors must be at least 16 years of age at the closing date for nominations for their election or appointment.

15. COUNCIL OF GOVERNORS - TENURE

15.1. An elected governor may hold office for a period of up to 3 years except on the first election of governors to the trust when terms of office shall be organised to enable staggered future elections as set out in Annex 6.

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

15.3. An elected governor shall be eligible for re-election at the end of his term, but shall serve for no more than three consecutive terms of office.

15.4. An appointed governor may hold office for a period of up to 3 years except on the first appointment of governors to the trust when terms of office shall be organised to enable staggered future elections as set out in Annex 6.

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

15.6. An appointed governor shall be eligible for re-appointment at the end of his term, but shall serve for no more than three consecutive terms of office.

16. COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL

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

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

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

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

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

16.2. Governors must be at least 16 years of age at the closing date for nominations for their election or appointment.

16.3. Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors and provision for the removal of Governors in certain circumstances are set out in Annex 6.

17. COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS

17.1. The general duties of the Council of Governors are:

17.1.1. to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors; and

17.1.2. to represent the interests of the members of the trust as a whole and the interests of the public.

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

18. COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS

18.1. The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 27.1 or paragraph 28.1 below) or, in his absence the Vice Chair (appointed in accordance with the provisions of paragraph 29 below), shall preside at meetings of the Council of Governors.

18.2. Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons in accordance with Standing Order 3.1.2 of Annex 8.

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

19. COUNCIL OF GOVERNORS – STANDING ORDERS

19.1. The standing orders for the practice and procedure of the Council of Governors are attached at Annex 8.

20. COUNCIL OF GOVERNORS – REFERRAL TO THE PANEL

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

20.1.1. to act in accordance with its constitution; or

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

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

21. COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS

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

21.2. The Council of Governors will adopt a policy for managing conflicts of interest.

22. COUNCIL OF GOVERNORS – TRAVEL EXPENSES

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

23. COUNCIL OF GOVERNORS – FURTHER PROVISIONS

23.1. Further provisions with respect to the Council of Governors are set out in Annex 6.

24. BOARD OF DIRECTORS – COMPOSITION

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

24.2. The Board of Directors is to comprise:

24.2.1. a non-executive Chairman;

24.2.2. at least 4 and not more than 7 other non-executive directors; and

24.2.3. at least 4 and not more than 7 executive directors.

24.3. At least half of the Board of Directors, excluding the Chairman, shall be comprised of non-executive directors.

24.4. If, at any time, there is an equal number of executive directors and non-executive directors (including the Chairman) on the Board then the Chairman shall have an additional and casting vote.

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

24.6. The Chief Executive shall be the Accounting Officer.

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

24.8. One of the executive directors is to be a registered medical practitioner.

24.9. One of the executive directors is to be a registered nurse.

25. BOARD OF DIRECTORS – GENERAL DUTY

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

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

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

26.1.1. he/she is a member of a Public Constituency, or

26.1.2. he/she is a member of the Service User and Carer Constituency, and

26.1.3. he/she is not disqualified by virtue of paragraph 32 below.

27. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIRMAN AND OTHER NON-EXECUTIVE DIRECTORS

27.1. 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.

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

27.3. The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 28 below.

28. BOARD OF DIRECTORS – APPOINTMENT OF INITIAL CHAIRMAN AND INITIAL OTHER NON-EXECUTIVE DIRECTORS

28.1. The Council of Governors shall appoint the Chairman of the applicant NHS Trust as the initial Chairman of the trust, if he/she wishes to be appointed.

28.2. The power of the Council of Governors to appoint the other non-executive directors of the trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the trust any of the non-executive directors of the applicant NHS Trust (other than the Chairman) who wish to be appointed.

28.3. The criteria for qualification for appointment as a non-executive director set out in paragraph 26 above (other than disqualification by virtue of paragraph 32 below) do not apply to the appointment of the initial chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

28.4. An individual appointed as the initial chairman or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chairman or (as the case may be) non-executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he/she shall be appointed for 12 months.

29. BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIRMAN

29.1. The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman. The deputy chairman shall be called the “Vice Chair”.

30. BOARD OF DIRECTORS - APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS

30.1. The non-executive directors shall appoint or remove the Chief Executive.

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

30.3. The initial Chief Executive is to be appointed in accordance with paragraph 31 below.

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

31. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF INITIAL CHIEF EXECUTIVE

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

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

32. BOARD OF DIRECTORS – DISQUALIFICATION

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

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

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

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

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

32.2. Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out in Annex 7.

33. BOARD OF DIRECTORS – MEETINGS

33.1. 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 in accordance with Standing Order 4.42 of Annex 9.

33.2. 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. Agendas and minutes of public meetings will be available on the trust's website. Minutes shall be published in approved form.

34. BOARD OF DIRECTORS – STANDING ORDERS

34.1. The standing orders for the practice and procedure of the Board of Directors are attached at Annex 9.

35. BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS

35.1. The duties that a director of the trust has by virtue of being a director include in particular:

35.1.1. 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;

35.1.2. 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.

35.2. The duty referred to in paragraph 35.1.1 is not infringed if:

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

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

35.3. The duty referred to in paragraph 35.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

35.4. In paragraph 35.1.2, "third party" means a person other than:

35.4.1. the trust; or

35.4.2. a person acting on its behalf.

35.5. 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.

35.6. If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.

35.7. Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.

35.8. This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

35.9. A director need not declare an interest:

35.9.1. if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

35.9.2. if, or to the extent that, the directors are already aware of it;

35.9.3. if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –

35.9.3.1. by a meeting of the Board of Directors; or

35.9.3.2. by a committee of the directors appointed for the purpose under the constitution.

35.10. A matter shall have been authorised for the purposes of paragraph 35.2.2 if it has previously been approved by the Board of Directors at a meeting and the minutes of the meeting shall be conclusive evidence of such approval having been given.

35.11. The Board of Directors will adopt a policy for managing conflicts of interests.

36. BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE

36.1. 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.

36.2. 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.

37. REGISTERS

37.1. The trust shall have:

37.1.1. a register of members showing, in respect of each member, the constituency to which he/she belongs and, where there are classes within it, the class to which he/she belongs;

37.1.2. a register of members of the Council of Governors;

37.1.3. a register of interests of governors;

37.1.4. a register of directors; and

37.1.5. a register of interests of the directors.

38. ADMISSION TO AND REMOVAL FROM THE REGISTERS

38.1. The Trust Secretary shall be responsible for establishing registers and for keeping these registers up-to-date.

38.2. The Council of Governors shall review the registers listed at Paragraphs 37.1.1 to 37.1.3 (inclusive) at least annually.

38.3. The Board of Directors shall review the registers listed at Paragraphs 37.1.4 to 37.1.5 (inclusive) at least annually.

38.4. The removal of any member from the register of members shall be undertaken in accordance with the provisions of paragraph 5 of Annex 10 to this constitution.

39. REGISTERS – INSPECTION AND COPIES

39.1. The trust shall make the registers specified in paragraph 37 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

39.2. The trust shall not make any part of its registers available for inspection by members of the public which shows details of:-

39.2.1. any member of the Service User and Carer Constituency; or

39.2.2. any other member of the trust, if he/she so requests.

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

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

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

39.4. 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.

40. DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

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

40.1.1. a copy of the current constitution;

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

40.1.3. a copy of the latest annual report.

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

40.2.1. 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;

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

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

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

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

40.2.6. 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;

40.2.7. a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;

40.2.8. a copy of any final report published under section 65 I (administrator's final report) of the 2006 Act;

40.2.9. 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;

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

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

40.4. 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.

41. AUDITOR

41.1. The trust shall have an auditor.

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

42. AUDIT COMMITTEE

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

43. ACCOUNTS

43.1. The trust must keep proper accounts and proper records in relation to the accounts.

43.2. Monitor may with the approval of the Secretary of State give directions to the trust as to the content and form of its accounts.

43.3. The accounts are to be audited by the trust's auditor.

43.4. 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.

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

44. ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK

44.1. The trust shall prepare an Annual Report and send it to Monitor.

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

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

44.4. In preparing the document, the directors shall have regard to the views of the Council of Governors.

44.5. Each forward plan must include information about:

44.5.1. 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

44.5.2. the income it expects to receive from doing so.

44.6. Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in paragraph 44.5.1 the Council of Governors must:

44.6.1. 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

44.6.2. notify the directors of the trust of its determination.

44.7. 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.

45. PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS

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

45.1.1. the annual accounts;

45.1.2. any report of the auditor on them;

45.1.3. the annual report.

45.2. The documents shall also be presented to the members of the trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.

45.3. The trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 45.1 with the Annual Members' Meeting.

46. INSTRUMENTS

46.1. The trust shall have a seal.

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

47. AMENDMENT OF THE CONSTITUTION

47.1. The trust may make amendments of its constitution only if:

47.1.1. more than half of the members of the Council of Governors of the trust voting approve the amendments; and

47.1.2. more than half of the members of the Board of Directors of the trust voting approve the amendments.

47.2. Amendments made under paragraph 47.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.

47.3. Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust):

47.3.1. at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and

47.3.2. the trust must give the members an opportunity to vote on whether they approve the amendment.

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

47.5. Amendments by the trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

48. MERGERS ETC AND SIGNIFICANT TRANSACTIONS

48.1. 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.

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

48.3. For the purposes of paragraph 48.2:

48.3.1. a transaction is an investment or disinvestment; and

48.3.2. a transaction is significant if it falls within the definition of a 'significant transaction' as set out in NHS Improvement's Transactons Guidance (November 2017) calculated with reference to the trust's opening balance sheet for the financial year in which approval is being sought

48.4. For the avoidance of doubt, for the purposes of paragraph 48.2, the term 'transaction' shall not include the renewal of an existing contract with a commissioning organisation for the provision of services for the purposes of the health service in England and Wales.

48.5. If more than half of the members of the Council of Governors voting decline to approve a significant transaction or any part of it, the Council of Governors must approve a written Statement of Reasons for its rejection, to be provided to the Board of Directors.

48.6. Nothing in this paragraph 48 shall prevent the Board of Directors from engaging with the Council of Governors, as it sees fit, about any other transaction or arrangement which the trust may enter into, which does not constitute a "significant transaction" within the meaning of this paragraph.

ANNEX 1 – THE PUBLIC CONSTITUENCIES

Name of the Public Constituency	Area of the Public Constituency (comprising all of the Electoral Wards within the following Local Authority areas and / or Countries)	Minimum Number of Members	Number of Governors
Liverpool, Sefton and Knowsley	• City of Liverpool • Sefton Metropolitan Borough Council • Knowsley Metropolitan Borough Council	120	3
Ribble Valley	• Ribble Valley District Council	20	1
Rest of England and Wales	All local authorities in England not referred to elsewhere in this Annex and the country of Wales	30	2
Total	• Minimum membership of the Public Constituencies	170	-
	• Number of Public Governors	-	8

ANNEX 2 – THE STAFF CONSTITUENCY

Staff Classes within the Staff Constituency	Individuals eligible for membership of the relevant Class	Minimum number of members	Number of governors
Medical Staff	Those members of staff employed by the trust who are registered with a medical regulatory body to practise	30	1
Nursing Staff	Those members of staff employed by the trust who are registered nurses	30	3
Other Clinical and Clinical Support Staff	1) Those members of clinical, scientific and therapeutic staff who hold recognised clinical, scientific or therapeutic qualifications (with the exception of those with recognised medical or nursing qualifications); and 2) those staff who provide clinical support services (e.g., health care assistants, nursing assistants, peer support workers, support workers)	30	3
Non-Clinical staff	The members of the Non Clinical Staff Class include: • Board members (excluding Non-Executive Directors); • senior managers; • administrative staff; • IT staff; • staff working in procurement; • security staff; • estates and facilities staff; • finance staff; and • library staff	20	1
Total	Minimum membership of the Staff Constituency	110	-
Total	Number of Staff Governors	-	8

In the case of any query as to which class of the Staff Constituency a member of staff is eligible to be a member of, the Trust Secretary shall be responsible for determining which one of the four (4) classes of the Staff Constituency, shown in this Annex, the member of staff is eligible to be a member of. If any member of staff is eligible to be a member of more than one class of the Staff Constituency, he/she shall select one class to be a member of or, where he/she fails to do so (including where he/she fails to notify the Trust Secretary of his/her selection), the Trust Secretary shall determine the class that the member of staff shall be a member of and shall notify the member of that determination in writing.

ANNEX 3 – THE SERVICE USER AND CARER CONSTITUENCY

The Service User and Carer Constituency has not been divided into classes.

The minimum number of members of the Service User and Carer Constitiency is 135.

The Service User and Carer Constitiency will have 8 governors.

ANNEX 4 – COMPOSITION OF THE COUNCIL OF GOVERNORS

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

COMPOSITION

1. The aggregate number of Public Governors and Service User and Carer Governors is to be more than half of the total number of members of the Council of Governors.

2. The Council of Governors shall be comprised of 29 Governors, as follows:

    2.1. 8 Public Governors from the following public constituencies:

        2.1.1. Liverpool, Sefton and Knowsley – 5 Public Governors

        2.1.2. Ribble Valley – 1 Public Governor

        2.1.3. Rest of England and Wales – 2 Public Governors.

    2.2. 8 Staff Governors from the following classes of the Staff Constituency:

        2.2.1. Medical Staff – 1 Staff Governor

        2.2.2. Nursing Staff – 3 Staff Governors

        2.2.3. Other Clinical and Clinical Support Staff – 3 Staff Governors

        2.2.4. Non Clinical Staff – 1 Staff Governor.

    2.3. 8 Service User and Carer Governors.

    2.4. 5 Appointed Governors:

        2.4.1. The Trust Secretary shall be responsible for determining which two of the following local authorities shall have the right to appoint a governor, from time to time, following consultation with the Board of Directors:

            2.4.1.1. Knowsley Metropolitan Borough Council,

            2.4.1.2. Liverpool City Council,

            2.4.1.3. Sefton Metropolitan Borough Council, and

            2.4.1.4. Ribble Valley District Council.

            Each local authority slected to appoint a governor shall have the right to appoint 1 governor.

        2.4.2. The unions amd other staff representative bodies formally recognised by the trust shall have the right to appoint 1 governor between them.

        2.4.3. The following universities / academic partners shall have the right to appoint 1 governor between them:

2.4.3.1. Edge Hill University,

2.4.3.2. University of Liverpool, and

2.4.3.3. Liverpool John Moores University.

The Trust Secretary shall, following consultation with the Board of Directors, identify one of the universities / academic partners to act on behalf of all of them for the purposes of appointing the governor.

2.4.4. The following voluntary sector organisations shall have the right to appoint 1 governor between them:

2.4.4.1. Knowsley Community and Voluntary Services,

2.4.4.2. Liverpool Charity and Voluntary Services, and

2.4.4.3. Sefton Council for Voluntary Services.

The Trust Secretary shall, following consultation with the Board of Directors, identify one of the voluntary sector organisations to act on behalf of all of them for the purposes of appointing the governor.

2.5. The organisations listed in paragraphs 2.4.2. to 2.4.4 (inclusive) above are specified for the purposes of paragraph 9(7) of Schedule 7 to the 2006 Act.

TRANSITION

3. All governors in post as at 1 April 2018 shall continue to serve their current term of office.

4. The Public Governors elected to represent the separate public constituencies of:

4.1. Liverpool;

4.2. Sefton; and

4.3. Knowsley

that existed prior to 1 April 2018 shall continue to serve as Public Governors for the combined public constituency of Liverpool, Sefton and Knowsley

5. The Public Governors elected to represent the public constituencies of:

5.1. Cumbria, Lancashire (excluding Ribble Valley) and Greater Manchester; and

5.2. Cheshire, St Helens, Wirral, West Midlands and Wales

that existed prior to 1 April 2018 shall continue to serve as Public Governors for the Rest of England and Wales public constituency.

6. The Staff Governors elected to represent the staff classes of:

6.1. Medical Staff (not transferred from Calderstones); and

6.2. Medical Staff (transferred from Calderstones);

that existed prior to 1 April 2018 shall continue to serve as Staff Governors for the Medical Staff class.

7. The Staff Governors elected to represent the staff classes of:

7.1. Nursing Staff (not transferred from Calderstones); and

7.2. Nursing Staff (transferred from Calderstones);

that existed prior to 1 April 2018 shall continue to serve as Staff Governors for the Nursing Staff class.

8. The Staff Governors elected to represent the staff classes of:

8.1. Other Clinical and Clinical Support Staff (not transferred from Calderstones); and

8.2. Other Clinical and Clinical Support Staff (transferred from Calderstones);

that existed prior to 1 April 2018 shall continue to serve as Staff Governors for the Other Clinical and Clinical Support Staff class.

9. The Service User and Carer Governors elected to represent the service user and carer classes of:

9.1. Service Users in Liverpool, Sefton or Knowsley

9.2. Service Users in the rest of England and Wales

9.3. Carers in Liverpool, Sefton or Knowsley

9.4. Carers in the rest of England and Wales

that existed prior to 1 April 2018 shall continue to serve as Service User and Carer Governors.

10. Those governors whose term of office is due to expire on 30 April 2018 shall continue to serve as governors until 30 September 2018, provided that such an extension to their term of office does not exceed the maximum term of office set out in paragraph 15 of the Constitution.

ANNEX 5 – THE 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;

"2012 Act" means the Health and Socila Care Act 2012;

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

"*council of governors*" means the council of governors of the corporation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Part 2 – Timetable for 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 69, the returning officer for an election is to be appointed by the corporation.

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

5. Staff

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

6. Expenditure

6.1 The corporation is to pay the returning officer:

(a) any expenses incurred by that officer in the exercise of his or her functions under these rules,

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

7. Duty of co-operation

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

8. Notice of election

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

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

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

(c) the details of any nomination committee that has been established by the corporation,

(d) the address and times at which nomination forms may be obtained;

(e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,

(f) the date and time by which any notice of withdrawal must be received by the returning officer,

(g) the contact details of the returning officer,

(h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

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

9.2 The returning officer:

(a) is to supply any member of the corporation with a nomination form, and

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

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

10. Candidate's particulars

10.1 The nomination paper must state the candidate's:

(a) full name,

(b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and

(c) constituency, or class within a constituency, of which the candidates a member.

11. Declaration of interests

11.1 The nomination form must state:

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

(b) whether the candidate is a member of a political party, and if so, which party,

and if the candidate has no such interests, the 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 or she is not prevented from being a member of the board of governors by paragraph 8 of Schedule 1 of the 2006 Act or by any provision of the constitution; and,

(b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate

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

(a) they wish to stand as a candidate,

(b) their declaration of interests as required under rule 11, is true and correct, and

(c) their declaration of eligibility, as required under rule 12, is true and correct.

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

14. Decisions as to the validity of nomination

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

(a) decides that the candidate is not eligible to stand,

(b) decides that the nomination form is invalid,

(c) receives satisfactory proof that the candidate has died, or

(d) receives a written request by the candidate of their withdrawal from candidacy.

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

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

(b) that the paper does not contain the candidate's particulars, as required by rule 10,

(c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,

(d) that the paper does not include a declaration of eligibility as required by rule 12, or

(e) that the paper is not signed and dated by the candidate, if required by rule 13.

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

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

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

15. Publication of statement of nominated candidates

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

15.2 The statement must show:

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

(b) the declared interests of each candidate standing,

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

16.1 The corporation is to make the statements of the candidates and the nomination form 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 member with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

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

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

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

(a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and

(b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

Part 5 – Contested elections

19. Poll to be taken by ballot

19.1 The votes at the poll must be given by secret ballot.

19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.

19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.

19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:

(a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:

(i) configured in accordance with these rules; and

(ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;

(b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:

(i) configured in accordance with these rules; and

(ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;

(c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:

(i) configured in accordance with these rules; and

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

20. The ballot paper

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

20.2 Every ballot paper must specify:

(a) the name of the corporation,

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

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

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

(e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,

(f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and

(g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

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

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

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

(a) that the voter is the person:

(i) to whom the ballot paper was addressed, and/or

(ii) to whom the voter ID number contained within the e-voting information was allocated,

(b) that he or she has not marked or returned any other voting information in the election, and

(c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

("declaration of identity")

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

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

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

Action to be taken before the poll

22. List of eligible voters

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

22.2 The list is to include, for each member:

(a) a postal address; and

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

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

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

23. Notice of poll

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

(a) the name of the corporation,

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

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

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

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

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

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

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

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

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

(k) the date and time of the close of the poll,

(l) the address and final dates for applications for replacement voting information, and

(m) the contact details of the returning officer.

24. Issue of voting information by returning officer

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

(a) a ballot paper and ballot paper envelope,

(b) the ID declaration form (if required),

(c) information about each candidate standing for election, pursuant to rule 61 of these rules, and

(d) a covering envelope.

("postal voting information")

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

(a) instructions on how to vote and how to make a declaration of identity (if required)

(b) the voter's voter ID number,

(c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the returning officer thinks appropriate,

(d) contact details of the returning officer.

("e-voting information").

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

(a) only be sent postal voting information; or

(b) only be sent e-voting information; or

(c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

(a) the address for return of the ballot paper printed on it, and

(b) pre-paid postage for return to that address.

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

(a) the completed ID declaration form if required, and

(b) the ballot paper envelope, with the ballot paper sealed inside it.

26. E-voting systems

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

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

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

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

(a) require a voter to:

(i) enter his or her voter ID number; and

(ii) where the election is for a public or patient constituency, make a declaration of identity;

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

(b) specify:

(i) the name of the corporation,

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

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

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

(v) instructions on how to vote and how to make a declaration of identity,

(vi) the date and time of the close of the poll, and

(vii) the contact details of the returning officer;

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

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

(i) the voter's voter ID number;

(ii) the voter's declaration of identity (where required);

(iii) the candidate or candidates for whom the voter has voted; and

(iv) the date and time of the voter's vote,

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

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

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

(a) require a voter to

(i) enter his or her voter ID number in order to be able to cast his or her vote; and

(ii) where the election is for a public or patient constituency, make a declaration of identity;

(b) specify:

(i) the name of the corporation,

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

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

(iv) instructions on how to vote and how to make a declaration of identity,

(v) the date and time of the close of the poll, and

(vii) the contact details of the returning officer;

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

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

(i) the voter's voter ID number;

(ii) the voter's declaration of identity (where required);

(iii) the candidate or candidates for whom the voter has voted; and

(iv) the date and time of the voter's vote

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

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

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

(a) require a voter to

(i) provide his or her voter ID number; and

(ii) where the election is for a public or patient constituency, make a declaration of identity;

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

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

(c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:

(i) the voter's voter ID number;

(ii) the voter's declaration of identity (where required);

(iii) the candidate or candidates for whom the voter has voted; and

iv) the date and time of the voter's vote;

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

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

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

29. Spoilt ballot papers and spoilt text message votes

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

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

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

(a) is satisfied as to the voter's identity, and

(b) has ensured that completed ID declaration form, if required, has not been returned.

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

(a) the name of the voter, and

(b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and

(c) the details of the unique identifier of the replacement ballot paper.

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

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

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

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

(a) the name of the voter, and

(b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and

(c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

30.1 Where a voter has not received his or her voting nformation 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 a 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 the declaration of identity, if required, has not 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 a replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

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

(a) the name of the voter, and

(b) the details of the unique identifier of the replacement ballot paper issued under this rule,

(c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

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

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

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

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

34. Voting procedure for remote voting by telephone

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

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

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

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

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

35. Voting procedure for remote voting by text message

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

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

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

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

36. Receipt of voting documents

36.1 Where the returning officer receives:

(a) a covering envelope, or

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

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

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

(a) the candidate for whom a voter has voted, or

(b) the unique identifier on a ballot paper.

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

37. Validity of votes

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

37.2 Where the returning officer is satisfied that paragraph 37.1has 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 paragraph 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) [1]

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

(a) mark the ID declaration form “disqualified”,

(b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper; and

(c) place the ID declaration form in a separate packet.

39. De-duplication of votes

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

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

(a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and

(b) mark as “disqualified” all other votes that were cast using the relevant voter ID number

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

(a) mark the ballot paper “disqualified”,

(b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,

(c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents,

(d) place the document or documents in a separate packet, and

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

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

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

(a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,

(b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;

(c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and

(d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

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

(a) the disqualified documents, together with the list of disqualified documents inside it,

(b) the ID declaration forms, if required,

(c) the list of spoilt ballot papers and the list of spoilt text message votes,

(d) the list of lost ballot documents,

(e) the list of eligible voters, and

(f) the list of tendered voting information

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

Part 6 - Counting the votes

41. Interpretation of Part 6

41.1 In Part 6 of these rules –

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

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

42. Arrangements for counting of the votes –

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

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

(a) the board of directors and the council of governors of the corporation have approved:

(i) the use of such software for the purpose of counting votes in the relevant election, and

(ii) a policy governing the use of such software, and

(b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

43.1 The returning officer is to:

(a) count and record the number of:

(i) ballot papers that have been returned; and

(ii) the number of internet voting records, telephone voting records and/or text voting records that have been created, and

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

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

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

44. Rejected ballot papers and rejected text voting records

44.1 Any ballot paper:

(a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

(b) on which 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 44.2 and 44.3 below, be rejected and not counted.

44.2 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.

44.3 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.

44.4 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 44.2 or 44.3 above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

44.5 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.

44.6 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 44.7 and 44.8, be rejected and not counted.

44.7 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.

44.8 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.

44.9 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 44.7 and 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

44.10 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.

45 Not used

46 Not used

47 Not used

48 Not used

49 Not used

50 Not used

51. Equality of votes

51.1 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

52. Declaration of result for contested elections

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

(a) declare the 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 Mersey Care NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or

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

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

52.2 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 44.5,

(c) the number of rejected ballot papers under each of the headings in rule 44.10,

available on request.

53. Declaration of result for uncontested elections

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

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

(b) give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation, and

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

Part 8 – Disposal of documents

54. Sealing up of documents relating to the poll

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

(a) the counted ballot papers, internet voting records, telephone voting records and text voting records,

(b) the ballot papers and text voting records endorsed with “rejected in part”,

(c) the rejected ballot papers and text voting records, and

(d) the statement of rejected ballot papers and the statement of rejected text voting records.

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

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

(a) the disqualified documents, with the list of disqualified documents inside it,

(c) the list of spoilt ballot papers and the list of spoilt text message votes,

(d) the list of lost ballot papers, and

(e) the list of eligible voters,

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

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

(a) its contents,

(b) the date of the publication of notice of the election,

(c) the name of the corporation to which the election relates, and

(d) the constituency, or class within a constituency, to which the election relates.

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where –

(a) any voting documents are received by the returning officer after the close of the poll, or

(b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or

(c) any applications for replacement voting information are made too late to enable new voting information to be issued,

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

57. Retention and public inspection of documents

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

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

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

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

58.1 The corporation may not allow:

(a) the inspection of, or the opening of any sealed packet containing:

(i) any rejected ballot papers, including ballot papers rejected in part,

(ii) any rejected text voting records, including text voting records rejected in part,

(iii) any disqualified documents, or the list of disqualified documents,

(iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or

(v) the list of eligible voters, or

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

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

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

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

(a) persons,

(b) time,

(c) place and mode of inspection,

(d) production or opening,

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

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

(a) in giving its consent, and

(b) in making the documents available for inspection,

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

(i) that his or her vote was given, and

(ii) that Monitor has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

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

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

(a) 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.

59.2 Where a new election is ordered under rule 59.1, 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.

59.3 Where a poll is abandoned under rule 59.1(a), rules 59.4 to 59.7 are to apply.

59.4 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.

59.5 The returning officer is to:

(a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,

(b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and

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

59.6 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.

59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules 59.4 to 59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

Part 10 – Election expenses and publicity

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates –

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

(a) personal expenses,

(b) travelling expenses, and expenses incurred while living away from home, and

(c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

62. Election expenses incurred by other persons –

62.1 No person may:

(a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or

(b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

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

Publicity

63. Publicity about election by the corporation –

63.1 The corporation may:

(a) compile and distribute such information about the candidates, and

(b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

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

(a) objective, balanced and fair,

(b) equivalent in size and content for all candidates,

(c) compiled and distributed in consultation with all of the candidates standing for election, and

(d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

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

(b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text voting facility ("numerical voting code"), and

(c) a photograph of the candidate.

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

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

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

Part 11 – Questioning elections and the consequence of irregularities

66. Application to question an election

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

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

66.3 An application may only be made to Monitor by:

(a) a person who voted at the election or who claimed to have had the right to vote, or

(b) a candidate, or a person claiming to have had a right to be elected at the election.

66.4 The application must:

(a) describe the alleged breach of the rules or electoral irregularity, and

(b) be in such a form as the independent election arbitration panel may require.

66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.

66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

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

66.8 The determination by the independent election arbitration panel shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

66.9 The independent election arbitration panel may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

67. Secrecy

67.1 The following persons

(a) the returning officer,

(b) the returning officer's staff,

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

(i) the name of any member of the corporation who has or has not been given voting information or who has or has not voted,

(ii) the unique identifier on any ballot paper,

(iii) the voter ID number allocated to any voter,

(iii) the candidate(s) for whom any member has voted.

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

(a) a member of the corporation,

(b) an employee of the corporation,

(c) a director of the corporation, or

(d) employed by or on behalf of a person who has been nominated for election.

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

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

(a) the delivery of the documents in rule 24, or

(b) the return of the ballot papers 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 by such period as he or she considers appropriate.

ANNEX 6 –
ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

1. APPOINTED GOVERNORS

1.1. The appointed governors shall be appointed by the appointing organisations, in accordance with a process agreed with the Trust Secretary.

2. NOT USED

3. TENURE FOR GOVERNORS

Appointed governors

3.1. An appointed governor:

3.1.1. shall subject to the staggered initial appointments required by paragraph 9 of this Annex 6 below normally hold office for a period of three years commencing immediately after the Annual Members' Meeting at which his appointment is announced save where such term of office commences pursuant to the exercise of paragraph 8.2 of this Annex 6 below on the occasion of a vacancy, in which case the relevant term of office shall commence on the date of such appointment and shall expire on the expiry of the remainder of the term of office of the governor who has vacated the seat;

3.1.2. shall be eligible for re-appointment at the end of his term of office;

3.1.3. may not hold office for longer than nine consecutive years, and shall not be eligible for re-appointment if he/she has already held office for more than six consecutive years.

3.2. For the purposes of these provisions concerning terms of office for appointed governors, "year" means a period commencing on the date the appointed governor took office and ending twelve (12) calendar months later.

3.3. An appointed governor shall cease to hold office if the organisation which appointed him terminates his employment or contract for services or withdraws its sponsorship of him.

Elected Governors

3.4. An elected governor:

3.4.1. shall subject to the staggered initial terms of office required by paragraph 9 of this Annex 6 below normally hold office for a period of three years commencing on the date notified to him by the trust following the election process save where such term of office commences pursuant to the exercise of paragraph 8.2 of this Annex 6 below on the occasion of a vacancy, in which case the relevant term of office shall commence on the date of such appointment and

shall expire on the expiry of the remainder of the term of office of the governor who has vacated the seat;

3.4.2. shall be eligible for re-election at the end of his term of office;

3.4.3. may not hold office for longer than nine consecutive years, and shall not be eligible for re-election if he/she has already held office for more than six consecutive years.

3.5. For the purposes of these provisions concerning terms of office for elected governors, “year” means a period commencing on the date the elected governor took office and ending twelve (12) calendar months later.

4. FURTHER PROVISIONS AS TO ELIGIBILITY TO BE A GOVERNOR

4.1. A person may not become a governor of the trust, and if already holding such office will immediately cease to do so, if:

4.1.1. they are a Director of the trust or a director of any other NHS body (unless they are appointed by an appointing organisation which is an NHS body);

4.1.2. they are the spouse, partner, parent or child of a member of the Board of Directors of the trust;

4.1.3. they are a member of a local authority’s scrutiny committee covering health matters;

4.1.4. they are a director (or equivalent) of the trust’s Local Healthwatch (unless they are appointed by such an organisation);

4.1.5. they have previously been removed as a governor pursuant to paragraph 6 or 7 of this Annex 6;

4.1.6. they are under 16 years of age at the closing date for nominations for their election or appointment;

4.1.7. they refuse to sign a declaration in the form specified by the Trust Secretary confirming that they are not prevented by this constitution from being a member of the Council of Governors;

4.1.8. they fail to sign and deliver to the Trust Secretary a statement in the form required by the Trust Secretary confirming acceptance of the code of conduct for governors;

4.1.9. they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirement to register under current legislation;

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

4.1.11. they are a person whose tenure of office as the chair or as a member or governor or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, reasons including non-attendance at meetings or for non-disclosure of a pecuniary interest;

4.1.12. on the basis of disclosures obtained through an application to the Disclosure and Barring Service, they are not considered suitable by the trust's director responsible for human resources;

4.1.13. they are a person who has had his name removed or been suspended from any list (including any performers list maintained by NHS England) prepared under the 2006 Act or under any related subordinate legislation or who has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had his name included in such a list or had his suspension lifted or qualification reinstated;

4.1.14. Monitor has exercised its powers to remove that person as a governor of an NHS foundation trust or has suspended him from such office or has disqualified him from holding office as a governor for a specified period or Monitor has exercised any of those powers concerned at any time;

4.1.15. he/she lacks capacity within the meaning of the Mental Capacity Act 2005;

4.1.16. he/she requires and has not been granted leave within the meaning of the MHA in order to attend Council of Governor meetings;

4.1.17. they have within the preceding five (5) years been made subject to or are currently subject to:

4.1.17.1. a Hospital Order under section 37 of the MHA whether or not subject to restrictions under section 41;

4.1.17.2. an interim Hospital Order under section 38 of the MHA;

4.1.17.3. a hospital direction under section 45A of the MHA;

4.1.17.4. a transfer direction under section 47 or section 48 of the MHA whether or not subject to restrictions under section 49; and/or

4.1.17.5. an order under the Criminal Procedure (Insanity) Act 1964 as amended;

4.1.18. they are an unfit person within the meaning of the trust's provider licence, save where Monitor has provided approval in writing to them becoming or continuing as a governor.

4.2. The Trust Secretary shall, at his/ her entire discretion, determine whether an individual is eligible to become or continue as a governor under the provisions of paragraph 4.1 above.

5. TERMINATION OF OFFICE AND REMOVAL OF GOVERNORS

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

5.1.1. they resign by notice in writing to the Trust Secretary;

5.1.2. they fail to attend three consecutive meetings of the Council of Governors, unless a majority of the other governors are satisfied that:

5.1.2.1. the absences were due to reasonable causes; and

5.1.2.2. they will be able to start attending meetings of the Council of Governors again within such a period as the other governors consider reasonable;

5.1.3. they have refused without reasonable cause to undertake any training which the Council of Governors requires all governors to undertake;

5.1.4. they have failed to sign and deliver to the Trust Secretary a statement in the form required by the Trust Secretary confirming acceptance of the code of conduct for governors;

5.1.5. they are removed from the Council of Governors under the provisions of paragraphs 6 or 7 of this Annex 6;

5.1.6. they are expelled from membership of the trust or in the case of any elected governor cease to be a member of the trust for any other reason.

6. TERMINATION OF OFFICE AND REMOVAL OF GOVERNOR – FAILURE TO DISCLOSE A DECLARABLE INTEREST

6.1. Any governor who fails to disclose any interest required to be disclosed under this constitution must permanently vacate their office if required to do so by a majority of the remaining governors.

7. TERMINATION OF OFFICE AND REMOVAL OF GOVERNORS – PROCESS FOR REMOVAL BY THE COUNCIL OF GOVERNORS

7.1. 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 the meeting on grounds including but not limited to that:

7.1.1. they have committed a material breach of any code of conduct for governors; or

7.1.2. they have acted in a manner detrimental to the interests of the trust; or

7.1.3. the Council of Governors considers that it is not in the best interests of the trust for them to continue as a governor;

and there is a recommendation from a working group formed under paragraph 7.2 below for them to be removed from office.

7.2. There shall be a working group of the Council of Governors whose function shall be to receive and consider concerns about the conduct of any governor and to make recommendations to the Council of Governors. The working group shall be made up of one governor from the Public Constituencies, one governor from the Service User and Carer Constituency, one governor from the Staff Constituency and one Appointed Governor. Each member of the working group shall be appointed by the Council of Governors and shall serve until they are otherwise removed or resign. The quorum of the working group shall be three (3) governors. No governor may consider any concern of which they are the subject.

7.3. If any governor, director or member of the trust has concerns about the conduct of any governor, including but not limited to where such conduct involves:

7.3.1. a breach of any governors' code of conduct;

7.3.2. causing disruption to meetings of the Council of Governors, Board of Directors, members meetings, any working group of the Council of Governors or any committee of the trust;

7.3.3. threatening any individual;

7.3.4. jeopardising the health or welfare of any patient;

7.3.5. causing disruption to the operations of the trust; or

7.3.6. causing damage to the reputation of the trust;

he/she may make a complaint in writing about that governor to the working group of governors established pursuant to paragraph 7.2 above, which shall investigate the complaint and make recommendations to the Council of Governors as to any action the working group considers necessary, which may include a recommendation that a governor is removed from office pursuant to paragraph 7.1 above.

7.4. A governor may resign from office by giving notice in writing to the Trust Secretary, to take effect immediately or following such period of notice as may be specified in such notice. For the avoidance of doubt, any such resignation does not need to be accepted by the Trust Secretary to be effective.

8. VACANCIES AMONGST GOVERNORS

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

8.2. Where the vacancy arises amongst the appointed governors, the Trust Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.

8.3. Where the vacancy arises amongst the elected governors, the Trust Secretary shall, having consulted the Chairman, either:

8.3.1. call an election within three months to fill the seat for the remainder of that term of office; or

8.3.2. invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next election, at which time the seat will fall vacant and subject to election or

8.3.3. to leave the seat vacant until the next elections are held provided that during such period, the Council of Governors will continue to meet the requirement at paragraph 1 of Annex 4 of this constitution and can continue to meet the quorum requirements at paragraph 3.11 of Annex 8 of this constitution.

9. NOT USED

10. GOVERNORS' CODE OF CONDUCT

10.1. The trust may from time to time publish a governors' code of conduct and each governor shall be required, on his appointment, to provide written confirmation that he/she will abide by any such code of conduct.

10.2. The Trust Secretary in consultation with the Chairman, shall draw up any code of conduct for approval by the Board of Directors. Any amendment to the code of conduct shall be made using the same process.

11. LEAD GOVERNOR

11.1. The Council of Governors shall appoint one of the governors as the Lead Governor. Subject to paragraphs 11.2 and 11.3 below, such governor shall fulfil the role of the Lead Governor for a period of 12 months.

11.2. The Council of Governors may reappoint a governor to the position of Lead Governor at the end of any 12 month period, if he/she wishes to be so reappointed.

11.3. If the Lead Governor notifies the Council of Governors, prior to the end of his term in office, that he/she no longer wishes to be the Lead Governor then the Council of Governors shall appoint another governor as the Lead Governor.

11.4. The role and responsibilities of the Lead Governor will be determined by the trust and set out in a written role description. They shall include but not be limited to:

11.4.1. leading the Council of Governors where it would be inappropriate for the Chairman or Vice Chair to do so, such circumstances to be determined by the senior independent director;

11.4.2. providing input to the senior independent director in respect of the evaluation of the Chairman; and

11.4.3. liaising with Monitor where it would be inappropriate for the Chairman to do so.

11.5. The Lead Governor will act in accordance with the terms of reference for the Lead Governor produced by the trust, as may be updated from time to time.

11.6. The Lead Governors shall lead the Council of Governors in the event that:

11.6.1. neither the Chairman or Vice Chair is present at a meeting; or

11.6.2. both the Chairman and the Vice Chair are disqualified from voting by virtue of a conflict of interest.

12. COMMUNICATIONS FROM GOVERNORS

12.1. Any communications to the members as a whole from individual governors shall be approved by the Council of Governors or, where such communication is requested between meetings of the Council of Governors, the communication may be approved by the Chairman.

12.2. Any communications which are approved in accordance with paragraph 12.1 above, shall be distributed to the members by the trust acting through the Trust Secretary.

12.3. The trust shall facilitate communications between a governor and the members in his constituency on no more than two (2) occasions per annum. Any such communications shall be distributed by the trust acting through the Trust Secretary.

12.4. Any communication produced by a governor for the purposes set out above, must make clear that the views or opinions expressed therein are those of that governor and not necessarily those of the trust. The Trust Secretary shall have the right to insert such a provision in any communication where such a provision is lacking.

12.5. Individual governors may, by making a request to the Chairman, request that the trust circulates information to the other governors. Subject to paragraph 12.6 below, the Chairman shall circulate the requested information to the governors, via the Trust Secretary, where the Chairman considers that the information relates to the business of the Council of Governors.

12.6. The Chairman or Trust Secretary may decline to circulate the information requested to be circulated under the provisions of this paragraph 12 for reasons including but not limited to:

12.6.1. the volume of information to be circulated;

12.6.2. the frequency of such requests;

12.6.3. the nature of the information to be circulated; or

12.6.4. the administrative cost to the trust of circulating such information.

12.7. For the avoidance of doubt, the trust shall not provide to any governor the contact details of any member who has requested that his details, as recorded in the register of members, are not available for inspection by the public.

ANNEX 7 - ADDITIONAL PROVISIONS – BOARD OF DIRECTORS

1. APPOINTMENT AND REMOVAL OF CHAIRMAN AND OTHER NON-EXECUTIVE DIRECTORS

1.1. A nominations committee with external advice, as appropriate, shall be responsible for the identification and nomination of non-executive directors.

1.2. The Council of Governors will maintain a policy for the composition of the non-executive directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.

1.3. The nominations committee will comprise the Chairman of the trust (or, when a chairman is being appointed, the Vice Chair unless he/she is standing for appointment, in which case another non-executive director), two elected governors and one appointed governor. The chair of another foundation trust may be invited to act as an independent assessor to the nominations committee but shall not be a member of such committee.

1.4. The nominations committee may work with an external organisation recognised as expert at appointments to identify the skills and experience required for non-executive directors.

1.5. The nominations committee shall regularly review the structure size and composition of the Board of Directors and make recommendations for change, where appropriate.

1.6. The nominations committee shall prepare a description of the role and capabilities required for any new non-executive director appointment and an assessment of the time commitment required. The Council of Governors shall take into account the views of the Board of Directors on the qualifications, skills and experience required for the position.

1.7. Suitable candidates (not more than five for each vacancy) will be identified by a nominations committee through a process of open competition. Once suitable candidates have been identified, the nominations committee shall make recommendations to the Council of Governors.

2. THE REMOVAL OR RESIGNATION OF THE CHAIRMAN AND OTHER NON-EXECUTIVE DIRECTORS

2.1. Any proposal for removal of the Chairman or another non-executive director must be proposed by a governor and seconded by not less than twelve governors including at least two elected governors and two appointed governors.

2.2. Written reasons for the proposal shall be provided to the non-executive director in question, who shall be given the opportunity to set out his position in response.

2.3. In making any decision to remove the Chairman or another non-executive director, the Council of Governors shall take into account the most recent annual appraisal carried out in respect of the Chairman or other non-executive director.

2.4. Removal of the Chairman or any other non-executive director shall require the approval of three-quarters of the members of the Council of Governors. If any proposal to remove a non-executive director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such non-executive director based upon the same reasons within twelve months of the meeting.

2.5. The Chairman or any other non-executive director may resign from office by giving notice in writing to the Chief Executive, to take effect immediately or following such period of notice as may be specified. For the avoidance of doubt, any such resignation does not need to be accepted by either the Chief Executive or the Council of Governors to be effective.

3. FURTHER PROVISIONS AS TO ELIGIBILITY TO BE A DIRECTOR

A person may not become or continue as a director of the trust if:

3.1. they are a member of the Council of Governors;

3.2. they are a governor of another NHS body (this provision will not apply to the initial non-executive directors);

3.3. they are the spouse, partner, parent or child of a member of the Board of Directors of the trust;

3.4. they are a member of a local authority's scrutiny committee covering health matters;

3.5. they are a person whose tenure of office as a chair 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 health service, for reasons including nonattendance at meetings, and the non-disclosure of a pecuniary interest;

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

3.7. in the case of a non-executive director they have refused without reasonable cause to fulfil any training requirement for members of the Board of Directors;

3.8. they have refused to sign and deliver to the Trust Secretary a statement in the form required by the Board of Directors confirming acceptance of any code of conduct for directors;

3.9. on the basis of disclosures obtained through an application to the Disclosure and Barring Service, they are not considered suitable by the trust's director responsible for human resources;

3.10. they are a person who has had their name removed or been suspended from any list (including any performers list prepared under the 2006 Act or under any related subordinate legislation) or who has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had their name included in such a list or had their suspension lifted or qualification reinstated;

3.11. they are a person who fails to satisfy the fit and proper persons requirements for directors as detailed in Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, as may be amended from time to time;

3.12. they fail to provide the required confirmation of their fitness to continue in post to the Trust Secretary, in the form prescribed by the trust, within 14 days of such confirmation being demanded, without reasonable cause;

3.13. they have within the preceding five (5) years been:

3.13.1. made subject to a hospital order under section 37 of the MHA whether or not subject to restrictions under section 41;

3.13.2. made subject to an interim hospital order under section 38 of the MHA;

3.13.3. made subject to a transfer direction under section 48 of the MHA whether or not subject to restrictions under section 49; and/or

3.13.4. made subject to an order under the Criminal Procedure (Insanity) Act 1964 as amended;

3.14. they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirement to register under current legislation; or

3.15. they are an unfit person within the meaning of the trust's provider licence, save where Monitor has provided its approval in writing to them becoming or continuing as a director..

4. REFERENCES TO THE CHAIRMAN

4.1. Where the Vice Chair or a non-executive director appointed under a paragraph of this constitution to deputise for the Chairman, are performing any deputising role then any relevant reference to the Chairman in this constitution shall be deemed to include the Vice Chair or the non-executive director so appointed.

ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

1. INTERPRETATION

1.1. Subject to Standing Order 3.6.2 of this Annex 8, save as permitted by law, the Chairman shall be the final authority on the interpretation of these Standing Orders (on which they shall be advised by the Chief Executive and Trust Secretary).

1.2. References to any statute, statutory provision, statutory instrument or guidance in these Standing Orders include reference to that statute, provision, instrument or guidance as replaced, amended, extended, re-enacted or consolidated from time to time.

2. GENERAL INFORMATION

2.1. The purpose of these Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Council of Governors meetings. The Council of Governors shall at all times seek to comply with the NHS Foundation Trust Code of Governance.

2.2. The roles and responsibilities of the Council of Governors which are to be carried out in accordance with this constitution include:

2.2.1. to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;

2.2.2. to undertake such functions as the Board of Directors shall from time to time request;

2.2.3. to prepare and from time to time review the trust's membership strategy and the policy for the composition of the Council of Governors and of the non-executive directors;

2.2.4. when appropriate to make recommendations for the revision of the constitution.

3. MEETINGS OF THE COUNCIL OF GOVERNORS

3.1. Meetings held in public

3.1.1. Meetings of the Council of Governors shall be open to the public subject to Standing Order 3.1.2 below.

3.1.2. The Council of Governors may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that:

3.1.2.1. publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or

3.1.2.2. there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.

3.1.3. The Chairman may exclude any member of the public from the meeting of the Council of Governors if he/she is interfering with or preventing the proper conduct of the meeting.

3.1.4. Nothing in these Standing Orders shall be construed as permitting the introduction by any person of any recording, transmitting, video or similar apparatus into meetings of the Council of Governors.

3.1.5. Where the public have been excluded from a meeting in accordance with Standing Order 3.1.2 above then the matters dealt with following such exclusion shall be confidential to the governors and directors of the trust. No governor, director, officer or employee of the trust in attendance at such meeting shall reveal or disclose any information concerning such matters to any other person or disclose the contents of any papers presented to such meeting or minutes taken of such a meeting to any other person.

3.1.6. Meetings of the Council of Governors shall be held regularly and at least three times each financial year.

3.1.7. Notwithstanding Paragraph 18.3 of the Constitution, the Council of Governors may invite the Chief Executive, or any other director, or a representative of the auditor to attend any meeting of the Council of Governors to enable governors to raise questions about the trust's affairs. For the avoidance of doubt, any such attendee shall not have the right to vote at such a meeting.

3.1.8. The Chief Executive and/or any other member of the Board of Directors may attend and address any meeting of the Council of Governors but shall not have the right to vote at such meetings.

3.1.9. The Chairman and/or the Trust Secretary may introduce legal or other advisers to the Council of Governors to advise the Chairman and the Council of Governors on behalf of the trust.

3.2. Calling meetings

3.2.1. Without prejudice to Standing Order 3.2.3 below, meetings of the Council of Governors shall be called by the Trust Secretary, or in the Trust Secretary's absence, by the Chairman and shall be held on such dates and at such times and such places as he/she shall determine.

3.2.2. Save in the case of emergencies or the need to conduct urgent business, the Trust Secretary shall give to all governors at least 14 days written notice of the date and place of every meeting of the Council of Governors. In the event of an emergency or the need to conduct urgent business the Trust Secretary may reduce the period of notice given to such period as he/she, having consulted where possible with the Chairman, deems reasonable in the circumstances.

3.2.3. Meetings of the Council of Governors shall be called by the Trust Secretary on the written request of at least 12 governors (including at least 2 elected governors and 2 appointed governors) who shall specify the business to be carried out. The Trust Secretary shall call a meeting of the Council of Governors on at least fourteen but not more than twenty-eight days written notice to discuss the specified business. If the Trust Secretary fails to call such a meeting within fourteen days of receipt of the written notice then the relevant governors may call such a meeting on not less than fourteen days written notice to all governors.

3.3. Notice of meetings

3.3.1. The notice for each meeting of the Council of Governors shall:

3.3.1.1. specify the business proposed to be transacted at the meeting;

3.3.1.2. be signed by the Chairman, or by an officer of the trust authorised by the Chairman to sign on his behalf; and

3.3.1.3. be delivered in person to each governor in person, sent by post to the usual place of residence of each such governor or sent by electronic mail to the address provided by any governor for such purposes.

3.3.2. The lack of service of notice on any governor shall not affect the validity of a meeting subject to Standing Order 3.3.3.

3.3.3. In the case of a meeting called by governors in default of the Trust Secretary pursuant to Standing Order 3.2.3 above, the notice shall be signed by those governors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice. Failure to serve such a notice on more than three quarters of governors will invalidate the meeting.

3.4. Setting the agenda

3.4.1. The Council of Governors may determine that certain matters shall appear on every agenda for meetings of the Council of Governors and shall be addressed prior to any other business being conducted.

3.4.2. Subject to Standing Order 3.4.1 of this Annex 8, the Trust Secretary shall be responsible for producing the agenda for meetings in conjunction with the Chairman. The Chairman shall determine the order of items on the agenda and the expression of such items, including any agenda items requested pursuant to Standing Order 3.4.4 below.

3.4.3. Save in the case of an emergency or the need to conduct urgent business, the agenda for each meeting of the Council of Governors shall be sent to all governors no later than 7 days before the meeting. Supporting papers shall accompany the agenda.

3.4.4. A governor desiring a matter to be included on an agenda shall make his request in writing to the Chairman at least 10 days before the meeting. The governor should indicate whether the item of business is to be transacted in the presence of the public and should provide the appropriate paper, document or supporting information. Where a request for an item of business to be included on an agenda is made less than 10 days but more than 5 days before a meeting such item of business may, at the discretion of the Chairman, be included on the agenda and shall be tabled as an agenda item at the commencement of the relevant meeting.

3.5. Notices of motions

3.5.1. A governor desiring to move or amend a motion shall send a written notice thereof at least 10 days before the meeting to the Chairman, who shall insert it into the agenda for the meeting. This Standing Order 3.5.1 shall not prevent any motion or amendment being moved during the meeting, without notice, on any business mentioned on the agenda for that meeting.

3.5.2. A motion or amendment, once moved at a meeting of the Council of Governors, may be withdrawn by the proposer with the consent of the Chairman.

3.5.3. Only the Chairman may propose a motion to amend or rescind any resolution or the general substance of any resolution, which has been passed within the preceding 6 calendar months by the Council of Governors.

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

3.5.5. When a motion is under discussion or immediately prior to discussion it shall be open to a governor to move:

3.5.5.1. an amendment to the motion;

3.5.5.2. the adjournment of the discussion or the meeting;

3.5.5.3. the appointment of an ad hoc committee to deal with a specific item of business;

3.5.5.4. that the meeting proceed to the next business;

3.5.5.5. that the motion be now put; or

3.5.5.6. a motion resolving to exclude the public, including the press.

Such a motion shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the original motion shall be admitted if, in the opinion of the chairman of the meeting, the amendment negates the substance of the original motion. In the case of motions under 3.5.5.4 and 3.5.5.5, to ensure objectivity motions may only be put by a governor who has not previously taken part in the debate on the original motion.

3.6. Chairman's ruling

3.6.1. Statements of governors made at meetings of the Council of Governors must be relevant to the matter under discussion at the material time and the decision of the chairman of the meeting on questions of order, relevance, regularity and any other matters shall be final and observed at the meeting.

3.6.2. Without prejudice to Standing Order 1.1, save as permitted by law, at any meeting the person presiding shall be the final authority on the interpretation of these Standing Orders in relation to that meeting.

3.7. Voting

3.7.1. No governor may vote at a meeting of the Council of Governors unless, prior to attending the meeting, they have made a declaration in the form specified by the Trust Secretary confirming that they are not prevented by this constitution from being a member of the Council of Governors. Each governor shall be deemed to have confirmed this declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of the governors.

3.7.2. Decisions at meetings shall be determined by a majority of the votes of the governors present and voting. In the case of any equality of votes, the person presiding as chairman shall have a second or casting vote.

3.7.3. All decisions put to the vote shall, at the discretion of the person presiding as chairman, be determined by oral expression or by a show of hands. A paper ballot may be used if a majority of the governors present so request.

3.7.4. 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.

3.7.5. If a governor so requests, his vote (other than by paper ballot) on any question shall be recorded by name .

3.7.6. In no circumstances may an absent governor vote by proxy. Absence is defined as being absent at the time of the vote.

3.8. Suspension Standing Orders

3.8.1. Except where this would contravene any statutory provision, any direction made by Monitor or any term of this constitution any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the members of the Council of Governors are present and that a majority of those present vote in favour of suspension.

3.8.2. A decision to suspend any Standing Order shall be recorded in the minutes of the meeting.

3.8.3. A separate record of matters discussed during the suspension of any Standing Order shall be made and shall be available to the directors and governors.

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

3.8.5. The trust's audit committee shall review every decision to suspend any Standing Order.

3.9. Record of attendance

3.9.1. The names of the governors present at each meeting shall be recorded in the minutes.

3.10. Minutes

3.10.1. The minutes of the proceedings of each meeting of the Council of Governors shall be drawn up and presented for agreement at the next meeting of the Council of Governors where they will be signed, once approved by the person presiding at it. The signed minutes will be conclusive evidence of the events of that meeting. Subject to Standing Order 3.10.4, the minutes shall be maintained as a public record once agreed.

3.10.2. No discussion shall take place at a Council of Governors meeting regarding the minutes except upon their accuracy or where the Chairman considers discussion appropriate, at his sole discretion. Any agreed amendment to the minutes of a preceding meeting shall be recorded in writing.

3.10.3. Minutes shall be circulated to the governors in draft form within two weeks of the date of the meeting.

3.10.4. The minutes of meetings of the Council of Governors shall be made available to the public except for minutes relating to the business conducted when members of the public have been excluded from the meeting pursuant to Standing Order 3.1 of these Standing Orders.

3.11. Quorum

3.11.1. No business shall be transacted at a meeting of the Council of Governors unless at least half of the Governors in post on the date of the meeting (as determined by the Trust Secretary) are present.

3.11.2. If a governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

3.11.3. Subject to Standing Order 3.11.2 above if the Council of Governors is quorate at the start of a meeting in accordance with Standing Order 3.11.1 above, the Council of Governors shall be regarded as quorate for the duration of the meeting and shall be able to transact business accordingly, even if governors subsequently leave the meeting.

3.11.4. For the avoidance of any doubt, the Chairman of the Trust (who usually presides at a meeting of the Council of Governors) shall not count towards the quorum for the meeting

4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

4.1. The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint working groups and/or sub-groups consisting of members of the Council of Governors, directors, and/or other persons to assist it in carrying out its functions. The Council of Governors may, through the Trust Secretary, request that advisers assist it or any working group or sub-group it appoints in carrying out its duties.

5. WORKING GROUPS

5.1. These Standing Orders, as far as they are applicable, shall as appropriate apply to meetings of any working groups established by the Council of Governors.

5.2. Each such working group or sub-group shall have such terms of reference and remit and be subject to such conditions (as to reporting back to the Council of Governors) as the Council of Governors shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.

5.3. The Council of Governors shall approve the membership of all working groups and sub-groups that it has formally constituted and shall appoint the chair of each such working group and sub-group.

6. CONFIDENTIALITY

6.1. Subject to Standing Order 6.3 below no governor or member of any committee or sub-committee of the Council of Governors or attendee at a meeting of the Council of Governors or any committee or sub-committee shall disclose details of any matter dealt with by, or brought before, the Council of Governors or a committee or sub-committee of the Council of Governors without the permission of the Council of Governors or the relevant committee or sub-committee (as applicable) until such matter has been concluded or in the case of a committee or sub-committee, until the committee or sub-committee has reported to the Council of Governors.

6.2. The Council of Governors and any committee or sub-committee of the Council of Governors shall make governors, the members of any committee or sub-committee and any other attendees at meetings of the Council of Governors and/or its committees or sub-committees aware of the confidential nature of the business being transacted and their duty of confidentiality as set out at Standing Order 6.1.

6.3. No governor or attendee at any meeting of the Council of Governors or any committee or sub-committee of the Council of Governors shall disclose any matter dealt with by the Council of Governors or the committee or sub-committee (as applicable), notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee or sub-committee resolves that it is confidential.

7. DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

7.1. Without prejudice to the generality of paragraph 21 of this constitution, each governor shall disclose to the Council of Governors any relevant and material interests (as defined below) held by them, their spouse or partner. Any interest that is disclosed by a governor pursuant to this constitution shall be recorded in a register of interests of governors maintained by the Trust Secretary.

7.2. The responsibility for declaring an interest is solely that of the governor concerned and shall be declared to the Trust Secretary:

7.2.1. within 14 days of election or appointment; or

7.2.2. if arising later, as soon as the governor becomes aware of the interest.

7.3. Subject to the exceptions in Standing Order 7.4 below a relevant and material interest is:

7.3.1. any directorship of a company;

7.3.2. any interest or position in any organisation (including any charitable or voluntary organisation) which has, is likely to have or which is proposing to enter into a trading or commercial relationship with the trust;

7.3.3. any interest in an organisation providing (or seeking to provide) health and social care services to the National Health Service;

7.3.4. any position of authority in any organisation (including a charity or voluntary organisation) in the field of health and social care; or

7.3.5. any connection with any organisation considering entering into a financial arrangement with the trust including but not limited to lenders or banks.

7.4. The exceptions which shall not be treated as relevant and material interests for the purposes of these provisions are as follows:

7.4.1. shares held in any company whose shares are listed on any public exchange not exceeding 2% of the total number of shares issued;

7.4.2. an employment contract with the trust held by a Staff Governor;

7.4.3. an employment contract with or other position of authority within an appointing organisation held by an Appointed Governor.

7.5. Any governor who has an interest in a matter to be considered by the Council of Governors and who is present at a meeting at which that matter is to be the subject of consideration shall declare such interest to the Council of Governors at that meeting and as soon as practicable after its commencement and;

7.5.1. shall withdraw from the meeting and play no part in the relevant discussion or decision; and

7.5.2. shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted); and

7.5.3. details of the interest shall be recorded in the minutes of the meeting.

7.6. Any governor who fails to disclose any interest required to be disclosed under this constitution must permanently vacate their office if required to do so by a majority of the remaining governors.

7.7. If a governor has any doubt about the relevance of an interest, he/she should discuss it with the Chairman who shall advise him whether or not to disclose the interest.

7.8. Governors' directorships of companies that may seek to do business with the trust should be published in the trust's Annual Report. The information shall be kept up to date for inclusion in succeeding annual reports.

8. COMPLIANCE – OTHER MATTERS

8.1. All decisions taken in good faith at a meeting of the Council of Governors or of any committee or sub-committee shall be valid even if there is any vacancy in its membership or it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the governors attending the meeting.

8.2. Governors shall comply with standing financial instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the trust.

8.3. Governors shall act at all times in accordance with the trust's schedule of reservation and delegation of powers.

8.4. Governors must conduct themselves at all times in accordance with the NHS Foundation Trust Code of Governance. Governors must:

8.4.1. actively support the vision and aims of the trust in developing as a successful NHS Foundation Trust;

8.4.2. contribute to the work of the Council of Governors in order for it to fulfil its role as defined in the trust's constitution, including as set out in these Standing Orders;

8.4.3. recognise that the Council of Governors has no managerial role within the trust;

8.4.4. value and respect governor colleagues, and all members of staff of the trust they come into contact with;

8.4.5. respect the confidentiality of information they receive in their role as governor;

8.4.6. act in the best interests of the trust, at all times without any expectation of personal benefit;

8.4.7. attend meetings of the Council of Governors and all training events for governors, on a regular basis;

8.4.8. conduct themselves in a manner that reflects positively on the trust, acting as an ambassador for the trust;

8.4.9. abide by the trust's policies and procedures;

8.4.10. recognise that the trust is an apolitical organisation and act in an apolitical way in their role as governor;

8.4.11. if they are a Public Governor, a Staff Governor, a Service User and Carer Governor and a member of any trade union, political party or other organisation, recognise that they do not, in their role as governor, represent those organisations (or the views of those organisations) but represent the interests of the constituency that elected them;

8.4.12. be honest and act with integrity and probity at all times;

8.4.13. respect and treat with dignity and fairness, members of the public, patients, relatives, carers, NHS staff and partners in other agencies;

8.4.14. accept responsibility for their own actions;

8.4.15. show their commitment to working as a team member by working with all their colleagues in the NHS and the wider community;

8.4.16. ensure that the trust's membership and its partner organisations receive appropriate information about the work of the Council of Governors and that their views are fed back to the Council of Governors;

8.4.17. ensure that no one is discriminated against because of their religion, belief, race, colour, gender, marital status, disability, sexual orientation, age, social and economic status or national origin;

8.4.18. respect the confidentiality of individual patients;

8.4.19. not make, permit or knowingly allow to be made, any untrue or misleading statement relating to their own duties or the functions of the trust;

8.4.20. ensure that the best interests of the public and patients/clients are upheld in decision making and that decisions are not improperly influenced by gifts or inducements; and

8.4.21. support and assist the Chief Executive of the trust in his responsibility to answer to NHS Improvement, commissioners and the public in terms of declaring and explaining the use of resources and the performance of the trust.

8.5. Each governor will uphold the seven principles of public life as detailed by the Nolan Committee:

8.5.1. Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

8.5.2. Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

8.5.3. Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

8.5.4. Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

8.5.5. Openness

Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

8.5.6. Honesty

Holders of public office have a duty to declare any private interest relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

8.5.7. Leadership

Holders of public office should promote and support these principles by leadership and example.

9. RESOLUTION OF DISPUTES WITH THE BOARD OF DIRECTORS

9.1. Should a dispute arise between the Council of Governors and the Board of Directors then the disputes resolution procedure set out below shall be utilised.

9.1.1. The Chairman, or Vice Chair (if the dispute involves the Chairman) shall first endeavour through discussion with appropriate representatives of the governors and the directors to achieve the earliest possible resolution of the matter in dispute to the reasonable satisfaction of both parties.

9.1.2. Failing resolution under Standing Order 9.1.1 above then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a disputes statement setting out clearly and concisely the issue or issues giving rise to the dispute.

9.1.3. The Chairman or Vice Chair (if the dispute involves the Chairman) shall ensure that the disputes statement produced in accordance with Standing Order 9.1.2 above, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or Council of Governors as appropriate (i.e. the body that does not issue the disputes statement). That meeting shall agree the precise wording of a response to the disputes statement.

9.1.4. The Chairman or Vice Chair (if the dispute involves the Chairman) shall immediately or as soon as is practical, communicate the outcome to the other party and deliver the written response to the disputes statement. If the matter remains unresolved or only partially resolved then the procedure outlined in Standing Order 9.1.1 above shall be repeated.

9.1.5. If, in the opinion of the Chairman or Vice Chair (if the dispute involves the Chairman), and following the further discussions prescribed in Standing Order 9.1.1, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chairman or Vice Chair (as the case may be), there is no prospect of a resolution (partial or otherwise) then he/she shall appoint a special committee comprising equal numbers of directors and governors to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute.

9.1.6. On the satisfactory completion of this disputes process the Board of Directors shall implement any agreed changes.

9.1.7. If the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute to an external mediator appointed by the Centre for Dispute Resolution or other such organisation as he/she considers appropriate.

9.2. 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 that the trust is not meeting the terms of its licence.

10. COUNCIL OF GOVERNORS PERFORMANCE

10.1. The Chairman shall, at least annually, lead a performance assessment process for the Council of Governors to enable the Council of Governors to review its roles, structure, composition and procedures taking into account emerging best practice.

11. AVAILABILITY OF STANDING ORDERS

11.1. The Trust Secretary shall ensure that on appointment all Governors are notified of their responsibilities as set out in these Standing Orders.

ANNEX 9 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

FOREWORD

These Standing Orders together with the trust's Standing Financial Instructions and Scheme of Delegation and Reservation of Powers (that provide respectively further detail of administrative practice and procedure, and record delegations and reservations of powers and functions, but do not form part of this constitution), provide a governance framework for the conduct of business by the trust. All directors and all staff should be aware of the existence of these documents and, where necessary, be familiar with their detailed provisions to the extent required for the proper conduct of their duties.

1. INTERPRETATION AND DEFINITIONS

1.1. Save as otherwise permitted by law, at any meeting the Chairman of the trust shall be the final authority on the interpretation of these Standing Orders, (on which he/she shall be advised by the Chief Executive).

2. STATUTORY FRAMEWORK

2.1. The principal place of business of the trust is Trust Offices, V7 Building, Kings Business Park, Prescot, Merseyside, L34 1PJ.

2.2. An NHS Foundation Trust is governed by a regulatory framework that confers the functions and powers of the Trust and comprises: Acts of Parliament and in particular the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012), its constitution and its licence as granted by Monitor.

2.3. 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 the trust is accountable to the Charity Commission for those funds deemed to be charitable, as well as to the Monitor.

3. THE BOARD

Appointment of Chairman and members of the board

Terms of office

3.1. The Chairman and the non-executive directors will:

3.1.1. serve terms of office of no longer than three (3) years;

3.1.2. be eligible for re-appointment at the end of a term of office provided that service of a further term is consistent with Standing Order 3.3 below.

3.2. For the avoidance of doubt the number of years service as a non-executive director of the applicant trust will not count towards the total number of years of service as a non-executive director of the trust.

3.3. Where the Council of Governors wishes to re-appoint the Chairman or a non-executive director for a term of office that would mean that such individual's total years of office will exceed six (6) years or where such individual's years of office already exceeds six (6) years at the time of such re-appointment, then the Council of Governors may do so where in reaching such a decision they:

3.3.1. take into account the current skill set requirements of the Board of Directors;

3.3.2. take into account the annual performance of the applicant non-executive director;

3.3.3. take into account the need for the progressive refreshing of the Board of Directors;

3.3.4. take into account the need to maintain at least half of the Board of Directors (excluding the Chairman) as independent non-executive directors; and

3.3.5. consider that there are exceptional circumstances justifying such a term of office;

provided that any such term of office must be subject to annual re-appointment by the Council of Governors in accordance with this Standing Order 3.3 at the end of each year of an individual's term of office where such individual's total years of office exceeds six (6) years or will exceed six (6) years during the next year of that individual's term of office.

3.4. The Chief Executive and the other executive directors will normally hold non time limited contracts of employment.

Vice Chair

3.5. If the Chairman is unable to discharge his office as Chairman of the trust, the Vice Chair shall be acting Chairman of the trust.

3.6. Any member of the Board of Directors (the "Board") so appointed may at any time resign from the office of Vice Chair by giving notice in writing to the Chairman. The Council of Governors shall thereupon appoint another non-executive director as Vice Chair in accordance with this constitution.

Joint Board Members

3.7. Where more than one person is appointed jointly as a member of the Board, those persons shall count for the purpose of Standing Order 4 (voting) as one person.

3.8. Where the office of a member of the Board is shared jointly by more than one person:

3.8.1. Either or both those persons may attend or take part in meetings of the Board;

3.8.2. If both are present at a meeting they should cast one vote if they agree;

3.8.3. In the case of disagreements no vote should be cast;

3.8.4. The presence of either or both those persons should count as the presence of one person for the purpose of Standing Order 4.38 (quorum).

Role of Board Members

3.9. The Board will function as a corporate decision-making body. Executive and non-executive directors will be full and equal members. Their role as director will be to consider the key strategic and managerial issues facing the trust in carrying out its statutory and other functions.

3.9.1. Executive Directors

Executive directors shall exercise their authority within the terms of these Standing Orders, the trust's Standing Financial Instructions and Scheme of Delegation and Reservation of Powers.

3.9.2. Chief Executive

The Chief Executive shall be responsible for the overall performance of the executive functions of the trust. He/she is the accounting officer for the trust and shall be responsible for ensuring the discharge of obligations under any relevant guidance from Monitor, and in line with the requirements of the NHS Foundation Trust.

3.9.3. Director of Finance

The Director of Finance shall be responsible for the provision of financial advice to the trust and to its members and for the supervision of financial control and accounting systems. He/she shall be responsible along with the Chief Executive for ensuring the discharge of obligations under any relevant guidance from Monitor.

3.9.4. 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 members of or when chairing a committee of the trust which has delegated powers.

3.9.5. Chairman

The Chairman shall be responsible for the operation of the Board and chair all Board meetings when present. The Chairman has certain delegated executive powers. The Chairman must comply with the terms of his appointment and with these Standing Orders. The Chairman shall liaise with the Council of Governors over the appointment of non-executive directors and once appointed shall take responsibility either directly or indirectly for their induction, their portfolios of interests and assignments, and their performance. 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.

3.9.6. Senior Independent Director

The Chairman shall, following consultation with the Council of Governors appoint one of the non-executive directors to be the Senior Independent Director. The Senior Independent Director shall make himself available to directors and governors who have concerns that they do not feel they can raise with the Chairman or any executive director of the trust. Recourse to the Senior Independent Director shall not replace the right to instigate the dispute resolution procedure at Annex 11 of this constitution.

Corporate role of the Board

3.10. All business shall be conducted in the name of the trust.

Charitable Funds

3.11. All gifts shall be received and held in the name of the trust and administered in accordance with the trust's policy. Attention is also drawn to the requirements of the Charities Act 1993. Officers should not establish and/or operate bank accounts for funds holding donated monies and income which should have been paid into charitable or endowment funds.

3.12. All charitable funds received in trust shall be held in the name of the trust as corporate trustee. In relation to funds held on trust, powers exercised by the Board in discharge of the trust's responsibilities as corporate trustee shall be

exercised separately and distinctly from those powers exercised as the Board of the trust.

3.13. The Board shall discharge the trust's responsibility to act as corporate trustee to administer charitable funds received by the trust and for which the trust is accountable to the Charity Commission.

4. MEETINGS OF THE BOARD

Calling a meeting

4.1. The Board of Directors shall meet sufficiently regularly to discharge its duties effectively and shall meet at least 4 times in public in each financial year. Ordinary meetings of the Board shall be held at such times and places as the Board may determine.

4.2. Meetings of the Board of Directors shall be called by the Trust Secretary, or in the Trust Secretary's absence by the Chairman

4.3. Save in the case of emergencies or the need to conduct urgent business, the Trust Secretary shall give to all directors at least fourteen days written notice of the date and place of every meeting of the Board of Directors. In the event of an emergency or the need to conduct urgent business the Trust Secretary may reduce the period of notice given to such period as he/she, having consulted where possible with the Chairman, deems reasonable in the circumstances.

4.4. Meetings of the Board of Directors shall be called by the Trust Secretary on the written request of at least five directors who shall specify the business to be carried out. The Trust Secretary shall call a meeting of the Board of Directors on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Trust Secretary fails to call such a meeting within fourteen days of receipt of the written notice then the relevant directors may call such a meeting on not less than fourteen days written notice to all directors.

4.5. Meetings of the Board shall be open to members of the public unless the Board decides otherwise in accordance with Standing Order 4.42.

4.6. Nothing in these Standing Orders shall require the Board to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Board.

4.7. The Board may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

Notice of meetings

4.8. The notice for each meeting of the Board shall:

4.8.1. specify the business to be transacted at the meeting;

4.8.2. be signed by the Chairman or by an officer authorised by the Chairman to sign on his behalf; and

4.8.3. shall be delivered to each Board member to the usual place of residence of such Board member, or sent by electronic mail to any address provided by such member for such purposes.

4.9. In the case of a meeting called by Board members in default of the Trust Secretary, the notice shall be signed by those Board members calling the meeting pursuant to Standing Order 4.4 above, and no business shall be transacted at the meeting other than that specified in the relevant notice.

Agenda

4.10. Agendas will be sent to members at least five clear days before the meeting. Supporting papers shall accompany the agenda, save in an emergency. An agenda shall be presumed to have been served two days after posting.

4.11. The Board shall use its annual reporting cycle, annual business cycle and actions arising from previous Board meetings to determine the main content of the agenda.

4.12. Subject to Standing Order 4.11 above the Trust Secretary shall be responsible for producing the agenda for board meetings in conjunction with the Chairman. The Chairman shall determine the order of items on the agenda and the expression of such items, including any agenda items requested under Standing Order 4.13 below.

4.13. A Board member desiring other matters to be included on an agenda shall make his request known to the Chairman, in writing at least fourteen days before the meeting. The Board member should indicate whether the item of business is to be transacted in the presence of the public and should provide the appropriate paper, document or supporting information. Where a request for an item of business to be included on an agenda is made less than fourteen days but more than five days before a meeting such item of business may, at the discretion of the Chairman, be included and shall be tabled as an agenda item at the commencement of the relevant meeting.

Petitions

4.14. Where a petition has been received by the trust the Chairman shall include it as an item for the agenda of the next Board meeting.

Chairing of meetings

4.15. The Chairman of the trust or, in his absence, the Vice Chair is to chair meetings of the Board. If both the Chairman and the Vice Chair are absent, the Board members present shall choose a non-executive director who is present to chair the meeting.

4.16. If the Chairman stands down temporarily, on the grounds of a declared conflict of interest, the Vice Chair, if present, shall chair that part of the meeting. If the Chairman and Vice Chair are both absent, or disqualified from participating on the grounds of a declared conflict of interest, the board members present shall choose a non-executive director who is present to chair the meeting.

Notices of motion

4.17. A member of the Board desiring to move or amend a motion shall send a written notice thereof at least ten days before the meeting to the Chairman. The Chairman shall insert in the agenda for the meeting all notices so received. This Standing Order 4.17 shall not prevent any motion or amendment being moved during the meeting, without notice, on any business mentioned on the agenda.

Withdrawal of motion or amendments

4.18. A motion or amendment once moved may be withdrawn by the proposer with the consent of the Chairman.

Motion to rescind a resolution

4.19. Only the Chairman may propose a motion to amend or rescind any resolution or the general substance of any resolution, which has been passed within the preceding six calendar months by the Board.

Motions

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

4.21. When a motion is under discussion, or immediately prior to discussion, it shall be open to a Board member to move:

4.21.1. an amendment to the motion;

4.21.2. the adjournment of the discussion or the meeting;

4.21.3. the appointment of an ad hoc committee to deal with a specific item of business;

4.21.4. that the meeting proceed to the next business;

4.21.5. that the motion be now put; or

4.21.6. a motion resolving to exclude the public, including the press.

Such a motion shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the original motion shall be admitted if, in the opinion of the chair of the meeting, the amendment negates the substance of the original motion. In the case of motions under Standing Order 4.21.4 and Standing Order 4.21.5, to ensure objectivity motions may only be put by a Board member who has not previously taken part in the debate on the original motion.

Chairman's ruling

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

Voting

4.23. Subject to the following provisions of this Standing Order 4.23, questions arising at a meeting of the board shall be decided by a majority of votes.

4.23.1. In case of an equality of votes the person presiding as chair shall have a second and casting vote.

4.23.2. No resolution of the Board shall be passed if it is opposed by all of the non-executive directors present or by all of the executive directors present.

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

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

4.26. If a Board member so requests, his vote (other than by paper ballot) on any question shall be recorded by name.

4.27. In no circumstances may an absent Board member vote by proxy. Absence is defined as being absent at the time of the vote.

4.28. An officer who has been appointed formally by the Board to act up for an executive director of the Board during his absence, or to cover a vacant executive director post, shall be entitled to exercise the voting rights of the executive director. An officer attending the Board to represent an executive director 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.

Minutes

4.29. Minutes of every meeting of the Board must be kept by the Trust Secretary. Minutes of meetings will be presented at the next meeting for approval and signed by the chair of that meeting once approved. The signed minutes will be conclusive evidence of the events of that meeting.

4.30. No discussion shall take place regarding the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes of a preceding meeting shall be recorded in writing.

4.31. Minutes shall be circulated to Board members in draft form within two weeks of the date of the meeting. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of Standing Order 4.42.

Suspension of Standing Orders by the Board

4.32. Except where this would contravene any statutory provision, any direction made by Monitor, or any provision of this constitution, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including at least two executive directors and two non-executive directors, and that a majority of those present vote in favour of suspension.

4.33. A decision to suspend any Standing Order shall be recorded in the minutes of the meeting.

4.34. A separate record of matters discussed during the suspension of any Standing Orders shall be made and shall be available to the Chairman and members of the Board.

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

4.36. The audit committee shall review every decision to suspend any Standing Orders.

Record of Attendance at Board Meetings

4.37. The names of the chair, the Board members present, and individuals in attendance at each Board meeting shall be recorded and this record shall be made available to the Council of Governors upon its request.

Quorum

4.38. 6 Board members, including no fewer than 3 executive directors, one of whom must be the Chief Executive or another executive director nominated by the Chief Executive and no fewer than 3 non-executive directors, one of whom must be the Chairman or the Vice Chair, shall form a quorum.

4.39. An officer in attendance for an executive director but without formal acting up status shall not count towards the quorum.

4.40. If the Chairman or any other member has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 8 or 9), he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The requirement at 4.38 for at least three executive directors to form part of the quorum shall not apply where the executive directors are excluded from a meeting, or part of a meeting; for example when the Board considers the recommendations of the remuneration committee.

4.41. The Board may agree that its members can participate in its meeting by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

Admission of public to board meetings

4.42. The Board may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that:

4.42.1. publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted following an appropriate resolution by the board; or

4.42.2. there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.

4.43. The Chairman may exclude any member of the public from a meeting of the Board if they are interfering with or preventing the proper conduct of the meeting.

4.44. Nothing in these Standing Orders shall be construed as permitting the introduction by any person of any recording, transmitting, video or similar apparatus into meetings of the trust of a committee or sub-committee of the trust.

4.45. Where the public have been excluded from a meeting in accordance with Standing Order 4.42 above then the matters dealt with following such exclusion shall be confidential to the directors of the trust. No director, officer or employee of the trust in attendance at such meeting shall reveal or disclose any information concerning such matters to any other person or disclose the contents of any papers presented to such meeting or minutes taken of such a meeting to any other person.

5. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

5.1. Subject to such directions or guidance as may be given by Monitor, the Board may make arrangements for the exercise, on behalf of the board, of any of its functions:

5.1.1. by a committee appointed by virtue of Standing Order 6.1 below; or

5.1.2. by an executive director of the trust;

in each case subject to such restrictions and conditions as the Board thinks fit.

Emergency powers

5.2. The powers which the Board has retained to itself within these Standing Orders may, in emergency, be exercised by the Chief Executive and the Chairman, after having consulted with 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 in public session for ratification.

Delegation to committees

5.3. The Board may agree, from time to time, to the delegation of executive powers to committees, formally constituted in accordance with Standing Order 6.1. The constitution and terms of reference of these committees or sub-committees and their specific executive powers shall be approved by the Board.

Delegation to officers

5.4. Those functions of the trust which have not been retained as reserved by the Board or delegated to a committee shall be exercised on behalf of the trust by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate officers to assist him in undertaking and discharging the remaining functions for which he/she will still retain accountability to the Board. For the avoidance of doubt whilst the Chief Executive can nominate officers to assist him/ her in undertaking and discharging any functions, the Chief Executive can only delegate functions to one or more executive directors.

5.5. The Chief Executive shall prepare a scheme of delegation identifying his proposals, which shall be considered and approved by the Board, subject to any amendments agreed during the discussion. The Chief Executive may periodically propose amendments to the scheme of delegation that shall also be considered and approved by the Board.

5.6. Nothing in the scheme of delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance to provide information and advise the Board in accordance with any statutory requirements and any requirements of Monitor. Outside these statutory requirements the role of the Director of Finance shall be accountable to the Chief Executive for operational matters.

Non-compliance with Standing Orders

5.7. If for any reason these standing orders are not complied with, full details of the non-compliance, any justification for non-compliance and the circumstances surrounding the non-compliance, shall be reported to the next formal meeting of the board for action or ratification. All members of the Board and staff have a duty to disclose any non-compliance with these standing orders to the Chief Executive as soon as possible.

6. COMMITTEES

Appointment

6.1. Subject to such directions or guidance as may be given by Monitor, the Board may establish committees, reporting to the Board, composed of the Chairman and other members of the Board.

6.2. A committee appointed under Standing Order 6.1 above may appoint sub-committees consisting wholly or partly of members of the committee or wholly of persons who are not members of the committee but who are members of the Board to assist and support the relevant committee with the discharge of its functions, but it may not delegate any function to such sub-committee.

6.3. The Board may appoint committees consisting wholly or partly of persons who are not executive directors or non-executive directors of the trust for any purpose that is calculated or likely to contribute to or assist it in the exercise of its powers but it may not delegate the exercise of any of its powers to any such committee.

6.4. The Board shall have the power to dismiss the members of any committee or subcommittee that is established under Standing Orders 6.1 to 6.3 inclusive above.

Applicability of standing orders

6.5. The standing orders of the trust, so far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board and to the meetings of any sub-committee. In which case the term Chairman is to be read as a reference to the chair of the committee as the context permits, and the term member is to be read as a reference to a member of the committee also as the context permits. There is no requirement for committees or sub-committees, established under Standing Order 6.1 and Standing Order 6.2 above, to hold meetings in public.

Terms of reference

6.6. Each committee established by the Board and each sub-committee shall have such terms of reference and powers and be subject to such conditions, such as to reporting back to the Board, as the Board shall decide and shall act in accordance with any legislation and any regulation or direction issued by

Monitor. Such terms of reference shall have effect as if incorporated into these Standing Orders.

Delegation of powers to sub-committee

6.7. Where committees established by the Board are authorised to establish sub-committees they may not delegate functions to the sub-committee.

Approval of appointments

6.8. The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines that persons who are neither members of the Board nor officers shall be appointed to a committee, the Board shall define the powers of such appointees and may agree allowances for such appointees, including reimbursement for loss of earnings, and/or expenses.

Committees Established by the Board

6.9. The committees to be established by the Board shall include the following:

6.9.1. Audit Committee

An audit committee will be established and constituted to provide the Board with an independent and objective review of its financial systems, financial information and compliance with relevant laws and guidance. The Terms of Reference will be approved by the Board and reviewed on a periodic basis. A minimum of three independent non-executive directors shall be appointed to the committee, of which at least one shall have significant, recent and relevant financial experience.

6.9.2. Remuneration and Terms of Service Committee

A remuneration committee will be established and constituted by the Board. The committee shall be comprised exclusively of non-executive directors, including at least three independent non-executive directors.

6.9.3. Executive Committee

An executive committee will be established and constituted by the Board to:

(i) support the Board in setting and delivering the organisation's strategic direction and priorities;

(ii) oversee effective operational management of the trust and delivery of continuous improvement in quality

(iii) assess and control risk.

6.9.4. Quality Assurance Committee

A quality and assurance committee will be established and constituted by the Board to provide assurance to the Board that quality in the trust is of the highest standard.

6.9.5. Performance, Investment and Finance Committee

A performance and investment committee will be established by the Board to provide scrutiny of the trust's strategy, investment plans and performance (including financial performance).

6.10. The following committee(s) will be established to provide the Board with advice through the Chief Executive, but they will have no delegated powers:

6.10.1. Standing Committee of the Service User and Carer Assembly

The Standing Committee of the Service User and Carer Assembly is accountable to the Service User and Carer Assembly and is an advisory committee to provide the Board with advice on a wide range of issues from the perspective of service users and carers, including in respect of the co-production activities between the trust and the service users and carers.

Confidentiality

6.11. Subject to Standing Order 6.13 below, no director of the trust or member of any committee or sub-committee of the Board or attendee at a meeting of the Board or any such committee or sub-committee shall disclose any matter dealt with by, or brought before the Board or committee or sub-committee without the permission of the Board or the relevant committee or sub-committee (as applicable) until such matter has been concluded or in the case of a committee or sub-committee until the committee or sub-committee has reported to the Board.

6.12. The Board and any committee or sub-committee of the Board shall make the directors of the trust, the members of any committee and sub-committee and any other attendees at meetings of the Board and/or its committees or sub-committees aware of the confidential nature of the business being transacted and their duty of confidentiality as set out at Standing Order 6.11.

6.13. No director of the trust or member of any committee or sub-committee or attendee at any meeting of the Board or any committee or sub-committee of the Board shall disclose any matter reported to the Board or otherwise dealt with by the Board or the committee or sub-committee (as applicable) notwithstanding that the matter has been reported or action has been concluded if the Board or committee or sub-committee resolves that it is confidential.

7. OTHER TRUST POLICY STATEMENTS

7.1. The Board will from time to time agree and approve policy statements which will apply to all or specific groups of staff employed by the trust. The decision to approve such policies will be recorded in an appropriate Board minute and will be deemed where appropriate to be an integral part of these Standing Orders.

8. DECLARATIONS OF INTERESTS AND REGISTERS OF INTERESTS

Declaration of interests

8.1. Each director of the trust shall declare any interests that he/she is required to declare under paragraph 35 of the constitution ("Declarable Interest").

8.2. The responsibility for declaring an interest is solely that of the director concerned and shall be declared to the Trust Secretary:

8.2.1. within 14 days of appointment; or

8.2.2. if arising later, as soon as the director becomes aware of the interest.

8.3. Any director who has a Declarable Interest in a matter to be considered by the Board and who is present at a meeting at which that matter is to be the subject of consideration shall declare such interest to the Board at that meeting and as soon as practicable after its commencement:

8.3.1. shall withdraw from the meeting and play no part in the relevant discussion or decision;

8.3.2. shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted); and

8.3.3. details of the interest shall be recorded in the minutes of the meeting.

8.4. Any director who fails to disclose any interest required to be disclosed under this constitution must permanently vacate their office if:

8.4.1. in the case of a non-executive director, he/she is required to do so by a resolution made pursuant to paragraph 27.2 of this constitution; and

8.4.2. in the case of an executive director, he/she is required to do so by a resolution made pursuant to paragraph 30.4 of this constitution.

8.5. If Board members have any doubt about the relevance of an interest, this should be discussed with the Chairman.

8.6. If a Board member has any financial interest in, holds any position in or has any affiliation to:

8.6.1. any health or social care related organisation providing (or seeking to provide) services to the National Health Service;

8.6.2. any health or social care related campaigning special interest group; and/or

8.6.3. any organisation operating in the field of health or social care;

he/she shall declare such an interest on appointment, or if arising later, as soon as reasonably practicable, to the Chairman or the Trust Secretary and such an interest shall be recorded in the register of interests of the directors.

8.7. Board members' directorships of companies that may seek to do business with the trust should be published in the trust's Annual Report. The information shall be kept up to date for inclusion in succeeding annual reports.

9. NOT USED

10. DEFECTS IN PROCESS OR APPOINTMENT

10.1. All decisions taken in good faith at a meeting of the Board of Directors or of any committee or sub-committee shall be valid even if there is any vacancy in its membership or it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the directors attending the meeting.

11. STANDARDS OF BUSINESS CONDUCT POLICY

Policy

11.1. Directors of the trust shall comply with standing financial instructions prepared by the Director of Finance and approved by the Board for the guidance of all staff employed by the trust.

11.2. Directors of the trust must conduct themselves at all times in accordance with the NHS Foundation Trust Code of Governance.

11.3. Each director will uphold the seven principles of public life as detailed by the Nolan Committee:

11.3.1. Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends

11.3.2. Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties

11.3.3. Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit

11.3.4. Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office

11.3.5. Openness

Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands

11.3.6. Honesty

Holders of public office have a duty to declare any private interest relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest

11.3.7. Leadership

Holders of public office should promote and support these principles by leadership and example

11.4. **Interests of officers in contracts**

If it comes to the knowledge of any officer of the trust that the trust has entered into or proposes to enter into a contract in which he/she has any pecuniary interest, direct or indirect, he/she shall declare such interest by giving notice in writing to the Chief Executive of the fact that he/she is interested therein. In the case of spouses or persons cohabiting as partners, the interest of one spouse or partner shall, if known to the other, be deemed to be also the interest of the other.

An officer should also declare to the Chief Executive any other employment or business or other relationship of his, or of a cohabiting spouse or partner, that conflicts, or might reasonably be predicted could conflict with the interests of the trust. The trust requires interests, employment or relationships so declared to be entered in a register of interests of staff.

Canvassing of and recommendations by, members of the Board in relation to appointments

11.5. Canvassing of members of the Board or of any committee or sub-committee the Board, either directly or indirectly for any appointment under the trust shall

disqualify the candidate for such appointment. The contents of this Standing Order 11.5 shall be included in application forms or otherwise brought to the attention of applicants.

11.6. A member of the Board shall not solicit for any person any appointment under the trust or recommend any person for such appointment. This Standing Order 11.6 shall not, however, preclude a member of the Board from giving written testimonial of a candidate's ability, experience or character for submission to the trust.

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

Relatives of members of the board or officers of the trust

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

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

11.10. Prior to acceptance of an appointment, members of the Board should disclose to the Board whether they are related to any other member of the Board or holder of any office in the trust.

11.11. Where the relationship to a member of the Board is disclosed, Standing Order 11.4 may apply.

Gifts and hospitality

11.12. Members of the Board and officers of the trust are expected to maintain high standards of personal conduct in all work related business. Under the Bribery Act 2010 they must not accept from any organisation, firm or individual any inducement or reward which might influence them to make a decision that is not in the best interests of the trust. Any breach of the Act renders any employee liable to instant dismissal.

11.13. Any gifts received from or offer of gifts by a contractor or potential contractor must be declined and reported immediately in accordance with the trust's policy on Gifts, Hospitality & Interests. In the context of these instructions contractor means any supplier of goods, and/or services to the trust.

11.14. Similarly, all offers of hospitality must be treated on the same basis. Visits to contractors or potential contractors or to another site to inspect their installations must be made at the trust's expense not the contractor's. Exception to this rule may be granted by the Chief Executive where

reasonable. Otherwise only minimal hospitality should be accepted from a contractor or potential contractor and immediate explanation must be given to the Chief Executive if a breach of the rules occurs. As with gifts, unless it is of a minor nature, hospitality and entertainment should be declined.

12. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

Custody of seal

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

Sealing of documents

12.2. The seal of the trust shall not be affixed to any document unless the sealing has been authorised by a resolution of the Board or of a committee established by the Board where the Board has delegated its powers to such a committee to authorise the application of the trust's seal.

12.3. Before any building, engineering, property or capital document is sealed it must be approved by the director of finance, or an officer nominated by him with such approval being evidenced in writing and authorised in writing by the chief executive, or an officer nominated by him who shall not be within the originating directorate.

12.4. All deeds entered into by the trust and all documents conveying an interest in land must be executed by the application of the trust's seal.

Register of sealing

12.5. A record of the sealing of every document shall be made and numbered consecutively in a register established for that purpose, and shall be signed by the persons who have approved and authorised the document and those who attested the seal. A report of all sealings shall be made to the Board at least annually. The report shall contain details of the seal number, the description of the document and date of sealing.

13. SIGNATURE OF DOCUMENTS

13.1. Where any document becomes a necessary step in legal proceedings involving the trust, it shall be signed by the Chief Executive or any executive director nominated by the Chief Executive.

13.2. The Chief Executive or any executive director nominated by the Chief Executive shall be authorised, by resolution of the Board, 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 or any committee established by the Board with delegated authority.

14. MISCELLANEOUS

Standing orders to be given to members of the board and officers of the trust

14.1. It is the duty of the Chief Executive to ensure that existing Board members and officers of the trust and all new appointees are notified of and understand their responsibilities within the Standing Orders, Standing Financial Institutions, Scheme of Delegation and Reservation of Power.

Review of standing orders

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

ANNEX 10 – FURTHER PROVISIONS - MEMBERS

1. DISQUALIFICATION FROM MEMBERSHIP

1.1. An individual may not become, or continue to be, a member of the trust if:

1.1.1. they are under 14 years of age; or

1.1.2. they have been involved as a perpetrator in a serious incident of physical or verbal aggression at any of the trust's sites or facilities or against any of the trust's employees or other persons who exercise functions for the purposes of the trust, or against any registered volunteer.

2. TERMINATION OF MEMBERSHIP

2.1. A member shall cease to be a member if:

2.1.1. they resign by notice to the Trust Secretary;

2.1.2. they die;

2.1.3. they are expelled from membership under this constitution;

2.1.4. they cease to be eligible under this constitution to be a member of any of the Public Constituencies, or of the Service User and Carer Constituency or of any classes of the Staff Constituency;

2.1.5. it appears to the Trust Secretary that 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 demonstrate that they wish to continue to be a member of the trust.

2.2. A member may be expelled by a resolution approved by not less than two thirds of the governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted.

2.2.1. any member may complain to the Trust Secretary that another member has acted in a way that is detrimental to the interests of the trust;

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

2.2.2.1. dismiss the complaint and take no further action; or

2.2.2.2. for a period not exceeding twelve months suspend the right of the member complained about to attend members meetings and vote under this constitution; or

2.2.2.3. arrange for a resolution to expel the member complained about to be considered at the next general meeting of the Council of Governors.

2.2.3. If a resolution to expel a member is to be considered at a general meeting of the Council of Governors, details of the complaint must be sent to the member complained about not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.

2.2.4. At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained about may wish to place before them.

2.2.5. If the member complained about fails to attend the meeting without due cause the meeting may proceed in their absence.

2.3. A person expelled from membership will cease to be a member upon the declaration by the chair of the meeting that the resolution to expel them is carried.

2.4. No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a general meeting.

3. MEMBERS MEETINGS

3.1. The trust is to hold the Annual Members' Meeting within nine months of the end of each financial year.

3.2. All members meetings other than Annual Members' Meetings are called Special Members' Meetings.

3.3. The Annual Members' meeting shall be open to members of the public. Special Members' Meetings are open to all members of the trust, governors and directors, and representatives of the auditor, but not to members of the public unless the Council of Governors decides otherwise. The Council of Governors 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 a members meeting.

3.4. All members' meetings are to be convened by the Trust Secretary.

3.5. The Trust Secretary shall decide where a members meeting is to be held and may also for the benefit of members:

3.5.1. arrange for the Annual Members' Meeting to be held in different venues each year;

3.5.2. make provision for a members meeting to be held at different venues simultaneously or at different times. In making such provision the

Trust Secretary shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.

3.6. At the Annual Members' Meeting:

3.6.1. the Board of Directors shall present to the members:

3.6.1.1. the annual accounts;

3.6.1.2. any report of the auditor;

3.6.1.3. forward planning information for the next financial year;

3.6.2. the Council of Governors shall present to the members a report on:

3.6.2.1. steps taken to secure that (taken as a whole) the actual membership of:

3.6.2.1.1. the Public Constituency;

3.6.2.1.2. the classes of the Staff Constituency;

3.6.2.1.3. the Service User and Carer Constituency; and

is representative of those eligible for such membership;

3.6.2.2. the progress of the membership strategy and any changes proposed; and

3.6.2.3. any proposed changes to the policy for the composition of the Council of Governors and of the non-executive directors

3.6.3. the results of the election and appointment of governors and the appointment of non-executive directors will be announced.

3.7. Notice of a members meeting is to be given by the Trust Secretary:

3.7.1. by written notice to all members;

3.7.2. by notice prominently displayed at the trust's head office and at all of the trust's places of business;

3.7.3. by notice on the trust's website; and

3.7.4. is to be given in writing to the Council of Governors and the Board of Directors, and to the auditor;

at least 14 days before the date of the meeting. The notice must:

3.7.5. state whether the meeting is an Annual Members' Meeting or a Special Members' Meeting;

3.7.6. give the time, date and place of the meeting; and

3.7.7. indicate the business to be dealt with at the meeting.

3.8. The lack of service of notice on any member shall not affect the validity of any meeting.

3.9. Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is one member present from each of the trust's constituencies.

3.10. The trust may make arrangements for members to vote by post, or by using electronic communications.

3.11. It is the responsibility of the Council of Governors, the chair of the meeting and the Trust Secretary to ensure that at any members meeting:

3.11.1. the issues to be decided are clearly explained; and

3.11.2. sufficient information is provided to members to enable meaningful discussion to take place.

3.12. The Chairman, or in their absence the Vice Chair, shall chair all members meetings. If neither the Chairman nor the Vice Chair is present, the members of the Council of Governors present at the meeting shall elect one of their number to be chair and if there is only one governor present and willing to act they shall be chair.

3.13. 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 Trust Secretary, having consulted with the Chairman, shall 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.

3.14. A resolution put to the vote at a members meeting shall be decided by a majority of votes of those members present and voting.

3.15. 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 chair of the meeting is to have a second and casting vote.

3.16. The result of any vote will be declared by the chair and entered in the minutes. The minutes will be conclusive evidence of the result of the vote.

4. CHOICE OF CONSTITUENCY

4.1. A person who is eligible to be a Member of the Staff Constituency may not become or continue as a Member of a Public Constituency or the Service User and Carer Constituency.

4.2. A person who is eligible to be a member of a Public Constituency and the Service User and Carer Constituency may elect to be a member of either constituency but not both at the same time.

4.3. An individual who is eligible and applies to be a member of the Service User and Carer Constituency will remain within that constituency unless they apply in writing to the Trust Secretary to change their membership to a Public Constituency.

4.4. An individual who is eligible and applies to be a member of a Public Constituency will remain within that constituency unless they apply in writing to the Trust Secretary to change their membership to the Service User and Carer Constituency.

4.5. An individual who is a member of the Service User and Carer Constituency but whom subsequently is employed by Mersey Care NHS Foundation Trust or the trust must transfer to the Staff Constituency.

5. DECISIONS ON ELIGIBILITY FOR MEMBERSHIP

5.1. It is the responsibility of each member to ensure his eligibility to become or continue as a Member of a Constituency or Class of a Constituency at all times and not the responsibility of the trust to do so on his behalf. A member who becomes aware of his ineligibility shall inform the trust as soon as practicable and that person shall thereupon be removed forthwith from the Register of Members and shall cease to be a member.

5.2. Where the trust has reason to believe that a member is ineligible for membership or may be disqualified from membership the Trust Secretary shall carry out reasonable enquiries to establish if this is the case.

5.3. Where the Trust Secretary considers that there may be reasons for concluding that a member or an applicant for membership may be ineligible or be disqualified from membership he/she shall advise that individual of those reasons in summary form and invite representations from the member or applicant for membership within 28 days or such other reasonable period as the Trust Secretary may in his absolute discretion determine. Any representations received shall be considered by the Trust Secretary and he/she shall make a decision on the member's or applicant's eligibility or disqualification as soon as reasonably practicable and shall give notice in writing of that decision to the Member or applicant within 28 days of the decision being made.

5.4. If no representations are received within the said period of 28 days or such longer period (if any) permitted under the preceding paragraph, the Trust Secretary shall be entitled nonetheless to proceed and make a decision on the member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from him.

5.5. Any decision to disqualify a member or an applicant for membership may be referred by the member or applicant concerned to the dispute resolution procedure described in Annex 11.

ANNEX 11 – FURTHER PROVISIONS

1. REPRESENTATIVE MEMBERSHIP

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

2. TRUST SECRETARY

2.1. The trust shall have a Trust Secretary who may be an employee. The Trust Secretary may not be a governor, or the Chief Executive or the Director of Finance. All directors and governors will have access to the advice and services of the Trust Secretary. The Trust Secretary's functions shall include:

2.1.1. acting as secretary to the Council of Governors, the Board of Directors and any committees, giving independent advice on governance and always acting in the best interests of the trust;

2.1.2. ensuring good information flows between the Board of Directors and its committees and between the Board of Directors, the Council of Governors and senior management;

2.1.3. calling and attending all members meetings, meetings of the Council of Governors and of the Board of Directors, and taking the minutes of those meetings;

2.1.4. being available to give advice and support to individual directors and governors, particularly in relation to the induction of new directors and governors and assistance with professional development;

2.1.5. keeping the register of members and other registers and books required by this constitution to be kept;

2.1.6. keeping the trust's seal;

2.1.7. publishing to members in an appropriate form information which they should have about the trust's affairs;

2.1.8. preparing and sending to Monitor and any other statutory body all returns which are required to be made.

2.2. Minutes of every members meeting, of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept by the Trust Secretary. Minutes of meetings will be read at the next meeting and signed by the chair of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.

2.3. The Trust Secretary shall be responsible for making any determination required on the interpretation of this constitution (having sought and received legal advice if required) where any query as to the interpretation of this constitution is raised by any governor, director or member.

2.4. A determination made in accordance with paragraph 2.3 above shall be binding on the Council of Governors, the Board of Directors and the members.

2.5. The Trust Secretary is to be appointed and removed by the Chief Executive and the Chairman jointly.

2.6. The Board of Directors of the applicant NHS trust shall appoint the first secretary of the trust.

3. FURTHER PROVISIONS AS TO AUDITOR

3.1. A person may only be appointed as the auditor if he/she (or in the case of a firm, each of its members) are a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 7 to the 2006 Act.

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

4. INDEMNITY

4.1. Members of the Council of Governors and of the Board of Directors and the Trust Secretary who act honestly and in good faith will not have to meet out of their personal resources the cost associated with any personal civil liability which accrues to them 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. The trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors and of the Board of Directors and of the Trust Secretary.

5. DISPUTE RESOLUTION PROCEDURES

5.1. Every unresolved dispute which arises out of this constitution between the trust and:

5.1.1. a member; or

5.1.2. an applicant for membership; or

5.1.3. any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or

5.1.4. any person bringing a claim under this constitution; or

5.1.5. an office-holder of the trust;

is to be submitted to an arbitrator agreed by the parties or in the absence of agreement to be nominated by the Strategic Health Authority or on its establishment the National Health Service Commissioning Board. The arbitrator's decision will be binding and conclusive on all parties, including as to cost.

5.2. Any person bringing a dispute must, if required to do so, deposit with the trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Trust Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.

6. NOTICES

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

6.2. Proof that:

6.2.1. in the case of a notice sent by post, the envelope containing the notice was properly addressed, prepaid and posted; and

6.2.2. in the case of a notice sent by electronic communication, the electronic communication was dispatched to the correct address;

shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 2 days after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 1 day after it was sent.

7. FURTHER PROVISIONS AS TO TRANSITION

7.1. The Board of Directors of the applicant NHS trust shall prepare and approve the first membership strategy and the first policy for the composition of the Council of Governors and of the non-executive directors.

7.2. These will be reviewed by the Council of Governors following the election and appointment of the initial governors.

7.3. For the purposes of the period before the applicant NHS trust becomes the trust:

7.3.1. elections shall be carried out in accordance with the Model Election Rules set out at Annex 5, using the first past the post method of voting;

7.3.2. the Chief Executive of the applicant NHS trust will approve:

7.3.2.1. a membership application form,

7.3.2.2. a form of declaration required by section 60 (1) of the 2006 Act,

7.3.2.3. a form of declaration required by section 60 (2) of the 2006 Act,

7.3.2.4. a form of declaration required by section 60 (3) of the 2006 Act,

7.3.2.5. a form confirming acceptance of a code of conduct for governors;

7.3.3. the Trust Secretary of the applicant NHS trust will consult and agree arrangements with the appointing organisations for the appointment of Appointed Governors; and

7.3.4. the Trust Secretary of the applicant NHS trust shall make the final decision about the class of the Staff Constituency of which an individual is eligible to be a member.