



**Greater Manchester
Mental Health**
NHS Foundation Trust

CONSTITUTION OF GREATER MANCHESTER MENTAL HEALTH NHS FOUNDATION TRUST

Approved:

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1. Interpretation and Definitions

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

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

the 2006 Act is the National Health Service Act 2006

the 2012 Act is the Health and Social Care Act 2012

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

Annual Members' Meeting is defined in paragraph 14 of the constitution

Appointed Governors means those governors appointed by the Appointing Organisations

Appointing Organisation means those organisations named in Annex 4 of this Constitution who are entitled to appoint Appointed Governors

Carer means a person who has attended any of the Foundation Trust's premises from which services are provided as the carer of a service user and who provides regular practical or emotional support to a service user, provided that such person is not providing care in pursuance of a contract (including a contract of employment) or as a volunteer for a voluntary organisation

Constitution means this constitution and all annexes to it

Elected Governors means those governors elected by the public constituencies, the service user and carer constituency and the classes of the staff constituency

Financial Year means (a) a period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and (b) each successive period of 12 months beginning with 1 April

Governor means a member of the Council of Governors

Independent Regulator is the body corporate known as NHS Improvement (previously Monitor), as provided by Section 61 of the 2012 Act

Lead Governor means a governor appointed by the Council of Governors to fulfil the role as defined in paragraph 15.5 of this constitution

NHS Provider Licence means the NHS Provider Licence issued by the Independent Regulator under Part 3 Chapter 3 of the 2012 Act

Predecessor Trust means Manchester Mental Health and Social Care NHS Trust

Public Constituency means (collectively) those members living in one of the areas specified in Annex 1

Public Governor means a governor elected by the members of one of the public constituencies

Secretary of State means the person appointed by HM Government to be the Secretary of State for Health for England

Senior Independent Director means the person appointed by the Board of Directors, in consultation with the Council of Governors, to provide a sounding board for the Chair, to serve as an intermediary for the other Directors when necessary and to be available to Governors if they have concerns that contact through normal channels has failed to resolve.

Service User and Carer Constituency means (collectively) the members of the service user and carer constituency which is referred to as the 'patients' constituency' in the 2006 Act

Service User and Carer Governor means a governor elected by the members of the service user and carer constituency

Staff Constituency means (collectively) the members of the six classes comprising the staff constituency

Staff Governor means a governor elected by the members of one of the classes of the staff constituency

Vexatious complainant means a person who has been deemed to be an unreasonable and persistent complainant in accordance with the procedures laid out in the relevant Foundation Trust policy

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

2. Name

The name of the Foundation Trust is Greater Manchester Mental Health NHS Foundation Trust (the Foundation Trust).

3. Principal Purpose

3.1 The principal purpose of the Foundation Trust is the provision of goods and services

for the purposes of the health service in England.

- 3.2** The Foundation 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 Foundation 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 Foundation 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 Foundation Trust are set out in the 2006 Act (as amended by the 2012 Act), subject to any restrictions in the Terms of Authorisation and NHS Provider Licence.
- 4.2** The Foundation Trust may do anything which appears to it to be necessary or desirable for the purposes of, or in connection with, its functions.
- 4.3** In particular, it may:
 - 4.3.1** acquire and dispose of property;
 - 4.3.2** enter into contracts;
 - 4.3.3** be a party to any arrangements with a local authority or local authorities;
 - 4.3.4** accept gifts of property (including property to be held on trust for the purposes of the Foundation Trust or for any purposes relating to the health service); and
 - 4.3.5** employ staff.
- 4.4** Any power of the Foundation Trust to pay remuneration and allowances to any person includes the power to make arrangements for providing or securing the provision of pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).

- 4.5** The Foundation Trust may borrow money for the purposes of or in connection with its functions, subject to any limit imposed by its authorisation or specified in the prudential borrowing code published by the Independent Regulator from time to time.
- 4.6** The Foundation Trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions. The investment may include investment by:
- 4.6.1** forming or participating in forming bodies corporate; and/or
- 4.6.2** otherwise acquiring membership of bodies corporate
- 4.7** The Foundation Trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.
- 4.8** Without prejudice to the general powers in paragraphs 4.1 to 4.7 and subject to the 2006 Act and to any restrictions in the Terms of Authorisation, the Foundation Trust may also act and continue to act as trustee of charitable and other trusts and funds, including but not limited to those trusts and funds of which the Foundation Trust is trustee at the date of adoption of this Constitution.
- 4.9** All the powers of the Foundation Trust shall be exercised by the Board of Directors on behalf of the Foundation Trust.
- 4.10** Any of these powers may be delegated to a committee of Directors or to an Executive Director.

5. Commitments

- 5.1** The Foundation Trust shall exercise its functions effectively, efficiently and economically.

Representative Membership

- 5.2** The Foundation 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 Foundation Trust shall have 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.

Co-operation with Health Service and Other Bodies

- 5.3** In exercising its functions, the Foundation Trust shall co-operate with other health organisations and local authorities.

Respects for Rights of People

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

Openness

- 5.5** The Foundation Trust shall have regard to the need to provide information to members and shall conduct its affairs in an open and accessible way.

Prohibiting Distribution

- 5.6** The surpluses of the Foundation Trust are not to be distributed either directly or indirectly in any way among members of the Foundation Trust or to other organisations.

6. Framework

- 6.1** The affairs of the Foundation Trust are to be conducted by the Board of Directors, the Council of Governors and the members in accordance with this Constitution, the Terms of Authorisation and the NHS Provider Licence.

Members

- 6.2** Members may attend and participate in Members' Meetings, vote in elections to the Council of Governors, stand for election to the Council of Governors, and take such other part in the affairs of the Foundation Trust as is provided in this Constitution.

Council of Governors

- 6.3** The general duties of the Council of Governors are:
- 6.3.1** to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and
 - 6.3.2** to represent the interests of the members of the Foundation Trust as a whole and the interests of the public.

6.4 The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with this Constitution and the Foundation Trust's authorisation; are

6.4.1 at a General Meeting:

6.4.1.1 to appoint or remove the Chair and the other Non-Executive Directors;

6.4.1.2 to approve an appointment (by the Non-Executive Directors) of the Chief Executive;

6.4.1.3 to decide the remuneration, allowances and other terms and conditions of office of the Non-Executive Directors;

6.4.1.4 to appoint or remove the Foundation Trust's auditor; and

6.4.1.5 to be presented with the annual accounts, any report of the auditor on them, and the annual report;

6.4.2 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Foundation Trust's forward planning;

6.4.3 to approve significant transactions, mergers, acquisitions, separations and dissolutions proposed for the Foundation Trust by the Board of Directors;

6.4.4 to take decisions on non-NHS income, determining whether it is satisfied that carrying out the activity will not to any significant extent interfere with the Foundation Trust's fulfilment of its principal purpose or the performance of its other functions;

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

6.4.6 to respond as appropriate when consulted by the Board of Directors on any proposed revision to this Constitution or any other matter.

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

Board of Directors

- 6.6** The general duty of the Board of Directors and of each Director is to act with a view to promoting the success of the Foundation Trust so as to maximise the benefit for the members of the Foundation Trust as a whole and for the public.
- 6.7** The business of the Foundation Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Foundation Trust, subject to any contrary provisions of the 2006 Act.
- 6.8** The Board of Directors shall be responsible for approving the annual accounts and annual report of the Foundation Trust.
- 6.9** In preparing the document containing information about the Foundation Trust's forward planning, the Board of Directors shall have regard to the views of the Council of Governors.

7. Membership

- 7.1** The members of the Foundation Trust are those individuals whose names are entered in the register of members. Every member shall be a member of one of the Public Constituencies, or a member of the Service User and Carer Constituency, or a member of one of the classes of the Staff Constituency.

8. Eligibility and Application for Membership

- 8.1** An individual who is eligible to become a member of the Foundation Trust may do so on application to the Foundation Trust.
- 8.2** Subject to this constitution, membership is open to any individual who:
 - 8.2.1** is fourteen years of age or over;
 - 8.2.2** is not otherwise disqualified from membership under paragraph 12 or any other provisions of this Constitution;
 - 8.2.3** is eligible under this Constitution to be a member of one of the Public Constituencies, or a member of the Service User and Carer Constituency, or a member of one of the classes of the Staff Constituency;
 - 8.2.4** (unless they are a member of one of the classes of the Staff Constituency) completes a membership application form in whatever form the Foundation Trust specifies; and
 - 8.2.5** in the case of the Staff Constituency only, has been invited to become a member of that constituency by the Foundation Trust and has not informed the Foundation Trust that they do not wish to be members.
- 8.3** Any dispute about eligibility for membership or the constituency or class of a

constituency that an individual is entitled to join shall be resolved by the Foundation Trust in accordance with the Dispute Resolution Procedure set out at paragraph 49 of this Constitution.

- 8.4** It is the responsibility of members, and not the Foundation Trust, to ensure their eligibility for membership. A member who becomes aware of his ineligibility shall inform the Foundation Trust as soon as practicable and shall thereupon be removed from the Register of Members and shall cease to be a member.

9. Public Constituency

- 9.1** There are four Public Constituencies corresponding to the public constituency areas specified in Annex 1. Membership of a Public Constituency is open to individuals who:

9.1.1 live in the relevant area of the Foundation Trust;

9.1.2 are not a member of another Public Constituency or of the Service User and Carer Constituency; and

9.1.3 are not eligible to be members of any of the classes of the Staff Constituency.

- 9.2** Those individuals who live in an area specified for a public constituency are referred to collectively as a Public Constituency.

- 9.3** The minimum number of members in each Public Constituency is specified in Annex 1.

10. Staff Constituency

- 10.1** The Staff Constituency shall be divided into six classes as specified in Annex 2.

- 10.2** Membership of one of the classes of the Staff Constituency is open to individuals who:

10.2.1 are employed under a contract of employment by the Foundation Trust provided:

10.2.1.1 the contract of employment has no fixed term or has a fixed term of at least 12 months; or

10.2.1.2 they have been continuously employed by the Foundation Trust or the Predecessor Trust for at least 12 months.

10.2.2 are not members of any Public Constituency or of the Service User and Carer Constituency.

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

10.4 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.

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

10.6 The Company Secretary shall make a final decision as to which class an individual is eligible to be a member.

Automatic Membership by Default – Staff

10.7 An individual who is:

10.7.1 eligible to become a member of one of the classes of the Staff Constituency, and

10.7.2 invited by the Foundation Trust to become a member of the appropriate class within the Staff Constituency,

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

11. Service User and Carer Constituency

11.1 The Service User and Carer Constituency set out in Annex 3 is not divided into classes.

11.2 Membership of the Service User and Carer Constituency is open to individuals:

11.2.1 who are a service user or carer when they apply for membership or have been a service user or carer within the period of five years ending on the date they apply for membership; and

11.2.2 who are not a member of a Public Constituency, nor eligible to be a member of one of the classes of the Staff Constituency.

- 11.3** Those individuals who are eligible for membership of the Foundation Trust by reason of the previous provisions are referred to collectively as the Service User and Carer Constituency.
- 11.4** 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.
- 11.5** The minimum number of members in the Service User and Carer Constituency is specified in Annex 3.

12. Disqualification from Membership

12.1 This provision applies to:

- 12.1.1** any person involved within the last five years as a perpetrator in a serious incident of assault or violence, or in one or more incidents of harassment, against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against registered volunteers;
- 12.1.2** any person who has been excluded from the Foundation Trust's premises from which services are provided;
- 12.1.3** any person who has been previously employed by the Foundation Trust and was dismissed for gross misconduct; and
- 12.1.4** any person who is, or at any time has been, deemed as a vexatious complainant.

12.2 In relation to any such person, membership of the Foundation Trust may be refused or withdrawn if the Council of Governors considers that it is not in the best interests of the Foundation Trust for them to become or remain a member.

13. Termination of Membership

13.1 A member shall cease to be a member if:

- 13.1.1** they resign by notice to the Company Secretary;
- 13.1.2** they die;

- 13.1.3** they are expelled from membership under this Constitution;
 - 13.1.4** they cease to be entitled under this Constitution to be a member of any of the Public Constituencies, or of the Service User and Carer Constituency, or of any of the classes of the Staff Constituency; and/or
 - 13.1.5** if it appears to the Foundation Trust, after making enquiries, that they no longer wish to be a member of the Foundation Trust;
 - 13.1.6** the Foundation Trust believes that a member no longer lives at their registered address and the Foundation Trust does not know where the member lives; or
 - 13.1.7** they are otherwise disqualified from membership under paragraph 12 of this constitution
- 13.2** A member may be expelled by a resolution of the Council of Governors on the grounds that the member's continued membership is harmful to, or not in the best interests of, the Foundation Trust.
- 13.3** If a resolution to expel a member is to be considered at a general meeting of the Council of Governors, the following procedure is to be adopted:
- 13.3.1** Details of the grounds for the proposed resolution must be sent to the member concerned not less than one calendar month before the meeting with an invitation to respond to the grounds and attend the meeting.
 - 13.3.2** At the meeting, the Council of Governors will consider evidence in support of the proposed resolution and such evidence as the member concerned may wish to place before them.
 - 13.3.3** If the member concerned fails to attend the meeting without reasonable cause, the meeting may proceed in their absence.
- 13.4** A person expelled from membership will cease to be a member when not less than two thirds of the governors present and voting at a General Meeting approve the resolution and the Chair of the meeting declares that the resolution to expel them is carried.
- 13.5** No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of not less than two thirds of the Governors present and voting at a General Meeting of the Council of Governors.

14. Annual Members' Meeting

14.1 The Foundation Trust shall hold an annual meeting of its members ('Annual Members' Meeting') within nine months of the end of each financial year. Additional Members' Meetings may be held as and when is considered necessary.

14.2 The Annual Members' Meeting shall be open to members of the public. All other Members' Meetings shall be open to all members of the Foundation Trust, Governors and Directors 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 Foundation Trust to attend a Members' Meeting.

14.3 All Members' Meetings, including an Annual Members' Meeting, are to be convened by the Company Secretary by order of the Council of Governors.

14.4 At the Annual Members' Meeting:

14.4.1 the Board of Directors shall present to the members the annual accounts, any report of the auditor, the annual report and the forward planning information for the next financial year.

14.4.2 the Council of Governors shall present to the members the progress of the Membership Strategy and any changes to the Membership Strategy; and

14.4.3 the results of the election and appointment of Governors and the appointment of Non-Executive Directors will be announced.

14.5 Where an amendment 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 Foundation Trust):

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

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

14.6 Notice of an Annual Members' Meeting is to be given:

14.6.1 by notice to all members;

14.6.2 by notice prominently displayed at the Foundation Trust's Head Office;

and

14.6.3 by notice on the Foundation Trust's website

at least 14 days clear before the date of the meeting. The notice must:

14.6.4 be given to the Council of Governors and to the Board of Directors, and to the financial auditor and any external auditors;

14.6.5 state whether the meeting is an Annual Members' Meeting;

14.6.6 give the time, date and place of the meeting; and

14.6.7 indicate the business to be dealt with at the meeting.

14.7 Before a Members' Meeting, including an Annual Members' Meeting, can do business there must be a quorum present. Except where this Constitution permits otherwise, a quorum is one member present from each of the Foundation Trust's constituencies. If no quorum is present within fifteen minutes of the time fixed for the start of the meeting, the meeting shall be adjourned to such time and place as the Council of Governors' decides. 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.

14.8 The Chair of the Foundation Trust, or in their absence the Vice-Chair (who shall be Vice-Chair of the Council of Governors), or in their absence one of the Non-Executive Directors appointed by the Council of Governors to fulfil the role of Chair, shall act as Chair at all Members' Meetings of the Foundation Trust.

14.9 It is the responsibility of the Chair of the meeting and the Company Secretary to ensure that at any Members' Meeting:

14.9.1 the issues to decide are clearly explained; and

14.9.2 sufficient information is provided to members to enable them rational discussion to take place.

14.10 A resolution put to the vote at a Members' Meeting shall be decided upon by a poll.

14.11 The Foundation Trust may make arrangements for members to vote by post, or by using electronic communications.

14.12 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of any equality of

votes the Chair of the meeting is to have a second or casting vote.

- 14.13** The result of any vote will be declared by the Chair and recorded in the minutes of the meeting. The minutes will be conclusive evidence of the result of the vote.

15. Council of Governors – Composition

- 15.1** The Foundation Trust is to have a Council of Governors, which shall comprise both Elected and Appointed Governors.

- 15.2** The aggregate number of Public and Service User and Carer Governors is to be more than half of the total number of Governors.

- 15.3** The composition of the Council of Governors is specified in Annex 4.

- 15.4** The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:

15.4.1 the interests of the community served by the Foundation Trust are appropriately represented;

15.4.2 the level of representation of the Public Constituencies, the Service User and Carer Constituency, the classes of the Staff Constituency and the Appointing Organisations strikes an appropriate balance having regard to their legitimate interest in the Foundation Trust's affairs.

- 15.5** The Council of Governors shall appoint one governor to operate as Lead Governor. The Lead Governor shall:

15.5.1 lead the Council of Governors where it is not considered appropriate for the Chair, Vice-Chair or another Non-Executive Director to do so;

15.5.2 provide the main point of contact for the Independent Regulator in any specific circumstances where it may need to contact the Council of Governors;

15.5.3 bring to the Chair's notice any issues arising from the Governors; and

15.5.4 work to ensure a continuing positive relationship between Governors and Directors of the Foundation Trust.

16. Council of Governors – Election of Governors

- 16.1** The members of the Council of Governors, other than the Appointed Governors,

shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

16.2 Elections for Elected Governors shall be conducted in accordance with the Model Election Rules (as published from time to time by NHS Providers) set out in Annex 5.

16.3 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 50 of the Constitution (amendment of the constitution).

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

16.5 To be eligible to vote at an election for Governors, members of a Public Constituency and members of the Service User and Carer Constituency must, within twenty-one days before they vote, make a declaration in the form specified by the Trust that they are eligible to vote. Making an incorrect declaration may be an offence.

16.6 To be eligible to stand for election as a Public Governor or Service User and Carer Governor, a person must, within the period specified in Annex 5, make a declaration in the form specified by the Foundation Trust that they are qualified to vote as a member of the relevant Public Constituency or of the Service User and Carer Constituency and are not prevented from being a Governor under the 2006 Act or this Constitution. Making an incorrect declaration may be an offence.

17. Council of Governors – Appointment of Appointed Governors

17.1 The Appointing Organisations that may appoint an Appointed Governor are set out in Annex 4.

17.2 The Appointed Governors are to be appointed by the Appointing Organisations in accordance with a process agreed with the Foundation Trust.

18. Council of Governors - Tenure

Elected Governors

18.1 An Elected Governor may hold office for a period of up to three years following the election that resulted in their election as Governor.

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

- 18.3** An Elected Governor shall be eligible for re-election at the end of his term.
- 18.4** An Elected Governor may not, if re-elected, hold office for more than three consecutive terms, making nine consecutive years.
- 18.5** An Elected Governor shall not be eligible for re-election if they have already held office for more than six consecutive years.
- 18.6** The Board of Directors may, at its discretion, appoint an Elected Governor who has concluded his tenure to act as an Ambassador of the Foundation Trust. Such appointment is to be terminable at the discretion of the Board by notice in writing.

Appointed Governors

- 18.7** An Appointed Governor may hold office for a period of up to three years.
- 18.8** An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 18.9** An Appointed Governor shall be eligible for re-appointment at the end of his term.
- 18.10** An Appointed Governor may not hold office for more than three consecutive terms, making nine consecutive years.

19. Council of Governors – Disqualification

- 19.1** A person may not become or continue as a member of the Council of Governors if:
 - 19.1.1** they are under sixteen years of age;
 - 19.1.2** they are a Director of the Foundation Trust, or a Governor or Director of another NHS Trust or Foundation Trust;
 - 19.1.3** they are a spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
 - 19.1.4** they are a member of a Local Authority’s scrutiny committee covering health matters;
 - 19.1.5** being a member of one of the Public Constituencies or the Service User and Carer Constituency, they refuse to sign a declaration in the form

specified by the Foundation Trust of particulars of their qualification to vote as a member of the Foundation Trust, and that they are not prevented from being a member of the Council of Governors;

- 19.1.6** they have been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 19.1.7** they have a moratorium period under a debt relief order applied (under [Part 7A](#) of the Insolvency Act 1986);
- 19.1.8** they have made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 19.1.9** they have within the preceding five years been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
- 19.1.10** they have within the preceding two years been dismissed, otherwise than by reason of redundancy or incapacity, from any paid employment with a health service body;
- 19.1.11** they are a person whose tenure of office as the Chair or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest; and/or
- 19.1.12** they are a vexatious complainant.

20. Termination of Office and Removal of Governors

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

20.1.1 they resign by notice in writing to the Company Secretary;

20.1.2 they fail to attend meetings of the Council of Governors for the lesser of twelve or more consecutive months or three successive meetings, unless the other Governors are satisfied that:

20.1.2.1 the absences were due to reasonable causes; and

21. Vacancies amongst Governors

- 21.1** Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 21.2** Where the vacancy arises amongst the Appointed Governors, the Foundation Trust shall request that the Appointing Organisation appoints a replacement to hold office for the remainder of the term of office.
- 21.3** Where the vacancy arises amongst the Elected Governors, the Council of Governors shall:
- 21.3.1** invite the next highest polling candidate for that seat at the most recent elections held less than twelve months previously, who is willing to take office, to fill the seat for the unexpired period of the term of office; or
 - 21.3.2** if there is no candidate at the most recent election willing to take office or if the most recent election was held more than twelve months previously, call an election within six months to fill the seat for the remainder of that term of office.

22. Expenses and Remuneration of Governors

- 22.1** The Foundation Trust may reimburse Governors for travelling and other costs and expenses at such rates as the Board of Directors decides.
- 22.2** Governors are not to receive remuneration.

23. Council of Governors – Meetings of Governors

- 23.1** The Council of Governors is to meet at least three times in each financial year. Save in the case of emergencies or the need to conduct urgent business, at least ten days written notice shall be given to all Governors of the date and place of every meeting of the Council of Governors. Notice will also be published on the Foundation Trust's website.
- 23.2** All meetings of the Council of Governors are to be General Meetings open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds.
- 23.3** The Chair of the Foundation Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 29.1 below) or, in his absence, the Vice-Chair, shall preside at meetings of the Council of Governors.

- 23.4** Nine Governors and where a majority of Governors present are Public and Service User and Carer Governors, shall form a quorum.
- 23.5** The Chair may exclude any member of the public or a Governor from a meeting of the Council of Governors, if the Chair considers he is interfering with or preventing the proper conduct of the meeting.
- 23.6** Subject to this Constitution and the following provisions of this paragraph, if the Chair of the meeting considers it necessary to hold a vote on an issue, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes. In case of an equality of votes the person chairing the meeting shall have a casting vote.
- 23.7** For the purposes of obtaining information about the Foundation Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Foundation Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.
- 23.8** The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions. The Council of Governors may appoint Governors and may invite Directors and other persons to serve on such committees. The Council of Governors may, through the Company Secretary, request that external advisors assist them or any committee they appoint in carrying out its duties.
- 23.9** All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or in the appointment of the Governors attending the meeting.

24. Council of Governors – Standing Orders

The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6.

25. Council of Governors – Referral to the Panel

25.1 In this paragraph, the Panel means a panel of persons appointed by the Independent Regulator to which a Governor of an NHS foundation trust may refer a question as to whether the Foundation Trust has failed or is failing:

25.1.1 to act in accordance with its constitution, or

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

25.2 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.

26. Council of Governors - Conflicts of Interest of Governors

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

26.2 Any Governor who has a material interest in a matter as defined below shall declare such interest to the Council of Governors and:

26.2.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and

26.2.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

26.3 Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Governors.

26.4 Subject to the exception below, a material interest is:

26.4.1 any directorship of a company;

26.4.2 any interest or position held by a Governor in any firm or company or business which, in connection with the matter, is trading with the Foundation Trust, or is likely to be considered as a potential trading partner with the Foundation Trust;

26.4.3 any interest in a voluntary or other organisation providing health and social care services to the National Health Service;

26.4.4 a position of authority in a charity or voluntary organisation in the field of health and social care; and/or

26.4.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.

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

26.5.1 shares not exceeding 1% of the total shares in issue, or a value of £5,000, held in any company whose shares are listed on the public exchange;

26.5.2 an employment contract held by a Staff Governor;

26.5.3 an employment contract held with an Appointing Organisation by an Appointed Governor;

26.5.4 the holding of any position of authority within their Appointing Organisation by an Appointed Governor.

27. Board of Directors – Composition

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

27.2 The Board of Directors is to comprise:

27.2.1 a non-executive Chair

27.2.2 a maximum of seven other Non-Executive Directors; and

27.2.3 a maximum of seven Executive Directors.

27.3 At least half of the Board of Directors, including the Chair, shall be comprised of non-executive directors.

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

27.5 The Chief Executive shall be the Accounting Officer.

27.6 One of the Executive Directors shall be the finance director.

27.7 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

27.8 One of the Executive Directors is to be a registered nurse or a registered midwife.

27.9 The Chief Executive shall be entitled to nominate one of the Executive Directors to be Deputy Chief Executive.

27.10 In consultation with the Council of Governors, the Board of Directors shall appoint one of the independent Non-Executive Directors to be the Senior Independent Director.

28. Board of Directors – Qualification for Appointment as a Non-Executive Director

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

28.1 he is a member of a Public Constituency, or

28.2 he is a member of the Service User and Carer Constituency, and

28.3 he is not disqualified by virtue of paragraph 32 below.

29. Board of Directors – Appointment and Removal of the Chair and other Non-Executive Directors

29.1 The Council of Governors at a General Meeting of the Council of Governors shall appoint the Chair of the Foundation Trust and the other Non-Executive Directors in accordance with the Foundation Trust's appointments policies and practices and the following procedure:

29.1.1 The Board of Directors will identify and review the skills and experience required for Non-Executive Directors to achieve the appropriate balance on the Board of Directors;

29.1.2 Appropriate candidates will be identified by a Nominations Committee through a process of open competition, which takes account of the required skills and experience required;

29.1.3 The Nominations Committee will comprise the Chair of the Foundation Trust (or the Vice-Chair unless they are standing for appointment, in which case another Non-Executive Director, when a Chair is being appointed), and a minimum of three elected Governors.

29.1.4 The Nominations Committee may invite an external organisation, recognised as experts at appointments, and an independent assessor to assist the Nominations Committee;

29.1.5 The Nominations Committee will make a recommendation to the Council of Governors on the ability of the identified candidates to meet

the required skills and experience.

29.2 Appointment of the Chair or any other Non-Executive Director shall require the approval of a majority of the Governors present and voting at a General Meeting of the Council of Governors

29.3 The removal of the Chair or any other Non-Executive Director shall be in accordance with the following procedure:

29.3.1 Any proposal for removal must be proposed by a Governor and seconded by not less than nine Governors including at least two Elected Governors and two Appointed Governors;

29.3.2 Written reasons for the proposal shall be provided to the Non-Executive Director in question, who shall be given the opportunity to respond to such reasons;

29.3.3 In making any decision to remove a Non-Executive Director, the Council of Governors shall take into account any annual appraisal carried out by the Chair; and

29.3.4 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.

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

30. Board of Directors – Appointment of Vice-Chair

30.1 The Council of Governors at a General Meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a Vice-Chair of the Board of Directors. If the Chair is unable to discharge their office as the Chair of the Foundation Trust, the Vice-Chair shall be acting Chair of the Foundation Trust.

31. Board of Directors - Appointment and Removal of the Chief Executive and other Executive Directors

31.1 The Non-Executive Directors shall appoint or remove the Chief Executive.

31.2 The appointment of the Chief Executive shall require the approval of a majority of the Council of Governors present and voting at a General Meeting of the Council of Governors.

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

32. Board of Directors – Disqualification

A person may not become or continue as a member of the Board of Directors if:

- 32.1** they are a Governor member of the Council of Governors;
- 32.2** they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
- 32.3** they are a member of a local authority’s scrutiny committee covering health matters;
- 32.4** they are determined to be an “unfit person” in accordance with the definition provided at condition G4(5) of the Foundation Trust’s Provider Licence;
- 32.5** they do not satisfy all of the requirements set out in paragraph 3 of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;
- 32.6** they are a person whose tenure of office as Chair or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 32.7** they have within the preceding two years been dismissed, other than by reason of redundancy, from any paid employment with a health service body;
- 32.8** on the basis of disclosures obtained through an application to the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012 (or any other checks required by the Foundation Trust from time to time as being consistent with its licence conditions or mandatory or nationally recommended good governance arrangements), they are not considered suitable by the Foundation Trust’s Director responsible for human resources or the Chair;
- 32.9** in the case of a Non-Executive Director, they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors; and/or
- 32.10** they have refused to sign and deliver to the Foundation Trust a statement in the form required by the Board of Directors confirming their acceptance of the Code of Conduct for Directors.

33. Board of Directors - Committees and Delegation

- 33.1** The Board of Directors may delegate any of its powers to a committee of Directors or to an Executive Director.
- 33.2** The Board of Directors shall appoint an Audit Committee of Non-Executive Directors for the purpose set out in paragraph 43 of this Constitution.
- 33.3** The Board of Directors shall appoint a Remuneration and Terms of Service Committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Executive Directors.

34. Board of Directors – Meetings

- 34.1** 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 reasons of commercial sensitivity or for other special reasons.
- 34.2** The Chair may exclude any member of the public from a meeting of the Board of Directors if he is interfering with or preventing the proper conduct of the meeting.
- 34.3** Before holding a meeting, the Board of Directors must send or otherwise make available 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 or otherwise make available a copy of the minutes of the meeting to the Council of Governors.

35. Board of Directors – Standing Orders

- 35.1** The Board of Directors is to adopt standing orders for the practice and procedure of the Board of Directors and may vary its standing orders from time to time. The standing orders for the practice and procedure of the Board of Directors are attached at Annex 7.
- 35.2** The proceedings of the Board of Directors shall not be invalidated by any vacancy in the office of Director, or any defect in the calling of the meeting or in the appointment of a Director.

36. Board of Directors - Conflicts of Interest of Directors

- 36.1** The duties that a Director of the Foundation Trust has by virtue of being a Director include in particular:
 - 36.1.1** 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.

36.1.2 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.

36.2 The duty referred to in sub-paragraph 36.1.1 is not infringed if:

36.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

36.2.2 The matter has been authorised in accordance with the constitution.

36.3 The duty referred to in sub-paragraph 36.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

36.4 In sub-paragraph 36.1.2, “third party” means a person other than –

36.4.1 The Foundation Trust, or

36.4.2 A person acting on its behalf.

36.5 If a Director of the Foundation Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Foundation Trust, the Director must declare the nature and extent of that interest to the other Directors.

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

36.7 Any declaration required by this paragraph must be made before the Foundation Trust enters into the transaction or arrangement.

36.8 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.

36.9 A Director need not declare an interest:

36.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;

36.9.2 If, or to the extent that, the Directors are already aware of it;

36.9.3 If, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered:

36.9.3.1 By a meeting of the Board of Directors, or

36.9.3.2 By a committee of the Directors appointed for the purpose under the constitution.

36.10 A matter shall have been authorised for the purposes of paragraph 36.2.2 if:

36.10.1 the Board of Directors by majority dis-applies the provision of the constitution which would otherwise prevent a Director from being counted as participated in the decision-making process;

36.10.2 the Director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

36.10.3 the Director's conflict of interest arises from a permitted cause.

36.10.4 For the purposes of paragraph 36.10.3, a permitted cause includes (but is not limited to):

36.10.4.1 a guarantee given, or to be given, by or to a Director in respect of an obligation incurred by or on behalf of the Foundation Trust or any of its subsidiaries; and

36.10.4.2 a transaction or arrangement for the benefit of the Foundation Trust's employees, or any of its subsidiaries, which does not award him a privilege or benefit not generally awarded to the employees to whom it relates.

37. Board of Directors – Remuneration and Terms of Office

37.1 The Chair and other Non-Executive Directors shall hold office for a period of up to three years, and are eligible for re-appointment after a three-year period of office.

37.2 The Chair and other Non-Executive Directors may not hold office for more than two successive terms (six consecutive years in total), except in exceptional circumstances.

37.3 Where the term of office of the Chair or any other Non-Executive Director extends beyond six years, this will be subject to annual re-appointment.

37.4 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors.

37.5 Any re-appointment of the Chair or another Non-Executive Director by the Council of Governors shall be subject to a satisfactory appraisal.

37.6 The Foundation 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.

Expenses

37.7 The Foundation Trust may reimburse Executive Directors travelling and other costs and expenses incurred in carrying out their duties at such rates as the remuneration committee of Non-Executive Directors decides. These are to be disclosed in the Annual Report.

37.8 The remuneration and allowances for Directors are to be disclosed in bands in the Annual Report.

38. Registers

The Foundation Trust shall have:

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

38.2 a register of members of the Council of Governors;

38.3 a register of interests of Governors;

38.4 a register of Directors; and

38.5 a register of interests of the Directors.

39. Admission to and Removal from the Registers

39.1 The Board of Directors shall delegate to an officer, or officers, of the Foundation Trust responsibility for maintaining the registers and removing from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this Constitution.

40. Registers – Inspection and Copies

40.1 The Foundation Trust shall make the registers specified in paragraph 38 above available for inspection by members of the public, except in the circumstances set

out below or as otherwise prescribed by regulations.

40.2 The Foundation Trust shall not make any part of its registers available for inspection by members of the public which shows details of:

40.2.1 any member of the Service User and Carers Constituency; or

40.2.2 any other member of the Foundation Trust, if he so requests.

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

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

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

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

41. Documents Available for Public Inspection

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

41.1.1 a copy of the current constitution,

41.1.2 a copy of the latest annual accounts and of any report of the auditor on them, and

41.1.3 a copy of the latest annual report.

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

41.2.1 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.

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

- 41.2.3** a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
- 41.2.4** a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
- 41.2.5** a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
- 41.2.6** 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.
- 41.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- 41.2.8** a copy of any final report published under section 65I (administrator's final report),
- 41.2.9** 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.
- 41.2.10** a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

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

42. Auditor

42.1 The Foundation Trust shall have an auditor and is to provide the auditor with every facility and all information, which he may reasonably require for the purposes of his functions under Schedule 10 of the 2006 Act.

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

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

42.4 The auditor shall be required to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted.

43. Audit Committee

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

44. Accounts

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

44.2 The Independent Regulator may with the approval of the Secretary of State give directions to the Foundation Trust as to the content and form of its accounts.

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

44.4 The Foundation Trust shall prepare in respect of each financial year annual accounts in such form as the Independent Regulator may with the approval of the Secretary of State direct:

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

44.6 In preparing its annual accounts, the Accounting Officer shall require the Trust to comply with any directions given by the Independent Regulator with the approval of the Secretary of State as to:

44.6.1 the methods and principles according to which the accounts are to be prepared; and

44.6.2 the content and form of the accounts.

44.7 The annual accounts, any report of the auditor on them, and the annual report are to be presented to the Council of Governors at a General Meeting.

44.8 The Accounting Officer shall cause the Foundation Trust to:

44.8.1 lay a copy of the annual accounts, and any report of the auditor on

them, before Parliament, and

44.8.2 once it has done so, send copies of those documents to the Independent Regulator within such a period as the Independent Regulator may direct.

44.9 The Accounting Officer shall cause the Foundation Trust to send to the Secretary of State within such period as the Secretary of State may direct:

44.9.1 a copy of any accounts prepared by the Foundation Trust by virtue of paragraph 44.1, and

44.9.2 a copy of any report of an auditor on them prepared by virtue of paragraph 44.3.

45. Annual Report, Forward Plans and Non-NHS Work

45.1 The Foundation Trust shall prepare an Annual Report and send it to the Independent Regulator.

45.2 The Annual Report is to contain:

45.2.1 information on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual membership of its Public Constituencies, its Service User and Carer Constituency and of the classes of its Staff Constituency is representative of those eligible for such membership;

45.2.2 information on any occasions in the period to which the report relates on which the Council of Governors exercised its power under paragraph 23.7;

45.2.3 information on the Foundation Trust's policy on pay and on the work of the Remuneration and Terms of Service Committee established under paragraph 33.3 and such other procedures as the Foundation Trust has on pay; and

45.2.4 information on the remuneration of the directors and on the expenses of the Governors and the Directors,

45.2.5 any other information the Independent Regulator requires including information required by 'The NHS Foundation Trust Code of Governance' as summarised at Schedule A of that Code.

45.3 The Foundation Trust is to comply with any decision the Independent Regulator makes as to the form of Annual Reports.

- 45.4** The Foundation Trust shall give information as to its forward planning in respect of each financial year to the Independent Regulator.
- 45.5** The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 45.6** In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 45.7** Each forward plan must include information about –
- 45.7.1** the activities other than the provision of goods and services for the purposes of the health service in England that the Foundation Trust proposes to carry on, and
 - 45.7.2** the income it expects to receive from doing so.
- 45.8** Where a forward plan contains a proposal that the Foundation Trust carry on an activity of a kind mentioned in sub-paragraph 45.7.1 the Council of Governors must:
- 45.8.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Foundation Trust of its principal purpose or the performance of its other functions, and
 - 45.8.2** notify the directors of the Foundation Trust of its determination.
- 45.9** A Foundation 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 Foundation Trust voting approve its implementation.

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

- 46.1** The following documents are to be presented to the Council of Governors at a General Meeting of the Council of Governors:
- 46.1.1** the annual accounts
 - 46.1.2** any report of the auditor on them
 - 46.1.3** the annual report.

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

46.3 The Foundation Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 46.1 with the Annual Members' Meeting.

47. Indemnity

47.1 Members of the Council of Governors, the Board of Directors and the Company Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Foundation Trust. The Foundation Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Council of Governors, the Board of Directors and the Company Secretary.

48. Instruments

48.1 The Foundation Trust shall have a seal.

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

48.3 The Standing Orders of the Board of Directors shall make provision as to whose signature(s) shall attest the seal.

48.4 A document purporting to be duly executed under the Foundation Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

49. Dispute Resolution Procedure

49.1 Every unresolved dispute which arises out of this constitution between the Foundation Trust and:

49.1.1 a member;

49.1.2 any aggrieved person who has ceased to be a member within the six months prior to the dispute;

49.1.3 a Governor,

49.1.4 any person bringing a claim under this constitution; or

49.1.5 an office-holder of the Foundation Trust

is to be submitted to an arbitrator agreed by the parties. The arbitrator's decision will be binding and conclusive on all parties.

49.2 Any person bringing a dispute must, if required to do so, deposit with the Foundation Trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Company Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.

50. Amendment of the Constitution

50.1 The Foundation Trust may make amendments to this constitution only if:

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

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

50.2 Amendments made under paragraph 50.1 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.

50.3 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 Foundation Trust):

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

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

50.4 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 Foundation Trust must take such steps as are necessary as a result.

50.5 Amendments by the Foundation Trust of its constitution are to be notified to the Independent Regulator. For the avoidance of doubt, the Independent Regulator'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.

51. Mergers etc. and significant transactions

51.1 The Foundation 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.

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

51.3 “Significant transactions” means a transaction which meets any of the following:

51.3.1 in relation to assets, the gross assets subject to the transaction exceed 25% of the gross assets of the Foundation Trust;

51.3.2 in relation to income, following the completion of the relevant transaction, the income attributable to the assets or contract associated with the transaction exceeds 25% of the income of the Foundation Trust;

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

51.4 A transaction includes any agreement (including an amendment to an agreement) entered into by the Foundation Trust, but:

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

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

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

52. Head Office

52.1 The Foundation Trust's Head Office is at The Curve, Bury New Road, Prestwich, Greater Manchester, M25 3BL.

53. Notices

53.1 Any notices 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 of addresses used for the purposes of such communications.

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

ANNEX 1 – THE PUBLIC CONSTITUENCIES

(Paragraphs 9.1 and 9.3)

Constituency	Qualification	Minimum Number of Members	Number of Elected Governors
Bolton	Resident of the Metropolitan Borough of Bolton	20	2
Salford	Resident of the City of Salford	20	2
Trafford	Resident of the Metropolitan Borough of Trafford	20	2
City of Manchester	Resident of the City of Manchester	20	3
Other England and Wales	Resident of England (other than Bolton, Salford, Trafford or Manchester) or Wales	20	2

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 10.1 and 10.5)

Constituency	Class	Number of Elected Governors
Staff	Medical	1
	Nursing	2
	Psychological Therapies	1
	Allied Health Professionals	1
	Social Care	1
	Non-Clinical	1

The minimum number of members in each class of the Staff Constituency is to be 20% of the total number of employees who are eligible to be members of that class.

ANNEX 3 – THE SERVICE USER AND CARER CONSTITUENCY

(Paragraphs 11.1 and 11.5)

There are no classes of the Service User and Carer Constituency.

The minimum number of members in the Service User and Carer Constituency shall be 40.

The number of Elected Governors in the Service User and Carer Constituency shall be 4.

ANNEX 4 – COMPOSITION OF THE COUNCIL OF GOVERNORS

(Paragraphs 15.1, 15.2 and 15.3)

Elected Public, Service User and Carer Governors	No.	Appointed Governors	No.
Public Governors		Partners	
Bolton	2	University of Manchester	1
Salford	2	University of Salford	1
Trafford	2	Voluntary Sector	1
City of Manchester	3	Greater Manchester Police	1
Other England and Wales	2	Greater Manchester Combined Authority (GMCA)	1
Total	11	Greater Manchester Association of Clinical Commissioning Groups	1
Service Users and Carers	4		
Total	4	Total	6
<i>More than half of the members of the Council of Governors are to be elected by members of the Trust other than those individuals within the staff constituency</i>		Elected Staff Governors	
		Health care clinical staff:	
		Medical	1
		Nursing	2
		Psychological Therapies	1
		Allied Health Professional	1
	Social care staff	1	
	Non-clinical staff	1	
	Total	7	
Total Elected Public, Service User and Carer Governors	15	Total Appointed Governors and Elected Staff Governors	13
TOTAL GOVERNORS - 28			

ANNEX 5 –THE MODEL ELECTION RULES

(Paragraph 16.2)

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PART 2: TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

PART 3: RETURNING OFFICER

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PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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- 60. Election expenses
- 61. Expenses and payments by candidates
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- 63. Publicity about election by the corporation
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PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES

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

PART 1: INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

"2006 Act" means the National Health Service Act 2006;

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

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

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

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

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

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

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

"Independent Regulator" means the body corporate known as NHS Improvement (previously Monitor) as provided by section 61 of the 2012 Act;

"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;

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

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

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

5. Staff

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

6. Expenditure

6.1 The corporation is to pay the returning officer:

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

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

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

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

member.

11. Declaration of interests

11.1 The nomination form must state:

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

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

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

- 14.2** The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:
- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
 - (e) that the paper is not signed and dated by the candidate, if required by rule 13.
- 14.3** The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- 14.4** Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5** The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

- 15.1** The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2** The statement must show:
- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing, as given in their nomination form.
- 15.3** The statement must list the candidates standing for election in alphabetical order by surname.
- 15.4** The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination forms

- 16.1** The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.
- 16.2** If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

- 18.1** If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 18.2** If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- 18.3** If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:
- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
 - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

20. The ballot paper

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

others, inserted in the paper.

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

("declaration of identity")

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

electronic method.

- 21.2** The voter must be required to return his or her declaration of identity with his or her ballot.
- 21.3** The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

- 22.1** The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2** The list is to include, for each member:
 - (a) a postal address; and,
 - (b) the member's e-mail address, if this has been provided to which his or her voting information may, subject to rule 22.3, be sent.
- 22.3** The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

23. Notice of poll

- 23.1** The returning officer is to publish a notice of the poll stating:
 - (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
 - (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
 - (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
 - (g) the address for return of the ballot papers,

- (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

24. Issue of voting information by returning officer

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

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

("postal voting information").

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

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

("e-voting information").

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

- (a) only be sent postal voting information; or

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

for the purposes of the poll.

- 24.4** If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.
- 24.5** The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

- 25.1** The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2** The covering envelope is to have:
 - (a) the address for return of the ballot paper printed on it, and
 - (b) pre-paid postage for return to that address.
- 25.3** There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –
 - (a) the completed ID declaration form if required, and
 - (b) the ballot paper envelope, with the ballot paper sealed inside it.

26. E-voting systems

- 26.1** If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2** If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3** If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4** The returning officer shall ensure that the polling website and internet voting system provided will:

- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;

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

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

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

- (a) require a voter to
 - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
 - (ii) where the election is for a public or patient constituency, make a

declaration of identity;

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

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

- (a) require a voter to:
 - (i) provide his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);

- (ii) the candidate or candidates for whom the voter has voted; and
- (iii) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

29. Spoilt ballot papers and spoilt text message votes

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

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

30. Lost voting information

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

31. Issue of replacement voting information

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

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

- 31.2** After issuing replacement voting information under this rule, the returning officer shall enter in a list (“the list of tendered voting information”):
- (a) the name of the voter,
 - (b) the unique identifier of any replacement ballot paper issued under this rule,
 - (c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

34. Voting procedure for remote voting by telephone

- 34.1** To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.
- 34.2** When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 34.3** If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4** When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes

to vote.

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

35. Voting procedure for remote voting by text message

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

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

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

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

36. Receipt of voting documents

36.1 Where the returning officer receives:

- (a) a covering envelope, or
 - (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,
- before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.

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

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

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

37. Validity of votes

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

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

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

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

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

37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.

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

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

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

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

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

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

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

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

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

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

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

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

40. Sealing of packets

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

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,

- (c) the list of spoiled ballot papers and the list of spoiled text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

PART 6: COUNTING THE VOTES

41. Interpretation of Part 6

41.1 In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

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

or

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

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

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

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

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

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

“surplus” means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a combination of both)

exceeds the quota; but references in these rules to the transfer of the surplus means the transfer (at a transfer value) of all transferable ballot documents from the candidate who has the surplus,

“stage of the count” means:

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

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

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

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

42. Arrangements for counting of the votes

- 42.1** The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 42.2** The returning officer may make arrangements for any votes to be counted using vote counting software where:
 - (a) the board of directors and the council of governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and
 - (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

- 43.1** The returning officer is to:
 - (a) count and record the number of:
 - (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 the figure "1" standing alone is not placed so as to indicate a first preference for any candidate,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

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

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

44.3 Any text voting record:

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

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

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

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

45. First stage

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

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

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

46. The quota

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

46.2 The result, increased by one, of the division under rule 46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules 47.1 to 47.3 has been complied with.

47. Transfer of votes

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

(a) according to next available preference given on those ballot documents for any continuing candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule 47.1.

47.3 The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.1(a) to the candidate for whom the next available preference is given on those ballot documents.

47.4 The vote on each ballot document transferred under rule 47.3 shall be at a value

("the transfer value") which:

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

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

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

47.6 The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

47.7 The vote on each ballot document transferred under rule 47.6 shall be at:

- (a) a transfer value calculated as set out in rule 47.4(b), or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

47.8 Each transfer of a surplus constitutes a stage in the count.

47.9 Subject to rule 47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:

- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
- (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.

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

48. Supplementary provisions on transfer

48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:

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

48.2 The returning officer shall, on each transfer of transferable ballot documents under rule 47:

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

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

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

49. Exclusion of candidates

49.1 If:

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

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule 49.12 applies, the candidates with the then lowest votes).

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

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

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

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

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

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

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

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

49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she

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

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

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

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

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

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

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

50. Filling of last vacancies

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

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

shall thereupon be deemed to be elected.

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

51. Order of election of candidates

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

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

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

51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

52. Declaration of result for contested elections

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

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

52.2 The returning officer is to make:

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

available on request.

53. Declaration of result for uncontested elections

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

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

declared elected.

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

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

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

57. Retention and public inspection of documents

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

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

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

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

58.1 The corporation may not allow:

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

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

corporation.

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

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

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

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

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

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

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

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

59. Countermand or abandonment of poll on death of candidate

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

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

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

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1 No person may:

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

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

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

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

as it considers necessary.

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

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

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

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

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

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

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

- 66.1** An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the Independent Regulator 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 the Independent Regulator by:
- (a) a person who voted at the election or who claimed to have had the right to vote, or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 66.4** The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as the independent panel may require.
- 66.5** The application must be presented in writing within 21 days of the declaration of the result of the election. The Independent Regulator will refer the application to the independent election arbitration panel appointed by the Independent Regulator.
- 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** The Independent Regulator shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8** The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9** The IEAP may prescribe rules of procedure for the determination of an application including costs.

PART 12: MISCELLANEOUS

67. Secrecy

67.1 The following persons:

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

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

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

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

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

(Paragraph 24)

1. Interpretation

1.1 Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he shall be advised by the Secretary).

1.2 If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.

1.3 Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

“Board of Directors” shall mean the Board of Directors of the NHS Foundation Trust

“Chair” means the Chair of the NHS Foundation Trust or, in relation to the function of presiding at or chairing a meeting where another person is carrying out that role as required by the Constitution

“Committee” means a committee appointed by the Council of Governors

“Constitution” means the Constitution of the NHS Foundation Trust as amended from time to time

“Council of Governors” means the Council of Governors of the Foundation Trust as constituted in accordance with the Constitution

“Foundation Trust” means (INSERT NAME) NHS Foundation Trust

“Meeting” means a duly convened meeting of the Council of Governors

“Motion” means a formal proposition to be discussed or voted on during the course of a meeting

“Secretary” means the Company Secretary of the Foundation Trust, or any other person appointed to perform the duties of the Secretary, including an assistant

1.4 Other terms defined in the Constitution shall have the same meaning in these

Standing Orders.

2. General Information

- 2.1** The purpose of the Standing Orders for the Practice and Procedure of the Council of Governors is to ensure that the highest standards of corporate governance and conduct are applied to all meetings of the Council of Governors.
- 2.2** The Council of Governors shall at all times seek to comply with the Trust's Code of Conduct for Governors.
- 2.3** All business shall be conducted in the name of the Trust.

3. Composition of the Council of Governors

- 3.1** The composition of the Council of Governors shall be as set out in Annex 4 of the Foundation Trust's Constitution.
- 3.2** The appointment and removal of the Chair and Vice-Chair of the Council of Governors shall be in accordance with paragraphs 29 and 30 of the Trust's Constitution.
- 3.3** If the Chair is unable to discharge their office as the Chair of the Foundation Trust, the Vice-Chair shall be acting Chair of the Foundation Trust.

4. Meetings of the Council of Governors

- 4.1** Meetings of the Council of Governors shall be held at least three times in each Financial Year in accordance with the Constitution, at such time and places as the Chair may determine.

4.2 Admission to Meetings

- 4.2.1** All meetings of the Council of Governors are to be open to members of the public unless the Council of Governors determines otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds.
- 4.2.2** The Chair may exclude any member of the public or a Governor from a meeting of the Council of Governors, if the Chair considers he is interfering with or preventing the proper conduct of the meeting.

4.3 Calling Meetings

- 4.3.1** Meetings of the Council of Governors may be called by the Chair, or by the

Secretary on behalf of the Chair, or by more than a third of Governors who give written notice to the Chair specifying the business to be carried out. The Secretary shall send written notice to all Governors as soon as possible after receipt of such a request. A meeting shall be called on at least fourteen but no more than twenty eight days' notice to discuss the specified business.

4.3.2 If the Chair fails to call a meeting after a requisition by Governors for that purpose, then the Governors may forthwith call a meeting provided that they have been requisitioned to do so by more than half of the members of the Council of Governors.

4.3.3 All decisions taken in good faith at a meeting of the Council of Governors shall be valid even if it is subsequently discovered that there was a defect in the calling of the meeting, or in the appointment of the Governors attending the meeting.

4.4 Notice of Meetings

4.4.1 Save in the case of emergencies or the need to conduct urgent business, at least fourteen days' written notice shall be given to all Governors of the date and place of every meeting of the Council of Governors. Notice will also be published on the Foundation Trust's website.

4.4.2 Failure to serve notice on more than three quarters of the Council of Governors will invalidate any meeting. A notice will be presumed to have been served in accordance with the provisions of paragraph 53 of the Constitution.

4.4.3 Before each meeting of the Council of Governors, the Secretary shall ensure that every Governor is provided with reasonable notice of the details of the business proposed to be transacted at it. In the case of a meeting called by Governors in default of the Chair, no business shall be transacted at the meeting other than that specified in the notice.

4.5 Setting the Agenda

4.5.1 The agenda for all meetings of the Council of Governors will be prepared by the Chair, as advised by the Secretary.

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

4.5.3 A Governor desiring a matter to be included on an agenda shall make his

request in writing to the Chair at least fourteen clear days before the meeting. Requests made less than fourteen days before a meeting may be included on the agenda at the discretion of the Chair.

4.5.4 An agenda, copies of any agenda items on notice and/or motions on notice to be considered at the relevant meeting of the Council of Governors and any supporting papers shall be sent to each Governor so as to arrive with each Governor no later than five days in advance of each meeting. Minutes of the previous meeting will be circulated with these papers for approval and this will be a specific agenda item.

4.6 Chair of Meeting

4.6.1 At any meeting of the Council of Governors, the Chair, if present, shall preside. If the Chair is absent from the meeting, or the Council of Governors is meeting to appoint or remove the Chair or decide his remuneration or allowances and other terms and conditions of office, the Vice-Chair shall preside. Otherwise, another Non-Executive Director, acting as Vice-Chair, shall preside.

4.7 Notice of Motions

4.7.1 A Governor of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Secretary, who shall in the agenda of the meeting record all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to section 4.4.3 of these Standing Orders.

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

4.7.3 Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Governors who gave it and also the signature of four other Governors. When any such motion has been disposed of by the Council it shall not be competent for any Governor, other than the Chair, to propose a motion to the same effect within six months; however, the Chair may do so if he considers it appropriate.

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

4.7.5 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:

4.7.5.1 An amendment to the motion.

4.7.5.2 The adjournment of the discussion or the meeting.

4.7.5.3 The appointment of an ad hoc committee to deal with a specific item of business.

4.7.5.4 That the meeting proceed to the next business.

4.7.5.5 That the motion be now put.

Such a motion, if seconded, shall be disposed of before the motion, which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

In the case of motions under paragraphs 4.7.5.4 and 4.7.5.5 of these Standing Orders, to ensure objectivity, motions may only be put by a Governor who has not previously taken part in the debate.

4.8 Chair's Ruling

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

4.9 Voting

4.9.1 An Elected Governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Trust of the particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a Governor. An Elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors and every agenda for meetings of the Council of Governors shall draw this to the attention of the Governors. Making a false declaration may be an offence.

4.9.2 Save as otherwise specified in the Constitution, 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 Chair or, in his absence, the person presiding in accordance with paragraph 4.6 shall have a second and casting vote.

- 4.9.3** All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request or if the Chair so directs.
- 4.9.4** 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.
- 4.9.5** If a Governor so requests, his vote shall be recorded by name upon any other vote (other than by paper ballot).
- 4.9.6** In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

4.10 Suspension of Standing Orders

- 4.10.1** Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council of Governors are present and that a majority of those present vote in favour of suspension.
- 4.10.2** A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 4.10.3** A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 4.10.4** No formal business may be transacted whilst Standing Orders are suspended.
- 4.10.5** The Foundation Trust's Audit Committee shall review every decision to suspend Standing Orders.

4.11 Variation and Amendment of Standing Orders

These Standing Orders shall be amended only in accordance with the Constitution and only if:

- 4.11.1** the variation/amendment proposed does not contravene a statutory provision;

4.11.2 a notice of motion to amend the Standing Orders is given in accordance with these Standing Orders; and

4.11.3 no fewer than half of the total number of Governors voting approve the variation/amendment.

4.12 Record of Attendance

4.12.1 The Secretary shall keep and maintain a record of the number of meetings of the Council of Governors and the attendance of individual Governors. The names of the Governors present at each meeting shall also be recorded in the minutes.

4.12.2 A Governor who is not able to attend a meeting of the Council of Governors must communicate his apologies in writing to the Secretary.

4.13 Minutes

4.13.1 The minutes of the proceedings of a meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.

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

4.13.3 Minutes shall be circulated in accordance with the Governors' wishes. 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 paragraph 4.2.2 of these Standing Orders.

4.14 Quorum

4.14.1 A quorum for a Meeting of the Council of Governors shall be nine governors and where a majority of governors present are public and service user and carer governors.

4.14.2 No business shall be transacted at a meeting of the Council of Governors unless a quorum of the Council of Governors is present.

4.14.3 If a Governor has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a

resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

5 Arrangements for the Exercise of Functions by Delegation

5.1 The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions.

5.2 Emergency Powers – the powers which the Council of Governors has retained to itself within these Standing Orders may in an emergency be exercised by the Chair after having consulted at least five Elected Governors. The exercise of such powers by the Chair shall be reported to the next formal meeting of the Council of Governors for ratification.

6 Committees

6.1 The Council of Governors has established the following committee:

- Nominations Committee

in accordance with the Constitution.

6.2 The Council of Governors shall establish such other committees as required to assist the Council of Governors in carrying out its functions.

6.3 The terms of reference for each Committee shall be approved by the Council of Governors and any changes must be agreed by a majority of Governors attending a meeting of the Council of Governors.

6.4 The Council of Governors shall approve the appointments to any committee that it has formally established.

7 Confidentiality

7.1 A member of the Council of Governors shall not disclose a matter dealt with by, or brought before, the Council of Governors without its permission.

7.2 A member of a committee of the Council of Governors shall not disclose any matter dealt with by, or brought before, the committee notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee resolves that it is confidential.

8 Declaration of Interests

- 8.1** Governors are required to comply with the NHS Standards of Business Conduct, to declare interests that are required to be declared by the Constitution and to declare any other interests that are material to the Council of Governors. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.
- 8.2** Interests regarded as ‘material’ include any of the following, held by a Governor, or the spouse, partner, parent or child of a Governor:
- 8.2.1** any directorship of a Company
 - 8.2.2** any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 1% of the nominal value of the issued share capital or the value of the shareholding does not exceed £5,000) or position held by a Governor in any firm, company or business which has or is likely to have a trading or commercial relationship with the Trust.
 - 8.2.3** any interest in a voluntary or other organisation providing health and social care services to the National Health Service.
 - 8.2.4** a position of authority in a charity or voluntary organisation in the field of health and social care.
 - 8.2.5** any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.
- 8.3** Any Governor who has a material interest in a matter as defined above shall declare such interest to the Council of Governors and:
- 8.3.1** withdraw from the meeting and play no part in the relevant discussion or decision, and
 - 8.3.2** shall not vote on any issue arising out of or connected with the matter (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 8.4** Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph or otherwise required to be disclosed by this Constitution must permanently vacate their office if required to do so by a majority of the remaining Governors.

8.5 If a Governor has any doubt about the relevance of an interest, he should discuss it with the Chair who shall advise him whether to disclose the interest.

8.6 At the time Governors' interests are declared, they should be entered on a Register of Interests of Governors to be maintained by the Company Secretary. Any changes in interests should be declared at the next meeting of the Council of Governors following the change occurring.

8.7 Governors' directorships of companies likely or possibly seeking to do business with the Foundation Trust should be published in the Foundation Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

9 Register of Interests

9.1 The Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Governors.

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

9.3 The Register will be available to the public.

10 Compliance – Other Matters

10.1 All Governors of the Council of Governors shall comply with the Standards of Business Conduct set by the Board of Directors for the guidance of all staff employed by the Trust.

10.2 All Governors of the Foundation Trust shall comply with the Standing Financial Instructions prepared by the Director of Finance, Capital and IM&T and approved by the Board of Directors for the guidance of all staff employed by the Foundation Trust.

10.3 All Governors must behave in accordance with the seven principles of public life (the 'Nolan Principles'):

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

and the Foundation Trust's Code of Conduct for Governors as amended from time to time

11 Resolution of Disputes with the Board of Directors

- 11.1** Should a dispute arise between the Council of Governors and the Board of Directors, then the dispute resolution procedure set out below shall be followed.
- 11.2** The Chair, or Vice-Chair (if the dispute involves the Chair), shall first endeavour, through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
- 11.3** Failing resolution under 11.2 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.
- 11.4** The Chair shall ensure that the Disputes Statement, 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. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 11.5** The Chair or Vice-Chair (if the dispute involves the Chair) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 11.2 above shall be repeated.
- 11.6** If, in the opinion of the Chair or Vice-Chair (if the dispute involves the Chair) and following the further discussions prescribed in 9.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Vice-Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the Council of Governors and Board of Directors accordingly.
- 11.7** On the satisfactory completion of this disputes process, the Board of Directors or the Council of Governors, as appropriate, shall implement agreed changes.
- 11.8** On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 11.9** Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing the Independent Regulator that, in the Council of Governors' opinion, the Board has not responded constructively to concerns of the Council of Governors that the Trust is not acting in accordance with the terms of its

Constitution or not complying with the terms of the 2006 Act.

12 Council of Governors' Performance

12.1 The Chair 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 and composition, and procedures, taking into account emerging best practice.

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

(Paragraph 35)

1. Interpretation

- 1.1** Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he shall be advised by the Secretary).
- 1.2** If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.
- 1.3** Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

“Board of Directors” shall mean the Board of Directors of the NHS Foundation Trust

“Chair” means the Chair of the NHS Foundation Trust or, in relation to the function of presiding at or chairing a meeting where another person is carrying out that role as required by the Constitution

“Chief Executive” means the Chief Executive of the NHS Foundation Trust

“Committee” means a committee appointed by the Board of Directors

“Committee members” means persons formally appointed by the Board of Directors to sit on or to chair committees

“Constitution” means the Constitution of the NHS Foundation Trust as amended from time to time

“Council of Governors” means the Council of Governors of the Foundation Trust as constituted in accordance with the Constitution

“Director” shall mean a member of the Board of Directors appointed in accordance with the Foundation Trust’s constitution and includes the Chair

“Foundation Trust” means (INSERT NAME) NHS Foundation Trust

“Meeting” means a duly convened meeting of the Council of Governors

“Officer” means an employee of the Trust

“Secretary” means the Company Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including an assistant

“Senior Independent Director” means the person appointed by the Board of Directors, in consultation with the Council of Governors, to provide a sounding board for the Chair, to serve as an intermediary for the other Directors when necessary and to be available to Governors if they have concerns that contact through normal channels has failed to resolve

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

2. General Information

2.1 The purpose of the Standing Orders for the Practice and Procedure of the Board of Directors is to ensure that the highest standards of corporate governance and conduct are applied to all meetings of the Board of Directors.

2.2 The Board of Directors shall at all times seek to comply with the Trust’s Code of Conduct for Directors.

2.3 All business shall be conducted in the name of the Trust.

3. Composition of the Board of Directors

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

3.2 The composition of the Board of Directors shall be as set out in paragraph 27 of the Foundation Trust’s Constitution.

3.3 The appointment and removal of the Chair and Vice-Chair of the Board of Directors shall be in accordance with paragraphs 29 and 30 of the Trust’s Constitution.

3.4 The Chief Executive and other Executive Directors shall be appointed in accordance with paragraph 31 of the Trust’s Constitution.

3.5 Senior Independent Director – the Board of Directors shall, following consultation with the Council of Governors, appoint one of the Non-Executive Directors to be Senior Independent Director for such period, not exceeding the remainder of his term as Director, as they may specify. The Senior Independent Director shall provide a sounding board for the Chair, serve as an intermediary for the other Directors when necessary and to be available to Governors if they have concerns that contact through normal channels has failed to resolve. Recourse to the Senior Independent Director shall not replace the right to instigate the dispute resolution

procedures set out in paragraph 11.

3.6 Deputy Chief Executive – the Chief Executive shall be entitled to nominate one of the Executive Directors to be Deputy Chief Executive. The Deputy Chief Executive shall have delegated authority to act in the absence of the Chief Executive and shall deputise instead of the Chief Executive.

3.7 Non-Executive Directors may seek external advice or appoint an external advisor on any material matter of concern provided the decision to do so is a collective one by the majority of the Non-Executive Directors.

4. Meetings of the Board of Directors

4.1 Meetings of the Board of Directors shall meet sufficiently regularly to discharge its duties effectively. Meetings shall be held at such time and places as the Board of Directors may determine.

4.2 Admission to Meetings

4.2.1 All meetings of the Board of Directors are to be open to members of the public unless the Board of Directors determines otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds.

4.2.2 The Chair may exclude any member of the public from a meeting of the Board of Directors, if the Chair considers he is interfering with or preventing the proper conduct of the meeting.

4.2.3 The Board of Directors may resolve to invite an individual to any meeting or part of a meeting on the grounds that it considers that:

4.2.3.1 their attendance at the meeting is relevant and beneficial to the nature of the business under consideration or is otherwise in the public interest; and

4.2.3.2 that the individual understands any requirements for confidentiality that may be required of them by attending that meeting or that part of a meeting.

4.3 Calling Meetings

4.3.1 Meetings of the Board of Directors are to be called by the Chair, or by the Secretary on behalf of the Chair, or by four Directors who give written notice to the Chair specifying the business to be carried out. The Secretary shall send written notice to all Directors as soon as possible after receipt of

such a request. A meeting shall be called on at least fourteen but no more than twenty eight days' notice to discuss the specified business.

4.3.2 If the Chair fails to call such a meeting after a requisition by Directors for that purpose, then the four Directors may forthwith call a meeting.

4.3.3 All decisions taken in good faith at a meeting of the Board of Directors shall be valid even if it is subsequently discovered that there was a defect in the calling of the meeting, or in the appointment of the Governors attending the meeting.

4.4 Notice of Meetings

4.4.1 Save in the case of emergencies or the need to conduct urgent business, at least fourteen days' written notice shall be given to all Directors of the date and place of every meeting of the Board of Directors. Notice will also be published on the Foundation Trust's website.

4.4.2 Failure to serve such a notice on more than three directors shall invalidate the meeting. A notice will be presumed to have been served in accordance with the provisions of paragraph 53 of the Trust's Constitution.

4.4.3 Before each meeting of the Board of Directors, the Secretary shall ensure that every Director is provided with reasonable notice of the details of the business proposed to be transacted at it. In the case of a meeting called by Directors in default of the Chair, no business shall be transacted at the meeting other than that specified in the notice.

4.5 Setting the Agenda

4.5.1 The agenda for all meetings of the Board of Directors will be prepared by the Chair and Chief Executive, as advised by the Secretary.

4.5.2 The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Board of Directors and shall be addressed prior to any business being conducted.

4.5.3 A Director desiring a matter to be included on an agenda shall make his request in writing to the Chair at least fourteen clear days before the meeting. Requests made less than fourteen days before a meeting may be included on the agenda at the discretion of the Chair.

4.5.4 An agenda, copies of any agenda items on notice and/or motions on notice to be considered at the relevant meeting of the Board of Directors and any supporting papers shall be sent to each Director so as to arrive with each

Director no later than five days in advance of each meeting. Minutes of the previous meeting will be circulated with these papers for approval and this will be a specific agenda item.

4.5.5 Copies of the final agenda of the Board of Directors shall be sent to members of the Council of Governors at the same time as it is sent to the Directors.

4.6 Chair of Meeting

4.6.1 At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting, the Vice-Chair shall preside. Otherwise, such Non-Executive Director as the Directors present shall choose shall preside.

4.7 Notice of Motions

4.7.1 A Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Secretary, who shall insert in the agenda of the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to section 4.4.3 of these Standing Orders.

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

4.7.3 Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Directors who gave it and also the signature of four other Directors. When any such motion has been disposed of by the Board of Directors it shall not be competent for any Director, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if he considers it appropriate.

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

4.7.5 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:

4.7.5.1 An amendment to the motion.

- 4.7.5.2** The adjournment of the discussion or the meeting.
- 4.7.5.3** The appointment of an ad hoc committee to deal with a specific item of business.
- 4.7.5.4** That the meeting proceed to the next business.
- 4.7.5.5** That the motion be now put.

Such a motion, if seconded, shall be disposed of before the motion, which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

In the case of motions under paragraphs 4.7.5.4 and 4.7.5.5 of these Standing Orders, to ensure objectivity, motions may only be put by a Director who has not previously taken part in the debate.

4.8 Chair's Ruling

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

4.9 Voting

- 4.9.1** Save as otherwise specified in the Constitution, decisions at meetings of the Board of Directors shall be determined by a majority of the votes of the Directors present and voting. In the case of any equality of votes, the Chair, or, in his absence, the person presiding in accordance with paragraph 4.6 shall have a second and casting vote.
- 4.9.2** All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request or if the Chair so directs.
- 4.9.3** If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 4.9.4** If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).

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

4.9.6 An officer who has been formally appointed to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Director. An officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An officer's status when attending the meeting will be recorded in the minutes.

4.10 Suspension of Standing Orders

4.10.1 Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board of Directors are present, including at least one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.

4.10.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.

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

4.10.4 No formal business may be transacted whilst Standing Orders are suspended.

4.10.5 The Foundation Trust's Audit Committee shall review every decision to suspend Standing Orders.

4.11 Variation and Amendment of Standing Orders

These Standing Orders shall be amended only in accordance with the Constitution and only if:

4.11.1 the variation/amendment proposed does not contravene a statutory provision

4.11.2 a notice of motion to amend the Standing Orders is given in accordance with these Standing Orders; and

4.11.3 no fewer than half of the total number of Non-Executive Directors voting approve the variation/amendment; and

4.11.4 at least two thirds of the Directors are present.

4.12 Record of Attendance

4.12.1 The Secretary shall keep and maintain a record of the number of meetings of the Board of Directors and the attendance of individual Directors. The names of the Directors present at each meeting shall also be recorded in the minutes.

4.12.2 A Director who is not able to attend a meeting of the Board of Directors must communicate his apologies in writing to the Secretary.

4.13 Minutes

4.13.1 The minutes of the proceedings of a meeting shall be drawn up and maintained as a permanent record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.

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

4.13.3 Approved minutes shall be sent to the Council of Governors as soon as practicable after each meeting of the Board of Directors and shall otherwise be circulated in accordance with the Directors' wishes.

4.14 Quorum

4.14.1 A quorum for a Meeting of the Board of Directors shall be seven directors including not less than two Executive Directors (one of whom must be the Chief Executive or Deputy Chief Executive) and not less than two Non-Executive Directors (one of whom must be the Chair or the Vice-Chair of the Board of Directors).

4.14.2 No business shall be transacted at a meeting of the Board of Directors unless a quorum of the Board of Directors is present.

4.14.3 An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

4.14.4 If a Director has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a

resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

4.14.5 The Board of Directors may agree that its members can participate in meetings by telephone, video or computer link and, where appropriate, address communication and language needs. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

5 Arrangements for the Exercise of Functions by Delegation

- 5.1** The Foundation Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. These powers and decisions are set out in the 'Scheme of Reservation and Delegation'.
- 5.2** The Board of Directors may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, or by a Director or an officer of the Foundation Trust in each case subject to such restrictions and conditions as the Board of Directors thinks fit.
- 5.3 Emergency Powers** – the powers which the Board of Directors has retained to itself within these Standing Orders may in an emergency be exercised by the Chair and Chief Executive after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chair and Chief Executive shall be reported to the next formal meeting of the Board of Directors for ratification.
- 5.4 Delegation to Committees** – the Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees of Directors, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board of Directors.
- 5.5 Delegation to Officers** – those functions of the Trust that have not been retained as reserved by the Board of Directors or delegated to one of its committees shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate officers to undertake remaining functions but still retain accountability for these to the Board of Directors.
- 5.6** The Chief Executive may periodically proposed amendments to the 'Scheme of Reservation and Delegation', which shall be considered and approved by the Board.

- 5.7** Nothing in the 'Scheme of Reservation and Delegation' shall impair the discharge of the direct accountability to the Board of Directors of the Executive Directors to provide information and advise the Board of Directors in accordance with any statutory requirements.
- 5.8** The arrangements made by the Board of Directors as set out in the 'Scheme of Reservation and Delegation' shall have effect as if incorporated in these Standing Orders.

6 Committees

- 6.1** The Board of Directors may appoint committees of the Board of Directors consisting wholly or partly of persons who are not Directors of the Trust.
- 6.2** A committee so appointed may appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include Directors of the Trust) or wholly of persons who are not members of the committee (whether or not they include Directors of the Trust).
- 6.3** The Standing Orders of the Board of Directors, as far as they are applicable, shall apply with appropriate alterations to meetings of any committees or sub-committees established by the Board of Directors.
- 6.4** Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board) as the Board of Directors shall decide from time to time following reviews of the terms of reference, powers and conditions. Such terms of reference shall be read in conjunction with these Standing Orders.
- 6.5** The Board of Directors may not delegate their executive powers to a committee, and a committee may not delegate any executive power it may have to a sub-committee, unless the committee or sub-committee exists wholly of Directors and such delegation is authorised by the Board of Directors.
- 6.6** The Board of Directors shall approve the appointments to each of the committees that it has formally constituted. Where the Board of Directors determines that persons, who are neither Directors nor officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board of Directors.
- 6.7** Where the Trust is required to appoint persons to a committee and/or undertake statutory functions as required by the Independent Regulator, and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with the applicable statute and regulations and with any

guidance issued by the Independent Regulator and approved by the Board of Directors.

7 Confidentiality

7.1 A member of the Board of Directors shall not disclose a matter dealt with by, or brought before, the Board of Directors without its permission.

7.2 A member of a committee of the Board of Directors shall not disclose any matter dealt with by, or brought before, the committee notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee resolves that it is confidential.

8 Declaration of Interests

8.1 Directors are required to comply with the NHS Standards of Business Conduct, to declare interests that are required to be declared by the Constitution and to declare any other interests that are material to the Board of Directors. All Directors should declare such interests on appointment and on any subsequent occasion that a conflict arises.

8.2 Interests regarded as 'material' include any of the following, held by a Director, or the spouse, partner, parent or child of a Director:

8.2.1 any directorship of a Company

8.2.2 any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 1% of the nominal value of the issued share capital or the value of the shareholding does not exceed £5,000) or position held by a Director in any firm, company or business which has or is likely to have a trading or commercial relationship with the Trust.

8.2.3 any interest in a voluntary or other organisation providing health and social care services to the National Health Service.

8.2.4 a position of authority in a charity or voluntary organisation in the field of health and social care.

- 8.2.5** any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.
- 8.3** Any Director who has a material interest in a matter as defined above shall declare such interest to the Board of Directors and:
- 8.3.1** withdraw from the meeting and play no part in the relevant discussion or decision, and
- 8.3.2** shall not vote on any issue arising out of or connected with the matter (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 8.4** Any Director who fails to disclose any interest required to be disclosed under the preceding paragraph or otherwise required to be disclosed by this Constitution must permanently vacate their office if required to do so by a majority of the remaining Directors and (in the case of a Non-Executive Director) in accordance with the procedures set out in paragraph 29.3 of the Foundation Trust's Constitution.
- 8.5** If a Director has any doubt about the relevance of an interest, he should discuss it with the Chair who shall advise him whether to disclose the interest.
- 8.6** At the time Directors' interests are declared, they should be entered on a Register of Interests of Directors to be maintained by the Secretary. Any changes in interests should be declared at the next meeting of the Board of Directors following the change occurring.
- 8.7** Directors' directorships of companies likely or possibly seeking to do business with the Foundation Trust should be published in the Foundation Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

9 Register of Interests

- 9.1** The Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Directors.
- 9.2** These details will be kept up to date by means of an annual review of the Register in which any material changes to interests declared during the preceding twelve months will be incorporated.
- 9.3** The Register will be available to the public.

10 Interest of Directors in Contracts

- 10.1** Subject to the following provisions of this Standing Order, if a Director of the Foundation Trust, or the spouse, partner, parent or child of a Director, has any pecuniary interest, direct or indirect, in any contract, or proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 10.2** The Board shall exclude a Director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which he or a spouse, partner, parent or child has a pecuniary interest, is under consideration.
- 10.3** For the purpose of this Standing Order, the Chair or a Director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 10.3.1** he, or a nominee of his, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 10.3.2** he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;
 - 10.3.3** and in the case of persons living together as partners the interest of one or other shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other, save that:
 - 10.3.4** A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
 - 10.3.4.1** of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
 - 10.3.4.2** of an interest in any company, body or person with which he is connected;
 - 10.3.4.3** above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 10.4** Where a Director:

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

10.4.2 the total nominal value of those securities does not exceed £10,000 or 2% of the total nominal value of the issued share capital of the company or body, whichever is the less, and

10.4.3 if the share capital is more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed 2% of the total issued share capital of that class, this Standing Order shall not prohibit him from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice to his duty to disclose his interest.

10.5 This paragraph 10 applies to a committee or sub-committee of the Board of Directors as it applies to the Board of Directors and applies to any member of any such committee or sub-committee (whether or not he is also a Director) as it applies to a Director.

11 Custody of Seal and Sealing of Documents

11.1 Custody of Seal - the common seal of the Foundation Trust shall be kept in a secure place by the Chief Executive or an officer of the Foundation Trust appointed by the Chief Executive.

11.2 Sealing of Documents – the seal of the Foundation Trust shall not be fixed to any documents unless the sealing has been approved by the Chief Executive. The seal shall be affixed in the presence of two authorised members of the Board of Director and shall be attested by them.

11.3 Register of Sealings – an entry of every sealing shall be made and numbered consecutively in a register provided for that purpose. Every such entry shall be signed by those present at the sealing. A report of all sealings shall be made to the Audit Committee at least quarterly. The report shall contain details of the seal number, a description of the document and the date of sealing.

12 Compliance – Other Matters

12.1 All Directors of the Board of Directors shall comply with the Standards of Business Conduct set by the Board of Directors for the guidance of all staff employed by the Trust.

12.2 All Directors of the Foundation Trust shall comply with the Standing Financial Instructions prepared by the Director of Finance, Capital and IM&T and approved by the Board of Directors for the guidance of all staff employed by the Foundation Trust.

12.3 All Directors must behave in accordance with the seven principles of public life (the 'Nolan Principles'):

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

and the Foundation Trust's Code of Conduct for Directors as amended from time to time

13 Resolution of Disputes with the Council of Governors

13.1 Should a dispute arise between the Council of Governors and the Board of Directors, then the dispute resolution procedure set out below shall be followed.

13.2 The Chair, or Vice-Chair (if the dispute involves the Chair), shall first endeavour, through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.

13.3 Failing resolution under 13.2 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.

13.4 The Chair shall ensure that the Disputes Statement, 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. That meeting shall agree the precise wording of a Response to Disputes Statement.

13.5 The Chair or Vice-Chair (if the dispute involves the Chair) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 13.2 above shall be repeated.

- 13.6** If, in the opinion of the Chair or Vice-Chair (if the dispute involves the Chair) and following the further discussions prescribed in 13.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Vice-Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the Council of Governors and Board of Directors accordingly.
- 13.7** On the satisfactory completion of this disputes process, the Board of Directors or the Council of Governors, as appropriate, shall implement agreed changes.
- 13.8** On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 13.9** Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing the Independent Regulator that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors that the Foundation Trust is not acting in accordance with the terms of its Constitution or not complying with the terms of the 2006 Act.

14 Board of Directors' Performance

- 14.1** The Chair shall, at least annually, lead a performance assessment process for the Board of Directors to enable the Board of Directors to review its roles, structure and composition, and procedures, taking into account emerging best practice.
- 14.2** The outcomes of this process should inform individual and collective development programmes for Directors.