



Chelsea and Westminster Hospital
NHS Foundation Trust

CONSTITUTION OF CHELSEA AND WESTMINSTER HOSPITAL NHS FOUNDATION TRUST

Approved by the Board of Directors – April 2024

Approved by the Council of Governors – April 2024

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1. Interpretation and definitions

- 1.1. Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act.
- 1.2. References in this Constitution to legislation include all amendments, replacements, or re-enactments made and references to paragraph numbers are references to paragraphs of this Constitution unless the context provides otherwise.
- 1.3. Save as otherwise permitted by law and subject to the Constitution, at any Board of Directors meeting, the Chair's interpretation of this Constitution (on which they should be advised by the Chief Executive or Company Secretary) shall be final.
- 1.4. In this Constitution, the following defined terms have the following meaning:

the 2006 Act means the National Health Service Act 2006 (as amended, including by the 2012 Act);

the 2012 Act means the Health and Social Care Act 2012;

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

Acquisition Date means the date of the acquisition by the Trust of WMUH, being 1 September 2015;

Annual Members' Meeting means the annual meeting of the Trust's Members as defined in paragraph 12.1 of this Constitution;

Audit Committee means the committee established in accordance with paragraph 40 of this Constitution;

Auditor means the auditor of the Trust as defined in paragraph 39 of this Constitution;

Authorisation is the authorisation issued by Monitor¹ under section 35 of the 2006 Act;

Board of Directors means the board of directors of the Trust as constituted in accordance with this Constitution and referred to in paragraph 24 of this Constitution;

Chair is the non-executive Chair of the Trust appointed by the Council of Governors in accordance with paragraph 27 of this Constitution. The expression "the Chair" shall be deemed to include the Vice Chair or any other Non-Executive Director of the Trust if the Chair is absent from the meeting or is otherwise unavailable;

Chief Executive means the chief executive and Accounting Officer;

Committee means a committee established by the Board of Directors or the Council of Governors;

Company Secretary means a person appointed to provide advice on corporate governance issues to the Board of Directors, the Council of Governors and the Chair;

Constitution means this constitution and all annexes to it, established in accordance with schedule 7 of the 2006 Act and as from time to time amended in accordance with paragraph 45 of this Constitution;

Council of Governors means the council of governors as constituted in accordance with this Constitution and referred to in paragraph 13 of this Constitution;

Vice Chair means the Non-Executive Director appointed by the Non-Executive Directors to take on the Chair's duties in accordance with paragraph 28 of this Constitution if the Chair is absent for any reason;

¹ All 'Monitor' references contained within this document should be read as 'NHS Improvement', the successor organisation to Monitor as of 1 April 2016. However, the statutory basis underpinning the existence of the regulator remains unchanged at the time of writing.

Director means an Executive Director or Non-Executive Director of the Board of Directors;

Executive Director means a person appointed as an executive director of the Trust under schedule 7 of the 2006 Act and in accordance with paragraph 29 of this Constitution and who is an Officer;

Finance Director means the suitably qualified chief financial Officer of the Trust;

Governor means a person elected or appointed as a member of the Council of Governors in accordance with this Constitution;

Health Service Body means a health service body as defined in section 9(4) of the 2006 Act;

Lead Governor is the public Governor or patient Governor elected by the Council of Governors in accordance with the Standing Orders (SOs) of the Council of Governors (as set out in SO 2.6 Annex 7);

Local Authority means the local authorities listed in Annex 4;

Member means a person whose name has been entered into the Trust's register of members as a member of the Trust's Public, Patient (for so long as is applicable) or Staff Constituency;

Model Election Rules means those election rules as published by NHS Providers from time to time and set out in Annex 5 of this Constitution;

Monitor is the body corporate known as Monitor, as provided by section 61 of the 2012 Act;

Motion means a formal proposition to be discussed and voted on during the course of a meeting;

Non-Executive Director means a person appointed as a non-executive director of the Trust under schedule 7 of the 2006 Act and in accordance with paragraph 26 of this Constitution and who is not an Officer;

North West London (NWL) Acute Provider Collaborative (APC) is a partnership of the four acute provider trusts in NWL;

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

Patients' Constituency shall have the meaning given in paragraph 8 of this Constitution;

Public Constituency shall have the meaning given in paragraph 7.2 of this Constitution;

Senior Independent Director means the Non-Executive Director appointed by the Board of Directors in accordance with paragraph 28.2 of this Constitution;

SFIs means standing financial instructions;

SOs/Standing Orders means the standing orders of the Board of Directors and/or the standing orders of the Council of Governors;

Special Members' Meeting shall have the meaning given in paragraph 4.2 of Annex 10 of this Constitution;

Staff Constituency shall have the meaning given in paragraph 9.3 of this Constitution;

Term shall mean three years or, in the case of a Governor appointed by a Local Authority under paragraph 13.5 of this Constitution, the period of such appointment;

Trust shall have the meaning given to it in paragraph 2.1 of this Constitution;

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

WMUH means West Middlesex University Hospital NHS Trust; and

Working Group means a working group established by the Council of Governors.

2. Name

- 2.1. The name of the foundation trust is Chelsea & Westminster Hospital NHS Foundation Trust (the "Trust").

3. Principal Purpose

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

4. Powers

- 4.1. The powers of the Trust are set out in the 2006 Act. All powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.2. Any of these powers may be delegated to a Committee of the Board of Directors or to an Executive Director, provided that where such a Committee includes individuals who are not Directors, the Committee shall have a majority of Directors.

5. Membership and Constituencies

- 5.1. The Trust shall have Members, each of whom shall be a Member of one of the constituencies in paragraph 5.2.
- 5.2. The constituencies of the Trust shall be:
- 5.2.1. the Public Constituencies;
 - 5.2.2. the Staff Constituency; and
 - 5.2.3. the Patients' Constituency.

6. Application for Membership

- 6.1. Subject to paragraph 10.1 below, an individual who is eligible to become a Member of the Trust may do so on application to the Trust for membership. Where that application has been accepted by the Trust, that individual shall become a Member of the Trust once their name has been entered as such in the Trust's register of Members.

7. Public Constituency

- 7.1. An individual who lives (during the relevant time periods specified in Part 1 and Part 2 of Annex 1) in an area specified in Annex 1 as an area for a Public Constituency may become or continue as a Member of the Trust.
- 7.2. Those individuals who live (during the relevant time periods specified in Part 1 and Part 2 of Annex 1) in an area specified in Annex 1 as an area for a Public Constituency are referred to collectively as the Public Constituency (the "**Public Constituency**").
- 7.3. The minimum number of Members in each area for the Public Constituency is specified in Annex 1.

8. Patients' Constituency

- 8.1. An individual who has, within the period specified in paragraph 8.2 below, attended any of the Trust's hospitals as either a patient or as the carer of a patient may become or continue as a Member of the Trust.
- 8.2. The period referred to in paragraph 8.1 above shall be the period of three years immediately preceding the date of an application by the patient or carer to become a Member of the Trust.
- 8.3. Those individuals who are eligible for membership of the Trust by reason of paragraphs 8.1 and 8.2 are referred to collectively as the Patients' Constituency (the "**Patients' Constituency**").
- 8.4. An individual providing care in pursuance of a contract (including a contract of employment), or as a volunteer for a Voluntary Organisation, does not come within the category of those who qualify for membership of the Patients' Constituency.
- 8.5. The minimum number of Members in the Patients' Constituency is specified in paragraph 1 of Annex 3.

9. Staff Constituency

- 9.1. An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided:
 - 9.1.1. they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 9.1.2. they have been continuously employed by the Trust under a contract of employment for at least 12 months.
- 9.2. Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as Members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 9.3. Those individuals who are eligible for membership of the Trust by reason of paragraphs 9.1 or 9.2 above are referred to collectively as the Staff Constituency (the "**Staff Constituency**").
- 9.4. The Staff Constituency shall be divided into six descriptions of individuals who are eligible for membership of the Staff Constituency. Each description of individuals is specified within Annex 2 and are referred to as a class within the Staff Constituency. The minimum number of Members in each class of the Staff Constituency is specified in Annex 2.

10. Automatic Membership by Default – Staff

- 10.1. An individual who is:
 - 10.1.1. eligible to become a Member of the Staff Constituency; and
 - 10.1.2. invited by the Trust to become a Member of the Staff Constituency and a Member of the appropriate class within the Staff Constituency,shall become a Member of the Trust as a Member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made and upon their name being entered in the Trust's Register of Members, unless they inform the Trust that they do not wish to do so.

11. Restriction on Membership

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

- 11.2. An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a Member of any constituency other than the Staff Constituency.
- 11.3. An individual must be at least 16 years old to become a Member of the Trust.
- 11.4. Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Trust are set out in paragraph 1 – 3 of Annex 10.

12. Annual Members' Meeting

- 12.1. The Trust shall hold an annual meeting of its Members (the “**Annual Members' Meeting**”). The Annual Members' Meeting shall be open to the public.
- 12.2. Further provisions about the Annual Members' Meeting are set out in paragraph 4 of Annex 10 – Further Provisions – Members.

13. Council of Governors – Composition

- 13.1. The Trust is to have a Council of Governors, which shall comprise both elected and appointed Governors.
- 13.2. The elected 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 4².
- 13.3. The composition of the Council of Governors shall be as set out at Annex 4.
- 13.4. The two Local Authority stakeholder groups shall each appoint, on a rotational basis, one local authority Governor per Local Authority Governor position. The Local Authorities shall choose (in accordance with a process agreed by the Local Authorities) which Local Authority shall appoint a local authority Governor, with the length of such appointment, subject to paragraph 15.4, to be agreed between the Trust and the respective Local Authorities.
- 13.5. If a Local Authority has not been chosen to appoint a local authority Governor on or before the date which is three weeks before the date upon which the Governor's Term is due to commence, the Trust shall determine by lot which Local Authority (if willing to make an appointment) shall appoint a Governor.

14. Council of Governors – election of Governors

- 14.1. Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 14.2. The Model Election Rules, as published and may be varied from time to time by NHS Providers, form part of this Constitution and are attached at Annex 5.
- 14.3. A 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 45 of the Constitution. For the avoidance of doubt, the Trust cannot amend the Model Election Rules.
- 14.4. An election, if contested, shall be by secret ballot.
- 14.5. The full election results will be made available to the Council of Governors and to all election candidates.

15. Council of Governors – Tenure

- 15.1. A Governor may hold office for a period of up to three years.
- 15.2. The returning officer (as referred to in part 3 of Annex 5) will undertake the election of Governors in accordance with the Model Election Rules.

- 15.3. An elected Governor shall cease to hold office if they cease to be a Member of the constituency or class by which they were elected.
- 15.4. An elected or an appointed Governor shall be eligible for re-election or re-appointment as appropriate at the end of their Term and may be re-elected or re-appointed for consecutive Terms provided that a Governor shall not hold office for longer than nine years.
- 15.5. An appointed Governor shall cease to hold office if the appointing Local Authority or partnership organisation of that Governor withdraws its appointment of them or if any such appointing body ceases to exist and there is no successor in title to its business.
- 15.6. For the avoidance of doubt, any Governor elected for a term under the conditions established by a previous iteration of the Constitution shall be entitled to serve the remainder of their term.

16. Council of Governors – Disqualification and Removal

- 16.1. A Governor may resign from that office at any time during their Term by giving notice in writing to the Company Secretary or the Chair, such notice is to specify the date of resignation.
- 16.2. The following may not become or continue as a member of the Council of Governors:
 - 16.2.1. a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 16.2.2. a person in relation to whom a moratorium period under a debt relief order applies (under part 7A of the Insolvency Act 1986);
 - 16.2.3. a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it; and
 - 16.2.4. a person who within the preceding five years has been convicted in the British Isles 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 them.
- 16.3. Further provisions as to the circumstances in which an individual may not become or continue or be removed as a member of the Council of Governors are set out in paragraph 2 and paragraph 3 of Annex 6.
- 16.4. Governors must be at least 16 years of age at the date they are nominated for election or appointment.

17. Council of Governors – Duties of Governors

- 17.1. The general duties of the Council of Governors are:
 - 17.1.1. to hold the Non-Executive Directors, individually and collectively, to account for the performance of the Board of Directors, and
 - 17.1.2. to represent the interests of the Members of the Trust as a whole and the interests of the public.
- 17.2. The Trust must take steps to secure that the Governors are equipped with the skills and knowledge that they require in their capacity as such.
- 17.3. Further provision as to the roles and responsibilities of the Council of Governors is set out in paragraph 1 of Annex 6.

18. Council of Governors – Meetings of Governors

- 18.1. The Chair of the Trust (i.e. the Chair of the Board of Directors appointed in accordance with paragraph 27.1 below) or, in their absence, the Vice Chair (i.e. the person appointed in accordance with paragraph 28.1 below) (or if such person is not available another Non-Executive Director) shall preside at meetings of the Council of Governors. If the Chair, the Vice Chair and all Non-Executive Directors are absent, the Lead Governor, if they are present, shall

preside. If the Lead Governor is not present, such Governor as the Governors present shall choose shall preside.

- 18.2. The Council of Governors shall elect one of the Governors, who is a Member of either the Public Constituency or the Patients' Constituency, to be the Lead Governor and the Chair shall liaise with the Lead Governor in relation to the proceedings of the Council of Governors. If the Chair considers it appropriate (taking into account the matters to be discussed at a meeting of the Council of Governors), the Lead Governor shall preside at such meeting.
- 18.3. Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to all or part of the meeting for special reasons of commercial confidentiality or on other proper grounds. The Chair may exclude any person from a meeting of the Council of Governors if that person is interfering with or preventing the proper conduct of the meeting.
- 18.4. The Trust will hold a minimum of four public Council of Governors' meetings each year, at least one joint workshop in private between the Governors and the Board of Directors and two informal meetings between the Governors and the Non-Executive Directors per annum.
- 18.5. The Council of Governors with the approval of the Chair may appoint Committees or Working Groups consisting of its members and other persons including Directors to assist it in carrying out its functions.
- 18.6. For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.

19. Council of Governors – Standing Orders

- 19.1. The SOs for the practice and procedure of the Council of Governors are attached at Annex 7.

20. Council of Governors – Referral to the Panel

- 20.1. In this paragraph, the panel means a panel of persons appointed by Monitor to which a Governor of a Trust may refer a question as to whether the Trust has failed or is failing:

20.1.1. to act in accordance with its Constitution; or

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

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

21. Council of Governors – Conflicts of Interest of Governors

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

22. Council of Governors – Travel Expenses

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

23. Council of Governors – Further Provisions

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

24. Board of Directors – Composition

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

24.2. The Board of Directors is to comprise:

24.2.1. the Chair;

24.2.2. at least four other Non-Executive Directors; and

24.2.3. at least four Executive Directors.

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

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

24.4. The Chief Executive shall be the Accounting Officer.

24.5. One of the Executive Directors shall be the Finance Director.

24.6. One of the Executive Directors is to be a registered medical practitioner (within the meaning of the Medical Act 1983 who holds a licence to practice under that Act) or a registered dentist (within the meaning of the Dentists Act 1984).

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

25. Board of Directors – General Duty

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

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

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

26.1.1. they are a Member of the Public or Patients' Constituency; or

26.1.2. where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university; and

26.1.3. they are not disqualified by virtue of paragraph 30 below.

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

27.1. The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other Non-Executive Directors.

27.2. Appointment of the Chair or another Non-Executive Director shall require the approval of a majority of the Council of Governors, present at a meeting of the Council of Governors.

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

28. Board of Directors – Appointment of Vice Chair and Senior Independent Director

28.1. The Council of Governors, following recommendation and in line with the agreed process, shall appoint a Non-Executive Director as a Vice Chair who shall perform the duties as set out in the agreed role description for Vice Chair. In addition, if the Chair is unable to discharge their duties, the Vice Chair shall act in their place. The Vice Chair position shall be open to applicants from the North West London (NWL) Acute Provider Collaborative (APC) Trust Non-Executive Directors in the first instance. Following a selection process, which shall involve the Lead Governor; the preferred candidate will be recommended for appointment to the Council of Governors Non-Executive Director Nominations and Remuneration Committee. Appointment

of the Vice Chair shall require the approval of a majority of the Council of Governors, present at a meeting of the Council of Governors.

- 28.2. The Board of Directors shall, following consultation with the Lead Governor, appoint one of the Non-Executive Directors as a Senior Independent Director to act in accordance with Monitor's NHS Foundation Trust Code of Governance (as may be amended and replaced from time to time) and the Trust's SOs.

28. Board of Directors – Appointment and Removal of the Chief Executive and other Executive Directors

- 29.1. The Chair and the other Non-Executive Directors shall appoint or remove the Chief Executive.
- 29.2. The appointment of the Chief Executive shall require the approval of a majority of the Council of Governors present at a meeting of the Council of Governors.
- 29.3. A Committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

30. Board of Directors – Disqualification

- 30.1. The following may not become or continue as a member of the Board of Directors:
- 30.1.1. a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 30.1.2. a person in relation to whom a moratorium period under a debt relief order applies (under part 7A of the Insolvency Act 1986);
 - 30.1.3. a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it; and
 - 30.1.4. a person who within the preceding five years has been convicted in the British Isles 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 them.
- 30.2. Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out in paragraph 1 Annex 8.

31. Board of Directors – Meetings

- 31.1. Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons, including without limitation, where business involves information that relates to staff or patients or is commercially sensitive.
- 31.2. Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors, with suitable redactions as necessary.

32. Board of Directors – Standing Orders

- 32.1. The SOs for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 9.

33. Board of Directors – Conflicts of Interest of Directors

- 33.1. The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 33.1.1. a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
 - 33.1.2. a duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.

- 33.2. The duty referred to in sub-paragraph 33.1.1 is not infringed if:
- 33.2.1. the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 33.2.2. the matter has been authorised in accordance with the Constitution.
- 33.3. The duty referred to in sub-paragraph 33.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.4. In sub-paragraph 33.1.2, "third party" means a person other than:
- 33.4.1. the Trust; or
 - 33.4.2. a person acting on its behalf.
- 33.5. If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 33.6. If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 33.7. Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 33.8. This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 33.9. A Director need not declare an interest:
- 33.9.1. if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 33.9.2. if, or to the extent that, the Directors are already aware of it;
 - 33.9.3. if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
 - 33.9.3.1. by a meeting of the Board of Directors; or
 - 33.9.3.2. by a Committee of the Directors appointed for the purpose under the Constitution.
- 33.10. A matter shall be authorised for the purposes of paragraph 33.2.2 if:
- 33.10.1. the Board of Directors by majority, disapplies the provision of the Constitution which would otherwise prevent a Director from being counted as participating in the decision-making process; and/or
 - 33.10.2. the Director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; and/or
 - 33.10.3. the Director's conflict of interest arises from a permitted cause (as determined by the Board of Directors from time to time).
- For the purposes of this paragraph 33.10, a permitted cause may include (without limitation):
- 33.10.3.1. a guarantee given, or to be given, by or to a Director in respect of an obligation incurred by or on behalf of the Trust or any of its subsidiaries; and/or
 - 33.10.3.2. arrangements pursuant to which benefits are made available to employees and Directors or former employees and Directors of the Trust or any of its subsidiaries which do not provide special benefits for Directors or former Directors.

34. Board of Directors – Remuneration and Terms of Office

- 34.1. The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair, Vice Chair and the other Non-Executive Directors. In doing so, the Council of Governors shall be guided by the recommendations of a Committee of Governors known as the Non-Executive Director Nominations and Remuneration Committee.
- 34.2. The Board of Directors shall establish a Committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

35. Registers

- 35.1. The Trust shall have:
 - 35.1.1. a register of Members showing, in respect of each Member, the constituency to which they belong and, where there are classes within it, the class to which they belong;
 - 35.1.2. a register of members of the Council of Governors;
 - 35.1.3. a register of interests of Governors;
 - 35.1.4. a register of Directors; and
 - 35.1.5. a register of interests of the Directors.

36. Removal from the Registers

- 36.1. The Company Secretary shall remove from the register of Members the name of any Member who ceases to be entitled to be a Member under the provisions of this Constitution.

37. Registers – Inspection and Copies

- 37.1. The Trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 37.2. The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:
 - 37.2.1. any Member of the Patients' Constituency where that Member has not consented to their details being made so available; or
 - 37.2.2. any other Member of the Trust, if they so requests.
- 37.3. So far as the registers are required to be made available:
 - 37.3.1. they are to be available for inspection free of charge at all reasonable times; and
 - 37.3.2. a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 37.4. If the person requesting a copy or extract is not a Member, the Trust may impose a reasonable charge for doing so.

38. Documents available for Public Inspection

- 38.1. The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
 - 38.1.1. a copy of the current Constitution;
 - 38.1.2. a copy of the latest annual accounts and of any report of the Auditor on them; and
 - 38.1.3. a copy of the latest annual report.

- 38.2. The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 38.2.1. a copy of any order made under section 65D (appointment of Trust Special Administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (Trusts coming out of administration) or 65LA (Trusts to be dissolved) of the 2006 Act;
 - 38.2.2. a copy of any report laid under section 65D (appointment of Trust Special Administrator) of the 2006 Act;
 - 38.2.3. a copy of any information published under section 65D (appointment of Trust Special Administrator) of the 2006 Act;
 - 38.2.4. a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 38.2.5. a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
 - 38.2.6. a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
 - 38.2.7. a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 38.2.8. a copy of any final report published under section 65I (administrator's final report);
 - 38.2.9. a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
 - 38.2.10. a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.
- 38.3. Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 38.4. If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

39. Auditor

- 39.1. The Trust shall have an Auditor (the "**Auditor**").
- 39.2. The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.

40. Audit Committee

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

41. Annual Accounts

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

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

42. Annual Report, Forward Plans and non-NHS work

- 42.1. The Trust shall prepare an annual report and send it to Monitor.
- 42.2. The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 42.3. The document containing the information with respect to forward planning (referred to above) shall be prepared by the Board of Directors.
- 42.4. In preparing the document, the Board of Directors shall have regard to the views of the Council of Governors.
- 42.5. Each forward plan must include information about:
- 42.5.1. the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on; and
 - 42.5.2. the income it expects to receive from doing so.
- 42.6. Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 42.5.1, the Council of Governors must:
- 42.6.1. determine whether it is satisfied that the carrying on of the activity will not, to any significant extent, interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions; and
 - 42.6.2. notify the Board of Directors of the Trust of its determination.
- 42.7. If the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England, it may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting, approve its implementation.

43. Presentation of the Annual Accounts and Reports to the Council of Governors and

Members

- 43.1. The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 43.1.1. the annual accounts;
 - 43.1.2. any report of the Auditor on them; and
 - 43.1.3. the annual report.
- 43.2. The documents shall also be presented to the Members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 43.3. The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 43.1 with the Annual Members' Meeting.

44. Instruments

- 44.1. The Trust shall have a seal.
- 44.2. The seal shall not be affixed except under the authority of the Board of Directors.

45. Amendment of the Constitution

- 45.1. The Trust may make amendments of its Constitution only if:

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

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

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

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

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

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

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

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

46. Mergers etc. and Significant Transactions

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

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

46.1.2. The constitution does not contain any descriptions of the term 'significant transaction' for the purposes of section 51A of the 2006 Act.

47. Procedures and Protocols

47.1. The Council of Governors and Board of Directors will adopt such procedures and protocols as they may deem to be appropriate for the good governance of the Trust from time to time.

48. Indemnity

48.1. Members of the Council of Governors and the Board of Directors and the 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 Trust.

ANNEX 1 THE PUBLIC CONSTITUENCY

There shall be seven Public Constituencies. Members of the public shall be eligible for membership of the Public Constituencies as shown in the table below:

Name of Public Constituency area	Minimum number of Members from 1 December 2015
Royal Borough of Kensington & Chelsea	500
City of Westminster	500
London Borough of Hammersmith & Fulham	300
London Borough of Wandsworth	300
London Borough of Hounslow	300
London Borough of Richmond upon Thames	300
London Borough of Ealing	150
Rest of England	50
Total	2,400

ANNEX 2 THE STAFF CONSTITUENCY

The Staff Constituency is divided into six classes. Staff shall be eligible for membership of a class within the Staff Constituency as shown in the table below:

Staff class	Minimum number of Members
Non-Clinical Staff	100
Allied Health Professionals, Scientific & Technical Staff	100
Medical & Dental Staff	100
Nursing & Midwifery Staff	100
Total	400

ANNEX 3 THE PATIENTS' CONSTITUENCY

1. PATIENTS' CONSTITUENCY

Patients shall be eligible for membership of the Patients' Constituency as shown in the table below.

	Minimum number of Members
Patients' Constituency	200
Total	200

ANNEX 4 COMPOSITION OF THE COUNCIL OF GOVERNORS

The composition of the Council of Governors set out below ensures that, at all times, the aggregate number of public and patients' constituencies' Governors shall be more than half the total membership of the Council of Governors.

COMPOSITION OF THE COUNCIL OF GOVERNORS

Elected Governors		
Constituency	Representative of	Number of Governors
Public Constituencies	Royal Borough of Kensington & Chelsea	2
	City of Westminster	2
	London Borough of Hammersmith & Fulham	2
	London Borough of Wandsworth	2
	London Borough of Hounslow	2
	London Borough of Richmond upon Thames	2
	London Borough of Ealing	1
	Rest of England	1
Patients' Constituency	Patients' Constituency	8
Staff Constituency	Non-Clinical Staff	2
	Allied Health Professionals, Scientific & Technical Staff	1
	Medical and Dental Staff	1
	Nursing & Midwifery Staff	2
Appointed Governors		
University/medical school (required by statute)	Imperial College London	1

Local Authority (required by statute)	- Royal Borough of Kensington & Chelsea; - Westminster City Council, and - London Borough of Hammersmith & Fulham who shall appoint a Governor on a rotational basis as set out at paragraphs 13.44 and 13.55 of this Constitution.	1
Local Authority (required by statute)	- London Borough of Hounslow; - London Borough of Richmond, and - London Borough of Wandsworth who shall appoint a Governor on a rotational basis as set out at paragraphs 13.44 and 13.55 of this Constitution.	1
Total:		31

ANNEX 5

The Trust is to hold elections in accordance with the first past the post version of the Model Election Rules, as set out below.

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1. Interpretation

PART 2: TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

PART 3: RETURNING OFFICER

4. Returning officer
5. Staff
6. Expenditure
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PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination forms
15. Publication of statement of nominated candidates
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17. Withdrawal of candidates
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PART 5: CONTESTED ELECTIONS

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

Action to be taken before the poll

22. List of eligible voters
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24. Issue of voting information by returning officer
25. Ballot paper envelope and covering envelope
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The poll

27. Eligibility to vote
28. Voting by persons who require assistance

29. Spoilt ballot papers and spoilt text message votes
30. Lost voting information
31. Issue of replacement voting information
32. ID declaration form for replacement ballot papers (public and patient constituencies)
33. Procedure for remote voting by internet
34. Procedure for remote voting by telephone
35. Procedure for remote voting by text message

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

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

PART 6: COUNTING THE VOTES

41. Not used
42. Arrangements for counting of the votes
43. The count
44. Rejected ballot papers and rejected text voting records
45. Not used 46. Not used 47 Not used
48. Not used
49. Not used
50. Not used
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52. Declaration of result for contested elections
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55. Delivery of documents
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59. Countermand or abandonment of poll on death of candidate

PART 10: ELECTION EXPENSES AND PUBLICITY

Expenses

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

Publicity

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

PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES

- 66. Application to question an election

PART 12: MISCELLANEOUS

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

PART 1: INTERPRETATION

1. Interpretation

- 1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the 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 they consider 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 their 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 their 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 they are 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 patient or public Constituency, of the particulars of their 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 they have 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 them 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 their vote using the internet voting system;
 - (b) if telephone voting is 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 their 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 their vote using the text message voting system.

20. The ballot paper

- 20.1 The ballot of each voter (other than a voter who casts their 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 they have not marked or returned any other voting information in the election, and
- (c) the particulars of their qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

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 their declaration of identity with their 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 their 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 64 of these rules, and
- (d) a covering envelope;

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 their 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; and
- (d) contact details of the returning officer,

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 their 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 their 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 they are 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 their voter ID number in order to be able to cast their 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 they are 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 their 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 their vote;
- (b) prevent a voter from voting for more candidates than they are 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 they consider necessary to enable that voter to vote.

29. Spoilt ballot papers and spoilt text message votes

- 29.1 If a voter has dealt with their ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if they can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless they :
- (a) are satisfied as to the voter's identity; and
 - (b) have 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 their 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 they 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 they are 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 their voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless they:
- (a) are satisfied as to the voter's identity,
 - (b) have no reason to doubt that the voter did not receive the original voting information,
 - (c) have 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, they are 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 their 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 their 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 their vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom they wish to cast their vote for.
- 33.5 The voter will not be able to access the internet voting system for an election once their vote at that election has been cast.

34. Voting procedure for remote voting by telephone

- 34.1 To cast their 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 their 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 their vote by keying in the numerical voting code of the candidate or candidates, for whom they wishes to vote for.
- 34.5 The voter will not be able to access the telephone voting facility for an election once their vote at that election has been cast.

35. Voting procedure for remote voting by text message

- 35.1 To cast their 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 their voter ID number and the numerical voting code for the candidate or candidates, for whom they wish to vote for.

- 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, they are 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, they are 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, they are 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, they are to:

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

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

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

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

39. De-duplication of votes

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

39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election they 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 spoilt ballot papers and the list of spoilt text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

PART 6: COUNTING THE VOTES

41. Not used

42. Arrangements for counting of the votes

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

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

- (a) the Board of Directors and the Council of Governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and

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

43. The count

43.1 The returning officer is to:

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

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

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

44. Rejected ballot papers and rejected text voting records

44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which votes are given for more candidates than the voter is entitled to vote,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

shall, subject to rules 44.2 and 44.3, be rejected and not counted.

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

44.3 A ballot paper on which a vote is marked:

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

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

- 44.4 The returning officer is to:
- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
 - (b) in the case of a ballot paper on which any vote is counted under rules 44.2 and 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.
- 44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:
- (a) does not bear proper features that have been incorporated into the ballot paper,
 - (b) voting for more candidates than the voter is entitled to,
 - (c) writing or mark by which voter could be identified, and
 - (d) unmarked or rejected because of uncertainty,
- and, where applicable, each heading must record the number of ballot papers rejected in part.
- 44.6 Any text voting record:
- (a) on which votes are given for more candidates than the voter is entitled to vote,
 - (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
 - (c) which is unmarked or rejected because of uncertainty,
- shall, subject to rules 44.7 and 44.8, be rejected and not counted.
- 44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.
- 44.8 A text voting record on which a vote is marked:
- (a) otherwise than by means of a clear mark,
 - (b) by more than one mark,
- is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the text voting record is marked does not itself identify the voter and it is not shown that they can be identified by it.
- 44.9 The returning officer is to:
- (a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and
 - (b) in the case of a text voting record on which any vote is counted under rules 44.7 and 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

- 44.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:
- (a) voting for more candidates than the voter is entitled to,
 - (b) writing or mark by which voter could be identified, and
 - (c) unmarked or rejected because of uncertainty,
- and, where applicable, each heading must record the number of text voting records rejected in part.
45. **Not used**
46. **Not used**
47. **Not used**
48. **Not used**
49. **Not used**
50. **Not used**
51. **Equality of votes**
- 51.1 Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

52. Declaration of result for contested elections

- 52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Governors from the constituency, or class within a constituency, for which the election is being held to be elected,
 - (b) give notice of the name of each candidate who they have declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS trust by section 33(4) of the 2006 Act, to the Chair of the NHS trust, or
 - (ii) in any other case, to the Chair of the corporation; and
 - (c) give public notice of the name of each candidate whom they have declared elected.
- 52.2 The returning officer is to make:

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule 44.5,
- (c) the number of rejected text voting records under each of the headings in rule 44.10, available on request.

53. Declaration of result for uncontested elections

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

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

PART 8: DISPOSAL OF DOCUMENTS

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 Chair 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 their vote was given; and
- (ii) that Monitor has declared that the vote was invalid.

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

59. Countermand or abandonment of poll on death of candidate

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

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

- 59.2 Where a new election is ordered under rule 59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- 59.3 Where a poll is abandoned under rule 59.1(a), rules 59.4 to 59.7 are to apply.
- 59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- 59.5 The returning officer is to:
- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
 - (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and
- ensure that complete electronic copies of the internet voting records telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- 59.6 The returning officer is to endorse on each packet a description of:
- (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency, or class within a constituency, to which the election relates.
- 59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules 59.4 to 59.6, the returning officer is to deliver them to the Chair of the corporation, and rules 57 and 58 are to apply.

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1 No person may:

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or their 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 their own services voluntarily, on their own time, and free of charge is not to be considered an expense for the purposes of this Part.

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

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

- 66.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

PART 12: MISCELLANEOUS

67. Secrecy

67.1 The following persons:

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

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

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

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

67.3 The returning officer is to make such arrangements as they think 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 they have 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 they consider appropriate.

ANNEX 6

ADDITIONAL PROVISIONS - COUNCIL OF GOVERNORS

1. Roles and responsibilities of the Council of Governors

- 1.1. The roles and responsibilities of the Council of Governors at a general meeting (which may be the Trust's annual members' meeting), which are to be carried out in accordance with this Constitution, the Trust's Authorisation and Monitor's Code of Governance, are :
- (a) subject to paragraph 27 of this Constitution, to appoint or remove the Chair and the other Non-Executive Directors;
 - (b) subject to paragraph 34 of this Constitution, to decide the remuneration and allowances, and other terms and conditions of office, of the Chair, Vice Chair and the other Non-Executive Directors;
 - (c) to appoint or remove the Auditor;
 - (d) to consider and be presented with the annual accounts, any report of the Auditor on them and the annual report;
 - (e) approve (by a majority of the Council of Governors voting in favour) an appointment by the Non-Executive Directors, of the Chief Executive and Accounting Officer; and
 - (f) to give the views of the Council of Governors to the directors for the purposes of the preparation by the Board of Directors of the forward planning in respect of each financial year (the annual plan to be given to Monitor).
- 1.2. Paragraph 17 of the constitution sets out provisions as to the duties of the Council of Governors.

2. Disqualification

- 2.1. The following may not become or continue as a member of the Council of Governors:
- (a) a person as referred to in paragraph 16.2 of the constitution;
 - (b) a director of the Trust or a director of an NHS trust or another foundation trust;
 - (c) a spouse, partner, parent or child of a member of the Board of Directors of the Trust;
 - (d) being a Member of the Patient or Public Constituency, a person who refuses to sign a declaration in the form specified by the Company Secretary of particulars of their qualification to vote as a Member of the Trust and that they are not prevented from being a member of the Council of Governors;
 - (e) a vexatious complainant as determined in accordance with the Trust's complaints procedure;
 - (f) a person who is required to notify the police of their name and address as a result of being convicted or cautioned for relevant sex offences pursuant to the Sexual Offences Act 2003 or other relevant legislation and/or a person who has previously been or is currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or has committed a sexual offence prior to the requirements to register under current legislation coming into force;
 - (g) a person who has been disqualified from being a member of a relevant authority under the provisions of the Local Government Act 2000;
 - (h) a person who, 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 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 Trust's Director responsible for human resources;

- (i) a person who within the preceding two years has been dismissed, otherwise than by reason of redundancy, from any paid employment with the Trust or with a Health Service Body;
- (j) a person who within the preceding two years has been subject to a disciplinary sanction within the Trust;
- (k) 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, or for non-attendance at meetings, or for nondisclosure of a pecuniary interest;
- (l) a person who has refused without reasonable cause to undertake any training (including any workshop) which the Trust requires all governors to undertake;
- (m) a person who has failed to sign and deliver to the Company Secretary a statement in the form required by the Company Secretary confirming acceptance of the code of conduct for the Council of Governors;
- (n) a person who has had their name removed or been suspended from any practising or professional list, by a direction under any legislation applicable to the NHS or under any related subordinate legislation or who has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had their name included in such a list or had their suspension lifted or qualification reinstated (as applicable);
- (o) a person who has failed to pay monies properly due to the Trust;
- (p) a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- (q) a person who, following investigations, including online and social media checks undertaken by the Trust, is determined by the Trust to be an individual who:
 - (i) is not of good character;
 - (ii) does not have the necessary qualifications, competence, skills and experience which are necessary in order to undertake their Governor role;
 - (iii) is unable, by reason of their health, after reasonable adjustments are made, of properly performing the tasks which are intrinsic to the work for which they are employed;
 - (iv) has been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity;
 - (v) any of the grounds of unfitness specified in paragraph 16 of this Constitution apply to;
 - (vi) is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order to like effect made in Scotland or Northern Ireland;
 - (vii) is included in the children's barred list or the adults' barred list maintained under paragraph 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland; and/or

- (viii) is prohibited from holding the relevant office or position, or in the case of an individual carrying on the regulated activity, by or under an enactment;
- (xi) a person who is found to have acted counter to the Trust's values or acted in such a way as to bring the Trust into disrepute. Basic background checks, including online and social media searches, will be completed before newly elected or re-elected Governors take up their posts. Any concerns raised through this process, would be considered by the Council of Governors Nominations and Remuneration Committee, with any exclusion under provisions in Annex 1 and Sections 2 and 3 below, to be determined by the full Council of Governors.

2.2. In assessing an individual's character for the purposes of paragraph (q)(i) above, the matters considered must include:

- (a) whether the person has been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence; and
- (b) whether the person has been erased, removed or struck-off a register of professionals maintained by a regulator of health care or social work professionals.

2.3. In the event that a Governor no longer meets the requirements set out in this Annex 6, the Trust shall:

- (a) take such action as is necessary and proportionate to ensure that the office or position in question is held by an individual who meets such requirements; and
- (b) if the individual is a health care professional, social worker or other professional registered with a health care or social care regulator, inform Monitor.

2.4. If a person has been elected or appointed to be a Governor and they become disqualified or are removed from office, the Company Secretary shall immediately declare that the person in question is disqualified and notify them in writing to that effect.

2.5. Upon despatch of any such notification, that person's tenure of office shall be terminated and they shall cease to act as a Governor; and the Company Secretary shall inform the Chair of the actions taken in respect of the person in question and the reasons for such action.

3. Removal

3.1. A Governor may be removed from the Council of Governors by a resolution approved by the majority of the remaining Governors present at the meeting on the grounds that:

- (a) they has committed a serious breach of the code of conduct; or
- (b) they have acted in a manner detrimental to the interests and values of the Trust, including bringing the Trust into disrepute; or
- (c) the Council of Governors consider that it is not in the best interest of the Trust for them to continue as a Governor; or
- (d) they fail to attend three consecutive formal meetings of the Council of Governors; or
- (e) they fail to attend two consecutive workshop meetings of the Council of Governors.

4. Vacancies

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

- (a) where the vacancy arises amongst the appointed Governors, the Company Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office; and
- (b) where the vacancy arises amongst the elected Governors, the Council of Governors may:
 - (i) call an election within three months to fill the seat for the remainder of that term of office; or
 - (ii) invite the next highest polling candidate, provided that that candidate received at least 10% of the vote in the last election (such 10% being calculated taking into account first preference votes cast under the transferable vote system set out in Annex 4), and is willing to take office, to fill the vacant seat until the next election, at which time the seat will fall vacant and be subject to election; or
 - (iii) if the unexpired period of the term of office is less than nine months (or such other period as the Council of Governors may from time to time determine by majority vote), leave the seat vacant until the next elections are held.

ANNEX 7

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

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1. INTRODUCTION

Regulatory Framework

- 1.1. Chelsea & Westminster Hospital NHS Foundation Trust (the "**Trust**") is a public benefit corporation and is constituted in accordance with the 2006 Act (as amended by the 2012 Act).
- 1.2. The principal places of business of the Trust are Chelsea & Westminster Hospital within the Royal Borough of Kensington & Chelsea and West Middlesex University Hospital within the London Borough of Hounslow.
- 1.3. The Trust is governed by the 2006 Act (as amended by the 2012 Act), by its Constitution and by its Foundation Trust Licence granted by Monitor.

2. THE COUNCIL OF GOVERNORS

- 2.1. **Composition of the Council** – from 1 December 2015, in accordance with Part B of Annex 4 of this Constitution, the composition of the Council of Governors of the Trust shall be:
 - 2.1.1. fourteen public Governors;
 - 2.1.2. eight patient Governors
 - 2.1.3. six staff Governors; and
 - 2.1.4. three stakeholder Governors including:
 - a) two local authority Governors; and
 - b) one Governor appointed by Imperial College London.
- 2.2. The Chief Executive or any other Director or a representative of the Trust's Auditors or other advisors can attend a meeting of the Council of Governors unless the Council of Governors agrees otherwise.
- 2.3. **Role of the patient and public Governors** - One of the duties of the patient and public Governors is to facilitate communication between the Board of Directors and the Members of the Trust.
- 2.4. **Role of the Chair** - The Chair is not a member of the Council of Governors. However, they preside at meetings of the Council of Governors and have a casting vote.
- 2.5. **Role and election of the Lead Governor** - For the purpose of facilitating liaison between the Board of Directors and the Council of Governors, the Council of Governors shall elect one of the public or patient Governors of the Trust to be the Lead Governor in accordance with the following process:
 - 2.5.1. when the Lead Governor position becomes vacant, the Chair shall invite public Governors and patient Governors to put themselves forward for the post of Lead Governor;
 - 2.5.2. candidates must have served as a Governor for six months before putting themselves forward for the role and have at least 12 months left on their term;
 - 2.5.3. if more than one public Governor or patient Governor puts themselves forward for the post of Lead Governor, the Company Secretary will compile a list of Lead Governor candidates and will require the completion of an applicant form from each candidate detailing their election statement. Any applications made after the agreed closing date will be rendered invalid;
 - 2.5.4. the completed Lead Governor applicant forms will be distributed to the Council of Governors no less than five working days prior to a decision as to the appointment being made;
 - 2.5.5. the final election of the Lead Governor will take place at a Council of Governors meeting by paper ballot or through an independently run ballot with

secure online voting. The numerical outcomes of the election will be declared to the Council once the count has been made.

2.5.6. Appointments will ordinarily last for up to a three year period. Should a vacancy arise prior to the expiry of the three year period or should the postholder be temporarily unable to fulfil their duties for any reason, the Council of Governors shall agree interim arrangements to fill the duties of the post.

2.5.7. The Lead Governor will be eligible for re-election twice after initially being elected.

3. MEETINGS OF THE COUNCIL OF GOVERNORS

3.1. **Admission to the public** - the meetings of the Council of Governors shall be open to members of the public except for special reasons where the Council of Governors resolves:

3.1.1. that members of the public be excluded from the remainder of the meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the interests of the Trust; and/or

3.1.2. that in the interests of public order, the meeting adjourns for a period to be specified in such resolution to enable the Council of Governors to complete business without the presence of the public.

3.2. Nothing in these SOs shall require the Council of Governors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place without the prior agreement of the Council of Governors.

3.3. **Calling meetings** - ordinary meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine and there will be no fewer than four meetings per year, as well as at least one joint workshop in private between the Governors and the Board of Directors, such that the total number of meetings will be not less than five per annum.

3.4. Meetings of the Council of Governors may be called by the Company Secretary, or by the Chair, or by ten Governors who give written notice to the Company Secretary specifying the business to be carried out. The Company Secretary will send (by appropriate means including, without limitation, by email or via the Trust's website) the dates, times and locations of meetings of the Council of Governor meetings to all Governors as soon as possible after receipt of such a request.

3.5. Other, or emergency, meetings of the Council of Governors may be called (by appropriate means including, without limitation, by email or via the Trust's website) in accordance with this Constitution. The Company Secretary shall call a meeting on at least 14 but not more than 28 days' notice to discuss the specified business. If the Company Secretary fails to call such a meeting then the Chair or ten Governors, whichever is the case, shall call such a meeting. Notice will also be published on the Trust's website.

3.6. Subject to SO 3.7 below, a lack of service of the notice of the business of the meeting on any Governor shall not affect the validity of a meeting.

3.7. Failure to serve such a notice specifying the business on more than one third of Governors who are elected from the Public and Patient Constituencies will invalidate the meeting. A notice will be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post or, where the notice is sent by email, at the time at which the email is sent.

3.8. In the case of a meeting being called by ten Governors in default of the Chair, the notice shall be signed by those members of the Council of Governors and no business shall be transacted at the meeting other than that specified in the notice.

- 3.9. **Agenda of meetings** - Before each meeting of the Council of Governors, an agenda of the meeting specifying the business proposed to be transacted at it and any supporting papers shall be delivered to each Governor, or sent by post to the usual place of residence of the Governor, so as to be available to them at least three clear days before the meeting.
- 3.10. **Setting the agenda** - The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted.
- 3.11. A Governor desiring a matter to be included on an agenda shall make their request in writing to the Company Secretary at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 15 days before a meeting may be included on the agenda at the discretion of the Company Secretary.
- 3.12. **Chair of the meeting** - At any meeting of the Council of Governors, the Chair, if present, shall preside. If the Chair considers it appropriate (taking into account the matters to be discussed at a meeting of the Council of Governors), the Lead Governor shall preside at such meeting. If the Chair is absent from the meeting, the Vice Chair or another Non-Executive Director, if present, shall preside. If the Chair, the Vice Chair and all Non-Executive Directors are absent, the Lead Governor, if they are present, shall preside. If the Lead Governor is not present, such Governor as the Council of Governors present shall choose shall preside.
- 3.13. **Emergency powers** - The Council of Governors' powers may in emergency be exercised by the Chair (or in their absence the Vice Chair and if the Vice Chair is absent, any other Non-Executive Director) together with at least one-third of the Governors elected from the Patient and Public Constituency combined. The exercise of such powers shall be reported to the next formal meeting of the Council of Governors for ratification.
- 3.14. **Notices of Motion** - A Governor desiring to move or amend a Motion shall send a written notice thereof at least 10 clear days before the meeting to the Company Secretary, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This SO shall not prevent any Motion being moved during the meeting without notice on any business mentioned on the agenda, except that the acceptance of such a Motion for inclusion on the agenda will be at the discretion of the Company Secretary.
- 3.15. **Withdrawal of Motion or amendments** - A Motion or amendment once moved may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 3.16. **Motion to rescind a resolution** - Notice of Motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Governor who gives it and also the signature of four other Governors. When any such Motion has been disposed of by the Council of Governors, it shall not be competent for any Governor to propose a Motion to the same effect within six months; however the Chair may do so if they consider it appropriate.
- 3.17. **Motions** - The mover of a Motion shall have a right of reply at the close of any discussion on the Motion or any amendment thereto.
- 3.18. When a Motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- 3.18.1. an amendment to the Motion;
 - 3.18.2. the adjournment of the discussion or the meeting;
 - 3.18.3. that the meeting proceed to the next business (*);
 - 3.18.4. the appointment of an ad hoc Committee to deal with a specific item of business; or
 - 3.18.5. that the Motion be now put (*);

- 3.18.6. provided that in the case of sub-paragraphs denoted by (*) above and to ensure objectivity, Motions may only be put by a Governor who has not previously taken Part in the debate.
- 3.19. 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.
- 3.20. **Chair's ruling** - 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 final.
- 3.21. **Voting** – Any vote required by the Council of Governors at a meeting shall be decided by a show of hands. A paper ballot may also be used if a majority of the Governors present so request. Governors may attend Council of Governors meetings by telephone, teleconference, or online and, in which case, shall cast their vote verbally (such verbal vote to be recorded in the minutes) or through an online ballot.
- 3.22. Where agreed by the Council of Governors, an absent Governor may vote by proxy.
- 3.23. **E-Governance** - The Council of Governors may confirm their response to any proposal in writing via e-mail. A response to a proposal sent by email shall be deemed to have been delivered on the date of transmission (if sent before 5pm on a clear day) or by 11am on the next clear day (if sent after 5pm on a clear day). The proposal will pass provided that the majority of Governors approve the proposal. Any decisions so passed via e-governance shall be noted at the next Council of Governors meeting.
- 3.24. **Written resolutions** - Where the Chair or a Governor desires that a resolution is passed by the Council of Governors (or any Committee or sub-Committee of the Council of Governors), the Chair or the Governor (with the consent of the Chair) may circulate the resolution amongst the Council of Governors (or such members of the relevant Committee or sub-Committee as the case may be) proposing that it is passed as a written resolution. For the resolution to be validly passed, the majority of all the Governors (or such members of the relevant Committee or sub-Committee as the case may be) must sign the resolution. Any written resolution that is so passed shall be noted at the next meeting of the Council of Governors.
- 3.25. **Minutes** - The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 3.26. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.27. Minutes shall be circulated in accordance with Governors' wishes.
- 3.28. **Suspension of SOs** - Except where this would contravene any statutory provision or any direction made by Monitor, any one or more of these SOs may be suspended at any meeting, provided that the majority of the Council of Governors are present and that a majority of those present vote in favour of suspension.
- 3.29. A decision to suspend these SOs shall be recorded in the minutes of the meeting.
- 3.30. A separate record of matters discussed during the suspension of the SOs shall be made and shall be available to the Chair and the Council of Governors.
- 3.31. No formal business may be transacted while the SOs are suspended.
- 3.32. The Audit Committee shall review every decision to suspend the SOs.

3.33. Amendment of SOs

These SOs shall be amended only if:

- 3.33.1. a notice of Motion under SO 3.14 has been given;
- 3.33.2. at least 16 of the Council of Governors are present;
- 3.33.3. the proposed amendment is made in accordance with paragraph 45 of the Constitution; and
- 3.33.4. the amendment proposed does not contravene a statutory provision or direction made by Monitor.

3.34. Record of attendance

The names of the Chair and Governors present at the meeting shall be recorded in the minutes. Governors who are unable to attend the Council of Governors meeting should advise the Company Secretary in advance of the meeting so that their apologies may be submitted.

- 3.34.1. Elected Governors seeking re-election by the members of their constituency will disclose their attendance record to governor meetings in their candidate statement to enable members to take an informed decision on their re-election.

3.35. Quorum

No business shall be transacted at a meeting of the Council of Governors unless there are at least 13 Governors present, and of that 13, at least eight must be public or patient Governors. For the avoidance of doubt, the number of public or patient Governors present at a meeting should be in the majority.

3.36. If the Chair or any Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 6 or 7) they 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. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 4.1. Subject to such directions, if any, as may be given by Monitor, the Council of Governors may make arrangements for the exercise, on behalf of the Council of Governors, of any of its functions by a Committee or sub-Committee, appointed by virtue of SOs 5.1 or 5.2 below, subject to such restrictions and conditions as the Council of Governors thinks fit.
- 4.2. **Overriding SOs** - If for any reason these SOs are not complied with, full details of the noncompliance and any justification for non-compliance and the circumstances around the noncompliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All Governors have a duty to disclose any non-compliance with these SOs to the Company Secretary as soon as possible.

5. COMMITTEES

- 5.1. **Appointment of Committees** - Subject to such directions and guidance as may be given by Monitor, the Council of Governors may, and if directed by the Chair shall, appoint Committees or Working Groups of the Council of Governors.
- 5.2. These SOs shall, as far as they are applicable and except as set out below, apply with appropriate alteration to meetings of any Committees or Working Groups established by the Council of Governors, in which case the term 'Chair' is to be read as a reference to the Chair of the Committee as the context permits, and the term 'Governor' is to be read as a reference to a member of the Committee as the context permits.
- 5.3. Members of Committees and Working Groups of the Council of Governors may participate in meetings of such Committees and Working Groups by telephone, teleconference or online.

In such cases, if any person attends the meeting by telephone, teleconference or online, then they shall cast their vote verbally (such verbal vote to be recorded in the minutes).

- 5.4. Each Committee and Working Group shall have such terms of reference and be subject to such conditions (as to reporting back to the Council of Governors) as the Council of Governors shall decide from time to time and shall be in accordance with any direction or guidance issued by Monitor and any legislation.
- 5.5. The members of each Working Group /Committee shall each elect a Chair. This will take place in accordance with the following processes:
 - 5.5.1. Committee or Working Group members shall elect by majority vote a Chair from amongst the Committee/ Working Group membership to serve for an agreed term.
 - 5.5.2. A Committee or Working Group Chair may be re-elected after they have served their term of office.
- 5.6. Where the Trust is required to appoint persons to a Committee or Working Group and/or to undertake statutory functions and where such appointments are to operate independently of the Council of Governors, such appointments shall be made in accordance with any applicable statutory regulations and with any direction or guidance issued by Monitor.
- 5.7. The Council of Governors shall establish the Non-Executive Director Nominations and Remuneration Committee and such other Committees or Working Groups as required to assist the Council of Governors in discharging its responsibilities.
- 5.8. Confidentiality - A member of a Committee or Working Group shall not disclose a matter dealt with by, or brought before, the Committee or Working Group without its permission until the Committee or Working Group has reported to the Council of Governors or has otherwise concluded on that matter.
- 5.9. A Governor or a member of a Committee or Working Group shall not disclose any matter reported to the Council of Governors or otherwise dealt with by the Committee or Working Group, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or Committee/Working Group shall resolve that it is confidential.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 6.1. **Declaration of interests** - Each Governor shall upon being elected or appointed declare to the Council of Governors via the Company Secretary any pecuniary (which includes monetary), personal or family interests that they have which are relevant to the Trust.
- 6.2. Interests which should be declared pursuant to SO 6.1 above include:
 - 6.2.1. directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
 - 6.2.2. majority or controlling share holdings in organisations, or ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the Trust or the NHS;
 - 6.2.3. a position of authority in a charity or Voluntary Organisation in the field of health and social care;
 - 6.2.4. any connection with a Voluntary Organisation or other organisation that is seeking to contract or has contracted for NHS services or for the provision of the Trust's mandatory or authorised services; and
 - 6.2.5. any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to lenders or banks.
- 6.3. No Governor shall be treated as having an interest in any contract, proposed contract or other matter by reason only:

- 6.3.1. of their membership of a company or other body if they has no beneficial interest in any securities of that company or other body; or
- 6.3.2. of an interest in any company, body or person with which they are connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in the consideration or discussion of, or in voting on, any question with respect to that contract, proposed contract or other matter.
- 6.4. If Governors have any doubt about the relevance of an interest, this should be discussed with the Chair or the Company Secretary.
- 6.5. At the time Governors' interests are declared, they should be recorded in the Council of Governor minutes. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring. It is the obligation of the Governor to inform the Company Secretary in writing within seven days of becoming aware of the existence of an interest. The Company Secretary shall amend the Register upon receipt within three working days.
- 6.6. This SO applies to a Committee or Working Group as it applies to the Council of Governors and applies to a member of any such Committee or Working Group (whether or not they are also a Governor) as it applies to a Governor.
- 6.7. Directorships of companies reasonably regarded as being likely or possibly seeking to do business with the Trust or the NHS should be published in the Trust's annual report. This information should be kept up to date for inclusion in succeeding annual reports.
- 6.8. **Register of interests** - The Company Secretary will ensure that a Register of Interests (the "Register") is established to record formal declarations of interests of Governors.
- 6.9. The details on the Register shall be reviewed every six months.
- 6.10. The Register will be available to the public and the Chair will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.
- 6.11. In establishing, maintaining, updating and publicising the Register, the Trust shall comply with all guidance issued from time to time by Monitor.

7. **CONFLICT OF INTEREST AND PECUNIARY INTEREST**

- 7.1. **Disclosure of interest** - 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 contract, proposed contract or other matter which is under consideration by the Council of Governors, they shall disclose that interest to the Council of Governors as soon as they become aware of it.
- 7.2. **Conflict of interest** - During the course of a Council of Governors meeting, if a conflict of interest is disclosed, the Governor concerned shall withdraw from the meeting and take no further part in the matter under discussion.
- 7.3. For the purpose of this SO, the Chair or Governor shall be treated, subject to SO 7.4 below, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if they, or a nominee of theirs, is a governor 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.
- 7.4. The Chair or a Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
 - 7.4.1. of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body; or
 - 7.4.2. of an interest in any company, body or person with which they are connected as mentioned in SO 7.3 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence the Governor in the

consideration or discussion of, or in voting on, any question with respect to that contract or matter.

7.5. Where the Chair or Governor:

7.5.1. has an indirect pecuniary interest in a contract, proposed contract, or any other matter by reason only of a beneficial interest in securities of a company or other body; and the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the fewer; and

7.5.2. if the share capital is of more than one class, the total nominal value of shares of any one class in which they has a beneficial interest does not exceed one hundredth of the total issued share capital of that class;

this SO shall not prohibit them from taking part in the consideration or discussion of the contract or other matter, or from voting on any question with respect to it without prejudice however to their duty to disclose their interest.

7.6. This SO applies to a Committee or Working Group of the Council of Governors as it applies to the Council of Governors and applies to any member of any such Committee or Working Group as it applies to a Governor.

8. STANDARDS OF BUSINESS CONDUCT

8.1. **Policy** - Governors must comply with the Constitution, the NHS Foundation Trust Code of Governance, the requirements of the law and any applicable guidance and directions issued by Monitor.

8.2. **Canvassing of, and recommendations by, Governors in relation to appointments** - Canvassing of Directors or Governors or of any members of any Committee or Working Group of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this SO shall be included in application forms or otherwise brought to the attention of candidates.

8.3. A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this SO shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

8.4. Informal discussions outside appointments panels or Committees, whether solicited or unsolicited, should be declared to the panel or Committee.

8.5. **Relatives of Governors** - Candidates for any staff appointment under the Trust shall when making application disclose in writing whether they are related to any Governor. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.

8.6. Every Governor of the Trust shall disclose to the Company Secretary any relationship with a candidate of whose candidature that Governor is aware. It shall be the duty of the Company Secretary to report to the Trust any such disclosure made.

8.7. On election or appointment, Governors should disclose to the Trust whether they are related to any other Governor or Officer. This disclosure will be asked for when Governors sign their declaration of eligibility to vote prior to their first Council of Governors meeting.

8.8. Where the relationship to a Governor is disclosed, the SO headed 'Conflict of interest and pecuniary interest' (SO 7) shall apply.

9. MISCELLANEOUS

9.1. **SOs to be given to Governors** - It is the duty of the Company Secretary to ensure that existing Governors and Officers and all new appointees are notified of and understand their responsibilities within these SOs. Updated copies shall be issued to individuals designated by the Chief Executive. New Governors shall be informed in writing and shall receive copies where appropriate of SOs.

- 9.2. **Review of SOs** - These SOs shall be reviewed annually by the Council of Governors.
- 9.3. **Dispute resolution** - Where a dispute arises regarding the interpretation of these SOs and the procedure to be followed at meetings of the Council of Governors, the Trust and the parties to the dispute shall use all reasonable endeavours to resolve the dispute as quickly as possible.
- 9.4. Where a dispute arises which involves the Chair, the dispute shall be referred to the Senior Independent Director who will use all reasonable efforts to mediate a settlement to the dispute.
- 9.5. For the avoidance of doubt, the Company Secretary shall deal with any membership queries and other similar questions in the first place including any voting or legislation issues and shall otherwise follow a process for resolving such matters in accordance with any procedures agreed by the Board of Directors.

ANNEX 8

ADDITIONAL PROVISIONS - BOARD OF DIRECTORS Disqualification

1. The following may not become or continue as a member of the Board of Directors:
 - 1.1. a member of the Council of Governors;
 - 1.2. a spouse, partner, parent or child of a member of the Board of Directors;
 - 1.3. a member of a local authority's scrutiny committee covering health matters;
 - 1.4. a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - 1.5. a person whose tenure in office as a 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, non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 1.6. a person who within the preceding two years has been dismissed, otherwise than by reasons of redundancy or for reasons of ill health, from any paid employment with a Health Service Body;
 - 1.7. in the case of a Non-Executive Director, a person who has refused without reasonable cause to fulfil any training requirement established by the Board of Directors;
 - 1.8. a person who has refused to sign and deliver to the Company Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors;
 - 1.9. in the case of a Non-Executive Director, a person who is no longer a member of the Public or Patients' Constituency; and
 - 1.10. a person who has had their name removed or been suspended from any practising or professional list, by a direction under any legislation applicable to the NHS or under any related subordinate legislation or who has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had their name included in such a list or had their suspension lifted or qualification reinstated;
 - 1.11. a person who, following investigations undertaken by the Trust, is determined by the Trust to be an individual who:
 - 1.11.1. is not of good character;
 - 1.11.2. does not have the necessary qualifications, competence, skills and experience which are necessary in order to undertake their Board role;
 - 1.11.3. is unable, by reason of their health, after reasonable adjustments are made, of properly performing the tasks which are intrinsic to the work for which they are employed;
 - 1.11.4. has been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity;
 - 1.11.5. any of the grounds of unfitness specified in paragraph 30 of this Constitution apply to;
 - 1.11.6. is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order to like effect made in Scotland or Northern Ireland;

- 1.11.7. is included in the children's barred list or the adults' barred list maintained under paragraph 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland; and/or
- 1.11.8. is prohibited from holding the relevant office or position, or in the case of an individual carrying on the regulated activity, by or under an enactment.

- 2. In assessing an individual's character for the purposes of paragraph 1.11.1 above, the matters considered must include:
 - 2.1. whether the person has been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence; and
 - 2.2. whether the person has been erased, removed or struck-off a register of professionals maintained by a regulator of health care or social work professionals.
- 3. In the event that a Director no longer meets the requirements set out in this Annex 8, the Trust shall:
 - 3.1. take such action as is necessary and proportionate to ensure that the office or position in question is held by an individual who meets such requirements; and
 - 3.2. if the individual is a health care professional, social worker or other professional registered with a health care or social care regulator, inform Monitor.

ANNEX 9

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

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1. INTRODUCTION

Regulatory Framework

- 1.1. Chelsea & Westminster Hospital NHS Foundation Trust (the "**Trust**") is a public benefit corporation and is constituted in accordance with the 2006 Act (as amended by the 2012 Act).
- 1.2. The principal places of business of the Trust are Chelsea & Westminster Hospital within the Royal Borough of Kensington & Chelsea and West Middlesex University Hospital within the London Borough of Hounslow.
- 1.3. The Trust is governed by the 2006 Act (as amended by the 2012 Act), by its Constitution and by its Foundation Trust Licence granted by Monitor.

2. THE BOARD OF DIRECTORS

- 2.1. All business shall be conducted in the name of the Trust.
- 2.2. **Appointment of the Chair, and Non-Executive Directors** – In accordance with paragraph 27 of the Constitution, the Chair and the other Non-Executive Directors are appointed and removed by the Council of Governors at a general meeting of the Council of Governors.
- 2.3. **Appointment of the Chief Executive and the Executive Directors** - The Chief Executive and the other Executive Directors are appointed in accordance with paragraph 29 of the Constitution. The Chair and Non-Executive Directors appoint or remove the Chief Executive and a Committee consisting of the Chair, Chief Executive and the Non-Executive Directors appoint or remove the Executive Directors.
- 2.4. **Terms of office of the Chair and Directors** - The remuneration and terms of office of the Chair and Non-Executive Directors shall be decided by the Council of Governors at a general meeting of the Council of Governors in accordance with paragraph 34 of the Constitution.
- 2.5. The remuneration and terms of office of the Chief Executive and other Executive Directors shall be decided by a Committee of Non-Executive Directors in accordance with paragraph 34 of the Constitution.
- 2.6. **Appointment of Vice Chair** - For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, the Non-Executive Directors shall appoint a Non-Executive Director to be Vice Chair for such a period, not exceeding the remainder of their term as Non-Executive Director, as they may specify on appointing them.
- 2.7. Any Non-Executive Director appointed as Vice Chair in accordance with SO 2.6 above may at any time resign from the office of Vice Chair by giving notice in writing to the Chair. The other Non-Executive Directors may thereupon appoint another Non-Executive Director as Vice Chair in accordance with SO 2.6.
- 2.8. **Powers of Vice Chair** - Subject to SO 2.9 below, where the Chair of the Trust has died or has ceased to hold office, or where they are unable to perform their duties as Chair owing to illness or any other cause, the Vice Chair or any other Non-Executive Director shall act as Chair until a new Chair is appointed in accordance with the Constitution or the existing Chair resumes their duties as the case may be; and references to the Chair in these SOs shall, so long as there is no Chair able to perform their duties, be taken to include references to the Vice Chair.
- 2.9. Paragraph 18.1 of the Constitution shall apply where the Chair is unable to perform their duties at a meeting of the Council of Governors.

3. MEETINGS OF THE BOARD OF DIRECTORS

- 3.1. Nothing in these SOs shall require the Board of Directors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place without the prior agreement of the Board of Directors.

- 3.2. **Calling meetings** – The Board of Directors will meet in public as part of the North West London Acute Provider Collaborative no less than four times a year and will hold an Annual Members Meeting in public once a year.
- 3.3. Meetings of the Board of Directors may be called by the Company Secretary, or by the Chair, or by four Directors who give written notice to the Company Secretary specifying the business to be carried out. The Company Secretary shall send (by appropriate means including, without limitation, by email or via the Trust's website) a written notice of the dates, times and locations of meetings of the Board of Directors meetings to all Directors as soon as possible after receipt of such a request. Other, or emergency, meetings of the Board of Directors may be called (by appropriate means including, without limitation, by email or post, or via the Trust's website) in accordance with this Constitution. Subject to SO 3.5 below, the Company Secretary shall call a meeting on at least 14 but not more than 28 days' notice to discuss the specified business. If the Company Secretary fails to call such a meeting then the Chair or four Directors, whichever is the case, shall call such a meeting.
- 3.4. In special circumstances, where there is an urgent need to call a meeting, the Company Secretary or Chair may decide that a meeting shall be called on less than seven days' notice and in such circumstances as much notice as possible shall be given of the meeting to each of the Directors.
- 3.5. Subject to SO 3.6 below, lack of service of the notice on any Director shall not affect the validity of a meeting.
- 3.6. Failure to serve such a notice specifying the business on more than two Directors will invalidate the meeting. A notice will be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post or, where the notice is sent by email, at the time at which the email is sent.
- 3.7. **Agenda of meetings** - Before each meeting of the Board of Directors, an agenda of the meeting specifying the business proposed to be transacted at it and any supporting papers available at that time shall be delivered to each Director, or sent by post to the usual place of residence of each Director, so as to be available to them at least three clear days before the meeting. If it is anticipated that the Directors participating in the meeting will not be in the same place, the agenda should specify how it is proposed that they should communicate with each other during the meeting.
- 3.8. **Setting the agenda** - 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 other business being conducted.
- 3.9. A Director desiring a matter to be included on an agenda shall make their request in writing to the Chair at least 10 clear days before the meeting. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.
- 3.10. **Participation in meetings** – Directors may participate in meetings by telephone, teleconference or online, and participation in a meeting in this manner shall be deemed to constitute a presence in person at the meeting. In determining whether Directors are participating in a meeting, it is irrelevant where any Director is or how they communicate with each other. If all the Directors are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.
- 3.11. **Chair of meeting** - 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, if there is one and they are present, shall preside. If the Chair and Vice Chair are absent such Non-Executive Director as the Board of Directors present shall choose shall preside.
- 3.12. **Notices of Motion** - A Director desiring to move or amend a Motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the

appropriate regulations. This SO shall not prevent any Motion being moved during the meeting, without notice on any business mentioned on the agenda.

- 3.13. **Withdrawal of Motion or amendments** - 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.
- 3.14. **Motion to rescind a resolution** - Notice of Motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives 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 to propose a Motion to the same effect within six months; however the Chair may do so if they consider it appropriate.
- 3.15. **Motions** - The mover of a Motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.16. When a Motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
 - 3.16.1. an amendment to the Motion;
 - 3.16.2. the adjournment of the discussion or the meeting;
 - 3.16.3. that the meeting proceed to the next business (*);
 - 3.16.4. the appointment of an ad hoc Committee to deal with a specific item of business;
or
 - 3.16.5. that the Motion be now put (*),provided that in the case of the sub-paragraphs denoted by (*) above and to ensure objectivity, Motions may only be put by a Director who has not previously taken part in the debate.
- 3.17. 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.
- 3.18. **Chair's ruling** - Statements of Directors made at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.
- 3.19. **Voting** - Questions arising at a meeting of the Board of Directors shall be decided by a majority of votes except that:
 - 3.19.1. in the case of an equality of votes, the Chair (or in their absence the Vice Chair or in the Vice Chair's absence a Non-Executive Director who is appointed by the Directors present at the meeting to chair the meeting) shall have a second and casting vote; and
 - 3.19.2. no resolution of the Board of Directors shall be passed if it is unanimously opposed by all of the Executive Directors present or by all of the Non-Executive Directors present.
- 3.20. All questions put to the vote shall be decided by a show of hands (and if any person is attending by telephone, teleconference, or online this person shall cast their vote verbally (such verbal vote to be recorded in the minutes).
- 3.21. A paper ballot may also be used if a majority of the Directors present so request, in which case any person attending by telephone, teleconference, video or computer link shall cast their vote verbally (such verbal vote to be recorded in the minutes).
- 3.22. The Board of Directors may agree that its members can participate in its meetings by telephone, teleconference, or online. Participation in a meeting in this manner shall be deemed to constitute a presence in person at the meeting.

- 3.23. An Officer who has been appointed formally by the Board of Directors to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. 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 a meeting shall be recorded in the minutes.
- 3.24. **E-Governance** - The Board of Directors may confirm their response to any proposal in writing via e-mail. A response to a proposal sent by email shall be deemed to have been delivered on the date of transmission (if sent before 5pm on a clear day) or by 11am on the next clear day (if sent after 5pm on a clear day). The proposal will pass provided that the majority of the Board of Directors approve the proposal. Any decisions so passed via e-governance shall be noted at the next Board of Directors meeting.
- 3.25. **Minutes** - The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 3.26. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.27. Minutes shall be circulated in accordance with Directors' wishes.
- 3.28. **Written resolutions** - Where the Chair or a Director desires that a resolution is passed by the Board of Directors, the Chair or the Director (with the consent of the Chair) may circulate the resolution amongst the Board of Directors proposing that it is passed as a written resolution. For the resolution to be validly passed, the resolution must be signed by at least six Directors (such Directors to include: (i) either (a) the Chair or Vice Chair and two Non-Executive Directors or (b) three Non-Executive Directors (but only if the Chair or Vice Chair are unavailable for a period of 48 hours from the time at which the resolution is first circulated); and (ii) three Executive Directors (such Executive Directors to include the Chief Executive or Finance Director). Any written resolution that is so passed shall be noted at the next meeting of the Board of Directors.
- 3.29. **Suspension of SOs** - Except where this would contravene any statutory provision or any direction made by Monitor, any one or more of these SOs may be suspended at any meeting, provided that at least five Directors are present agree to such suspension, including (i) not less than three Executive Directors (one of whom must be either the Chief Executive or the Finance Director) and (ii) two Non-Executive Directors, and that a majority of those present vote in favour of suspension.
- 3.30. A decision to suspend these SOs shall be recorded in the minutes of the meeting.
- 3.31. A separate record of matters discussed during the suspension of the SOs shall be made and shall be available to the Chair and the Directors.
- 3.32. No formal business may be transacted while the SOs are suspended.
- 3.33. The Audit Committee shall review every decision to suspend the SOs.
- 3.34. **Amendment of SOs** - These SOs shall be amended only if:
- 3.34.1. a notice of Motion under SO 3.12 has been given;
- 3.34.2. at least six Directors are present, including no less than three Executive Directors (one of whom must be either the Chief Executive or the Finance Director) and three Non-Executive Directors;
- 3.34.3. the proposed amendment is made in accordance with paragraph 45 of the Constitution;
- and

- 3.34.4. the amendment proposed does not contravene a statutory provision or direction made by Monitor.
- 3.35. **Record of attendance** - The names of the Chair and Directors present at the meeting shall be recorded in the minutes.
- 3.36. **Quorum** - No business shall be transacted at a meeting of the Board of Directors unless at least six Directors are present including not less than three Executive Directors (one of whom must be either the Chief Executive or the Finance Director) and not less than three Non-Executive Directors.
- 3.37. An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 3.38. If the Chair or another Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 6 or 7) they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the performance and remuneration Committee). In such circumstances, the quorum shall be three Non-Executive Directors (including the Chair).
- 3.39. **Overriding SOs** - If for any reason these SOs are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All Directors and staff have a duty to disclose any non-compliance with these SOs to the Company Secretary as soon as possible.

4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 4.1. Subject to SO 2.1 and such directions, if any, as may be given by Monitor, the Board of Directors may make arrangements for the exercise, on behalf of the Board of Directors, of any of its functions by:
- 4.1.1. a Committee or sub-Committee, appointed by virtue of SOs 5.1 or 5.2 below; or
 - 4.1.2. an Officer, in each case subject to such restrictions and conditions as the Board of Directors thinks fit.
- 4.2. **Emergency powers** – Subject to paragraph 4.2 of this Constitution, the powers of the Board of Directors may in emergency be exercised by the Chief Executive (or in their absence the Finance Director) and the Chair (or in their absence the Vice Chair or any other Non-Executive Director). The exercise of such powers by the Chief Executive (or Finance Director) and the Chair (or Vice Chair or any other Non-Executive Director) shall be reported to the next formal meeting of the Board of Directors for ratification.
- 4.3. **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 which it has formally constituted.
- 4.4. **Delegation to officers** - Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to an executive Committee or sub-Committee shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate Officers to undertake the remaining functions for which they will still retain accountability to the Board of Directors.

- 4.5. The Chief Executive shall prepare a scheme of delegation identifying their proposals which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the scheme of delegation which shall be considered and approved by the Board of Directors as indicated above.
- 4.6. Nothing in the scheme of delegation shall impair the discharge of the direct accountability to the Board of Directors of the Finance Director to provide information and advise the Board of Directors in accordance with statute or Monitor's requirements. Outside these regulatory requirements the Finance Director shall be accountable to the Chief Executive for operational matters.

5. COMMITTEES

- 5.1. **Appointment of Committees** - Subject to such directions and guidance as may be given by Monitor, the Board of Directors may, and if directed by Monitor shall, appoint Committees of the Board of Directors that shall include at least one Director.
- 5.2. A Committee appointed under SO 5.1 may, subject to SO 5.5 below and such directions as may be given by Monitor or the Board of Directors, appoint sub-Committees consisting wholly or partly of members of the appointing Committee (whether or not they include Directors) or wholly of persons who are not members of the appointing Committee (whether or not they include Directors).
- 5.3. These SOs shall, as far as they are applicable, apply with appropriate alteration to meetings of any Committee or sub-Committee established by the Board of Directors, in which case the term 'Chair' is to be read as a reference to the Chair of the Committee as the context permits, and the term 'Director' is to be read as a reference to a member of the Committee as the context permits.
- 5.4. Each Committee and sub-Committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors) as the Board of Directors shall decide from time to time and shall be in accordance with any direction or guidance issued by Monitor and any applicable legislation.
- 5.5. Committees may not delegate their executive powers to a sub-Committee unless expressly authorised by the Board of Directors.
- 5.6. The Board of Directors shall appoint persons to sit on each of the Committees which it has formally constituted.
- 5.7. Where the Trust is required to appoint persons to a Committee and/or to undertake statutory functions and where such appointments are to operate independently of the Board of Directors, such appointments shall be made in accordance with any applicable statutory regulations and with any direction or guidance issued by Monitor.
- 5.8. The Board of Directors shall establish the following Committees (and sub-Committees) of the Trust:
- 5.8.1. Audit Committee;
 - 5.8.2. Nominations and Remuneration Committee;
 - 5.8.3. Finance and Performance Committee;
 - 5.8.4. People and Workforce Committee; and
 - 5.8.5. Quality Committee,
- and the Board of Directors shall also establish such other Committees (and sub-Committees) as required to discharge the Board of Director's responsibilities.

- 5.9. **Confidentiality** - A member of a Committee shall not disclose a matter dealt with by, or brought before, the Committee without its permission until the Committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.
- 5.10. A Director or a member of a Committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the Committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or Committee shall resolve that it is confidential.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 6.1. **Declaration of interests** - Each Director shall upon being appointed declare to the Board of Directors via the Company Secretary any pecuniary (which includes monetary), personal or family interests that they have which are relevant to the Trust.
- 6.2. Interests which should be declared pursuant to SO 6.1 above include:
- 6.2.1. directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
 - 6.2.2. majority or controlling share holdings in organisations, or ownership or part-ownership of private companies, businesses or consultancies reasonably regarded as being likely or possibly seeking to do business with the Trust or the NHS;
 - 6.2.3. a position of authority in a charity or Voluntary Organisation in the field of health and social care;
 - 6.2.4. any connection with a Voluntary Organisation or other organisation that is seeking to contract or has contracted for NHS services or for the provision of the Trust's mandatory or authorised services; and
 - 6.2.5. any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to lenders or banks.
- 6.3. No Director shall be treated as having an interest in any contract, proposed contract or other matter by reason only:
- 6.3.1. of their membership of a company or other body if they have no beneficial interest in any securities of that company or other body; or
 - 6.3.2. of an interest in any company, body or person with which they are connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in the consideration or discussion of, or in voting on, any question with respect to that contract, proposed contract or other matter.
- 6.4. If Directors have any doubt about the relevance of an interest, this should be discussed with the Chair or the Company Secretary.
- 6.5. At the time Directors' interests are declared, they should be recorded in the Board of Director minutes. Any changes in interests should be declared at the next Board of Directors meeting following the change occurring. It is the obligation of the Director to inform the Company Secretary in writing within seven days of becoming aware of the existence of an interest. The Company Secretary shall amend the Register upon receipt within three working days.
- 6.6. This SO applies to a Committee or sub-Committee as it applies to the Board of Directors and applies to a member of any such Committee or sub-Committee (whether or not they are also a Director) as it applies to a Director.

- 6.7. Directorships of companies likely or possibly seeking to do business with the Trust or the NHS should be published in the Trust's annual report. This information should be kept up to date for inclusion in succeeding annual reports.
- 6.8. **Register of interests** - The Company Secretary will ensure that a Register of interests (the "Register") is established to record formally declarations of interests of Directors. In particular the Register will include details of all directorships and other interests which have been declared by both Executive Directors and Non-Executive Directors.
- 6.9. The details on the Register shall be reviewed every six months.
- 6.10. The Register will be available to the public and the Chair will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.
- 6.11. In establishing, maintaining, updating and publicising the Register, the Trust shall have due regard to all guidance issued from time to time by Monitor.

7. **CONFLICT OF INTEREST AND PECUNIARY INTEREST**

- 7.1. **Disclosure of interest** - If a Director has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any contract, proposed contract or other matter which is under consideration by the Board of Directors, they shall disclose that interest to the Board of Directors as soon as they become aware of it.
- 7.2. **Conflict of interest** - During the course of a Board of Directors meeting, if a conflict of interest is disclosed, the Director concerned shall withdraw from the meeting and take no further part in the matter under discussion.
- 7.3. Any remuneration, compensation or allowances payable to the Chair or a Director by virtue of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this SO.
- 7.4. For the purpose of this SO, the Director shall be treated, subject to SO 7.5 below, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if they, or a nominee of them, 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.
- 7.5. The Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
 - 7.5.1. of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body; or
 - 7.5.2. of an interest in any company, body or person with which they are connected as mentioned in SO 7.4 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence the Director in the consideration or discussion of, or in voting on, any question with respect to that contract or matter.
- 7.6. Where the Director:
 - 7.6.1. 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
 - 7.6.2. the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; and
 - 7.6.3. if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued share capital of that class;

this SO shall not prohibit them from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to their duty to disclose their interest.

- 7.7. This SO 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 as it applies to a Director.

8. STANDARDS OF BUSINESS CONDUCT

- 8.1. All Directors must comply with the Trust's standards of business conduct policy as amended from time to time.
- 8.2. A Director shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this SO shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 8.3. Informal discussions outside appointments panels or Committees, whether solicited or unsolicited, should be declared to the panel or Committee.
- 8.4. **Relatives of Directors** - every Director of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that Director is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- 8.5. On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Board of Directors whether they are related to any other Director or employee of the Trust.

9. CHARITABLE FUNDS

- 9.1. Accountability for charitable funds held on trust is to the Charity Commission and to Monitor. Accountability for non-charitable funds held on trust is only to Monitor.

10. TENDERING AND CONTRACT PROCEDURE

- 10.1. **Duty to comply with SOs** - the procedure for making all contracts by or on behalf of the Trust shall comply with these SOs (except where SO 3.29 (Suspension of SOs) is applied).
- 10.2. **Contracts** - The Board of Directors may enter into contracts on behalf of the Trust within its statutory powers and shall comply with:
- 10.2.1. these SOs;
 - 10.2.2. the Trust's SFIs; and
 - 10.2.3. its terms of Authorisation.
- 10.3. **Personnel and agency or temporary staff contracts** - the Chief Executive shall nominate Officers with delegated authority to enter into contracts of employment, regarding staff, agency staff or temporary staff service contracts.
- 10.4. **Contracts involving funds held on trust** - such contracts involving charitable funds shall comply with the requirements of the Charities Act.

11. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 11.1. **Custody of seal** - the common seal of the Trust shall be kept by the Company Secretary in a secure place.
- 11.2. **Sealing of documents** - where it is necessary that a document shall be sealed, the seal of the Trust shall be affixed in the presence of two Executive Directors or one Executive Director and either the Chair or Company Secretary, duly authorised by a resolution of the Board of Directors

(or of a Committee thereof where the Board of Directors has delegated its powers) and shall be attested by them.

- 11.3. **Register of sealing** - an entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Board of Directors at least bi-annually. The report shall detail the seal number, the description of the document and date of sealing.
- 11.4. The seal should be used to execute deeds (e.g. conveyances of land) or where otherwise required by law.

12. SIGNATURE OF DOCUMENTS

- 12.1. Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, the Finance Director or other Executive Director, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.
- 12.2. The Chief Executive, or the Finance Director or other Executive Directors shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors or any Committee or sub-Committee to which the Board of Directors has delegated appropriate authority.

13. MISCELLANEOUS

- 13.1. **SOs to be given to Directors and officers** - it is the duty of the Chief Executive, including the Company Secretary of the Trust on the Chief Executive's behalf, to ensure that Directors are notified of and understand their responsibilities within these SOs and the Trust's SFIs. Updated copies shall be issued to the Directors.
- 13.2. **Review of SOs** - these SOs shall be reviewed annually by the Board of Directors.
- 13.3. **Dispute resolution** - where a dispute arises out of or in connection with the Constitution, including the interpretation of these SOs and the procedure to be followed at meetings of the Board of Directors, the Trust and the parties to the dispute shall use all reasonable endeavours to resolve the dispute as quickly as possible.
- 13.4. Where a dispute arises which involves the Chair, the dispute shall be referred to the Senior Independent Director who will use all reasonable efforts to mediate a settlement to the dispute.
- 13.5. For the avoidance of doubt, the Company Secretary shall deal with any membership queries and other similar questions in the first place including any voting or legislation issues and shall otherwise follow a process for resolving such matters in accordance with any procedures agreed by the Board of Directors.

ANNEX 10

FURTHER PROVISIONS – MEMBERS

1 Disqualification from membership

- 1.1 An individual may not become or continue as a Member of the Trust if:
- 1.1.1 the individual is under 16 years of age;
 - 1.1.2 the individual has been specifically excluded in writing from any of the Trust's premises or other facilities;
 - 1.1.3 the Board of Directors considers that an individual has or is likely to cause harm or detriment to the Trust and the Board of Directors notifies the individual about their disqualification accordingly.
- 1.2 Notwithstanding anything contained in this Constitution, no person who ceases to be a Member of the Trust pursuant to paragraph **1.1.2** or **1.1.3** above shall be re-admitted to membership except by a decision of the Board of Directors.
- 1.3 It is the responsibility of Members to ensure their eligibility and not the Trust, but if the Trust is on notice that a Member may be disqualified from membership, they shall carry out all reasonable enquiries to establish if this is the case.

2 Members - expulsion by the Council of Governors

- 2.1 A Member may be expelled by a resolution of the Council of Governors.
- 2.2 A Member may complain to the Company Secretary that another Member has acted in a way detrimental to the interests of the Trust. If a complaint is made, the Council of Governors, or a sub-Committee thereof, may consider the complaint having taken such steps as it considers appropriate to ensure the Member in question has their point of view heard and may either:
- 2.2.1 dismiss the complaint and take no further action; or
 - 2.2.2 arrange for a resolution to expel the Member complained of to be considered at the next meeting of the Council of Governors, or a sub-Committee thereof.
- 2.3 If a resolution to expel a Member is to be considered at a meeting of the Council of Governors, or a sub-Committee thereof, details of the complaint must be sent to the Member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 2.4 At the meeting of the Council of Governors, or a sub-Committee thereof, the Governors will consider evidence in support of the complaint and such evidence as the Member complained of may wish to place before them. If the Member complained of fails to attend the meeting without due cause, the meeting may proceed in their absence.
- 2.5 A person expelled from membership will cease to be a Member upon the declaration by the Chair of the meeting that the resolution to expel them is carried.
- 2.6 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of the majority of the members of the Council of Governors present at a meeting of the Council of Governors.

3 Termination of membership

- 3.1 A Member shall cease to be a Member if that Member:
- 3.1.1 resigns by notice to the membership manager or to the Company Secretary;

- 3.1.2 ceases to fulfil the requirements of membership as set out in paragraphs 5 to 11 of this Constitution;
- 3.1.3 dies; or
- 3.1.4 the Council of Governors, having made reasonable enquiries, determines that the Member no longer wishes to be a Member or they cease to be eligible as a Member for whatever reason.

4 Members' Meetings

- 4.1 The Trust shall hold a Members' meeting for all Members (called the "**Annual Members' Meeting**") within six months of the end of each financial year of the Trust.
- 4.2 Any Members' meeting other than the Annual Members' Meeting shall be called a "**Special Members' Meeting**".
- 4.3 Both Annual Members' Meetings and any Special Members' Meetings shall be open to all members of the Trust, members of the Council of Governors and members of the Board of Directors, together with representatives of the Trust's Auditors, and to members of the public. The Trust may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend any such meeting.
- 4.4 The Board of Directors may convene an Annual Members' Meeting or a Special Members' Meeting when it thinks fit. The Council of Governors may request the Board of Directors to convene a Members' meeting.
- 4.5 The Board of Directors (or at least one member thereof) shall present to the Members at the Annual Members' Meeting:
 - 4.5.1 the annual accounts;
 - 4.5.2 any report of the Auditor on them;
 - 4.5.3 the annual report;
 - 4.5.4 a report on steps taken to secure that (taken as a whole) the actual membership of the Trust is representative of those eligible for such membership;
 - 4.5.5 the progress of the membership plan; and
 - 4.5.6 the results of any election and appointments to the Council of Governors, and any other reports or documentation it considers necessary or otherwise required by Monitor or the 2006 Act.
- 4.6 The Trust shall give notice of all Members' meetings:
 - 4.6.1 by notice in writing to all Members;
 - 4.6.2 by notice prominently displayed at the Trust's headquarters and at all of the Trust's hospitals;
 - 4.6.3 by notice on the Trust's website; and
 - 4.6.4 to the Council of Governors, the Board of Directors, and to the Trust's Auditors,

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

- 4.7 An accidental omission to give notice of a Members' meeting or to send, supply or make available any document or information relating to the meeting, or the non-receipt of any such notice, document or information by a person entitled to receive any such notice, document or information shall not invalidate the proceedings at that meeting.
- 4.8 The Chair, or in their absence, the Vice Chair shall preside at all Members' meetings of the Trust.
- 4.9 The quorum for a Members' meeting shall be four members present and entitled to vote.
- 4.10 The Chair may, with the consent of a Members' meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn a Members' meeting from time to time and from place to place or for an indefinite period.
- 4.11 A resolution put to the vote of a Members' meeting shall be decided on a show of hands.
- 4.12 No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.
- 4.13 If the Board of Directors, in its absolute discretion, considers that it is impractical or unreasonable for any reason to hold a Members' meeting at the time, date or place specified in the notice calling that meeting, it may move and/or postpone the general meeting to another time, date and/or place.
- 4.14 In the case of a Members' meeting adjourned or postponed for 14 days or more, at least seven working days' notice shall be given specifying the time and place of the adjourned Members' meeting and the general nature of the business to be transacted. Otherwise, it shall not be necessary to give any such notice.
- 4.15 The Board of Directors may make any arrangement and impose any restriction it considers appropriate to ensure the security of a Members' meeting.
- 4.16 Any approval to speak at a Members' meeting must be given by the Chair.
- 4.17 The Board of Directors shall cause minutes to be made and kept, in writing, of all proceedings at Members' meetings.