

Manchester University NHS Foundation Trust (MFT)

Constitution

- JUNE 2023 -



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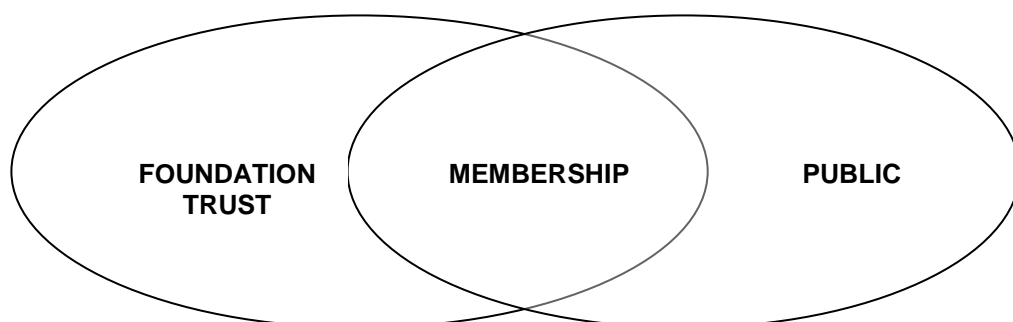
Introduction

An NHS Foundation Trust has more financial and operational freedoms than conventional NHS Trusts. However, Foundation Trusts are still firmly part of the NHS and subject to NHS standards, performance ratings and systems of inspection with their primary purpose being to provide NHS care to NHS patients according to NHS quality standards and principles i.e. free care based on need, not ability to pay.

Foundation Trusts were first introduced in April 2004 and are based upon the mutual organisation model in that those living in communities served by the Foundation Trust can become members. From these members, Governors are elected to represent members' interests in the running of the organisation. Members are therefore given a bigger say in the management and provision of services. By this method, Foundation Trusts provide greater accountability to patients, service users, local people and NHS staff with the overriding principle being that members have a sense of ownership over the services that a Foundation Trust provides. Foundation Trusts therefore have a duty to engage with their local communities and encourage local people to become members of their organisation.

Foundation Trusts are regulated by NHS England and are subject to inspections by the Care Quality Commission.

The diagram below highlights the relationship between a Foundation Trust and the communities it serves: -



1. Interpretation and Definitions

- 1.1 Unless otherwise stated, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006 as amended.
- 1.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa
- 1.3 Definitions in this Constitution:

‘2006 Act’	National Health Service Act 2006
‘2012 Act’	Health and Social Care Act 2012
‘2022 Act’	Health and Care Act 2022
‘Accounting Officer’	is the Group Chief Executive, who from time to time discharges the functions as Accounting Officer of the Trust for the purposes of Government accounting as specified in paragraph 25(5) of Schedule 7 to the 2006 Act
‘Annual Members Meeting’	is defined in paragraph 11 of the Constitution
‘Appointed Governor’	is a Governor who has been appointed by stakeholder organisations to represent the interests of their organisations in the local community
‘Board of Directors or Board’	is the Board of Directors of the Trust as constituted pursuant to this Constitution and the 2006 Act
‘Consecutive Years’	are one year followed by another year unless there is a period not less than 12 months between them
‘Constitution’	this Constitution that has effect in accordance with Section 56(11) of the 2006 Act and the Annexes to it
‘Council of Governors’	is the Council of Governors of the Trust as constituted pursuant to this Constitution
‘Directors’	are the Group Chairman, the Group Executive Directors and the Group Non-Executive Directors
‘Elected Governor’	is a Governor who has been elected in accordance with this Constitution

‘Governor’	is an individual who is a member of the Council of Governors
‘Group Chairman’ or ‘Group Chair’	is the individual appointed as Group Chairman of the Board of Directors (and Chair of the Council of Governors) in accordance with paragraph 26.1 of this Constitution
‘Group Chief Executive’	is the individual appointed as Group Chief Executive of the Trust in accordance with paragraph 17(3) of Schedule 7 to the 2006 Act and paragraph 28.1 of this Constitution
‘Group Deputy Chair’ or ‘Group Deputy Chairman’	is the Group Non-Executive Director appointed as Group Deputy Chairman in accordance with paragraph 27 of this Constitution
‘Group Executive Director’	is the Group Chief Executive or an individual appointed as a Group Executive Director of the Trust in accordance with paragraph 28.3 of this Constitution
‘Group Non-Executive Director’	is an individual appointed as a Group Non-Executive Director of the Trust in accordance with paragraph 25 of this Constitution
‘Integrated Care Board’ or ‘ICB’	means an integrated care board established under Chapter A3 of Part 2 of the 2006 Act
‘Licence’	means the Trust’s provider licence number 130164 issued by Monitor on 1st October 2017
‘Local Authority Governor’	is a Governor appointed by a Local Authority (which for the avoidance of doubt is not to mean a Councillor of a Local Authority)
‘Member’	is an individual registered as a member of one of the constituencies described at paragraph 5 and at Annex 1 and Annex 2 of this Constitution
‘NHS England’	is the body corporate known as NHS England, established under section 1H of the 2006 Act
‘Officer’	is an employee of the Trust or any person holding a paid appointment of office with the Trust
‘Register of Members’	is a register of members which the Trust is required to have and maintain under Paragraph 20 of Schedule 7 of the 2006 Act

‘Secretary’	is the individual appointed by the Group Chairman and Group Chief Executive as the Secretary
‘Significant Transaction’	is defined in paragraph 45.3 of this Constitution
‘Statutory Transaction’	is a merger under s56 of the 2006 Act or an acquisition under s56A of the 2006 Act or a separation under s56B of the 2006 Act or a dissolution under s57A of the 2006 Act
‘Trust’	Manchester University NHS Foundation Trust

- 1.4 Save as otherwise permitted by law, the Group Chairman shall be the final authority for all purposes on the interpretation of this Constitution (on which he/she should be advised by the Group Chief Executive and/or Secretary).

2. Name

- 2.1 The name of the Trust is:

Manchester University NHS Foundation Trust (MFT)

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 fulfill 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.

- 4.2** All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3** Any of these powers may be delegated to a Committee of Directors or to a Group Executive Director.
- 4.4** The Trust shall exercise its functions effectively, efficiently and economically.
- 4.5** Subject to paragraph 4.6 below and having regard to any guidance published by NHS England, in making a decision about the exercise of its functions, the Trust shall have regard to all likely effects of the decision in relation to:
- 4.5.1** the health and wellbeing of the people of England;
 - 4.5.2** the quality of services provided to individuals by relevant bodies, or in pursuance of arrangements made by relevant bodies, for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England; and
 - 4.5.3** efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- 4.6** The requirement to have regard to the wider effect of its decisions set out at paragraph 4.5 shall not apply to decisions about services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness.
- 4.7** In paragraph 4.5 'relevant bodies' has the meaning set out in paragraph 63A(4) of the 2006 Act.
- 4.8** In exercising its functions, the Trust shall have regard to the need to contribute towards compliance with the UK net zero emissions target set out at section 1 of the Climate Change Act 2008 and the environmental targets set out at section 5 of the Environment Act 2021, and to adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008. In doing so, the Trust shall also have regard to guidance published by NHS England.
- 4.9** The Trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions.

4A Joint working and delegation arrangements

4A.1 Subject to paragraph 4A.2 the Trust may arrange in accordance with s65Z5 of the 2006 Act for the joint exercise of functions with any one or more of the following bodies:

- 4A.1.1** a relevant body;
- 4A.1.2** a local authority;
- 4A.1.3** a combined authority.

4A.2 Where the Trust has entered into arrangements for the joint exercise of functions with one or more bodies in accordance with paragraph 5A.1, it may make arrangements for:

4A.2.1 the function to be exercised by a joint committee of theirs

4A.2.2 for one or more of them, or a joint committee of them, to establish and maintain a pooled fund.

4A.3 The Trust must have regard to any guidance published by NHS England under s65Z7.

4A.4 In this paragraph 4A the following terms have the following meanings:

4A.4.1 'Relevant body' has the meaning set out in section 65Z5(2) of the 2006 Act

4A.4.2 'Local authority' means a local authority within the meaning of section 2B of the 2006 Act

4A.4.3 'Combined authority' has the meaning set out in s275 of the 2006 Act

4A.4.4 'Pooled fund' has the meaning set out in s65Z6(3) of the 2006.

4B Duties relating to Integrated care system financial controls

4B.1 The Trust must seek to achieve financial objectives that apply to it under section 223L of the 2006 Act.

4B.2 The Trust must exercise its functions with a view to ensuring that it complies with its duties:

4B.2.1 under s223LA of the 2006 Act to limit expenditure

4B.2. under s223M and s223N of the 2006 Act to limit local capital resource use and local revenue resource use.

5. Membership and Constituencies

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

5.1.1 a public constituency

5.1.2 the staff constituency.

6. Application for Membership

6.1 An individual who is eligible to become a member of the Trust may do so on application to the Trust in accordance with this Constitution subject to paragraph 7, 8 and 9.

6.2 Where an individual applies to become a member of the Trust, once received and accepted by the Trust, the applicant's details will be entered into the Trust's Register of Members.

7. Public Constituency

7.1 An individual who lives in the area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.

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

7.3 The Trust has five Public Constituencies:

7.3.1 Manchester

7.3.2 Trafford

7.3.3 Rest of Greater Manchester

7.3.4 Eastern Cheshire

7.3.5 Rest of England & Wales.

7.4 The minimum number of members in each Public Constituency is specified in Annex 1 (The Public Constituencies).

8. Staff Constituency

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

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

8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.

8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt this does not include individuals who assist or provide services to the Trust on a voluntary basis.

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

8.4 The Staff Constituency shall be divided into four descriptions of individuals who are eligible for membership of the Staff Constituency:

8.4.1 Medical and Dental

8.4.2 Nursing and Midwifery

8.4.3 Other Clinical

8.4.4 Non-Clinical and Support.

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

9. Automatic Membership by Default (Staff)

9.1 An individual who is:

9.1.1 eligible to become a member of the Staff Constituency; and

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

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

10. Restriction on Membership

10.1 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.

10.2 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.

10.3 An individual must be at least 11 years old to become a member of the Trust.

10.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 7 (Further Provisions).

11. Annual Members' Meeting

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

11.2 Further provisions about the Annual Members' Meeting are set out in Annex 8 (Annual Members' Meeting).

12. Council of Governors (Composition)

12.1 The Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors.

12.2 The aggregate number of Public Governors is to be more than half of the total number of members of the Council of Governors.

12.3 The composition of the Council of Governors is specified in Annex 3 (Composition of the Council of Governors).

- 12.4** The Governors, other than the Appointed Governors, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Elected Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3 (Composition of the Council of Governors).

13. Council of Governors (Election of Governors)

- 13.1** Elections for Elected Governors shall be conducted in accordance with the Model Election Rules on the basis of single transferable vote (STV) polling and the Model Election Rules shall be construed accordingly.
- 13.2** The Model Election Rules as published by NHS Providers form part of this Constitution. The Model Election Rules current at the date of their adoption under this Constitution are attached at Annex 10 (Model Election Rules, 2014).
- 13.3** A subsequent variation of the Model Election Rules by NHS Providers or the Department of Health and Social Care shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 44 of the Constitution (amendment of the Constitution).
- 13.4** An election, if contested, shall be by secret ballot.

14. Council of Governors (Tenure)

- 14.1** An Elected Governor may hold office for a period of up to three years. The period of office shall be known as the term.
- 14.2** An Elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected. For the avoidance of doubt, this includes a Governor moving their principal residence from one public constituency to another.
- 14.3** Subject to 14.4 an Elected Governor shall be eligible for re-election at the end of his term.
- 14.4** An Elected Governor may not hold office for more than three terms or a maximum of nine consecutive years, whichever is the shorter in duration, and shall not be eligible for re-election if he has already held office for more than six consecutive years.
- 14.5** An Appointed Governor may hold office for a period of up to three years.
- 14.6** An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him (terminates the appointment). An Appointed Governor shall be eligible for re-appointment at the end of his term subject to 14.7.

- 14.7** An Appointed Governor may not hold office for more than three terms or nine Consecutive Years, whichever is the shorter in duration, and shall not be eligible for re-appointment if he has already held office for more than six Consecutive Years.
- 14.8** Further provisions as to the tenure for Governors, is set out at Annex 4 (Additional Provisions – Council of Governors).
- 15. Council of Governors (Disqualification and Removal)**
- 15.1** The following may not become or continue as a Governor:
- 15.1.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 15.1.2** a person in relation to whom a moratorium period under a debt relief order applies under Part 7A of the Insolvency Act 1986;
- 15.1.3** a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 15.1.4** a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 15.2** Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 15.3** Further provisions as to the circumstances in which an individual may not become or continue as a Governor and for the removal of Governors are set out in Annex 5 (Additional Provisions – Council of Governors).
- 16. Council of Governors (Duties of Governors)**
- 16.1** The general duties of the Council of Governors are:
- 16.1.1** to hold the Group Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and
- 16.1.2** to represent the interests of the members of the Trust as a whole and the interests of the public.
- 16.2** The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.
- 16.3** Further provisions about the duties of Governors are set out in Annex 7 (Further Provisions).

17. Council of Governors (Meetings of Governors)

- 17.1** The Group Chairman or, in his absence the Group Deputy Chairman or, in his absence, one of the Group Non-Executive Directors, shall preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Lead Governor of the Council of Governors may support the Group Chairman, Group Deputy Chairman or a Group Non-Executive Director in the discussions for that part of the meeting (as appropriate).
- 17.2** Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from all or part of a meeting for special reasons (in accordance with the Council of Governors Standing Orders – Annex5).
- 17.3** For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.
- 17.4** Further provisions about Council of Governors' Meetings are set out in Annex5 (Standing Orders for the Practice and Procedure of the Council of Governors).

18. Council of Governors (Standing Orders)

- 18.1** The Standing Orders for the practice and procedure of the Council of Governors are attached at Annex 5 (Standing Orders for the Practice and Procedure of the Council of Governors).

19. Council of Governors (Referral to the Panel)

- 19.1** In this paragraph, the Panel means a panel of persons appointed by NHS England to which a Governor of an NHS Foundation Trust may refer a question as to whether the Trust has failed or is failing:
- 19.1.1** to act in accordance with its Constitution, or
- 19.1.2** to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 19.2** 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 referral¹.

¹ The panel has been disbanded as at July 2023

20. Council of Governors (Conflicts of Interest of Governors)

- 20.1** If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of

the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Council of Governors (Annex 5) shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

21. Council of Governors (Travel Expenses)

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

22. Council of Governors (Further Provisions)

22.1 Further provisions with respect to the Council of Governors are set out in Annex 4 (Additional Provisions – Council of Governors).

23. Board of Directors (Composition)

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

23.2 The Board of Directors is to comprise:

23.2.1 the Group Chairman.

23.2.2 a minimum of five other Group Non-Executive Directors; and

23.2.3 a minimum of five Group Executive Directors

23.3 One of the Group Executive Directors shall be the Group Chief Executive.

23.4 The Group Chief Executive shall be the Accounting Officer.

23.5 One of the Group Executive Directors shall be the Group Chief Finance Officer.

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

23.7 One of the Group Executive Directors is to be a Registered Nurse or a Registered Midwife.

23.8 The number of the Directors may be increased provided always that at least half of the Board, excluding the Group Chairman, comprises Group Non-Executive Directors.

24. Board of Directors (General Duty)

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

25. Board of Directors (Qualification for Appointment as a Group Non-Executive Director)

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

25.1.1 he is a member of a Public Constituency, or

25.1.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and

25.1.3 he is not disqualified by virtue of paragraph 29 below.

26. Board of Directors (Appointment and Removal of Group Chairman and other Group Non-Executive Directors)

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

26.2 Removal of the Group Chairman or another Group Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

26.3 The Council of Governors shall adopt a procedure for appointing/removing the Group Chairman and/or other Group Non-Executive Director in accordance with any guidance issued by NHS England.

26.4 Further provisions as to the appointment and removal of the Group Chairman and other Group Non-Executive Directors are set out at Annex6 (Standing Orders for the Practice and Procedure of the Board of Directors).

27. Board of Directors (Appointment of Group Deputy Chairman and Group Senior Independent Director)

27.1 The Nominations Committee shall, following consultation with the Council of Governors, appoint one of the Group Non-Executive Directors as Group Deputy Chairman.

27.2 The Board of Directors shall, following consultation with the Council of Governors, appoint one of the Group Non-Executive Directors as a Group Senior Independent Director to act in accordance with NHS England's Code of Governance for NHS Provider Trusts (as may be amended and replaced from time to time); and the Trust's Standing Orders.

28. Board of Directors (Appointment and Removal of the Group Chief Executive and other Group Executive Directors)

- 28.1** The Group Non-Executive Directors shall appoint or remove the Group Chief Executive.
- 28.2** The appointment of the Group Chief Executive shall require the approval of the Council of Governors.
- 28.3** A committee consisting of the Group Chairman, the Group Chief Executive and the other Group Non-Executive Directors shall appoint or remove the other Group Executive Directors.

29. Board of Directors (Disqualification)

- 29.1** The following may not become or continue as a member of the Board of Directors:
- 29.1.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 29.1.2** a person in relation to whom a moratorium period under a debt relief order applies under Part 7A of the Insolvency Act 1986;
- 29.1.3** a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
- 29.1.4** a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 29.1.5** A person where disclosures revealed by a Disclosure and Barring Service check against such a person are such that it would be inappropriate for him to become or continue as a Director or would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute.
- 29.1.6** A person who is a Governor.
- 29.1.6** A person who is the spouse, partner, parent or child of an existing member of the Board of Directors of the Trust.
- 29.1.7** A person who is not a fit and proper person for the purposes of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and/or Conditions of the Trust's License
- 29.1.8** A person is subject of a disqualification order made under the Company Directors Disqualification Act 1986.

- 29.1.9** A person whose tenure of office as Chair or a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service for reasons including non-attendance at meetings, or for non-disclosure of a pecuniary interest.
- 29.1.10** A person who has within the preceding two years been dismissed, otherwise than by reason of redundancy or for ill health, from any paid employment with a health service body or a local authority
- 29.1.11** A person who is the subject of an order under the Sexual Offences Act 2003.
- 29.1.12** A person who is included in any barred list established under the Safeguarding Vulnerable Adults Act 2006 or any equivalent list.
- 29.1.13** A person who is a Director or Governor or Governing Body member or equivalent of another NHS body except with the approval of the Board of Directors for Group Executive Directors or the Council of Governors for Group Non-Executive Directors.
- 29.1.14** In the case of Group Non-Executive Directors, a person who no longer meets the requirements set out in paragraph 25.1.
- 29.1.15** In the case of the Group Non-Executive Directors, a person who has refused without any reasonable cause to fulfill any training requirement established by the Board of Directors.
- 29.1.16** A person who is a member of a Local Authority's Overview and Scrutiny Committee or Health and Wellbeing Board covering health matters.

30. Board of Directors (Meetings)

- 30.1** 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.
- 30.2** Before holding a meeting, the Board of Directors will 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 will send a copy of the minutes of the meeting to the Council of Governors.
- 30.3** Further provisions as to Board of Directors' Meetings are set out at Annex 6 (Standing Orders for the Practice and Procedure of the Board of Directors) .

31. Board of Directors (Standing Orders)

- 31.1** The Standing Orders for the practice and procedure of the Board of Directors are attached at Annex6 (Standing Orders for the Practice and Procedure of the Board of Directors).

- 31.2** The Board of Directors Standing Orders do not form part of this Constitution and any amendment of the Standing Orders shall not constitute an amendment of the terms of this Constitution for the purposes of paragraph 44 of this Constitution.
- 31.3** The Board of Directors Standing Orders may be amended in accordance with the procedure set out in Board of Directors Standing Order Annex6 (Standing Order for the Practice and Procedure of the Board of Directors). If there is any conflict between the Board of Directors Standing Orders and the Constitution, the Constitution shall prevail.
- 32. Board of Director (Conflicts of Interest of Directors)**
- 32.1** The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 32.1.1** 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.
- 32.1.2** 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.
- 32.2** The duty referred to in sub-paragraph 32.1.1 is not infringed if:
- 32.2.1** The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 32.2.2** The matter has been authorised in accordance with the Constitution.
- 32.3** The duty referred to in sub-paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4** In sub-paragraph 32.1.2, “third party” means a person other than:
- 32.4.1** The Trust, or
- 32.4.2** A person acting on its behalf.
- 32.5** 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.
- 32.6** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 32.7** Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.

- 32.8** 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.
- 32.9** A Director need not declare an interest:
- 32.9.1** If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 32.9.2** If, or to the extent that, the Directors are already aware of it;
- 32.9.3** If, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
- 32.9.3.1** By a meeting of the Board of Directors, or
- 32.9.3.2** By a committee of the Directors appointed for the purpose under the Constitution.
- 32.10** The Standing Orders for the Practice and Procedure of the Board of Directors (Annex 6) make further provisions for the disclosure of interests.
- 33. Board of Directors (Remuneration and Terms of Office)**
- 33.1** 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 Group Chairman and the other Group Non-Executive Directors.
- 33.2** The Trust shall establish a Committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Group Chief Executive and other Group Executive Directors.
- 34. Registers**
- 34.1** The Trust shall have:
- 34.1.1** a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 34.1.2** a register of members of the Council of Governors;
- 34.1.3** a register of interests of Governors;
- 34.1.4** a register of Directors; and
- 34.1.5** a register of interests of the Directors.
- 34.1.6** The information to be included in the above registers shall be such as will comply with the requirements of the 2006 Act, and any subordinate legislation made under it and the provisions of this Constitution.

35. Admission to and Removal from the Registers

35.1 The Secretary shall be responsible for the maintenance of, admission to and removal from the registers under the provisions of this Constitution.

35.2 Each Director and Governor shall advise the Secretary as soon as practicable of anything which comes to his attention or which he is aware of which might affect the accuracy of the matters recorded in any of the registers referred to in paragraph 34.

35.3 Members will be removed from the Register of Members if:

35.3.1 the Member is no longer eligible or is disqualified; or

35.3.2 the Member dies.

36. Registers (Inspection and Copies)

36.1 The Trust shall make the registers specified in paragraph 34 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations made under the 2006 Act.

36.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if he so requests.

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

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

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

37. Documents Available for Public Inspection

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

37.1.1 a copy of the current Constitution,

37.1.2 a copy of the latest Annual Accounts and of any report of the auditor on them, and

37.1.3 a copy of the latest Annual Report

37.2 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:

- 37.2.1** 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.
- 37.2.2** a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.
- 37.2.3** a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act.
- 37.2.4** a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
- 37.2.5** a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
- 37.2.6** 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 (NHS England's decision), 65KB (Secretary of State's response to NHS England'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.
- 37.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- 37.2.8** a copy of any final report published under section 65I (administrator's final report).
- 37.2.9** 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.
- 37.2.10** a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.
- 37.3** Any person who requests a copy of or extract from any of the above documents is to be provided with a copy or extract.
- 37.4** If the person requesting a copy is not a member of the Trust, the Trust may impose a reasonable charge for doing so.
- 38. Auditor**
- 38.1** The Trust shall have an Auditor.
- 38.2** A person may only be appointed Auditor if he (or in the case of a firm each of its members) is a member of one or more of the bodies referred to in Paragraph 23(4) of Schedule 7 to the 2006 Act.

38.3 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors in accordance with paragraph 23 of Schedule 7 to the 2006 Act.

38.4 The Auditor shall carry out its duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHS England on standards, procedures and techniques to be adopted.

39. Audit Committee

39.1 The Trust shall establish a Committee of Group Non-Executive Directors (at least one of whom that has competence in accounting and/or auditing and recent and relevant financial experience) as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

39.2 The Group Chairman should not be a member of the Committee.

39.3 The Group Deputy Chairman and/or the Group Senior Independent Director shall not chair the Committee.

40. Accounts

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

40.2 NHS England may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

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

40.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS England may with the approval of the Secretary of State direct.

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

40.6 The Trust shall lay a copy of the annual accounts, and any report of the auditor on them, before parliament and once it has done so, send copies of those to NHS England.

40.7 Further provisions as to the accounts are set out at Annex7 (Further Provisions).

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

41.1 The Trust shall prepare an Annual Report and send it to NHS England.

41.1A Each Annual Report must, in particular, review the extent to which the Trust has exercised its functions:

41.1 A.1 in accordance with the plans published under:

41.1A.1.1 section 14Z52 of the 2006 Act;

41.1A.1.2 section 14Z56 of the 2006 Act

41.1A.2 consistently with NHS England's views set out in the latest statement published under section 13SA(1)

41.1B Each Annual Report shall provide:

41.1B.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its public constituencies and the classes of the staff constituency is representative of those eligible for such membership;

41.1B.2 information on any occasions in the period to which the report relates on which the Council of Governors exercised its powers under paragraph 33.2 and such other procedures as the Trust has on pay;

41.1B.3 information on the remuneration of the directors and on the expenses of the governors and the directors; and

41.1B.4 any other information NHS England requires.

41.1C The Trust is to comply with any decision NHS England makes as to:

41.1C.1 the form of the report;

41.1C.2 when the report are to be sent to it;

41.1C.3 the periods to which the report relates.

41.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS England.

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

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

41.5 Each forward plan must include information about:

41.5.1 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

41.5.2 the income it expects to receive from doing so.

- 41.6** Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 41.5.1 the Council of Governors must:
- 41.6.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and
- 41.6.2** notify the Directors of the Trust of its determination.
- 41.7** Where 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 NHS in England may implement the proposal only if more than half of the members of the Council of Governors voting approve its implementation.
- 41.8** Further provisions as to Annual Reports is outlined in Annex 7 (Further Provisions).
- 42. Presentation of the Annual Accounts and Reports to the Governors and Members**
- 42.1** The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 42.1.1** the annual accounts
- 42.1.2** any report of the auditor on them
- 42.1.3** the annual report.
- 42.2** 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.
- 42.3** The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 42.1 with the Annual Members' Meeting.
- 43. Instruments**
- 43.1** The Trust shall have a seal.
- 43.2** The seal shall not be affixed except under the authority of the Board of Directors. Attestation by any two directors shall be deemed to constitute affixing the seal under the authority of the Board of Directors.
- 44. Amendment of the Constitution**
- 44.1** The Trust may make amendments of its Constitution only if:

- 44.1.1** More than half of the members of the Council of Governors of the Trust voting approve the amendments, and
- 44.1.2** More than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 44.2** Amendments made under paragraph 44.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 44.3** 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):
 - 44.3.1** At least one Governor must attend the next Annual Members' Meeting and present the amendment, and
 - 44.3.2** The Trust must give the members an opportunity to vote on whether they approve the amendment.

If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 44.4** Amendments by the Trust of its Constitution are to be notified to NHS England. For the avoidance of doubt, NHS England'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.

45. Mergers etc. and Significant Transactions

- 45.1** The Trust may only apply for a Statutory Transaction with the approval of more than half of the members of the Council of Governors.
- 45.2** The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 45.3** 'Significant Transaction' is defined as:
 - 45.3.1** The acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 25% of the value of the Trust's gross assets before the acquisition; or
 - 45.3.2** The disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 25% of the value of the Trust's gross assets before the disposition; or
 - 45.3.3** A transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the

value of which is more than 25% of the value of the Trust's gross assets before the transaction.

45.4 For the purpose of this paragraph 45:

45.4.1 'Gross assets' means the total of fixed assets and current assets;

45.4.2 In assessing the value of any contingent liability for the purposes of sub-paragraph 45.3.3, the Directors:

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

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

45.4.2.3 may take account of the likelihood of the contingency occurring; and

45.4.3 A Statutory Transaction is not a Significant Transaction.

45.5 The views of the Council of Governors will be taken into account before the Trust enters into any proposed transaction which would exceed a threshold of 10% for any of the criteria set out in paragraph 45.3 above.

46. Indemnity

46.1 Governors and Directors who act honestly and in good faith and not recklessly 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 Council of Governors or Board of Directors functions. Any such liabilities will be liabilities of the Trust.

46.2 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, the Council of Governors, the Board of Directors, and the Board Secretary.

47. Validity of Actions

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

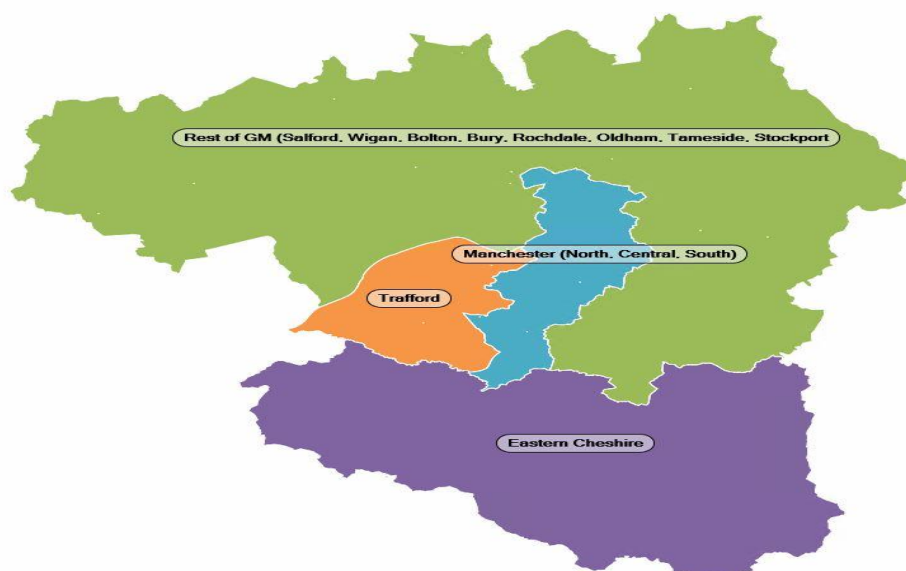
ANNEX 1

The Public Constituencies

(Paragraphs 7.1 and 7.3)

Name of Public Membership Constituency	Electoral wards within the following Local Authority boundaries	Minimum Number of Public Members
Manchester	Manchester City Council	4
Trafford	Trafford MBC	4
Eastern Cheshire	Cheshire East Council Electoral Wards as follows: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> Alderley Edge Bollington Broken Cross and Upton Chelford Disley Gawsworth Handforth High Legh Knutsford Macclesfield Central Macclesfield East Macclesfield Hurdsfield </div> <div style="width: 45%;"> Macclesfield South Macclesfield Tytherington Macclesfield West and Ivy Mobberley Poynton East & Pott Shrigley Poynton West & Adlington Prestbury Sutton Wilmslow Dean Row Wilmslow East Wilmslow Lacey Green Wilmslow West & Chorley </div> </div>	4
Rest of Greater Manchester	Bolton MBC Bury MBC Oldham MBC Rochdale MBC Salford City Council Stockport MBC Tameside MBC Wigan MBC	4
Rest of England and Wales	All electoral areas in England and Wales not listed above	4

The map below illustrates the Public Member Constituencies for Manchester, Trafford, Eastern Cheshire and Rest of Greater Manchester areas. Areas that fall outside these Constituencies are captured in the Rest of England and Wales Constituency



The Staff Constituency

(Paragraphs 8.4 and 8.5)

Name of Staff Constituency	Minimum Number of Staff
Medical and Dental	4
Nursing and Midwifery	4
Other Clinical	4
Non-Clinical and Support	4

Composition of the Council of Governors

(Paragraphs 12.2 and 12.3)

1. The aggregate number of Public Governors is to be more than half of the total number of members of the Council of Governors.
2. The Trust, subject to the 2006 Act, shall seek to ensure that:
 - 2.1 the composition of the Council of Governors reflects the composition of the membership
 - 2.2 the level of representation of the Public Constituencies, the classes of the Staff Constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs; and to this end, the Council of Governors:
 - 2.3 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the composition of the membership, the membership strategy, and shall from time to time and not less than every three years review the policy for the composition of the Council of Governors, and
 - 2.4 when appropriate shall propose amendments to this Constitution.
3. The Council of Governors, subject to the 2006 Act, shall seek to ensure that the interests of the members as a whole and the public and communities served by the Trust are appropriately represented;

4. The Council of Governors of the Trust is to comprise:

Public Governors	17
Manchester	7
Trafford	2
Eastern Cheshire	1
Greater Manchester	5
Rest of England and Wales	2

Staff Governors	7
Medical and Dental	1
Nursing and Midwifery	2
Other Clinical	2
Non-Clinical and Support	2

Appointed Governors	8
Local Authority (Manchester City Council and Trafford Council)	2
Manchester University	1
NHS Greater Manchester Integrated Care Board	1
Trust Volunteer	1
Trust Youth Forum	1
Manchester Council for Community Relations or Manchester BME Network	1
Umbrella third section organisation	1
Council of Governors Total	32

Additional Provisions – Council of Governors

Elected Governors

1. A member of the Public Constituency may not vote at an election for a Public Governor unless during the voting process they sign a declaration in the form specified by the Secretary that they are qualified to vote as a member of the relevant area of a Public Constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.
2. A member of the Staff Constituency may not vote at an election for a Staff Governor unless during the voting process they sign a declaration in the form specified by the Secretary that they are qualified to vote as a member of the relevant class of the Staff Constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

Appointed Governors

3. The Appointed Governors are to be appointed by the partnership organisations, in accordance with a process agreed with the Secretary.

Tenure for Elected and Appointed Governors

4. A Governor shall normally hold office for a period of three years commencing immediately after the Annual Members' Meeting or other Members' Meeting (forum) at which his election or appointment is announced.
5. For the purposes of these provisions concerning terms of office for Governors, "year" means a period commencing immediately after the conclusion of the Annual Members' Meeting or other Members' Meeting at which their election or appointment was announced and ending at the conclusion of the next Annual Members' Meeting, but in any event shall not exceed a period of 12 calendar months.
6. A Governor may not stand again for re-election or re-appointment as a Governor until three years has elapsed since he resigned, or he completed the maximum three terms or nine consecutive years as a Governor.
- 6A A Governor may resign from office at any time during the term of office by giving notice in writing to the Trust Secretary save that if in the opinion of the Trust Secretary the Governor's conduct and tenure are or may become subject to review or investigation (investigation procedure set out in Annex 9) which may lead to his or her removal under paragraph 10 below, then any such notice of resignation will not be effective without the agreement of the Group Chairman or (if the Group Chairman is conflicted) the Group Deputy Chairman.
- 6B The Group Chairman or (if the Group Chairman is conflicted) the Group Deputy Chairman may suspend a Governor whose conduct and tenure are subject to review or investigation if in the opinion of the Group Chairman or the Group Deputy Chairman such review or investigation may lead to the Governor's removal under paragraph 10 below.

Appointment of Lead Governor of the Council of Governors

7. The Council of Governors shall elect one of the Governors to be Lead Governor of the Council of Governors.
 - 7.1 Lead Governor elections will usually be held following the Annual Members' Meeting.
 - 7.2 Candidates from all Governor constituencies (Public, Staff and Appointed) are eligible to stand for election as Lead Governor.
 - 7.3 Governors must have served within their current term of office or previous term(s), if consecutive, a minimum of 12 months experience as a Governor of the Trust in order to be eligible to stand for election as the Lead Governor .
 - 7.4 Results of Lead Governor elections shall be announced at the next general meeting of the Council of Governors.
 - 7.5 The Lead Governor's term of office shall be for 12 months commencing immediately at the general meeting of the Council of Governors at which his election is announced. The Lead Governor shall serve a maximum of two terms of office unless in exceptional circumstances agreed by the Chairman of the Council of Governors.
 - 7.6 The Lead Governor shall cease to hold office if he ceases to be a member of the Council of Governors.
 - 7.7 The Secretary shall inform NHS England of the Lead Governor's name upon election.
 - 7.8 Where a vacancy arises for the elected Lead Governor, the Council of Governors shall be at liberty either:
 - 7.8.1 to call an election within three months to elect a Lead Governor for the remainder of the previous Lead Governor's term of office; or
 - 7.8.2 to invite the next highest polling candidate at the most recent election for Lead Governor, who is willing to take office, to undertake the role of Lead Governor until the next annual election, at which time the role will fall vacant; or
 - 7.8.3 to leave the seat vacant until the next Lead Governor elections are held and nominate a Governor to act as Acting Lead Governor until an election takes place

Further Provisions as to Eligibility to be a Governor

8. A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so, if:
 - 8.1 they are a Director of the Trust or a Governor or Director of an NHS body (unless they are appointed by an appointing organisation which is an NHS body);
 - 8.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
 - 8.3 they are a member of a local authority's Scrutiny Committee covering health matters;

- 8.4 they have been previously removed as a Governor pursuant to paragraph 9 of this Annex 4 or they are otherwise a person whose tenure as a Governor of another Foundation Trust has been terminated for cause
- 8.5 being a member of the Public Constituency, they refuse to sign a declaration in the form specified by the 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;
- 8.6 they are subject to an order under the Sexual Offences Act 2003;
- 8.7 they have, within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;
- 8.8 they are a person whose tenure of office as the Chairman or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 8.9 they are a person who is not a fit and proper person as defined by regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and / or conditions of the Trust's License.
- 8.10 they are a person who refuses to undertake a Disclosure & Barring Service (DBS) check and/or other fit and proper person checks including insolvency, bankruptcy and disqualified directors' registrations alongside health questionnaire/checks;
 - 8.10.1 a Governor will be disqualified if on the basis of disclosure(s) (convictions/cautions) obtained through a DBS and or/other fit and proper person checks, he is not considered suitable by the Trust:
 - 8.10.1.1 such a person is such that it would be inappropriate for him to become or as a Governor or
 - 8.10.1.2 would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute.
- 8.11 they are a person who does not adhere to the Governors' Code of Conduct.
- 8.12 they are currently or have previously been a Governor of an NHS Foundation Trust other than the Trust, unless the Group Chairman decides that they may become or continue as a Governor.
- 8.13 being a member of the Staff Constituency they have a current and unexpired written warning which has been imposed following disciplinary action by the Trust arising out of their employment with the Trust. If a Staff Governor is suspended from duties for any reason they will also be suspended from their role as a Staff Governor for the duration of their suspension. Whilst a Staff Governor is under suspension, the Staff Governor cannot attend meetings of the Council of Governors as a member of the Council of Governors, but missing any meetings of the Council of Governors will not count as failure to attend for the purposes of paragraph 9.2 of this Annex 4. Spent disciplinary warnings will not preclude eligibility to be a Governor;

8.14 they are a vexatious complainant within the context of the following meaning

that who as an individual

- a) has threatened, harassed, harmed or abused staff, patients and/or visitors of the Trust; or
- b) has been a vexatious complainant. For the purposes of this paragraph a vexatious complainant is an individual who is found by the Trust (applying the relevant Trust policy) to have abused or used inappropriately the Trust's or a predecessor Trust's complaints procedure,

shall be refused membership of the Trust or where an existing member shall have their membership of the Trust withdrawn.

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

9.1 they resign by notice in writing to the Secretary;

9.2 they fail to attend three consecutive meetings of the Council of Governors, unless the other Governors are satisfied that:

9.2.1 the absences were due to reasonable causes; and

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

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

9.4 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the Governors' Code of Conduct;

9.5 they are removed from the Council of Governors under paragraph 10 below or any other provisions set out in this Constitution.

10. A Governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting on the grounds that:

10.1 they have committed a serious breach of the Governors' Code of Conduct; or

10.2 they have acted in a manner detrimental to the interests of the Trust; and

10.3 the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor.

Vacancies amongst Governors

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

12. Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement or to leave the seat vacant until the next annual round of Governor appointments (nominations) are held.

13. Where the vacancy arises amongst the Elected Governors, the Council of Governors shall be at liberty either:
 - 13.1 to call an election within three months to fill the seat for the remainder of the previous Governor's term of office; or
 - 13.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office;; or
 - 13.3 to leave the seat vacant until the next elections are held.

Further Provisions on the Relationship between the Council of Governors and the Board of Directors

14. The Council will agree with the Audit Committee the criteria for appointing, re-appointing and removing external auditors.
15. If the Council does not accept the Audit Committee's recommendation, the Board should include in the annual report a statement from the Audit Committee explaining the recommendation and should set out reasons why the Council had taken a different position.

Standing Orders for the Practice and Procedure of the Council of Governors

1 INTERPRETATION

In these Standing Orders:

- (a) unless the context otherwise requires, the following expressions have the following meanings:

“Meeting”	means a duly convened meeting of the Council of Governors;
“Motion”	means a formal proposition (either with or without notice pursuant to Standing Orders 10 and 11) to be discussed and voted on during the course of a Meeting about a matter for which the Council of Governors has responsibility;
“Question on Notice”	means a question from a Governor or Governors (notice of which has been given pursuant to Standing Order 7) about a matter for which the Council of Governors has responsibility;

- (b) other terms defined in the Constitution shall have the same meaning in these Standing Orders.

2 THESE STANDING ORDERS

These Standing Orders for the Practice and Procedures of the Council of Governors are the standing orders referred to in paragraph 20 of the Constitution. They may be amended in accordance with the procedure set out in Standing Order 20 below. If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.

3 MEETINGS

Meetings of the Council of Governors shall be open to members of the public unless the presiding Chair decides otherwise in relation to all or part of the meeting for reasons of commercial confidentiality or on other proper grounds.

Meetings of the Council of Governors shall be held at regular intervals at such times and places as the Group Chairman may determine from time to time. The Secretary will publish the dates, times and locations of meetings of the Council of Governors for the year 6 months in advance. Other, or emergency, meetings of the Council of Governors may be called in accordance with the Constitution.

4 AGENDAS AND PAPERS

An agenda, copies of any Questions on Notice and/or motions on notice to be considered at the relevant Meeting and any supporting papers shall be sent to each Governor so as to arrive with each Governor normally no later than 7 days in advance of each Meeting. Minutes of the previous Meeting will be circulated with these papers for approval and this will be a specific agenda item.

5 REPORTS FROM THE GROUP EXECUTIVE DIRECTORS

At any Meeting a Governor may ask any question through the Group Chairman without notice on any report by a Group Executive Director, or other officer of the Trust, after that report has been received by or while such report is under consideration by the Council of Governors at the Meeting. Unless the Group Chairman decides otherwise no statements will be made other than those which are strictly necessary to define any question posed and in any event no statements will be allowed to last longer than 3 minutes each. A Governor who has put such a question may also put one supplementary question if the supplementary question arises directly out of the reply given to the initial question. The Group Chairman may, in its absolute discretion, reject any question from any Governor if in the opinion of the Group Chairman the question is substantially the same and relates to the same subject matter as a question which has already been put to that Meeting or a previous Meeting.

6 QUESTIONS ON NOTICE AT MEETINGS

Subject to the provisions of Standing Order 7, a Governor may ask a Question on Notice of:

- (a) the Group Chairman;
- (b) another Governor;
- (c) a Group Executive Director of the Trust;
- (d) the chairman of any sub-group of the Council of Governors.

7 NOTICE OF QUESTIONS

Notice of a Question on Notice must be given in writing to the Secretary at least 14 days prior to the relevant Meeting. For the purposes of this Standing Order 7, receipt of any such Questions on Notice via electronic means is acceptable.

8 RESPONSE TO A QUESTION ON NOTICE

An answer to a Question on Notice may take the form of:

- (a) a direct oral answer at the relevant Meeting (which may, where the desired information is in a publication of the Trust or other published work, take the form of a reference to that publication);
- (b) where the reply cannot conveniently be given orally at the relevant Meeting, a written answer which will be circulated as soon as reasonably practicable to the questioner and to the other Governors or with the agenda for the next Meeting; or

- (c) a brief oral answer at the relevant Meeting supplemented by a written answer circulated as soon as reasonably practicable to the questioner and to the other Governors and/or information will be provided as an agenda item for the next Meeting.

9 SUPPLEMENTARY QUESTIONS IN RESPECT OF A QUESTION ON NOTICE

Supplementary questions for the purpose of clarification of a reply to a Question on Notice may be asked at the absolute discretion of the Group Chairman.

10 MOTIONS ON NOTICE

- (a) Notice

Subject to Standing Order 11, a motion may only be submitted by Governors and must be received by the Secretary in writing at least 14 days prior to the Meeting at which it is proposed to be considered, together with any relevant supporting papers. Except for motions which can be moved without notice under Standing Order 11, the notice of every motion must be signed or transmitted by at least two Governors. For the purposes of this Standing Order 10, receipt of any such motions via electronic means is acceptable. All motions received by the Secretary will be acknowledged by the Secretary in writing to the Governors who have signed or transmitted the same.

- (b) Scope

Motions may only be about matters for which the Council of Governors has a responsibility.

11 MOTIONS WITHOUT NOTICE

The following motions may be moved at any Meeting without notice:

- (a) in relation to the accuracy of the minutes of the previous Meeting;
- (b) to change the order of business in the agenda for the Meeting;
- (c) to refer a matter discussed at a Meeting to an appropriate body or individual;
- (d) to appoint a group arising from an item on the agenda for the Meeting;
- (e) to receive reports or adopt recommendations made by the Board of Directors;
- (f) to withdraw a motion;
- (g) to amend a motion;
- (h) to proceed to the next business on the agenda;
- (i) that the question be now put;
- (j) to adjourn a debate;
- (k) to adjourn a Meeting;

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

12 URGENT MOTIONS OR QUESTIONS

Urgent motions or questions may only be submitted by a Governor and must be received by the Secretary in writing before the commencement of the Meeting in question. The Group Chairman shall decide whether the motion or question in question should be tabled.

13 SPEAKING

This Standing Order applies to all forms of speech/debate by Governors or members of the Trust and the public in relation to the motion or question under discussion at a Meeting.

(a) Content and Length of Speeches

Any approval to speak must be given by the Group Chairman. Speeches must be directed to the matter, motion or question under discussion or to a point of order. Unless in the opinion of the Group Chairman it would not be desirable or appropriate to time limit speeches on any topic to be discussed having regard to its nature complexity or importance, no proposal, speech, nor any reply, may exceed three minutes. In the interests of time the Group Chairman may, in its absolute discretion, limit the number replies questions or speeches which are heard at any one Meeting.

(b) When a person may speak again

A person who has already spoken on a matter at a Meeting may not speak again at that Meeting in respect of the same matter, except:

- (i) in exercise of a right of reply;

(ii) on a point of order.

(c) Identification

All speakers must state their name and role before starting to speak to ensure the accuracy of the minutes.

14 VOTING

All questions put to the vote shall, at the discretion of the Group Chairman, be decided by a show of hands, or if meeting is being held virtually (video or teleconferencing) via the associated electronic or verbal communication channels. A paper ballot may be used if a majority of the Governors present so request.

15 ATTENDANCE

Governors who are unable to attend a Meeting shall notify the Secretary in writing in advance of the Meeting in question so that their apologies may be submitted.

16 QUORUM

The quorum for a Meeting will be as set out in paragraph 18.3 of this Annex 5 to the Constitution.

17 CHAIRMAN

The arrangements for presiding at or chairing meetings of the Council of Governors are set out in the Constitution.

18 Further Provisions as to Meetings of Governors

- 18.1. The Council of Governors is to meet at least four times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least seven days written notice of the date and place of every meeting of the Council of Governors together with an agenda and any supporting papers to all Governors. Notice will also be published on the Trust's website.
- 18.2. Meetings of the Council of Governors may be called by the Secretary, or by the Group Chairman, or by ten Governors (including at least two Elected Governors and two Appointed Governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least seven but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Group Chairman or ten Governors, whichever is the case, shall call such a meeting.
- 18.3. Eleven Governors including not less than four Public Governors, not less than one Staff Governor and not less than one Appointed Governors shall form a quorum.
- 18.4. The Council of Governors may invite the Group Chief Executive or any other member or members of the Board of Directors, or a representative of the auditor or other advisors to attend a meeting of the Council of Governors.
- 18.5. The Council of Governors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

- 18.6 Subject to the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes. No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.
- 18.7 The Council of Governors may not delegate any of its powers to a group, committee or sub-committee, but it may appoint committees consisting of its members, Directors, and other persons to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.
- 18.8 All decisions taken in good faith at a meeting of the Council of Governors or of any group or committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.

Declaration

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

19 FURTHER PROVISIONS IN RESPECT OF THE COUNCIL OF GOVERNORS CONFLICTS OF INTEREST OF GOVERNORS

19.1 A material interest is:

- a. any directorship of a company;
- b. any interest or position in any firm, company, business, or organisation (including any charitable or voluntary organisation) which has or is likely to have a trading or commercial relationship with the Trust;
- c. any interest in an organisation providing health and social care services to the National Health Service;
- d. a position of authority in a charity or voluntary organisation in the field of health and social care;
- e. any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.

20 DECLARATION OF INTERESTS

20.1 Any Governor who has an interest in a matter to be considered by the Council of Governors (whether because the matter involves a firm, company, business, or organisation [including any charitable or voluntary organisation] in which the Governor or his spouse or partner has a material interest or otherwise) shall declare such interest to the Council of Governors and:

- a. shall withdraw from the meeting and play no part in the relevant discussion or decision; and
- b. shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

- 20.2 Details of any such interest shall be recorded in the register of interests of Governors.
- 20.3 Any Governor who fails to disclose any interest or material interests required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining Governors.

21 AMENDMENTS TO STANDING ORDERS

These Standing Orders may only be amended at a Meeting. A motion to change the Standing Orders must be signed by five Governors and submitted to the Secretary in writing at least 21 days before the Meeting at which the motion is intended to be proposed.

22 DISPUTES BETWEEN THE COUNCIL OF GOVERNORS AND THE BOARD OF DIRECTORS

Dispute Resolution Procedure:

- 1 The Council of Governors adopts a policy to proactively engage with the Board of Directors in those circumstances when they have concerns. The Council of Governors is encouraged to ensure its interaction and relationship with the Board of Directors is appropriate and effective.
- 2 The Council of Governors elects a Lead Governor who is the first point of contact when Governors wish to seek advice and/or raise issues and who acts as the Council of Governors lead representative to the Group Chairman on Governor matters.
- 3 In the event of a dispute arising between the Council of Governors and the Board of Directors, the Group Chairman (or Group Senior Independent Director or Group Deputy Chairman if the dispute involves the Group Chairman) will endeavour to resolve the dispute informally, through discussions with the Council of Governors.
- 4 If Governors have concerns and when approaches through normal channels (Lead Governor and/or Group Chairman and/or Group Deputy Chairman) have failed to resolve or for which such approaches are inappropriate, the Group Senior Independent Director (SID) acts as the point of contact for Governors with the Board of Directors.
- 5 The Group SID also acts as the point of contact for Governors with the Board of Directors during the Group Chairman's annual performance appraisal process (includes remuneration and other allowances).

The Council of Governors should only exercise its power to remove the Group Chairman, or any other Group Non-Executive Director, after exhausting all means of engagement with the Board.

Standing Orders for the Practice and Procedure of the Board of Directors

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1. Introduction

Statutory Framework

The Manchester University NHS Foundation Trust (the Trust) is a public benefit corporation which came into existence on 1st October 2017 following the grant of an application by Monitor (now NHS England) pursuant to section 56 of the National Health Service Act 2006.

The functions of the Trust are conferred by the National Health Service Act 2006 and the Trust will exercise its functions in accordance with the terms of its provider license (no: **130164**) and all relevant legislation and guidance.

- The principal places of business of the Trust are:
- Manchester Royal Infirmary
- Manchester Royal Eye Hospital
- Royal Manchester Children's Hospital
- Saint Mary's Hospital
- Trafford General Hospital
- University Dental Hospital of Manchester
- Wythenshawe Hospital
- Altrincham Hospital
- Withington Hospital
- North Manchester General Hospital
- Manchester and Trafford Local Care Organisations

The Constitution requires the Board to adopt Standing Orders for the regulation of its proceedings and business. Nothing in these standing orders shall override the Trust's Constitution, the National Health Service Act 2006, the Health and Social Care Act 2012 or the Health and Care Act 2022.

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

2. Purpose

2.1 Delegation of Power

All the powers of the Trust are exercisable by the Board of Directors. The Constitution may provide for any of those powers to be delegated to a committee of Directors or to a Group Executive Director. Delegated powers are covered in a separate Scheme of Delegation. The Scheme of Delegation has effect as if incorporated into the Standing Orders.

2.2 Interpretation

2.2.1 Save as otherwise permitted by law, at any meeting the Group Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Group Chief Executive and/or Secretary to the Board of Directors).

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

2.2.3 Any expression to which a meaning is given in the Constitution, the 2006 Act, the 2012 Act or the 2022 Act shall have the same meaning in this interpretation and in addition:

"Budget" is a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.

"Committee of the Board of Directors" is a committee formed by the Board with specific Terms of Reference, Chair and membership.

"Contracting and procuring" is the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.

"Group Executive Director of Finance" is the Group Chief Financial Officer of the Trust who will ensure compliance with Standing Financial Instructions.

"Motion" is a formal proposition to be discussed and voted on during the course of a meeting.

"NHS Standard Contract" the NHS standard contract mandated by NHS England for use by commissioners for all contracts for healthcare services other than primary care.

"NHS Standard Terms and Conditions" the NHS terms and conditions for procuring goods and services published by NHS England.

"Nominated Officer" is an officer charged with the responsibility for discharging specific tasks within Standing Order in line with the 2006 Act.

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

"Regulators" means NHS England, the Care Quality Commission and any other public authority which regulates NHS Foundation Trusts;

"Remuneration Committee" is a Committee of the Board of Directors consisting of the Group Non-Executive Directors which determines the remuneration and allowances for the Group Chief Executive and Group Executive Directors.

"SFIs" means Standing Financial Instructions.

"SOs" means Standing Orders.

"Trust Hospital" is all or any hospital or other patient care facilities administered by the trust from time to time and designated by the Trust as falling within this definition.

3. BOARD OF DIRECTORS

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

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

3.1.3 The Board of Directors has resolved that certain powers and decisions may only be exercised by the Board of Directors in formal session. These powers and decisions are set out in the Scheme of Decisions and Scheme of Delegation and have effect as if incorporated into the Standing Orders.

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

3.2 Composition of the Board of Directors

3.2.1 In accordance with paragraph 23 of the Trust's Constitution the composition of the Board of Directors shall be:

3.2.1.1 a Non-Executive Director Group Chairman;

3.2.1.2 a minimum of five Group Non-Executive Directors;

3.2.1.3 a minimum of five Group Executive Directors:

- One of the Group Executive Directors shall be the Group Chief Executive.
- The Group Chief Executive shall be the Accounting Officer.
- One of the Group Executive Directors shall be the Group Executive Director of Finance (Group Chief Finance Officer).
- One of the Group Executive Directors is to be a registered medical practitioner, or, a registered dentist (within the meaning of the Dentists Act 1984).
- One of the Group Executive Directors is to be a registered nurse, or, a registered midwife.

3.2.2 The number of Group Directors may be increased provided always that at least half of the Board, excluding the Group Chairman, comprises of Group Non-Executive Directors.

3.2.3 The Trust Secretary (or nominated deputy) will be in attendance at all meetings of the Board.

3.3 Appointment and Removal of the Group Chairman and Group Non-Executive Directors

3.3.1 In accordance with paragraph 26 of the Constitution and guidance issued by NHS England, the Group Chairman and Group Non-Executive Directors are appointed

and removed by the Council of Governors at a general meeting of the Council of Governors.

- 3.3.2 The Group Chairman and Group Non-Executive Directors shall be appointed for a term of office of up to three years.
- 3.3.3 The Group Chairman and Group Non-Executive Directors may be appointed to serve a further term of up to three years (depending on satisfactory performance) and subject to the provisions of the 2006 Act in respect of removal of a Director.
- 3.3.4 The Group Chairman and Group Non-Executive Directors may, in exceptional circumstances, serve longer than six years subject to rigorous review/annual re-appointment and subject to external competition if recommended by the Board. Re-appointments are to be approved by the Council of Governors and in circumstances that term extends beyond six years, are to also be agreed with NHSE. In establishing that the Group Non-Executive Director continues to be independent, the Group Chairman and Group Senior Independent Director (Appraisal Facilitators) will take account of NHS England's guidance and conduct an evidence-based evaluation.
- 3.3.5 Any re-appointment after the second term of office (irrespective of tenure duration), for the Group Chairman and Group Non-Executive Directors, shall be subject to a performance evaluation carried out in accordance with procedures approved by the Council of Governors to ensure that those individuals continue to be effective, demonstrate commitment to the role and demonstrate independence. Unless agreed by NHSE, the Group Chairman or Group Non-Executive Directors should not remain in post beyond nine years from the date of their first appointment.

3.4 Appointment and Powers of Group Deputy Chairman

- 3.4.1 The Nominations Committee shall, following consultation with the Council of Governors, appoint one of the Group Non-Executive Directors as Group Deputy Chairman in accordance with paragraph 27.1 of the Constitution and, in similar manner, shall remove any person appointed from that position and appoint another Group Non-Executive Director in his place.
- 3.4.2 Before a resolution for any such appointment is passed, the Board may decide which of the Group Non-Executive Directors it recommends for that appointment; the Group Chairman shall advise the Nominations Committee and Council of Governors of the recommendation from the Board which will not be binding upon the Committee or Council but will be presented to the Council at its meeting before it comes to a decision.
- 3.4.3 In the absence of the Group Chairman, the Group Deputy Chairman shall be acting Group Chairman of the Trust.
- 3.4.4 Any Group Non-Executive Director may at any time resign from the office of Group Deputy Chairman by giving notice in writing to the Group Chairman. The Nominations Committee in consultation with the Council of Governors upon the recommendation of the Board may then appoint another Group Deputy Chairman in accordance with paragraph 27.1 of the Constitution.

3.4.5 Where the Group Chairman of the Trust has died or has ceased to hold office, or where he/she has been unable to perform his/her duties as Group Chairman owing to illness or any other cause, the Group Deputy Chairman shall act as Group Chairman until a new Group Chairman is appointed or the existing Group Chairman resumes his/her duties, as the case may be; and references to the Group Chairman in these Standing Orders shall, so long as there is no Group Chairman able to perform his/her duties, be taken to include references to the Group Deputy Chairman.

3.5 Appointment and Role of the Group Senior Independent Director

3.5.1 The Board of Directors shall, following consultation with the Council of Governors, appoint one of the Group Non-Executive Directors as a Group Senior Independent Director in accordance with paragraph 27.2 of the Constitution, for such a period not exceeding the remainder of the individual's term of office as a Group Non-Executive Director. The Group Senior Independent Director to act in accordance with NHS England's Code of Governance for NHS Provider Trusts (as may be amended and replaced from time to time); and the Trust's Standing Orders.

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

3.5.3 The Group Senior Independent Director shall meet with the Group Chairman at least annually to evaluate his/her performance, as part of a process, which should be agreed with the Council of Governors and be in keeping with NHSE's guidance, for appraising the Group Chairman and on such occasions as are deemed appropriate.

3.6 **Terms of Office of the Group Chairman and Group Non-Executive Directors -** The Group Chairman and Group Non-Executive Directors shall be appointed with terms and conditions of office as decided by the Council of Governors at a general meeting taking account of NHS England governance guidance.

3.7 Appointment and Removal of the Group Chief Executive

3.7.1 In accordance with the Trust's Constitution paragraph 28, the Group Non-Executive Directors shall appoint or remove the Group Chief Executive.

3.7.2 The appointment of the Group Chief Executive requires the approval of the Council of Governors in accordance with paragraph 28.2 of the Trust's Constitution.

3.8 Appointment and Removal of Group Executive Directors

In accordance with the Constitution, paragraph 28.3, all Group Executive Directors (excluding the Group Chief Executive) are to be appointed (and removed) by a committee consisting of the Group Chairman, the Group Chief Executive and the other Group Non-Executive Directors.

3.9 Joint Directors

3.9.1 Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for group executive directorship or in relation to which a Group Executive

Director is to be appointed, those persons shall count for the purpose of SO4. (composition of Board) as one person (save that the Group Executive positions of registered Medical Practitioner or registered Dental and registered Nurse or registered Midwife cannot be shared between the two professions).

3.9.2 Where such an arrangement is in force, both individuals shall be able to attend a meeting of the Board provided that at any meeting of the Board they may only count as one individual for the purposes of the quorum and may only exercise one vote between them.

3.9.3 Where the two individuals disagree as to how to vote at a Board meeting, then no vote shall be cast. If only one individual attends the meeting they can cast the vote on behalf of both.

3.9.4 The presence of either or both persons shall count as the presence of one person for the purposes of quorum.

3.10 **Trust Secretary**

The Group Chairman and Group Chief Executive shall appoint a Trust Secretary to act independently of the Board, to provide advice on corporate governance issues to the Group Chairman and Board, and to monitor the Trust's compliance with its regulatory framework, the Trust's Constitution and SOs.

3.11 **Role of Group Chief Executive**

3.11.1 The Group Chief Executive is responsible for implementing the decisions of the Board in the running of the Trust's business.

3.11.2 The Group Chief Executive reports to the Group Chairman of the Board.

3.11.3 The Group Chief Executive is the Accounting Officer and shall be responsible for ensuring the discharge of obligations under all relevant financial directions and guidance issued by NHS England or any other relevant body.

3.12 **Role of Group Chief Finance Officer**

3.12.1 The Group Chief Finance Officer shall be responsible for the provision of financial advice to the Trust and to its Group Directors and for the supervision of financial control and accounting systems.

3.12.2 The individual shall be responsible, along with the Group Chief Executive, to ensure the discharge of obligations under all relevant financial requirements, conditions or notices issued by any Regulators or other relevant body.

3.13 **Role of Group Executive Directors**

Group Executive Directors shall exercise their authority within these SOs, SFIs and SoRD.

3.14 **Role of the Group Chairman**

The Group Chairman shall be responsible for the leadership of the Board (and Council of Governors) and chair all Board (and Council of Governor) meetings when present.

3.14.1 The Group Chairman must ensure effectiveness in all aspects of the Board's role and lead on setting the agenda for meetings and ensure that adequate time is available for discussion of agenda items and strategic issues.

3.14.2 The Group Chairman is responsible for ensuring that the Board and Council of Governors work effectively together.

3.15 Role of Group Non-Executive Directors

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

3.16 The Board as a Trustee

3.16.1 All funds received in trust shall be held in the name of the Trust as corporate trustee.

3.16.2 In relation to funds held in trust, powers exercised by the Board of Directors as corporate trustee shall be exercised separately and distinctly from those powers exercised as the Trust.

3.16.3 The Trust has the functions conferred on it by the 2006 Act. Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission and to the Secretary of State for Health. Accountability for non-charitable funds held on trust is only to NHS England.

3.17 Relationship between the Board of Directors and Council of Governors

3.17.1 The Council of Governors has a statutory duty to hold the Group Non-Executive Directors individually and collectively to account for the performance of the Board. This includes ensuring the Board acts so that the Trust does not breach the conditions of its License. It remains the responsibility of the Board to design and implement agreed priorities, objectives and the overall strategy of the Trust. The Council of Governors is responsible for representing the interests of the Trust's members and the public at large, and staff in the governance of the Trust. Governors must act in the best interests of the Trust and should adhere to its values and Governors' Code of Conduct. Governors are responsible for regularly feeding back information about the Trust, its vision and its performance to members, the public at large, and the stakeholder organisations that either elected or appointed them. The Trust should ensure that Governors have appropriate support to help them to discharge this duty.

3.17.2 The Board is to present to the Council of Governors, at a general meeting, the annual accounts, any report of the auditor on them, and the annual report.

3.17.3 The annual report should describe the process followed by the Council of Governors in relation to the appointments of the Group Chairman and Group Non-Executive Directors.

3.17.4 The Council of Governors will agree with the Audit Committee the criteria for appointing, re-appointing and removing External Auditors.

- 3.17.5 If the Council of Governors does not accept the Audit Committee's recommendation, the Board should include in the annual report a statement from the Audit Committee explaining the recommendation and should set out reasons why the Council of Governors had taken a different position.

4. MEETINGS OF THE BOARD OF DIRECTORS

4.1 Admission of the Public and Press

Meetings of the Board of Directors shall be open to members of the public and press in accordance with paragraph 30.1 of the Constitution.

- 4.1.1 Members of the public and the press may be excluded from a meeting for special reasons. Special reasons include for reasons of commercial confidentiality. The Board will resolve that:

'In accordance with paragraph 30.1 of the Constitution and paragraph 18E of Schedule 7 of the 2006 Act, the Board of Directors resolves that there are special reasons to exclude members of the public from this meeting having regard to commercial sensitivity and/or confidentiality and/or personal information and/or legal professional privilege in relation to the business to be discussed'.

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

- 4.1.3 Matters discussed at a meeting following the exclusion of Governors. the public and representatives of the media shall be confidential to the Board and shall not be disclosed by any person attending the meeting without the consent of the Group Chairman of the meeting.

4.2 Calling Meetings

Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine, with a minimum number of five meetings held each year.

- 4.2.1 Meetings of the Board of Directors may be called by the Secretary, or by the Group Chairman or by four Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request.

- 4.2.2 The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Group Chairman or four Directors, whichever is the case, shall call such a meeting.

4.3 Notice of Meetings

Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Group Chairman or by an officer of the Trust authorised by the Group Chairman to sign on his/her behalf shall be delivered to every Director by hand or via e-mail, sent by post to the usual place of residence of such Director, and advertised on the Trust's website so as to

be available to him/her at least three clear days before the meeting. Lack of service of the notice on any Director shall not affect the validity of a meeting.

- 4.3.1 Notwithstanding the above requirement for notice, the Group Chairman may waive notice in the case of emergencies or in the case of the need to conduct urgent business or on written receipt of the agreement of at least two-thirds of Directors (Group Executive and Group Non-Executive Directors taken together) but to include a minimum of two Group Executive Directors and two Group Non-Executive Directors.
- 4.3.2 In the case of a meeting called by Directors in default of the Group Chairman, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.
- 4.3.3 Agendas and any supporting papers will, normally, be sent to Directors so to arrive no later than five days before the meeting but will certainly be dispatched no later than three clear days before the meeting, save in emergency. Subject to paragraph 4.3.1, failure to serve such a notice on more than three Directors will invalidate the meeting. A notice will be presumed to have been served 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.
- 4.3.4 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.
- 4.4 **Notice of Extraordinary Meetings**
At the request of the Group Chairman or by at least one-third of the whole number of members of the Board, the Trust Secretary shall send a written notice to all Directors within 14 (fourteen) days of receipt of such a request specifying the date and place to discuss the specified business.
 - 4.4.1 If the Trust Secretary fails to call such a meeting, then the Group Chair or at least one-third of the whole number of members of the Board, whichever is the case, shall call such a meeting.
- 4.5 **Setting of 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.
 - 4.5.1 A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Group Chair at least 10 clear days before the meeting. The request should state whether the item of business should be taken in a closed session i.e. not open to the public, press or staff be transacted in the presence of the public.
 - 4.5.2 Clear rationale and any appropriate supporting information should be provided in support of the request. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Group Chairman.
 - 4.5.3 Before holding a meeting, the Trust Secretary must send a copy of the agenda of the Board meeting to the Council of Governors.

- 4.6 **Petitions** - Where a petition has been received by the Trust, the Group Chairman of the Board of Directors shall include the petition as an item for the agenda of the next Board of Directors meeting.
- 4.7 **Chair of Meeting**
At any meeting of the Board of Directors, the Group Chairman, if present, shall preside. If the Group Chairman is absent from the meeting or absent temporarily on the grounds of a declared conflict of interest the Group Deputy Chairman, if present, shall preside. If the Group Chairman and Group Deputy Chairman are absent, or are disqualified from participating, another Group Non-Executive Director, as the Directors determine shall choose who shall preside.
- 4.8 **Annual Members' Meeting**
The Trust will publicise and hold an Annual Members' Meeting, in accordance with paragraph 11 of the Constitution.
- 4.9 **Notices of Motion** - A Director of the Board desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Group Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to paragraph 4.5 above.
- 4.10 **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 Group Chairman.
- 4.11 **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 other than the Group Chairman to propose a motion to the same effect within six months; however the Group Chairman may do so if he/she considers it appropriate.
- 4.12 **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.
- 4.12.1 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- an amendment to the motion.
 - the adjournment of the discussion or the meeting.
 - that the meeting proceed to the next business(*)
 - the appointment of an ad hoc committee to deal with a specific item of business.
 - that the motion be now put. (*)
 - a motion under paragraph 4.1.1.

In the case of sub-paragraphs denoted by () above to ensure objectivity, motions may only be put by a Director who has not previously taken part in the debate and who is eligible to vote.

4.12.2 No amendment to the motion shall be admitted if, in the opinion of the Group Chairman of the meeting, the amendment negates the substance of the motion.

4.13 Group Chairman's Ruling

Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Group Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

4.14 Voting

Every question/decision put to a vote at a meeting shall be determined by a majority of the votes of the Group Chairman of the meeting and members present/participating and voting on the decision and, in the case of the number of votes for and against a motion being equal, the Group Chairman of the meeting shall have a second or casting vote. No resolution of the Board of Directors shall be passed if it is opposed by all of the Group Non-Executive Directors present or by all of the Group Executive Directors present.

4.14.1 All questions/decisions put to the vote shall, at the discretion of the Group Chairman of the meeting, be determined or by a show of hands, or if meeting is being held virtually (video or teleconferencing) via the associated electronic or verbal communication channels. A paper ballot may also be used if a majority of the Directors present/participating so request.

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

4.14.3 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

4.14.4 The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting and thus entitled to vote.

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

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

4.15 Minutes

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

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

4.15.2 Minutes shall be circulated in accordance with the Directors' wishes. The minutes shall be made available to the Council of Governors. The minutes shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under these Standing Orders.

4.16 Waiver/Suspension of Standing Orders

4.16.1 Except where this would contravene any provision of the Constitution or any direction made by NHS England, any one or more of the Standing Orders may be suspended at any meeting, provided that at least 50% of the Board of Directors are present, including two Group Executive Directors and two Group Non-Executive Directors, and that a majority of those present vote in favour of suspension.

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

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

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

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

4.17 Variation and Amendment of Standing Orders

These Standing Orders shall be amended only if:

- the variation proposed does not contravene a statutory provision
- at least two-thirds of the Directors are present; and
- no fewer than half the total of the Trust's Group Non-Executive Directors vote in favour of amendment.

4.18 Record of Attendance

4.18.1 The names of the Group Chairman and Directors and all others present at the meeting (other than members of the public and media) who are present at the meeting shall be recorded in the minutes.

4.18.2 A meeting of the Board refers to officers being physically present and officers being present via the use of technology.

4.19 Quorum

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

- 4.19.2 An officer in attendance for a Group Executive Director but without formal acting up status may not count towards the quorum.
- 4.19.3 If the Group Chairman or 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 he/she shall no longer count towards the quorum.
- 4.19.4 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.
- 4.19.5 Board Directors may participate (and vote) in its meetings by telephone teleconference, video or computer link. Participation in a meeting in this manner shall be deemed to constitute present in person at the meeting.

4.20 Meetings – Electronic Communication

- 4.20.1 Within these SOs, communication and electronic communication shall have the meanings as set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 4.20.2 A Director in electronic communication with the Group Chairman and all other parties to a meeting of the Board or of a standing Committee of the Board shall be regarded for all purposes as being present and personally attending such a meeting provided that, but only for so long as, at such a meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
- 4.20.3 For meetings to be held in accordance with these SO for such a meeting to be quorate, quorum must be present and maintained throughout a meeting.
- 4.20.4 Minutes of a meeting held in this way must state that it was held by electronic communication.

5. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 5.1 The 2006 Act provides for all powers of the Trust to be exercised by the Board on its behalf. It also states that the Board may delegate any of its powers to a committee of Directors or to a Group Executive Director, in each case subject to such restrictions and conditions as the Board of Directors considers appropriate.

5.2 Emergency Powers

- 5.2.1 The powers which the Board of Directors has retained to itself within these Standing Orders (Standing Order 3) may in emergency be exercised by the Group Chief Executive and the Group Chairman after having consulted at least two Group Non-Executive Directors.
- 5.2.2 The exercise of such powers by the Group Chief Executive and Group Chairman shall be reported to the next formal meeting of the Board of Directors held in public for ratification.

5.3 Delegation to Committees

The Board of Directors:

- May appoint committees with a membership wholly of Group Directors to exercise any of its powers
- May appoint working groups consisting wholly or partly of members who are not directors for any purpose which is calculated or likely to contribute to or assist it in the exercise of its powers but it may not delegate the exercise of any of its powers to such a group. The power to appoint groups under this SO is delegated to the Group Chief Executive.
- shall agree from time to time to the delegation of executive powers to be exercised by committees, sub-committees or joint-committees, which it has formally constituted in accordance with its powers of delegation. The constitution and terms of reference of these committees, or sub-committees, or joint committees, and their specific executive powers shall be approved by the Board of Directors.

5.4 Delegation to Officers

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

5.4.2 The Group Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Group Chief Executive may periodically propose amendment to the Scheme of Delegation that shall be considered and approved by the Board of Directors as indicated above.

5.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Executive Directors to provide information and advise the Board of Directors in accordance with the Constitution, conditions of the License or any statutory requirements or provisions required by NHS England. Outside these statutory requirements the roles of the Group Chief Finance Officer shall be accountable to the Group Chief Executive for operational matters.

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

5.5 Non-compliance with Standing Orders

5.5.1 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification.

5.5.2 All staff have a duty to disclose any potential or impending non-compliance to their Group Executive Director who in turn has a duty to report to the Group Chief Executive and Group Chairman as soon as possible.

6. COMMITTEES

- 6.1 The Board shall appoint an Audit Committee of Group Non-Executive Directors to perform such monitoring, reviewing and other functions as appropriate in accordance with these SOs and the constitution at paragraph 39.
- 6.2 The Board shall appoint a Committee of Group Non-Executive Directors to decide the remuneration and allowances, and other terms and conditions of office, of the Group Executive Directors in accordance with these SOs and the Constitution paragraph 33.
- 6.3 Subject to the 2006 Act and any such regulatory framework or guidance issued by NHS England, the Board may appoint standing committees of the Board.
- 6.4 There are no requirements to hold meetings of committees in public.
- 6.5 The Standing Orders of the Board of Directors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors. In which case the term “Chair” is to be read as a reference to the Group Chairman of the committee as the context permits.
- 6.6 Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide and shall be in accordance with any legislation and regulation or direction issued by NHS England. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 6.7 Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board of Directors.
- 6.8 The Board of Directors shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines, and regulations permit, that persons, who are neither officers nor Directors, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board of Directors.
- 6.9 The Board of Directors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.
- 6.10 The Board of Directors may establish other committees, sub committees and joint committees which will work as working groups, including ad hoc committees, sub committees and joint committees at its discretion without requirement to amend these SOs.

7. CONFIDENTIALITY

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

- 7.2 A Director or an appointee of a committee, sub-committee or joint committee shall not disclose any matter reported to the Board of Directors otherwise dealt with by the relevant 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.

8. DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

8.1 Declaration of Interests

- 8.1.1 All Board members, all Directors, Governors and Officers have a duty to avoid a situation in which they have (or can have) a direct or indirect interest that conflicts (or may conflict) with interests of the Trust. Any Director who has an interest in a matter that he/she is required to declare in accordance with paragraph 32 of the Trust's Constitution shall declare such interest to the Board and:
- shall withdraw from the meeting and play no part in the relevant discussion or decision; and
 - shall not vote on the issue (and if inadvertence they do remain and vote, their vote shall not be counted).
- 8.1.2 Details of any such interest shall be recorded in the Register of Interests of Board members. At the time Board members' interests are declared, they should be recorded in the Board of Directors minutes. Any changes in interests shall be declared in accordance with the requirements of the Trust's constitution, these SOs and the Trust associated Policy.
- 8.1.3 Any Board member who fails to disclose any interest required to be disclosed under the preceding clause must permanently vacate their office if required to do so by a majority of the remaining Board members and, in the case of a Group Non-Executive Director, by the requisite majority of the Council of Governors.
- 8.1.4 Board members' directorships of companies which may conflict with their management responsibilities shall be published or referenced in the Trust's annual report. As the Trust maintains a Register of Interests which is open to the public, the disclosure included or reference within the annual report at the discretion of the Board, be limited to a comment on how access to the information in that Register may be obtained.
- 8.1.5 During the course of a Board meeting, if a conflict of interest is established, the Board member concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 8.1.6 If Board members have any doubt about the relevance of an interest, this should be discussed with the Group Chairman or Trust Secretary.

8.2 Register of Interests

- 8.2.1 The Group Chief Executive will ensure that a Register of Interests 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 Group Executive and Group Non-Executive Board members, in accordance with paragraphs 32 and 36 of the Trust's Constitution.

8.2.2 The Trust Secretary will keep these details up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated. It is the responsibility of each Board member to provide an update to the Trust Secretary of their register entry if their interest changes.

8.2.3 The Register will be available to the public and the Group Chief Executive 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.

8.3 Register of Gifts and Hospitality

8.3.1 A Register of Gifts and Hospitality will be maintained by the Trust Secretary for the Board members, staff, all prospective employees – who are part-way through recruitment, Contractors and sub-contractors, Agency staff; and Committee, sub-committee and advisory group members (who may not be directly employed or engaged by the organisation).

8.3.2 The Register will be published on the Trust's website in line with regulatory requirements.

9. DISABILITY OF DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

9.1 Subject to the following provisions of this Standing Order, if the Group Chairman or a Director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, he/she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

9.2 The Board of Directors may exclude the Group Chairman or a Director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.

9.3 The Board, as it may think fit, may remove any disability imposed by this Standing Order in any case in which it appears to the Board that, in the interests of the Trust, the disability shall be removed.

9.4 Such action shall have the support of at 50% of the Directors present at the meeting (including two Group Executive and two Group Non-Executive Directors).

9.5 Any remuneration, compensation or allowances payable to the Group Chairman or a Director by the Trust shall not be treated as a pecuniary interest for the purpose of this Standing Order.

9.6 For the purpose of this SO the Group Chairman and Director shall be treated, subject to these SOs as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

9.6.1 he/she, or a nominee of his/her, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

9.6.2 he/she is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and

9.6.3 In the case of family, or, close personal relationships the interest of one party shall, if known to the other, be deemed for the purposes of these SOs to be also an interest of the other.

9.7 The Group Chairman or a Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

9.7.1 of his/her membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;

9.7.2 of an interest in any company, body or person with which he/she is connected as mentioned above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

9.8 Where the Group Chairman or Director:

9.8.1 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

9.8.2 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 body, whichever is the less; and

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

this Standing Order shall not prohibit him/her 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 his/her duty to disclose his/her interest.

9.9 These SOs applies to a committee or sub-committee and to a joint committee as it applies to the Board of Directors and applies to an appointee of any such committee or sub-committee (whether or not he/she is also a Director of the Trust) as it applies to a Director of the Trust.

10. STANDARDS OF BUSINESS CONDUCT POLICY

10.1 Policy

Staff should comply with the Trust's Constitution and the National Guidance Standards of Business Conduct for NHS Staff – “managing conflicts of interest in the NHS”, which came into force on 1 June 2017. This guidance supersedes and extinguishes HSG (93)5 Standards of Business Conduct for NHS Staff. This guidance requires all NHS organisations to meet strict ethical standards in the conduct of any NHS business.

10.2 Interests of Directors, Officers, all staff, Consultants, Contractors and Governors

If it comes to the knowledge of a Director or Officer (the term officer in this instance includes all staff, consultants, contractors and Governors) of the Trust that a contract in which he/she has any pecuniary interest not being a contract to which he/she is himself/herself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Group Chief Executive of the fact that he/she is interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

10.2.1 A Director should also declare to the Group Chief Executive any other employment or business or other relationship of his/her, or of a spouse/partner/other family member, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust comply with the SOs, SFI, the financial limits specified in the SoRD, and the Trust's Tendering and Quotation Policy and Procedure.

10.3 Legislation Governing Public Procurement

10.3.1 The Trust shall comply with the Public Contracts Regulations 2015 (the ‘Regulations’) as applicable and any other duties derived from the UK common law (‘Common Law Duties’) . The Regulations and Common Law Duties together are referred to elsewhere in these SOs as ‘Procurement Legislation’.

10.3.2 The Trust should consider obtaining support from the NHS Supply chain and/or Cabinet Office where relevant and/or any suitably qualified professional advisor (including where appropriate legal advisors to ensure compliance with Procurement Legislation when engaging in tendering procedures).

10.3.3 When procuring services, the Trust should have regard to the requirements of the Public Services (Social Value) Act 2012 and its supporting regulations and guidance, as amended.

10.4 Guidance on Procurement and Commissioning

The Trust should have due regard to all relevant guidance issued in relation to the conduct of procurement practice.

10.5 Formal Competitive Tendering

10.5.1 The Trust shall ensure that competitive tenders are invited for the supply of goods, materials and manufactured articles and for the rendering of services including all forms of management consultancy services: for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals when so required by any

Procurement Legislation or as otherwise set out in the Trust's Tendering and quotation Policy and Procedure and/or the SoRD.

10.5.2 Formal tendering procedures may be waived by officers to whom powers have been delegated by the Group Chief Executive in accordance with the Trust's Policy and Procedure. All such waivers should be reported to the next available meeting of the Audit Committee.

10.6. Contracts

10.6.1 The Board of Directors may only enter into contracts on behalf of the Trust within the statutory powers delegated to it and shall comply with:

- These SOs;
- The Trust's SFIs;
- other statutory provisions;

10.6.2 Any relevant and mandatory directions including NHS England's guidance Assuring and supporting complex change Statutory transactions, including mergers and acquisitions, the Department of Health and Social Care's Estate Code; and the NHS Standard Contract as applicable.

10.6.3 Where appropriate contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited.

10.6.4 In all contracts made by the Trust, the Board shall endeavour to obtain best value for money. The Group Chief Executive shall nominate an officer who shall oversee and manage each contract on behalf of the Trust.

10.7 Personal and Agency or Temporary Staff Contracts

10.7.1 The Group Chief Executive shall nominate officers with delegated authority to enter into contracts of employment, regarding staff, agency staff or temporary staff service contracts.

10.8 Legally Binding Contracts for the Provisions of Healthcare

Legally binding contracts for the supply of healthcare services shall be drawn up in accordance with legal advice, best practice and where possible use the NHS Standard Contract. These legally binding contracts will be administered by the Trust.

10.9 Cancellation of Contracts

10.9.1 Except where specific provision is made in the NHS Standard Terms and Conditions approved for use within the NHS, there shall be inserted in every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation:

10.9.1.1 if the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust, or for showing or

foreseeing to show favour or disfavor to any person in relation to the contracts or any other contract with the Trust; or

10.9.1.2 if any relation to any contract with the Trust the contractor or any person employed by them or action on their behalf shall have committed any offence under the Bribery Act 2010 and any other appropriate legislation.

10.10 Determination of Contracts for Failure to Deliver Goods or Materials

10.10.1 There shall be inserted in every written contract for the supply of goods or materials a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereon within the time or times specified in the contract, the Trust may, without prejudice, determine the contract either wholly or to the extent of such default and purchase other goods, or material of similar description to make good:

such default; or

in the event of the contract being wholly determined the goods or materials remaining to be delivered.

The clause shall further secure that the amount by which the cost of so purchasing other goods or material exceeds the amount which would have been payable to the contract in respect of the goods or materials shall be recoverable from the contractor.

11. DISPOSALS

11.1 Competitive tendering or quotation procedures shall not apply to the disposal of:

11.1.1 Any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in reserve) by the Group Chief Executive or his nominated officer.

11.1.2 Obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust.

11.1.3 Items to be disposed of with an estimated sale value of less than £(n) this figure to be reviewed annually.

11.1.4 Items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with relevant contract.

12. IN-HOUSE SERVICES

12.1 In all cases where the Trust determines that in-house services should be subject to competitive tendering the following groups shall be set up:

12.2 Specification group, comprising the Group Chief Executive or nominated officer(s) and specialist(s).

12.3 In-house tender group, comprising representatives of the in-house team, a nominee of the Group Chief Executive and technical support.

- 12.4 Evaluation team comprising normally a specialist officer, a supplies officer and a Director of Finance representative. For services having a likely annual expenditure exceeding £(n), a non-officer member should be a member of the evaluation team.
- 12.5 All groups should work independently of each other, but individual officers may be a member of more than one group. No member of the in-house tender group may participate in the evaluation of tenders.
- 12.6 The evaluation group shall made recommendations to a Committee of the Board of Directors and/or Board.

13. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

13.1 Requirements to seal

It is a legal requirement to place any property transactions e.g. purchase, sale, and lease, under seal.

- 13.1.1 Other contracts/documentation should be approved by an authorised signatory 'under hand' i.e. signed.

13.2 Custody of Seal

- 13.2.1 The Common Seal of the Trust shall be kept by the Trust Secretary on behalf of the Group Chief Executive in a secure place.

13.3 Sealing of Document

- 13.3.1 The Board delegates authority to the Group Chairman (or a Group Non-Executive Director) and the Group Chief Executive (or another Group Executive Director, but excluding the Group Chief Finance Officer) to apply the seal on behalf of the Trust to any document 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 has delegated appropriate authority
- 13.3.2 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed. The Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.

13.4 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 sealings shall be made to the Board at least quarterly. The report shall contain details of the seal number, the description of the document, date of sealing and the names of persons who attested the fixing of the seal or who executed the Deed on behalf of the Trust.

14. SIGNATURE OF DOCUMENTS

- 14.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Group Chief Executive or an officer acting on his/her behalf, 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.
- 14.2 The Group Chief Executive or nominated officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board of Directors or any committee or sub-committee to which the Board has delegated appropriate authority.

15. MISCELLANEOUS

15.1 Standing Orders to be given to Board Members and Officers

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

15.2 Documents having the standing of Standing Orders

Standing Financial Instructions and Reservation of Powers to the Board and Delegation of Powers shall have effect as if incorporated into Standing Orders.

15.3 Review of Standing Orders

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

15.4 Dispute Resolution

- 15.4.1 Where there is a dispute between the Board of Directors and the Council of Governors in connection with the constitution, including the interpretation of these SOs and the procedure to be followed at meetings of the Board, the Group Chairman (or Group Senior Independent Director or Group Deputy Chairman if the dispute involves the Group Chairman) will endeavour to resolve the dispute informally, through discussions with the Council of Governors.
- 15.4.2 Where a dispute arises that involves the Group Chairman, the dispute shall be referred to the Group Senior Independent Director who will use all reasonable efforts to mediate a settlement to the dispute.
- 15.4.3 The Group SID also acts as the point of contact for Governors with the Board of Directors during the Group Chairman's annual performance appraisal process (includes remuneration and other allowances).
- 15.4.4 The Council of Governors should only exercise its power to remove the Group Chairman, or any other Group Non-Executive Director, after exhausting all means of engagement with the Board.

- 15.4.5 In the event of any unresolved dispute between the Board of Directors and the Council of Governors, the Group Chairman or the Secretary may arrange for independent professional advice to be obtained for the Trust. The Group Chairman may also initiate an independent review to investigate and make recommendations in respect of how the dispute may be resolved.
- 15.4.6 For avoidance of doubt, the Trust Secretary shall deal with any membership queries and other similar questions in the first instance including any voting or legislation issues and shall otherwise follow up process of resolving such matters in accordance with any procedures agreed by the Board.

Further Provisions

1. DISQUALIFICATION FROM MEMBERSHIP

1.1 An individual may not become a member of the Trust if:

1.1.1 they are under 11 years of age; or

1.1.2 within the last five years they have been involved as a perpetrator in a serious incident of violence at any of the Trust's hospitals or facilities or against any of the Trust's employees or other persons who exercise functions for the purposes of the Trust, or against any registered volunteer.

2. TERMINATION OF MEMBERSHIP

2.1 A member shall cease to be a member if:

2.1.1 they resign by notice to the Secretary;

2.1.2 they die;

2.1.3 they are expelled from membership under this Constitution;

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

2.1.5 it appears to the Secretary that they no longer wish to be a member of the Trust, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to demonstrate that they wish to continue to be a member of the Trust.

2.2 A member may be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a General Meeting. The following procedure is to be adopted.

2.2.1 Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Trust.

2.2.2 If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:

2.2.2.1 dismiss the complaint and take no further action; or

2.2.2.2 for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this Constitution;

2.2.2.3 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.

2.2.3 If a resolution to expel a member is to be considered at a General Meeting of the Council of Governors, details of the complaint must be sent to the member complained of

not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.

2.2.4 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.

2.2.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.

2.3 A person expelled from membership will cease to be a member upon the declaration by the Group Chairman of the meeting that the resolution to expel them is carried.

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

REPRESENTATIVE MEMBERSHIP

2.5 The Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end:

2.5.1 the Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time, and at least every three years,

2.5.2 the Council of Governors shall present to each Annual Members' Meeting a report on:

2.5.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituencies is representative of those eligible for such membership and the progress of the membership strategy;

2.5.2.2 any changes to the membership strategy.

COMMITMENTS

2.6 The Trust shall exercise its functions effectively, efficiently and economically.

Co-operation with NHS Bodies and Local Authorities

2.7 In exercising its functions, the Trust shall co-operate with NHS bodies and local authorities.

Openness

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

Prohibiting Distribution

2.9 The profits or surpluses of the Trust are not to be distributed either directly or indirectly in any way at all among members of the Trust.

3. **FRAMEWORK**

3.1 The affairs of the Trust are to be conducted by the Board of Directors, the Council of Governors and the members in accordance with this Constitution and the Trust's licence. The members, the Council of Governors and the Board of Directors are to have the roles and responsibilities set out in this Constitution.

Members

3.2 Members may attend and participate at members' meetings, vote in elections to, and if eligible, stand for election to, the Council of Governors, and take such other part in the affairs of the Trust as is provided in this Constitution.

Council of Governors

3.3 The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with this constitution and the Trust's License, are outlined in 16.1, 26.1, 28.2, 33.1, 38.3, 44.1.1 and 45.1 of the Constitution.

3.4 Additional roles and responsibilities include:

3.4.1 to discharge their duty to represent the public, Councils of Governors are required to take account of the interests of the public at large. This includes the population of the local system of which the Trust is part and the whole population of England as served by the wider NHS.

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

3.4.3 to undertake such matters as the Board of Directors shall from time to time request;

3.4.4 to prepare and from time to time review the Trust's membership strategy and its policy for the composition of the Council of Governors and of the Group Non-Executive Directors and when appropriate to make recommendations for the revision of this Constitution.

Board of Directors

3.5 The business of the Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Trust, subject to any contrary provisions of the 2006 Act as given effect by this Constitution.

4. **Secretary**

4.1 The Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Group Chief Executive or the Finance Director. The Secretary's functions shall include:

4.1.1 acting as Secretary to the Council of Governors and the Board of Directors, and any committees;

4.1.2 summoning and attending all Members' meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;

4.1.3 keeping the register of members and other registers and books required by this Constitution to be kept;

4.1.4 having charge of the Trust's seal;

4.1.5 publishing to members in an appropriate form information which they should have about the Trust's affairs;

4.1.6 preparing and sending to NHS England and any other statutory body all returns which are required to be made.

4.1.7 the Secretary shall make the final decision about the staff class of which an individual is eligible to be a member.

4.2 Minutes of every Members' meeting, of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept. Minutes of the Council of Governors' and Board of Directors' meetings will be read at the next meeting and signed by the Group Chairman of that meeting. The Council of Governors will approve the minutes of Members' meeting. The signed or approved minutes will be conclusive evidence of the events of the meeting.

4.3 The Secretary is to be appointed and removed by the Board of Directors.

5. FURTHER PROVISIONS AS TO ACCOUNTS

5.1 The following documents will be made available to the Comptroller and Auditor General for examination at his request:

5.1.1 the accounts;

5.1.2 any records relating to them; and

5.1.3 any report of the auditor on them.

5.2 In preparing its annual accounts, the Accounting Officer shall cause the Trust to keep proper accounts and proper records in relation to the accounts that comply with any directions given by NHS England with the approval of the Secretary of State as to:

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

5.2.2 the information to be given in the accounts;

and shall be responsible for the functions of the Trust as set out in paragraph 25 of Schedule 7 to the 2006 Act.

5.3 The Accounting Officer shall cause the Trust to:

5.3.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and

5.3.2 once it has done so, send copies of those documents to NHS England.

6. FURTHER PROVISIONS AS TO ANNUAL REPORTS

6.1 The annual reports are to give:

6.1.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;

6.1.2 information on any occasions in the period to which the report relates on which the Council of Governors exercised its powers under paragraph 33.2 and such other procedures as the Trust has on pay;

6.1.3 information on the remuneration of the directors and on the expenses of the governors and the directors;

6.1.4 any other information NHS England requires.

6.2 The Trust is to comply with any decision NHS England makes as to:

6.2.1 the form of the reports;

6.2.2 when the reports are to be sent to it;

6.2.3 the periods to which the reports are to relate.

7. DISPUTE RESOLUTION PROCEDURES (Non-Council of Governors related)

7.1 Every unresolved dispute which arises out of this Constitution between the Trust and:

7.1.1 a member; or

7.1.2 any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or

7.1.3 any person bringing a claim under this Constitution; or

7.1.4 an office-holder of the Trust

is to be submitted to an arbitrator agreed by the parties or in the absence of agreement to be nominated by NHSE. The arbitrator's decision will be binding and conclusive on all parties.

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

8. DISSOLUTION

The Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2006 Act.

9. HEAD OFFICE

The Trust's head office is at Cobbett House, Oxford Road, Manchester or such other place as the Board of Directors shall decide.

10. **NOTICES**

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

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

Annual Members' Meeting

(Paragraph 11)

1. The Group Chairman shall be the final authority on the interpretation of these Standing Orders for the purpose of the Annual Members' Meeting (on which he shall be advised by the Group Chief Executive and the Secretary).
2. **Attendance**
 - 2.1 Each member shall be entitled to attend/participate an Annual Members' Meeting.
3. **Meetings in Public**
 - 3.1 Annual Members' Meetings are open to all members of the Trust, Governors and Directors, representatives of the External Auditor, and to members of the public subject to the provisions in paragraph 3.2 below:
 - 3.2 The Group Chairman may exclude any member of the public from an Annual Members' Meeting if he is interfering with or preventing the reasonable conduct of the meeting.
 - 3.3. Annual Members' Meetings shall be held annually at such times and places or in a format as the Group Chairman may determine.
 - 3.4 For the avoidance of doubt, the Trust may invite members to attend engagement and other events in addition to the Annual Members' Meeting.
4. **Notice of Meetings**
 - 4.1. All Members' Meetings are to be convened by the Secretary by order of the Council of Governors.
 - 4.2 A notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Group Chairman, or by an officer of the Trust authorised by the Group Chairman to sign on his behalf, shall be served upon every Member, the Board of Directors, Council of Governors and to the External Auditor at least 14 clear days before the meeting and posted on the Trust's website and displayed at its headquarters. Failure of service of such a notice on any Member shall not affect the validity of a meeting.
 - 4.3 The notice shall state whether the meeting is:
 - 4.3.1 an annual other members' meeting (forum);
 - 4.3.2 give the time, date, place and/or format of the meeting; and
 - 4.3.3 indicate the business to be dealt with at the meeting.
 - 4.4. The Annual Report and Accounts shall be circulated to Governors and published on the website at the earliest and appropriate opportunity. Copies of the Annual Report and Accounts shall be sent to any member upon written request to the

Secretary and shall be available for inspection by a member free of charge at the place of the meeting and/or in electronic format, via the Trust's website

5. Setting the Agenda

- 5.1. The Group Chairman shall determine the agenda for Annual Members' Meetings which must include the business required by the 2006 Act.

6. Chair of Annual Members' Meetings

- 6.1 The Group Chairman of the Trust, or in their absence the Group Deputy Chairman of the Board of Directors, shall act as Chair. If neither the Group Chairman or the Group Deputy Chairman of the Board of Directors is present/participating, the members of the Council of Governors present/participating shall elect one of their number to be Chair and if there is only one Governor present/participating and willing to act, they shall be Chair of the Annual Members' Meeting.

7. Chair's Ruling

- 7.1. Statements of members made at Annual Members' Meetings shall be relevant to the matter under discussion at that time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

8. Voting

- 8.1. Decisions at meetings shall be determined by a majority of the votes of the members present/participating and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.
- 8.2 Where appropriate, the Trust may make arrangements for members to vote by post, or (except with regard to elections to the Council of Governors, which are subject to Annex 10) by using electronic communications.
- 8.3 All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands, or if meeting is being held virtually (video or teleconferencing) via the associated electronic or verbal communication channels.
- 8.4. In such circumstances when a member is absent member proxy voting will not be allowed at any time.
- 8.5. Every member present/participating and every member who has voted by post or using electronic communications is to have one vote.

9. Suspension of Standing Orders

- 9.1. Except where this would contravene any statutory provision, any one or more of these standing orders may be suspended at an Annual Members' Meeting, provided that a majority of members present vote in favour of their suspension.
- 9.2. A decision to suspend the standing orders shall be recorded in the minutes of the meeting.
- 9.3. A separate record of matters discussed during the suspension of the standing orders shall be made and shall be available to the members.

- 9.4. No formal business may be transacted while the standing orders are suspended.
- 9.5. The Trust's Audit Committee shall review every decision to suspend the standing orders.

10. Minutes

- 10.1. The minutes of the proceedings of an Annual Members' Meeting shall be drawn up and maintained as a public record. They will be submitted to the Council of Governors for agreement.
- 10.2. No discussion shall take place upon the minutes except upon their accuracy or where the Group Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded.
- 10.3. The result of any vote will be declared by the Group Chairman and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.
- 10.4. The minutes of an Annual Members' Meeting shall be made available to the public on the Trust's website.

11. Quorum

- 11.1. Before a Members' Meeting can do business there must be a quorum present/participating. Except where this Constitution says otherwise, a quorum is 20 members present.
- 11.2. If no quorum is present within half an hour of the time fixed for the start of the meeting (if meeting is being held face-to-face), the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting (if meeting is being held face-to-face), the number of members present during the meeting is to be a quorum.
- 11.3. A resolution put to the vote at a Members' Meeting shall be decided upon by an oral expression or by show of hands unless a poll is requested by the Chair of the meeting.

Panel investigation procedure for governors

1. PANEL

- 1.1 A panel consisting of the Chair, the Lead Governor and two Elected and one Appointed Governors (“the Panel”) shall be convened to carry out enquiries to investigate whether there are grounds to remove an existing Governor from the Council of Governors, and to recommend to the Council of Governors what action should be taken.
- 1.2 Where the matter concerns the Lead Governor, that individual shall be excluded from the Panel and will be substituted by a second Appointed Governor.
- 1.3 The Panel may at any time determine that it is in the best interests of the Trust for the Governor concerned to be suspended from the Council of Governors pending the outcome of the Panel’s deliberations. Suspension is a neutral act and is not a presumption of guilt nor an indication of the Panel’s eventual recommendation. Suspension shall not be applied automatically and will be considered on a case-by-case basis. The suspension of a Governor shall be reviewed by the Group Chairman after a period of fourteen (14) calendar days, and every seven (7) calendar days thereafter until such a time as the matter has been determined.
- 1.4 The Panel may investigate the matter itself or appoint a suitably experienced investigating officer (who may be external to the Trust) to investigate the matter and to prepare a report for the Panel.
- 1.5 The Governor concerned shall be invited to make written or oral representations to the Panel or to the investigating officer (or to be accompanied at his or her own cost) in respect of the matter, and such representations must be provided within a period of twenty-eight (28) days from the date of the invitation. Any representations received shall be considered by the Panel or the investigating officer as applicable.

2. DECISION BY THE PANEL

- 2.1 Subject to paragraph 3 below, the Panel shall make a decision on the Governor’s disqualification from the Council of Governors as soon as reasonably practicable and shall give notice in writing of that decision to the Governor concerned within seven (7) days of the decision being made. The decision shall be based on a majority vote.

- 2.2 If the Governor concerned disputes the decision made by the Panel, the decision will be referred to an arbitrator, following which the procedure set out in paragraph 21 of the Constitution (Dispute Resolution Procedures) shall apply.

3. RECOMMENDATION BY THE PANEL TO THE COUNCIL OF GOVERNORS

- 3.1 Where the matter concerns allegations that:

- 3.1.1 the relevant Governor has committed a material breach of the Trust's code of conduct; or
- 3.1.2 the relevant Governor has acted in a manner detrimental to the interests of the Trust; or
- 3.1.3 it is not in the best interests of the Trust for the relevant Governor to continue as a Governor

as set out in Annex 4 (Additional Provisions – Council of Governors) paragraph **Error! Reference source not found.**10 of the Constitution, the Panel will make a recommendation to the Council of Governors rather than come to a decision itself. The Panel's recommendation shall be based on a majority vote and may include a recommendation to the Council of Governors to terminate the tenure of office of the Governor concerned.

- 3.2 The Council of Governors will consider the Panel's recommendation in private session at its next scheduled Council meeting. Where the Panel considers it appropriate for the Council of Governors to consider the recommendation earlier than the next scheduled Council meeting, the Panel may request the Secretary to convene an extraordinary Council meeting on at least seven (7) days' notice. The Council of Governors will receive representations from the Panel and from the Governor concerned. If the Governor concerned fails to attend the Council meeting without due cause, the Council meeting may proceed in their absence.
- 3.3 The decision of the Council of Governors will be confirmed in writing, including the reasons for the decision, to the Governor concerned by the Secretary within seven (7) days of the date of the Council meeting.
- 3.4 If the Governor concerned disputes the decision made by the Council of Governors, they may apply in writing to the Council of Governors within seven (7) days of the date of the written confirmation referred to in paragraph 3.3 above for the decision of the Council of Governors to be referred to an arbitrator, following which the procedure set out in Annex 5 paragraph 22 (Standing Orders for the Practice and Procedure for the Council of Governors) of the Constitution (Dispute Resolution Procedure) shall apply.

MODEL ELECTION RULES (2014)

(Paragraph 13.2)

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11. Declaration of interests
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- 67. Secrecy
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- 69. Disqualification
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PART 1: INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires: “*2006 Act*” means the National Health Service Act 2006;

“*corporation*” means the public benefit corporation subject to this constitution; “*council of governors*” means the council of governors of the corporation; “*declaration of identity*” has the meaning set out in rule 21.1;

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

“*e-voting*” means voting using either the internet, telephone or text message; “*e-voting information*” has the meaning set out in rule 24.2;

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

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

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

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

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

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

“*numerical voting code*” has the meaning set out in rule 64.2(b) “*polling website*” has the meaning set out in rule 26.1;

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

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

“telephone voting facility” has the meaning set out in rule 26.2; *“telephone voting record”* has the meaning set out in rule 26.5 (d); *“text message voting facility”* has the meaning set out in rule 26.3; *“text voting record”* has the meaning set out in rule 26.6 (d);

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

- 4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

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

6. Expenditure

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

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

9. Nomination of candidates

- 9.1 Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.
- 9.2 The returning officer:
- (a) is to supply any member of the corporation with a nomination form, and
 - (b) is to prepare a nomination form for signature at the request of any member of the corporation,
- but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

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

11. Declaration of interests

11.1 The nomination form must state:

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

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

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

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

15. Publication of statement of candidates

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

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

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

20. The ballot paper

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e- voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
- (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

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

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

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

22. List of eligible voters

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

22.2 The list is to include, for each member:

(a) a postal address; and,

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

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

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

23. Notice of poll

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

(a) the name of the corporation,

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

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

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

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

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

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

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

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

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

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

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

(m) the contact details of the returning officer.

24. Issue of voting information by returning officer

- 24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:
- (a) a ballot paper and ballot paper envelope,
 - (b) the ID declaration form (if required),
 - (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
 - (d) a covering envelope; ("postal voting information").
- 24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:
- (a) instructions on how to vote and how to make a declaration of identity (if required),
 - (b) the voter's voter ID number,
 - (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer, ("e-voting information").
- 24.3 The corporation may determine that any member of the corporation shall:
- (a) only be sent postal voting information; or
 - (b) only be sent e-voting information; or
 - (c) be sent both postal voting information and e-voting information;
- for the purposes of the poll.
- 24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.
- 24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

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

26. E-voting systems

- 26.1 If internet voting is a method of polling for the relevant election, then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election, then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
 - (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

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

26.5

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

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

- (i) the voter's voter ID number;
- (ii) the voter's declaration of identity (where required);
- (iii) the candidate or candidates for whom the voter has voted; and
- (iv) the date and time of the voter's vote

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

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

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

(a) require a voter to:

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

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

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

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

- (i) the voter's voter ID number;
- (ii) the voter's declaration of identity (where required);
- (ii) the candidate or candidates for whom the voter has voted; and
- (iii) the date and time of the voter's vote

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

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

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

29. Spoilt ballot papers and spoilt text message votes

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

30. Lost voting information

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

- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter's identity,
 - (b) has no reason to doubt that the voter did not receive the original voting information,
 - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):
- (a) the name of the voter
 - (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
 - (c) the voter ID number of the voter.

31. Issue of replacement voting information

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
- (a) the name of the voter,
 - (b) the unique identifier of any replacement ballot paper issued under this rule;
 - (c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

- 33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the URL of the polling website provided in the voting information.
- 33.2 When prompted to do so, the voter will need to enter his or her voter ID number.

- 33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

34. Voting procedure for remote voting by telephone

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

35. Voting procedure for remote voting by text message

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

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

36. Receipt of voting documents

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

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

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

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

37. Validity of votes

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

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

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

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

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

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

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

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

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

38. Declaration of identity but no ballot paper (public and patient constituency)¹

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

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

39. De-duplication of votes

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

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

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

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

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

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

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

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

- (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

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

transferable vote” means a ballot document:

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

or

(b) which is excluded by the returning officer under rule STV49,

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

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

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

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

“quota” means the number calculated in accordance with rule STV46,

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

“stage of the count” means:

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

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

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

“transfer value” means the value of a transferred vote calculated in accordance with rules STV47.4 or STV47.7.

42. Arrangements for counting of the votes

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

43. The count

- 43.1 The returning officer is to:
 - (a) count and record the number of:
 - (iii) ballot papers that have been returned; and
 - (iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
 - (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.
- 43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.
- 43.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

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

STV44.2 The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

STV44.3 Any text voting record:

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

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

STV44.4 The returning officer is to endorse the word “rejected” on any text voting record which under this rule is not to be counted.

STV44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by him or her under each of the sub- paragraphs (a) to (c) of rule STV44.3.

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 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 FPP44.2 and FPP44.3, be rejected and not counted.

FPP44.2 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.

FPP44.3 A ballot paper on which a vote is marked:

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

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

FPP44.4 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 FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

FPP44.5 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.

FPP44.6 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 FPP44.7 and FPP44.8, be rejected and not counted.

FPP44.7 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.

FPP44.8 A text voting record on which a vote is marked:

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

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

FPP44.9 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 FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

FPP44.10 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.

STV45. First stage

STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.

STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate and is to record those numbers.

STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

STV46. The quota

STV46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.

STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.

STV47. Transfer of votes

STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:

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

STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.

STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:

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

STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:

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

STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5 (a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:

- (a) a transfer value calculated as set out in rule STV47.4(b), or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

STV47.8 Each transfer of a surplus constitutes a stage in the count.

STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:

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

STV47.11 This rule does not apply at an election where there is only one vacancy.

STV48. Supplementary provisions on transfer

STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:

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

STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:

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

STV48.3 All ballot documents transferred under rule STV47 or STV49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

STV49. Exclusion of candidates

STV49.1 If:

- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule STV50, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).

STV49.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

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

- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV49.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
 - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
 - (d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.

- STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
 - (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

STV50. Filling of last vacancies

- STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.
- STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.
- STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

STV51. Order of election of candidates

- STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.
- STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.
- STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP51. Equality of votes

FPP51.1 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

FPP52. Declaration of result for contested elections

FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

FPP52.2 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 FPP44.5,
- (c) the number of rejected text voting records under each of the headings in rule FPP44.10,

available on request.

STV52. Declaration of result for contested elections

STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

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

STV52.2 The returning officer is to make:

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule STV44.1,
- (f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

53. Declaration of result for uncontested elections

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

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

- 54.1 On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:
- (a) the counted ballot papers, internet voting records, telephone voting records and text voting records,
 - (b) the ballot papers and text voting records endorsed with “rejected in part”,
 - (c) the rejected ballot papers and text voting records, and
 - (d) the statement of rejected ballot papers and the statement of rejected text voting records, and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- 54.2 The returning officer must not open the sealed packets of:
- (a) the disqualified documents, with the list of disqualified documents inside it,
 - (b) the list of spoilt ballot papers and the list of spoilt text message votes,
 - (c) the list of lost ballot documents, and
 - (d) the list of eligible voters,
- or access the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage.
- 54.3 The returning officer must endorse on each packet a description of:
- (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency, or class within a constituency, to which the election relates.

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

- 56.1 Where:
- (a) any voting documents are received by the returning officer after the close of the poll, or
 - (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or

- (c) any applications for replacement voting information are made too late to enable new voting information to be issued, the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chairman of the corporation.

57. Retention and public inspection of documents

- 57.1 The corporation is to retain the documents relating to an election that are forwarded to the chairman by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.
- 57.2 With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- 57.3 A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

- 58.1 The corporation may not allow:
 - (a) the inspection of, or the opening of any sealed packet containing –
 - (i) any rejected ballot papers, including ballot papers rejected in part,
 - (ii) any rejected text voting records, including text voting records rejected in part,
 - (iii) any disqualified documents, or the list of disqualified documents,
 - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
 - (v) the list of eligible voters, or
 - (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage, by any person without the consent of the board of directors of the corporation.
- 58.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- 58.3 The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –
 - (a) persons,
 - (b) time,
 - (c) place and mode of inspection,
 - (d) production or opening,

and the corporation must only make the documents available for inspection in

accordance with those terms and conditions.

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

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

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

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

- FPP59.1 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 him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- FPP59.2 Where a new election is ordered under rule FPP59.1, 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.
- FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.
- FPP59.4 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.
- FPP59.5 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.
- FPP59.6 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.
- FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate

STV59.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

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

STV59.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1(a).

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

- 62.1 No person may:

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

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

Publicity

63. Publicity about election by the corporation

- 63.1 The corporation may:

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

- 63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:
- (a) objective, balanced and fair,
 - (b) equivalent in size and content for all candidates,
 - (c) compiled and distributed in consultation with all of the candidates standing for election, and
 - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

64. Information about candidates for inclusion with voting information

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

- 64.2 The information must consist of:

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

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

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor.
- 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 Monitor may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election.
- 66.6 If Monitor 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 person or panel of persons nominated in accordance with rule 66.7 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 Monitor may prescribe rules of procedure for the determination of an application including costs.

PART 12: MISCELLANEOUS

67. **Secrecy**

67.1 The following persons:

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

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

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

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

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

68. **Prohibition of disclosure of vote**

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

69. **Disqualification**

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

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

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

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

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

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