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**UNIVERSITY HOSPITALS BIRMINGHAM<sup>1</sup>**  
**NHS FOUNDATION TRUST**  
**(A PUBLIC BENEFIT CORPORATION)**

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**CONSTITUTION<sup>2 3</sup>**

Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the 2006 Act.

References in this Constitution to legislation include all amendments, replacements, or re-enactments made.

References to legislation include all regulations, statutory guidance or directions.

References to sections and annexes are references to sections of and annexes to this Constitution, save where the context provides otherwise.

Headings are for ease of reference only and are not to affect interpretation.

**1. DEFINITIONS**

1.1 In this Constitution:

<b>"the 2012 Act</b>	means the Health and Social Care Act 2012
<b>"the 2006 Act"</b>	means the National Health Service Act 2006;
<b>"the 1977 Act"</b>	means the National Health Service Act 1977;
<b>"Annual General Meeting"</b>	means a meeting held in accordance with section

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<sup>1</sup> Name changed from UNIVERSITY HOSPITAL BIRMINGHAM NHS FOUNDATION TRUST by resolution of the Council of Governors dated 5 June 2008

<sup>2</sup> (As amended by resolutions of the Governors dated 11 November 2005, 13 March 2007, 27 June 2007, 25 September 2008, 17 June 2011, 24 September 2012, 16 November 2012 and resolutions of the Governors and the Directors dated 28 March, 22 and 23 May 2013, 13 and 27 November 2014, and 26 March 2018)

<sup>3</sup> (Reviewed by the Directors dated 19 February 2020 and reviewed and approved by the Governors 26 March and 21 May 2020. )

	6.11;
<b>"Board of Directors"</b>	means the Board of Directors as constituted in accordance with this Constitution;
<b>"Council of Governors"</b>	means the Council of Governors as constituted in accordance with this Constitution;
<b>"Chair"</b>	means the Chair of the Trust;
<b>"Chief Executive"</b>	means the Chief Executive of the Trust;
<b>"Director"</b>	means a Director of the Board of Directors;
<b>"Executive Director"</b>	means a Director appointed in accordance with section 8.8.8;
<b>"Financial Year"</b>	means:  the period beginning with the date on which the Trust is authorised and ending with the next 31 March; and  each successive period of twelve months beginning with 1 April;
<b>"Foundation Secretary"</b>	means the secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust;
<b>"Governor"</b>	means a Public Governor, Staff Governor or Stakeholder Governor;
<b>"Governor Vice-Chair"</b>	means a member of the Council of Governors elected by a majority of the Council of Governors present at a duly constituted meeting to chair meetings of the Council of Governors or the Nomination & Remuneration Committee for Non-Executive Directors or equivalent body which relate to matters which affect the interests of the Chair and/or Non-Executive Directors;
<b>"Member"</b>	means a member of the Trust;
<b>"NHSI"</b>	means the body corporate known as NHS Improvement, and referred to as "Monitor" as provided by Section 61 of the 2012 Act;
<b>"NHS Foundation Trust"</b>	means a foundation trust duly authorised in accordance with the 2006 Act;
<b>"NHS Organisation"</b>	means foundation trusts and other health service bodies as mentioned in section 65 of the 2006 Act;

<b>“Nomination &amp; Remuneration Committee for Non-Executive Directors”</b>	means a committee of the Council of Governors constituted in accordance with section 7.23.3;
<b>"Non-Executive Director"</b>	means a Director appointed in accordance with section 7.17.3a);
<b>“Panel”</b>	means a panel of persons appointed by NHSI to which a Governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing: <ul style="list-style-type: none"> <li>a. to act in accordance with its constitution; or</li> <li>b. to act in accordance with provision made by or under Chapter 5 of the 2006 Act.</li> </ul>
<b>"Public Governor"</b>	means a member of the Council of Governors elected by Members of a Public Constituency;
<b>“Significant Transaction”</b>	has the meaning given to it in Annex 5;
<b>"Staff Governor"</b>	means a member of the Council of Governors elected by the Members of the Staff Constituency;
<b>"Stakeholder Governor"</b>	means a member of the Council of Governors appointed under section 7.9, 7.10 or 7.11;
<b>"the Trust"</b>	means University Hospitals Birmingham NHS Foundation Trust;
<b>"Deputy Chair"</b>	means the Deputy Chair of the Trust.

## 2. NAME

The name of this Trust shall be "University Hospitals Birmingham NHS Foundation Trust".

## 3. PRINCIPAL PURPOSE

- 3.1 The Trust's principal purpose is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Trust may provide goods and services for any purposes related to:
- 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and

3.3.2 the promotion and protection of public health.

#### **4. OTHER PURPOSES**

- 4.1 The Trust may also carry any activities in addition to those mentioned in section 3 above for the purpose of making additional income available in order better to carry on its principal purpose.
- 4.2 The Trust may also form, acquire an interest in, invest in, participate in, and dispose of any interest in, joint ventures and partnerships, whether incorporated or not, carrying out any activity the Trust is authorised to carry out.
- 4.3 References to goods and services in section 3 include the provision of education, training, accommodation and similar facilities or activities.

#### **5. POWERS**

- 5.1 The Trust shall have all the powers of an NHS Foundation Trust set out in the 2006 Act, including the power to do anything which appears to the Trust to be necessary or desirable for the purposes of or in connection with its purposes.
- 5.2 In particular, and without limitation to the generality of section 5.1, the Trust may:
  - 5.2.1 acquire and dispose of property;
  - 5.2.2 enter into contracts;
  - 5.2.3 accept gifts of property (including property to be held on trust for the purposes of the NHS foundation trust or for any purposes relating to the health service); and
  - 5.2.4 employ staff.

#### **6. MEMBERS**

- 6.1 The Trust shall have 17 membership constituencies, namely:
  - 6.1.1 16 Public Constituencies; and
  - 6.1.2 a Staff Constituency.
- 6.2 Public Constituencies
  - 6.2.1 The Public Constituencies shall be the areas identified in Column 1 of Annex 1.

- 6.2.2 Members of the Trust who are Members of a Public Constituencies shall be individuals who are aged 16 or over and:
- a) who live in one of the constituency areas of the Trust; and
  - b) who are not eligible to become Members of the Staff Constituency or otherwise disqualified for membership under section 6.4; and
  - c) who have each made, or have been deemed to have made, an application for membership to the Trust.
- 6.2.3 The minimum number of Members required for each Public Constituency mentioned in column 1 of Annex 1 is to be the number given in the corresponding entry in column 3 of Annex 1.

### 6.3 Staff Constituency

- 6.3.1 The Staff Constituency is to be divided into 4 classes as follows:
- a) Medical and Dental staff;
  - b) Nursing and Midwifery staff;
  - c) Clinical Professions Allied to Healthcare staff; and
  - d) Corporate and Support Services staff.
- 6.3.2 The Members of the Medical and Dental staff class are individuals who are fully registered medical practitioners within the meaning of the Medical Act 1983 or dentists within the meaning of the Dentists Act 1984 and who hold a licence to practise and who are employed by or exercise functions for the Trust as doctors or dentists.
- 6.3.3 The Members of the Nursing and Midwifery staff class are individuals who hold a professional registration with the Nurses & Midwives Council or the British Association of Dental Nurses or are non-registered nursing/midwifery staff and who are employed by or exercise functions for the Trust as nurses or midwives.
- 6.3.4 The Members of the Clinical Professions Allied to Healthcare staff class are individuals who are registered clinical professionals who are employed by or exercise functions for the Trust as clinical staff other than those who are eligible for membership of the classes specified in sections 6.3.2 and 6.3.3. For the purposes of this clause, "registered clinical professional" shall mean an individual who is registered with or affiliated to, whether as a trainee or otherwise, a clinical professional body recognised by the Trust. A list of such bodies shall be maintained by the Foundation Secretary and may be amended from time to time with the approval of the Chair of the Trust.
- 6.3.5 The Members of the Corporate and Support Services staff class are any individuals who are employed by or exercise functions for the Trust and who do not come within sections 6.3.2 to 6.3.4 above.

6.3.6 Members of the Trust who are Members of the Staff Constituency are to be individuals:

- a) who are employed under a contract of employment by the Trust; or
- b) who are not so employed but who exercise functions for the purposes of the Trust; and
- c) who satisfy the minimum duration requirements set out in section 3(3) of Schedule 7 to the 2006 Act, that is to say:
  - (i) in the case of employees of the Trust who are employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months or who have been continuously employed by the Trust for at least 12 months; or
  - (ii) in the case of individuals falling within section 6.3.6(b) who has exercised functions for the purposes of the Trust continuously for at least 12 months; and
- d) in any such case who:
  - (i) have either made an application for membership to the Trust; or
  - (ii) have been invited by the Trust to become a Member of that constituency (as a Member of the appropriate staff class) and have not informed the Trust within 14 days of the issue of such invitation, that they do not wish to do so.

6.3.7 The minimum number of Members required for each staff class shall be:

- a) for the Medical and Dental staff class: 10;
- b) for the Nursing and Midwifery staff class: 10;
- c) for the Clinical Professions Allied to Healthcare staff class: 10; and
- d) for the Corporate and Support Services staff class: 10.

6.3.8 A person who is eligible to be a Member of the Staff Constituency may not become or continue as a Member of any constituency other than the Staff Constituency and may not become or continue as a Member of more than one staff class.

## 6.4 Disqualification for Membership

6.4.1 A person may not become or continue as a Member if:

- a) such person has:
  - (i) been dismissed from the employment of the Trust, any of its Subcontractors or any other NHS Organisation, save where such dismissal is on the grounds of ill-health, redundancy or determined to have been unfair by a competent tribunal;

- (ii) made a false application for membership;
- (iii) made a false statement in the process of being nominated, elected or appointed as a Governor; or

b) it is reasonably considered that his/her so doing would or would be likely to:

- (i) prejudice or impede the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions; or
- (ii) adversely affect public confidence in the goods or services provided by the Trust; or
- (iii) harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or
- (iv) otherwise bring the Trust into disrepute.

6.4.2 Examples (without limitation) of behaviour by individuals which may lead to disqualification under one or more of the grounds in paragraph 6.4.1b) of this Constitution will include making vexatious complaints and verbally or physically assaulting any staff, patient or visitor of the Trust in contravention of the Trust's policy of zero tolerance of such matters (or any replacement thereof)..

6.4.3 It is the responsibility of the Member to ensure their eligibility and not the Trust, but where the Trust is on notice that a Member may be disqualified from membership, the Foundation Secretary shall carry out all reasonable enquiries to establish if this is the case.

6.5 Where the Foundation Secretary considers that there may be reasons for concluding that a Member or an applicant for membership may be ineligible or be disqualified from membership, the Foundation Secretary shall advise that individual of those reasons in summary form and invite representations from the Member or applicant for membership within 28 days or such other reasonable period as the Foundation Secretary may in his/her absolute discretion determine. Any representations received shall be considered by the Foundation Secretary and he/she shall make a decision on the Member's or applicant's eligibility or disqualification as soon as reasonably practicable and shall give notice in writing of that decision to the Member or applicant within 14 days of the decision being made.

6.6 If no representations are received within the said period of 28 days or other reasonable period (if any) permitted under the preceding paragraph of this Constitution, the Foundation Secretary shall be entitled nonetheless to proceed and make a decision on the Member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from him.

6.7 Upon a decision being made under paragraphs 6.4.1, 6.5 or 6.6 of this Constitution that the Member is ineligible for or disqualified from membership the Member's name shall be removed from the Register of Members forthwith and he/she shall thereupon cease to be a Member.

6.8 The dispute resolution procedure referred to in section 17.2 shall apply in relation to any dispute arising under or in respect of any decision made pursuant to this section 6.

## 6.9 Termination of membership

- 6.9.1 A Member shall cease to be a Member if s/he resigns by notice in writing to the Foundation Secretary.
- 6.9.2 A Member shall automatically cease to be a Member in the event of their becoming ineligible for Membership of the constituency or class of the constituency of which they are a Member, although a person who is/has become eligible to be a Member of another constituency may continue as a Member of that other constituency or class of that constituency, provided that a Member may not become or continue as a Member of more than one constituency or class of a constituency.
- 6.9.3 The Trust may, at its discretion, terminate the membership of any Member of the Trust who fails to respond to three or more communications from the Trust requesting a response.

## 6.10 Voting at Governor elections

- 6.10.1 A person may not vote at an election for a Public Governor unless prior to the close of the poll that person has made a declaration in the specified form as set out at section 6.10.2 below, stating the particulars of their qualification to vote as a Member of the constituency and class for which an election is being held. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.
- 6.10.2 The form referred to in section 6.10.1 above is:

"I declare that I [name] of [address] am the addressee of this ballot paper and that I have not marked or returned any other voting paper in the election. I declare that I am qualified to vote in this election as a Member of the [ ] Public Constituency."

## 6.11 Annual General Meeting

- 6.11.1 The Trust shall hold an annual meeting of its members ('Annual General Meeting'). The Annual General Meeting shall be open to members of the public.
- 6.11.2 Further provisions about the Annual General Meeting are set out in Annex 7.

## 7. COUNCIL OF GOVERNORS

- 7.1 The Trust is to have a Council of Governors. It is to consist of Public Governors, Staff Governors and Stakeholder Governors.
- 7.2 A Governor shall be aged 16 or over.
- 7.3 The Council of Governors of the Trust shall include:
- 7.3.1 twenty Public Governors elected in accordance with section 7.7;
- 7.3.2 six Staff Governors elected in accordance with section 7.7, one to be elected by the Medical and Dental staff class, one by the Clinical Professions Allied to



Healthcare staff class, two by the Nursing and Midwifery staff class and two by the Corporate and Support staff class;

7.3.3 seven Stakeholder Governors as follows:

- a) three Local Authority Stakeholder Governors appointed in accordance with section 7.9;
- b) two University Stakeholder Governors appointed in accordance with section 7.10; and
- c) two other Stakeholder Governors appointed in accordance with section 7.11 by each organisation specified in section 7.6.

7.4 The number of Public Governors shall be more than half the total membership of the Council of Governors.

7.5 If there is a vacancy within the Council of Governors, the validity of the proceedings of the Council of Governors shall not be affected.

7.6 The organisations specified as partnership organisations that may appoint a member of the Council of Governors are:

7.6.1 Surgeon General's Department of the Ministry of Defence (One Governor); and

7.6.2 Birmingham Faith Leaders Group (One Governor).

7.7 From time to time an organisation may, in accordance with the procedure set out at section 18, be removed from or added to the list of organisations specified in section 7.6. Upon removal of such an organisation from the list specified in section 7.6, that organisation shall cease to have the power to appoint the number of Governors as specified in section 7.6 and upon the addition of an organisation to the list specified in section 7.6 the number of Governors which the additional organisation shall have the power to appoint shall be specified in section 7.6.

7.8 Election of Governors

7.8.1 Members of a Public Constituency or a staff class of the Staff Constituency may elect any of their number to be a Governor.

7.8.2 If contested, the election must be by secret ballot.

7.8.3 Rules for the all elections made in accordance with Regulations made under the 2006 Act and in force from time to time as to the conduct of elections for membership of the Council of Governors (the "Election Rules") are included at Annex 3. The Election Rules shall not be altered except in accordance with the procedure set out at section 18.

7.8.4 A total of 20 Public Governors shall be elected as follows:

- a) three Governors from each of the Solihull and Meriden, Rest of England and Wales Public Constituencies; and
- b) one Governor from each of the fourteen other Public Constituencies.

- 7.8.5 The following Staff Governors shall be elected:
- a) one Governor from the medical and dental staff class;
  - b) two Governors from the nursing and midwifery staff class;
  - c) one Governor from the clinical professions allied to healthcare staff class;  
and
  - d) two Governors from the corporate and support services staff class.

7.8.6 A person may not stand for election to the Council of Governors as a Public Governor unless, within 28 days preceding the close of nominations for the election that person has made a declaration in the specified form as set out at section 7.8.77 below of their qualification to vote as a Member of the Public Constituency for which the election is being held and that s/he is not prevented from being a member of the Council of Governors by section 7.15 (Disqualification). It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.

7.8.7 The form referred to in section 7.8.66 above is:

"I declare that I am eligible as a Member of the University Hospitals Birmingham NHS Foundation Trust as at the date of the notice of election and that I am a Member of the Public Constituency for which I am seeking election. I declare that I am not prevented from being a Member by section 7.15 (Disqualification) of the Constitution."

7.8.8 Section 6.10.1 (Voting at Governor Elections) applies.

## 7.9 Local Authority Governors

7.9.1 Birmingham City Council (acting by its leader) shall appoint one Local Authority Stakeholder Governor. Removal of this Local Authority Stakeholder Governor shall also be by Birmingham City Council (acting by its leader).

7.9.2 Solihull Metropolitan Borough Council (acting by its leader) shall appoint one Local Authority Stakeholder Governor. Removal of this Local Authority Stakeholder Governor shall also be by Solihull Metropolitan Borough Council (acting by its leader).

7.9.3 Lichfield Borough Council and Tamworth Borough Council (each acting by its leader) shall jointly appoint one Local Authority Stakeholder Governor. Removal of this Local Authority Stakeholder Governor shall also be by Lichfield Borough Council and Tamworth Borough Council (each acting by its leader).

## 7.10 University Governors

7.10.1 The University of Birmingham (acting by the Vice Chancellor) shall appoint one University Stakeholder Governor. Removal of this University Stakeholder Governor shall also be by the University of Birmingham (acting by the Vice Chancellor).

7.10.2 Birmingham City University (acting by the Vice Chancellor) shall appoint one University Stakeholder Governor. Removal of this University Stakeholder Governor shall also be by Birmingham City University (acting by the Vice Chancellor).

#### 7.11 Other Stakeholder Governors

The two other Stakeholder Governors are to be appointed by the organisations listed in section 7.6 (acting by the Chair or an individual of equivalent or similar status). Removal of Other Stakeholder Governors shall also be by the relevant organisation (acting by the Chair or an individual of equivalent status).

7.12 Any appointed Stakeholder Governor, who is unable to attend a Council of Governors meeting, can nominate a representative to attend and, if necessary, vote on their behalf. Advance notice of the substitution and apologies should be sent to the Foundation Secretary at least 24 hours ahead of the meeting.

#### 7.13 Terms of office

##### 7.13.1 Public Governors:

- a) may hold office for a period of up to three years;
- b) are eligible for re-election at the end of that period; and
- c) cease to hold office if they cease to be a Member for the relevant Public Constituency.

##### 7.13.2 Staff Governors:

- a) may hold office for a period of three years;
- b) are eligible for re-election at the end of that period; and
- c) cease to hold office if they cease to be a Member of the staff constituency.

7.13.3 Stakeholder Governors may hold office until they are replaced by the organisation which appointed them.

#### 7.14 Termination of tenure

7.14.1 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Foundation Secretary;

7.14.2 Public and Staff Governors' tenure of office shall be automatically terminated in the event of their becoming ineligible for Membership of the constituency or area/class of the constituency for which they hold their position;

7.14.3 A Governor may be removed from the Council of Governors for:

- a) failure to attend 60% or more of the duly called meetings of the Council of Governors in any continuous 12 months' period;
- b) making a false nomination declaration;

- c) acting in a manner prejudicial to the good conduct of the Council of Governors;
- d) acting in a manner prejudicial to the best interests of the Foundation Trust or bringing the Trust into disrepute; or
- e) falling under section 7.15.1.

7.14.4 Removal under section 7.14.3 shall be at the recommendation of the Chair or the recommendation of a Governor with the support of a further 30% of the Governors and in each case approved by a vote of at more than 50% of those Governors present either in person or by proxy at a properly constituted meeting of the Council of Governors.

## 7.15 Disqualification

7.15.1 A person may not become or continue as a Governor of the Trust if:

- a) that person is or would be disqualified from membership under section 6.4.1;
- b) that person has been removed as a Governor under section 7.14.3;
- c) in the case of a Staff Governor or Public Governor, that person ceases to be a Member of the constituency or class of the constituency s/he represents;
- d) in the case of a Stakeholder Governor, the organisation that appointed them withdraws its appointment of him/her;
- e) that person fails to complete and comply with a Disclosure and Barring Service (DBS) disclosure and failure to meet the requirements of the Fit & Proper Persons Regulations;
- f) that person has been adjudged bankrupt or his/her estate has been sequestrated and in either case that person has not been discharged;
- g) that person has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
- h) that person has within the preceding five years been convicted in the in the British Isles of any criminal offence, or convicted anywhere of an offence which would, if committed in England and Wales constitute a criminal offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him/her;
- i) that person has within the preceding two years been dismissed, from any paid employment of the Trust, any of its Subcontractors or any other NHS Organisation, save where such dismissal is on the grounds of redundancy or is determined to have been unfair by a competent tribunal;
- j) that person is a person whose tenure of office as the Chair or as a member or director of an NHS Organisation 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;

- k) that person is an executive or non-executive director of the Trust, or a governor, director, chair or chief executive of another NHS foundation trust;
  - l) that person is incapable by reason of mental disorder, illness or injury of managing and administering his/her property and affairs;
  - m) he/she is a registered sex offender pursuant to the Sex Offenders Act 2003;
  - n) that person has failed to abide by the Trust's Code of Conduct and accountability and any Code of Values and principles in such form as the Trust may publish from time to time; or
  - o) that person is or becomes a member of a Scrutiny Committee of any of the local authorities specified in paragraph 8.2.3 of this Constitution concerned with health matters.
- 7.15.2 Where a person has been elected or appointed to be a Governor and that person becomes disqualified for appointment under section 7.15.1, s/he shall notify the Foundation Secretary in writing of such disqualification.
- 7.15.3 If it comes to the notice of the Foundation Secretary, at the time of appointment of a Governor or later, that there may be reasons for concluding that a Governor is so disqualified, the Foundation Secretary shall advise that individual of those reasons in summary form and invite representations from the individual within 28 days or such other reasonable period as the Foundation Secretary may in his/her absolute discretion determine. Any representations received shall be considered by the Foundation Secretary and he/she shall make a decision on the individual's eligibility or disqualification as soon as reasonably practicable and shall give notice in writing of that decision to the individual within 14 days of the decision being made.
- 7.15.4 If no representations are received within the said period of 28 days or other reasonable period (if any) permitted under the preceding paragraph of this Constitution, the Foundation Secretary shall be entitled nonetheless to proceed and make a decision on the individual's eligibility or disqualification notwithstanding the absence of any such representations from him/her.
- 7.15.5 Upon a decision being made under paragraphs 7.15.1, 7.15.3 or 7.15.4 of this Constitution that an individual is ineligible for or disqualified from being a Governor, the Foundation Secretary shall immediately declare that the person in question is disqualified and notify him/her in writing to that effect.
- 7.15.6 Upon the issue of any such notification including failure to complete and comply with a Disclosure and Barring Service (DBS) disclosure and failure to meet the requirements of the Fit & Proper Persons Regulations under paragraph 7.15.1e that person's tenure of office, if any, shall be terminated and that person shall cease to act as a Governor.
- 7.15.7 If a member of the Council of Governors is disqualified for ineligibility to be a Governor under this section 7, all votes which that Governor participated in, before notification under section, 7.14.3 or 7.14.4 occurred, shall be valid.

7.15.8 The dispute resolution procedure referred to in section 17.2 shall apply in relation to any dispute arising under or in respect of any decisions made pursuant to this section 7.15.

## 7.16 Vacancies

7.16.1 In the event of an elected governorship seat falling vacant for any reason before the end of the term of office

a by-election shall be held unless an election is due within 9 months in which case the seat shall stand vacant until the following scheduled election.

7.16.2 Stakeholder Governors shall be replaced in accordance with sections 7.7 to 7.11.

## 7.17 Duties of the Council of Governors

7.17.1 The general duties of the Council of Governors are to:

- a) hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and
- b) represent the interests of the members of the trust as a whole and the interests of the public.

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

7.17.3 Specific roles and responsibilities of the Governors are:

- a) at a quorate meeting of the Council of Governors, to appoint or remove the Chair and the other non-executive directors (as provided in section 7.23.3). The removal of a non-executive director requires the approval of 75% of the Council of Governors;
- b) at a general meeting of the Council of Governors, to appoint one of the non-executive directors as the Deputy Chair;
- c) to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors (as provided in section 7.23.3);
- d) to appoint or remove the Trust's auditor; and
- e) to be presented with the annual accounts, any report of the auditor on them and the annual report;
- f) to approve (by a majority of the Council of Governors voting) an appointment of the Chief Executive;
- g) to give views of the Council of Governors to directors for the purposes of the preparation (by the directors) of the document containing information as to the Trust's forward planning in respect of each financial year to be given to NHSI;

- h) to consider the annual accounts, any report of the auditor on them and the annual report;
- i) to respond as appropriate when consulted by the Board of Directors and undertake other activities prescribed by the Board of Directors in accordance with this Constitution.

#### 7.18 Expenses

7.18.1 The Trust may pay travelling and other expenses to Governors at such rates as it decides. These shall be published in the annual report.

7.18.2 The remuneration and allowances for non-executive directors set by the Governors are also to be published in the annual report.

#### 7.19 Remuneration

Governors shall not receive remuneration.

#### 7.20 Meetings

7.20.1 The Foundation Secretary and the Chair shall have the power to call a meeting and shall be required to call one if 66% of the Council of Governors require it.

7.20.2 Failure to provide an agenda to those entitled to attend a meeting of the Council of Governors shall not invalidate that meeting provided that an agenda covering the principal items to be discussed has been sent to at least 66% of the Governors entitled to attend such a meeting.

7.20.3 Subject to section 7.20.4 below, the Chair of the Trust, or in their absence the Deputy Chair, or in their absence a non-executive director nominated by the Chair, shall preside at meetings of the Council of Governors and shall hold the role of proxy for any Governors who are absent from a meeting, provided a proxy form has been completed. The proxy shall vote either as they choose or as the absent Governor specifies dependent upon the relevant proxy form.

7.20.4 The Council of Governors shall appoint a Governor Vice-Chair, who shall be a Governor, for the purpose of enabling the proceedings of the Council of Governors when the Council of Governors is discussing issues related to the non-executive directors or Chair.

7.20.5 During a meeting of the Council of Governors, matters which affect the interests of the Chair and/or non-executive directors shall be chaired by the Governor Vice Chair.

7.20.6 Meetings of the Council of Governors are to be open to members of the public except for special reasons such as matters being confidential due to commercial, staff or patient considerations to be discussed.

7.20.7 The Council of Governors shall meet at least twice in each financial year and during these meetings shall:

- a) receive and consider the annual accounts, any report of the auditor on them, and the annual report; and

b) receive and consider the draft strategic, financial and capital plans prepared by the Board of Directors.

7.20.8 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.

7.20.9 The Council of Governors shall adopt Council Standing Orders covering the proceedings and business of its meetings (attached at Annex 6).

## 7.21 Conflicts of Interest of Governors

If a Governor has a registrable interest as set out in Annex 4, that Governor shall disclose the interest to the rest of the Council of Governors as soon as s/he is aware of it and follow the procedure outlined in Annex 4.

## 7.22 Quorum

7.22.1 The Council of Governors shall be deemed quorate if:

- a) at least one third of the total membership of the Council of Governors is present either in person or by proxy; and
- b) at least three Public Governors, one Staff Governor and one Stakeholder Governor are present in person.

7.22.2 At a quorate meeting of the Council of Governors where the Public Governors do not hold a numerical majority of all Governors present, a resolution of the Governors shall not pass if it is unanimously opposed by the Public Governors present either in person or by proxy.

## 7.23 Committees and sub-committees

7.23.1 The Council of Governors may appoint but not delegate its powers to committees consisting of its Members (and others) to assist it in carrying out its functions. A committee appointed under this section may appoint a sub-committee.

7.23.2 Any committees or sub-committees established in accordance with section 7.23.1 may appoint advisors who are not Governors to help them in their tasks.

7.23.3 A committee, chaired by the Chair, shall be established to assist the Council of Governors with the nomination, appointment and remuneration of the non-executive directors (the "Nomination and Remuneration Committee for Non-Executive Directors"). In the case of the nomination, appointment or remuneration of the Chair, the Nomination and Remuneration Committee for Non-Executive Directors shall be chaired by the Governor Vice-Chair.



## **8. BOARD OF DIRECTORS**

- 8.1 The Trust shall have a Board of Directors. It shall consist of executive and non-executive directors.
- 8.2 The Board of Directors shall consist of (subject always to the provisions of section 8.2.1b):
- 8.2.1 the following non-executive directors:
- a) the Chair; and
  - b) no fewer than five nor more than nine other non-executive directors; and
- 8.2.2 the following executive directors, provided that one is a registered medical practitioner (within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984) and another is a registered nurse or a registered midwife:
- a) a Chief Executive;
  - b) a Finance Director; and
  - c) a minimum of three or (subject to the provisions of section 8.2.1b)) more other executive directors.
- 8.2.3 The total number of non-executive directors (including the Chair) shall exceed by at least one but no more than three the total number of executive directors.
- 8.3 Only a Member of a Public Constituency or an individual exercising functions for the University of Birmingham is eligible for appointment as a non-executive director.
- 8.4 non-executive directors shall be appointed in accordance with a process to be established from time to time by the Nomination & Remuneration Committee for Non-Executive Directors. In carrying out the appointment process, the Nomination & Remuneration Committee for Non-Executive Directors shall have regard to best practice in corporate governance and shall take into account the level or range of skill and experience required in the Board of Directors.
- 8.5 The validity of any act of the Trust is not affected by any vacancy among the directors or by any defect in the appointment of a director.
- 8.6 Terms of Office
- 8.6.1 The Chair and the non-executive directors shall be appointed for a period of office in accordance with the terms and conditions of office decided by the Council of Governors at a general meeting.
- 8.6.2 The Chief Executive, Finance Director and other executive directors shall hold office for a period in accordance with the terms and conditions of office set out by the Executive Appointments and Remuneration Committee (as defined in section 8.8.5).

## 8.7 Disqualification

- 8.7.1 A person may not become a director of the Trust or shall be disqualified as a director of the Trust if that person:
- a) Is not considered to be a fit and proper person, that is, they do not satisfy all the requirements set out in paragraph (3) of Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;
  - b) in the case of a non-executive director, no longer satisfies section 8.3; or
  - c) is a person whose tenure of office as a Chair or as a member or director of an NHS organisation has been terminated on the grounds that their appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
- 8.7.2 Where a person has been appointed to be a director and that person becomes disqualified for appointment under section 8.7.1 or circumstances arise whereby that person may no longer be considered to meet all the requirements set out in paragraph (3) of Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, s/he shall notify the Foundation Secretary in writing of such disqualification or circumstances.
- 8.7.3 If it comes to the notice of the Foundation Secretary at the time of appointment of a director or later that a director is so disqualified, on the instructions of the Chair (or, if the director in question is the Chair, the Senior Independent Director), the Foundation Secretary shall immediately declare that the person in question is disqualified and notify him/her in writing to that effect.
- 8.7.4 If it comes to the notice of the Foundation Secretary, at the time of appointment of a director or later, that circumstances have arisen whereby that person may no longer be considered to meet all the requirements set out in paragraph (3) of Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, the Foundation Secretary shall inform the Chair (or, if the director in question is the Chair, the Senior Independent Director) who shall, acting reasonably, determine whether the director in question continues to meet the said requirements. If the Chair (or, if applicable, the Senior Independent Director) determines that the director in question does not or no longer meets the said requirements, on the instructions of the Chair (or, if applicable, the Senior Independent Director), the Foundation Secretary shall immediately declare that the person in question is disqualified and notify him/her in writing to that effect.
- 8.7.5 Upon the issue of any such notification, that person's tenure of office, if any, shall be terminated and that person shall cease to act as a director.
- 8.7.6 If a director is disqualified for ineligibility to be a director under this section 0, all votes which that director participated in, before notification under section 8.7.2 or section 8.7.3 or determination under section 8.7.4 that the said director is no longer considered to meet all the requirements set out in paragraph (3) of Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 occurred, shall be valid.

## 8.8 General duty, roles and responsibilities

- 8.8.1 The general duty of the Board of Directors and of each director individually, is to act with a view to promoting the success of the Trust so as to maximise the benefits for the members of the Trust as a whole and for the public.
- 8.8.2 The powers of the Trust are to be exercised by the Board of Directors on its behalf.
- 8.8.3 Any of those powers may be delegated to a committee of directors or to an executive director. A committee appointed under this section may appoint a sub-committee.
- 8.8.4 Any committees or sub-committee established in accordance with section 8.8.2 may appoint advisors who are not directors to help them in their tasks.
- 8.8.5 A committee consisting of the Chair and at least two non-executive directors shall be established to decide the remuneration and allowances and other terms and conditions of office of the executive directors (the "Executive Appointments and Remuneration Committee").
- 8.8.6 A committee of non-executive directors shall be established as an audit committee (the "Audit Committee") to perform such monitoring, reviewing and other functions as appropriate.
- 8.8.7 The non-executive directors shall appoint (subject to the approval of the Council of Governors) or remove the Chief Executive.
- 8.8.8 A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the executive directors.
- 8.8.9 The directors, having regard to the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to NHSI.
- 8.8.10 The directors shall present the annual accounts, any report of the auditor on them, and the annual report to the Council of Governors.
- 8.8.11 The functions of the Trust under sections 13.5 to 13.7 below are delegated to the Chief Executive as accounting officer.

## 8.9 Meetings of Directors

- 8.9.1 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.
- 8.9.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.
- 8.9.3 The Board of Directors shall adopt Standing Orders covering the proceedings and business of its meetings. These shall include the setting of a quorum for meetings, both of executive and non-executive directors. The proceedings shall

not however be invalidated by any vacancy of its membership, or defect in a director's appointment.

## 8.10 Conflicts of interest of directors

8.10.1 The duties that a director of the Trust has by virtue of being a director include in particular:

- a) 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; and
- b) 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.

8.10.2 The duty referred to in section 8.10.1a) is not infringed if:

- a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- b) the matter has been authorized in accordance with this Constitution.

8.10.3 The duty referred to in section 8.10.1b) is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

8.10.4 In section 8.10.1b), "third party" means a person other than:

- a) the Trust; or
- b) a person acting on its behalf.

8.10.5 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.

8.10.6 If a declaration under this section 8.10 proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

8.10.7 Any declaration required by this section 8.10 must be made before the Trust enters into the transaction or arrangement.

8.10.8 This section 8.10 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.

8.10.9 A director need not declare an interest:

- a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- b) if, or to the extent that, the directors are already aware of it;
- c) if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered:

- (i) by a meeting of the Board of Directors; or
- (ii) by a committee of the directors appointed for the purpose under this Constitution.

8.10.10 The Standing Orders for the Board of Directors shall make provision for the disclosure and registration of interests and arrangements for the conduct of business or consideration of any matter in respect of which an interest has been disclosed.

## **9. VOTING**

- 9.1 All decisions of Governors, directors and committees shall be by a simple majority of those present either in person or by proxy at a quorate meeting unless stated otherwise in this Constitution.
- 9.2 Subject to section 7.20.4 the Chair or in their absence the Deputy Chair shall hold the casting vote at meetings.

## **10. REGISTERS**

- 10.1 The Trust shall have:
  - 10.1.1 a register of Members for Public and Staff Members, showing, in respect of each Member, the constituency and class to which that Member belongs;
  - 10.1.2 a register of members of the Council of Governors;
  - 10.1.3 a register of directors;
  - 10.1.4 a register of interests of the directors; and
  - 10.1.5 a register of interests of the Governors.
- 10.2 The Foundation Secretary shall hold and administer or cause to be held and administered the registers set out in section 10.1 and shall be responsible for all additions and removals from the registers.

## **11. PUBLIC DOCUMENTS**

- 11.1 The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times:
  - 11.1.1 a copy of the current Constitution;
  - 11.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and
  - 11.1.3 a copy of the latest annual report.

- 11.2 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:
- 11.2.1 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;
  - 11.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 11.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 11.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
  - 11.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
  - 11.2.6 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 (NHSI's decision), 65KB (Secretary of State's response to NHSI'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;
  - 11.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
  - 11.2.8 a copy of any final report published under section 65I (administrator's final report);
  - 11.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
  - 11.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 11.3 Any person who requests it shall be provided with a copy or extract from any of the above documents.
- 11.4 The registers mentioned in section 10.1 are also to be made available for inspection by members of the public, except where a Member requests that his/her details should not be made available as prescribed by the Public Benefit Corporation (Register of Members) Regulations 2004.
- 11.5 So far as those registers mentioned in section 10.1 are required to be available:
- 11.5.1 they are to be available free of charge at all reasonable times;
  - 11.5.2 a person who requests it is to be provided with a copy of or extract from it.

- 11.6 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.

## **12. AUDITOR**

- 12.1 The Trust shall have an auditor appointed by the Council of Governors in accordance with section 7.17.3 and shall provide the auditor with every facility and all information which the auditor may reasonably require for the purposes of his/her functions under Part 2, Chapter 5 of the 2006 Act.
- 12.2 A person may only be appointed auditor if s/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.
- 12.3 The auditor shall carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHSI on standards, procedures and techniques to be adopted. The Audit Committee shall monitor the auditor's functions in accordance with section 8.8.6.

## **13. ACCOUNTS**

- 13.1 The Trust shall keep proper accounts and proper records in relation to the accounts.
- 13.2 NHSI may, with the approval of the Secretary of State, give directions to the Trust as to the content and form of its accounts.
- 13.3 The accounts are to be audited by the Trust's auditor.
- 13.4 The following documents shall be made available to the Comptroller and Auditor General for examination at their request:
- 13.4.1 the accounts;
  - 13.4.2 any records relating to them; and
  - 13.4.3 any report of the auditor on them.
- 13.5 The Trust (through its Chief Executive and accounting officer) shall prepare in respect of each financial year annual accounts in such form as NHSI may, with the approval of the Secretary of State, direct.
- 13.6 In preparing its annual accounts, the Trust shall comply with any directions given by NHSI, with the approval of the Secretary of State, as to:
- 13.6.1 the methods and principles according to which the accounts are to be prepared;
  - 13.6.2 the content and form of the accounts.

- 13.7 The Trust shall:
- 13.7.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
  - 13.7.2 once it has done so, send copies of those documents to NHSI.
- 13.8 The Trust shall hold at its headquarters copies of the annual accounts and auditor's report for inspection by the public.

#### **14. ANNUAL REPORTS, FORWARD PLANS AND NON-NHS WORK**

- 14.1 The Trust shall prepare annual reports and send them to NHSI.
- 14.2 The reports are to give:
- 14.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of any public constituency is representative of those eligible for such membership; and
  - 14.2.2 any other information NHSI requires.
- 14.3 The Trust shall comply with any decision NHSI makes as to:
- 14.3.1 the form of the reports;
  - 14.3.2 when the reports are to be sent;
  - 14.3.3 the periods to which the reports are to relate.
- 14.4 The Trust shall give information as to its forward planning in respect of each financial year to NHSI. This information shall be prepared by the Directors, who must have regard to the views of the Council of Governors (section 8.8.9 above).
- 14.5 Each forward plan must include information about:
- 14.5.1 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
  - 14.5.2 the income it expects to receive from doing so.
- 14.6 Where a forward plan contains a proposal that the Trust will carry on an activity of a kind mentioned in sub-section 14.5.1 the Council of Governors must:
- 14.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions; and
  - 14.6.2 notify the Board of Directors of its determination.



- 14.7 Any proposal to increase the proportion of the Trust's total income by 5% or more in any financial year attributable to activities other than the provision of goods and services for the purposes of health service in England may only be implemented if more than half of the members of the Council of Governors voting approving its implementation.
- 14.8 The annual report shall also be held at the Trust headquarters for public inspection and shall be made available via the Trust's website.
- 14.9 Presentation of the annual accounts and reports to the governors and members
- 14.9.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- a) the annual accounts;
  - b) any report of the auditor on them; and
  - c) the annual report.
- 14.9.2 The documents shall also be presented to the members of the Trust at the Annual General Meeting by at least one member of the Board of Directors in attendance.
- 14.9.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of section 14.9.1 with the Annual General Meeting.

## **15. INDEMNITY**

- 15.1 If proceedings for negligence, default, breach of duty or breach of trust are brought against a member of the Council of Governors or the Board of Directors, and that member has acted honestly, in good faith, reasonably and in execution or purported execution of their Board functions, or judgment is given in the Member's favour or the Member is acquitted, then that Member shall not have to meet out of their personal resources any personal, civil or criminal costs or liabilities which arise from such proceedings.
- 15.2 The Trust may purchase and maintain for a member of the Council of Governors or a Member of the Board of Directors insurance against any such costs or liabilities.

## **16. INSTRUMENTS ETC.**

- 16.1 Any 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.
- 16.2 The Trust shall have a seal which shall only be used by the authority of officers of the Trust designated by the Board of Directors.
- 16.3 Unless otherwise determined by the Board of Directors, any instrument to which the seal is affixed shall be signed by a director and the Foundation Secretary or by two directors.

- 16.4 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 have attested the seal.
- 16.5 A report of all sealings shall be made to the Board of Directors at least annually. This report is to contain details of the seal number, the description of the document and the date of the sealing.

## **17. DISPUTE RESOLUTION PROCEDURE & REFERRAL TO THE NHSI PANEL**

- 17.1 Following a majority vote by either the Council of Governors or the Board of Directors that a dispute exists, disputes between the Board of Directors and the Council of Governors shall be resolved in accordance with the dispute resolution procedure as set out in Annex 2 Part 1 as amended from time to time in accordance with the procedure set out at section 18.
- 17.2 Disputes relating to claims by Governors or Members in relation to disqualification shall be resolved in accordance with the dispute resolution procedure as set out in Annex 2 Part 2 as amended from time to time in accordance with the procedure set out at section 18.
- 17.3 A Governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

## **18. AMENDMENT OF THE CONSTITUTION**

- 18.1 The Trust may make amendments to this Constitution only if:
- 18.1.1 More than half of the members of the Council of Governors voting approve the amendments; and
  - 18.1.2 More than half of the members of the Board of Directors voting approve the amendments.
- 18.2 Amendments made under section 18.1 take effect as soon as the conditions in that section 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.
- 18.3 Where an amendment is made to this Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 18.3.1 at least one member of the Council of Governors must attend the next Annual General Meeting and present the amendment, and
  - 18.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 18.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

- 18.5 Amendments of the Constitution are to be notified to NHSI. For the avoidance of doubt, NHSI'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.
- 18.6 The Chair, 50% of the Directors or 50% of the Governors may recommend an amendment.

## **19. MERGERS ETC. AND SIGNIFICANT TRANSACTIONS**

- 19.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 19.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.
- 19.3 Where a merger, acquisition, separation or dissolution may also fall within the definition of a significant transaction, approval under section 19.1 shall be deemed also to constitute approval under section 19.2.

## **20. DISSOLUTION OF THE TRUST**

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

## ANNEX 1

### THE PUBLIC CONSTITUENCIES OF THE TRUST

1	2	3	4
Name of Public Constituency	Specified Area	Minimum No. of Members	Number of Governors
Lichfield, Northwest & Northeast	The electoral wards of Little Aston & Stonnall, Shenstone, Bourne Vale, Fazeley, Whittington & Streethay, Mease Valley, Curborough, Stowe, Chadsmead, Boley Park, St John's, Leomansley, Hammerwich with Wall, Highfield, Boney Hay & Central, Chase Terrace, Chasetown, Summerfield & All Saints, Brownhills, Aldridge North & Walsall Wood, Aldridge Central & South, Streetly, Newton, Great Barr with Yew Tree, Paddock, Pheasey Park Farm, Curdworth, Kingsbury, Water Orton, Coleshill North and Coleshill South	20	1
Tamworth	The electoral wards of Castle, Mercian, Spital, Amington, Bolehall, Glascote, Belgrave, Wilncote, Trinity and Stonydelph	20	1
Sutton Coldfield North	The electoral wards of Sutton Vesey, Sutton Four Oaks, Sutton Mere Green, Sutton Roughley, Sutton Trinity and Sutton Redicap	20	1
Sutton Coldfield South	The electoral wards of Sutton Wylde Green, Sutton Walmley & Minworth, Gravelly Hill, Pype Hayes & Castle Vale	20	1
Birmingham North	The electoral wards of Oscott, Kingstanding, Perry Common, Erdington, Perry Barr and Stockland Green	20	1
Birmingham West	The electoral wards of Edgbaston, North Edgbaston, Harborne, Ladywood, Soho & Jewellery Quarter, Newtown, Lozells, Aston, Birchfield, Handsworth, Holyhead and Handsworth Wood	20	1

Birmingham Central	The electoral wards of Nechells, Bordsley & Highgate, Bordesley Green and Small Heath	20	1
Birmingham Heartlands	The electoral wards of Heartlands, Alum Rock, Ward End, Bromford & Hodge Hill and Yardley West & Stechford	20	1
Birmingham East	The electoral wards of Garrets Green, Glebe Farm & Tile Cross, Shard End, Sheldon, Yardley East and Yardley South	20	1
Quinton, Halesowen & Southwest	The electoral wards of Quinton, Bartley Green, Old Warley, Abbey, Bristnall, Soho & Victoria, St Pauls, Smethwick, Hayley Green & Cradley South, Belle Vale, Halesowen South, Halesowen North, Blackheath, Rowley, Cradley Heath & Old Hill, Hagley East, Hagley West, Belbroughton & Romsley, Rubery North, Rubery South, Cofton, Catshill North, Catshill South, Marlbrook, Lickey Hill, Barnt Green & Norwood, Wythall East, Wythall West, Hollywood and Drakes Cross	20	1
Birmingham Southwest	The electoral wards of Weoley & Selly Oak, Bournbrook & Selly Park, Stirchley, Allens Cross and Bournville & Cotteridge	20	1
Birmingham Southeast	The electoral wards of Moseley, Balsall Heath West, Sparkbrook & Balsall Heath East, Sparkhill, Tyseley & Hay Mills and Acocks Green	20	1
Solihull & Meriden	The electoral wards of Meriden, Knowle, Bickenhill, Dorridge & Hockley Heath, Blythe, Shirley West, Shirley South, Shirley East, St Alphege, Silhill, Elmdon, Olton, Lyndon, Chelmsley Wood, Kingshurst & Fordbridge, Smith's Wood and Castle Bromwich	60	3
Birmingham Reservoirs	The electoral wards of Frankley Great Park, Northfield, Kings Norton North, Kings Norton South, Rubery & Rednal and Longbridge & West Heath	20	1

Birmingham South	The electoral wards of Hall Green North, Hall Green South, Brandwood & Kings Heath, Billesley, Druids Heath & Monyhull and Highter's Heath	20	1
<b>Rest of England &amp; Wales</b>	all electoral wards in England and Wales not included within the constituencies set out above.	60	3
			20

## ANNEX 2

### PART 1

#### DISPUTE RESOLUTION PROCEDURE

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

- 1.1 If a dispute between the Board of Directors and the Council of Governors (the "**Boards**") in relation to law, power or authority of one of the Boards arises, the matter is to be referred to the Chair of the Trust and, following such referral, the parties shall attempt to negotiate a settlement in good faith.
- 1.2 If any such dispute cannot be resolved in accordance with Condition 1.1, the dispute may, by agreement between the relevant parties, be referred to mediation in accordance with Condition 1.3.
- 1.3 The procedure for any such mediation shall be as follows:
  - 1.3.1 A neutral person, being an accredited mediator, (the "**Mediator**") shall be chosen by agreement between the Boards. Alternatively, either Board may within seven days from the date of the proposal to appoint a mediator, or within seven days of notice to any party that the chosen mediator is unable and unwilling to act, apply to the Centre for Dispute Resolution ("**CEDR**") to appoint a Mediator.
  - 1.3.2 The Boards shall within seven days of the appointment of the Mediator agree a timetable for the exchange of all relevant and necessary information and the procedure to be adopted for the mediation. If appropriate, the Boards may at any stage seek from CEDR guidance on a suitable procedure.
  - 1.3.3 All negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the Boards in any future proceedings.
  - 1.3.4 All information (whether oral or in the form of documents, tapes, computer disks etc.) produced for, during, or as a result of, the mediation will be without prejudice, privileged and not admissible as evidence or discoverable in any litigation or arbitration relating to the dispute. This does not apply to any information which would in any event have been admissible or discoverable in any such litigation or arbitration.
  - 1.3.5 The Mediator's reasonable fees and other expenses of the mediation will be borne by the Foundation Trust. The Foundation Trust will bear the reasonable costs and expenses of the participation in the mediation.
  - 1.3.6 If the Boards reach agreement on the resolution of the dispute that agreement shall be reduced to writing and shall be binding upon the relevant parties.
  - 1.3.7 For a period of ninety days from the date of the appointment of the Mediator, or such other period as the Boards may agree, neither Board may commence any proceedings in relation to the matters referred to the Mediator.
  - 1.3.8 If the Boards are unable to reach a settlement at the mediation and only if both Boards so request and the Mediator agrees, the Mediator will produce for the parties a non-binding recommendation on terms of settlement. This will not attempt to anticipate what a court might order but will set out what the Mediator

suggests are appropriate settlement terms in all of the circumstances. Such opinion shall be provided on a without prejudice basis.

- 1.3.9 Subject to Conditions 1.3.6 and 1.3.7, should either Board decide to pursue the dispute in a court, the Foundation Trust shall not be liable for any of the costs or expenses in relation to such proceedings.



## **ANNEX 2**

### **PART 2**

#### **DISPUTE RESOLUTION PROCEDURE**

##### **DISPUTES RELATING TO DISQUALIFICATION**

- 1.1 If a dispute arises in relation to a Member's right to membership of the Foundation Trust:
  - 1.1.1 the matter shall be referred to the Foundation Secretary who shall review the case and make a recommendation on settlement to the Deputy Chair who shall take account of but not be bound by such recommendation and who shall deliver an outcome to the parties; but
  - 1.1.2 if such dispute cannot be resolved in accordance with Condition 1.1.1 above, there is a right of appeal of the Member to the Council of Governors chaired by the Chair. The outcome reached by the Council of Governors shall be final.
- 1.2 If a dispute arises in relation to a Governor's right to governorship of the Foundation Trust:
  - 1.2.1 the matter shall be referred to the Foundation Secretary who shall review the case and make a recommendation on settlement to the Deputy Chair who shall take account of but not be bound by such recommendation and who shall deliver an outcome to the parties; but
  - 1.2.2 if such dispute cannot be resolved in accordance with Condition 1.1.1 above, there is a right of appeal of the Governor to the Council of Governors chaired by the Chair. The outcome reached by the Council of Governors shall be final.
- 1.3 Conditions 1.1.2 and 1.2.2 above do not affect the jurisdiction of any court which has or would otherwise have competent jurisdiction over such a matter.

## **ANNEX 3**

# **RULES FOR THE CONDUCT OF ELECTIONS TO THE COUNCIL OF GOVERNORS**

**(Adopted November 2014)**

## **UNIVERSITY HOSPITALS BIRMINGHAM NHS FOUNDATION TRUST**

### **Rules for the Conduct of Elections to the Council of Governors**

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## PART 1: INTERPRETATION

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### 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 (NHSI, 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;

(a) “*NHSI*” 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:

<b>Proceeding</b>	<b>Time</b>
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.



**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**

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### **8. Notice of election**

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

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

### **9. Nomination of candidates**

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

9.2 The returning officer:

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

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

### **10. Candidate's particulars**

10.1 The nomination form must state the candidate's:

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

**11. Declaration of interests**

11.1 The nomination form must state:

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

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

and if the candidate has no such interests, the paper must include a statement to that effect.

**12. Declaration of eligibility**

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

(a) that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,

(b) for a member of a public 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 constituencies)**

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

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

("declaration of identity")

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

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

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

*Action to be taken before the poll*

**22. List of eligible voters**

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

22.2 The list is to include, for each member:

(a) a postal address; and,

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

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

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

**23. Notice of poll**

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

(a) the name of the corporation,

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

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

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

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

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

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

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

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

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

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



- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

**24. Issue of voting information by returning officer**

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

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

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

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

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

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

for the purposes of the poll.

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

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

**25. Ballot paper envelope and covering envelope**

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

25.2 The covering envelope is to have:

- (a) the address for return of the ballot paper printed on it, and
- (b) pre-paid postage for return to that address.

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

- (a) the completed ID declaration form if required, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

**26. E-voting systems**

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

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

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

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

- (a) require a voter to:
  - (i) enter his or her voter ID number; and
  - (ii) where the election is for a public 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 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 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 constituencies)**

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

*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 constituencies)<sup>4</sup>**

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

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<sup>4</sup> It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

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

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

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

#### **40. Sealing of packets**

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

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of spoiled ballot papers and the list of spoiled text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

**41. Interpretation of Part 6**

41.1 In Part 6 of these rules:

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

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

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

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

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

*“non-transferable vote”* means a ballot document:

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

or

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

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

- (a) *“first preference”* means the figure “1” or any mark or word which clearly indicates a first (or only) preference,
- (b) *“next available preference”* means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
- (c) in this context, a *“second preference”* is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

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

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

*“stage of the count”* means:

- (a) the determination of the first preference vote of each candidate,

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

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

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

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

## **42. Arrangements for counting of the votes**

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

## **43. The count**

- 43.1 The returning officer is to:
  - (a) count and record the number of:
    - (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.

#### **44. Rejected ballot papers and rejected text voting records**

44.1 Any ballot paper:

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

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

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

44.3 Any text voting record:

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

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

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

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

#### **45. First stage**

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

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

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

documents.

**46. The quota**

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

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

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

**47. Transfer of votes**

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

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

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

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

47.4 The vote on each ballot document transferred under rule 47.3 shall be at a value (“the transfer value”) which:

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

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

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

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

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

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

whichever is the less.

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

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

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

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

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

#### **48. Supplementary provisions on transfer**

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

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

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

- (a) record the total value of the votes transferred to each candidate,
- (b) add that value to the previous total of votes recorded for each candidate and record the new total,

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

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

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

#### **49. Exclusion of candidates**

49.1 If:

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

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

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

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

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

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

49.5 If, subject to rule 50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been



transferred to any candidate excluded under rule 49.1 into sub- parcels according to their transfer value.

- 49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- 49.7 The vote on each transferable ballot document transferred under rule 49.6 shall be at the value at which that vote was received by the candidate excluded under rule 49.1.
- 49.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- 49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule 49.1.
- 49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
    - (i) the total value of votes, or
    - (ii) the total transfer value of votes transferred to each candidate,
  - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
  - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
  - (d) compare:
    - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
    - (ii) the recorded total of valid first preference votes.
- 49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules 47.5 to 47.10 and rule 48.
- 49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- 49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of

votes and the candidate with the lowest number of votes at that stage shall be excluded, and

- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

**50. Filling of last vacancies**

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

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

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

**51. Order of election of candidates**

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

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

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

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

## **PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS**

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### **52. Declaration of result for contested elections**

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

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

52.2 The returning officer is to make:

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

available on request.

### **53. Declaration of result for uncontested elections**

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

- (a) declare the candidate or candidates remaining validly nominated to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected to the Chair 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**

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### **54. Sealing up of documents relating to the poll**

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

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

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

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

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

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

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

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

### **55. Delivery of documents**

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

### **56. Forwarding of documents received after close of the poll**

56.1 Where:

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

- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued,

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

## **57. Retention and public inspection of documents**

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

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

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

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

58.1 The corporation may not allow:

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

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

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

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

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

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

58.4

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

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

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

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

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**PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

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

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

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

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

## **PART 10: ELECTION EXPENSES AND PUBLICITY**

### *Election expenses*

#### **60. Election expenses**

60.1 Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application made to NHSI 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 their or her own services voluntarily, on their 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 NHSI for the purpose of seeking a referral to the independent election arbitration panel (IEAP).
- 66.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 66.3 An application may only be made to NHSI by:
- (a) a person who voted at the election or who claimed to have had the right to vote, or
  - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 66.4 The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
  - (b) be in such a form as the independent panel may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. NHSI will refer the application to the independent election arbitration panel appointed by NHSI.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 NHSI shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

**67. Secrecy**

67.1 The following persons:

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

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

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

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

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

**68. Prohibition of disclosure of vote**

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

**69. Disqualification**

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

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

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

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

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

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

## ANNEX 4

### REGISTER OF GOVERNORS INTERESTS

Pursuant to Section 20 of Schedule 7 of the National Health Service Act 2006, a register of Governors' interests must be kept by each NHS Foundation Trust.

#### A. Declaration of Interests

1. All existing governors should declare relevant and material interests. Any governors appointed or elected subsequently should do so on appointment or election.
2. Interests which should be regarded as "relevant and material" and which, for the guidance of doubt, should be included in the register, are:
  - (a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
  - (b) Ownership, part-ownership or directorship of private companies, business or consultancies likely or possibly seeking to do business with the NHS.
  - (c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
  - (d) A position of Authority in a charity or voluntary organisation in the field of health and social care.
  - (e) Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
  - (f) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the NHS Foundation Trust, including but not limited to, lenders or banks.
3. If governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Foundation Secretary.
4. At the time the interests are declared, they should be recorded in the Council of Governors meeting minutes. Any changes in interests should be officially declared at the next Council of Governors meeting as appropriate following the change occurring. It is the obligation of the Governor to inform the Foundation Secretary in writing within 7 days of becoming aware of the existence of a relevant or material interest. The Foundation Secretary will amend the Register upon receipt within 3 working days.
5. During the course of a Council of Governors meeting, if a conflict of interest is established, the Governors concerned are not to be counted as participating in that meeting, or part of a meeting, for quorum or voting purposes. For the avoidance of doubt, this includes voting on such an issue where a conflict is established. If the majority of the Governors present at that meeting, for which purpose the Governors concerned are not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes, so resolve, the Governors concerned should withdraw from the meeting and play no part in the relevant discussion or decision. If there is a dispute as to whether a conflict of interest does exist, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any director other than the Chair is to be final and conclusive. If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Governors

present at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

6. There is no requirement for the interests of Governors' spouses or partners to be declared.

**B. Register of Interests**

1. The details of Governors interests recorded in the Register will be kept up to date by means of a quarterly review of the Register by the Foundation Secretary during which any changes of interests declared during the preceding quarter will be incorporated.
2. Subject to contrary regulations being passed, the Register will be available for inspection by the public free of charge. The Chair will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the Register must be provided to members of the NHS Foundation Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the Register.

## ANNEX 5

### Meaning of Significant Transaction

1. A Significant Transaction is any transaction that meets any one of the following criteria:
  - 1.1 The gross assets that are the subject of the transaction are greater than 25% of the gross assets of the Trust;
  - 1.2 The income attributable to:
    - 1.2.1 the assets; or
    - 1.2.2 the contractassociated with the transaction is greater than 25% of the income of the Trust;
  - 1.3 the gross capital of the company or business being acquired is greater than 25% of the total capital of the Trust following completion; or
  - 1.4 the effect on the total capital of the Trust resulting from the transaction is a reduction or increase of more than 25% of the total capital of the Trust.
2. In this Annex:
  - 2.1 gross assets means the total of fixed assets and current assets;
  - 2.2 gross capital equals the market value of the target's shares and debt securities plus the excess of current liabilities over current assets; and
  - 2.3 total capital of the Trust is equal to taxpayers' equity.
3. For the purposes of paragraph 1 above:
  - 3.1 for acquisitions and divestments of assets or businesses, data from the last year's audited accounts should be used; and
  - 3.2 for capital investments, the investment may be made over a number of years, with revenue attributable to the investment potentially only being achieved in future years. For the asset ratio, estimated capital spend will be compared with the audited asset values, and for income ratio the full year impact of projected revenue from the investment will be compared with projected Trust revenue in that year.
  - 3.3 In addition:
    - 3.3.1 for any other transaction types or where there has been a material or significant transaction since the date of the last audited accounts, the data used will be considered on a case by case basis;
    - 3.3.2 in the case of an acquisition where there has been a material change in the financial position of either the Trust or the business being acquired since the last accounts date, and the ratio at that time is not considered representative of the

contribution of the acquired business to the Trust, the Board of Directors may, following discussions with the Council of Governors, choose to recalculate the ratios on a pro-forma basis using current or future year data; and

- 3.3.3 in all cases the Board of Directors may, following discussions with the Council of Governors, choose to recalculate the ratios using data from future years where they reasonably consider this to be an appropriate measure of the relative size of the transaction.



## ANNEX 6

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

#### 1 INTERPRETATION

1.1 Save as permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of these Council Standing Orders (on which he/she should be advised by the Foundation Secretary).

1.2 Any expression to which a meaning is given in the NHS Acts or in the Regulations or Orders made under the NHS Acts shall have the same meaning in these Council Standing Orders and in addition:

'TRUST' means University Hospitals Birmingham NHS Foundation Trust;

BOARD of DIRECTORS means the board of executive and non-executive directors as constituted in accordance with the Trust's Constitution;

COUNCIL of GOVERNORS means the Council of Governors as constituted in accordance with the Trust's Constitution;

'CHAIR' is the Chair of the Board of Directors and the Council of Governors;

'CHIEF EXECUTIVE' shall mean the Chief Executive of the Trust;

'COMMITTEE' shall mean a committee of the Council of Governors;

'COMMITTEE MEMBERS' shall be persons formally appointed to sit on or to chair specific committees;

'DIRECTOR' means a member of the Board of Directors;

'GOVERNOR' means a Public Governor, Staff Governor or Stakeholder Governor;

'GOVERNOR VICE-CHAIR' means a Governor appointed as Governor Vice-Chair in accordance with section 17.9.4 of the Constitution;

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

'OFFICER' means an employee of the Trust;

'FOUNDATION SECRETARY' means the person appointed by the Trust to act independently of the Board and monitor the Trust's compliance with the law, Standing Orders and best practice in respect of Corporate Governance;

'CSOs' means these Council Standing Orders; and

'DEPUTY CHAIR' means the non-executive director appointed to take on the Chair's duties if the Chair is absent.

## **2 MEETINGS OF THE COUNCIL OF GOVERNORS**

### **2.1 Admission of the Public and the Press**

2.1.1 The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors but shall be required to withdraw upon the Council of Governors resolving as follows:

'That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest'.

2.1.2 The Chair shall give such directions as they think fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Council of Governors' business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Council of Governors resolving as follows:

'That in the interest of public order the meeting adjourn for up to 6 hours to enable the Council of Governors to complete business without the presence of the public'

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

### **2.2 Calling Meetings**

2.2.1 Ordinary meetings of the Council of Governors shall be held at such times and places as the Council may determine.

2.2.2 The Chair may call a meeting of the Council of Governors at any time. If the Chair refuses to call a meeting of the Council of Governors after a requisition for that purpose, signed by at least 66% of the Governors entitled to attend such a meeting, has been presented to him/her, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to him/her, at the Trust's Headquarters, such governors may forthwith call a meeting.

### **2.3 Notice of Meetings**

2.3.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it shall be delivered to every governor, or sent by post to the usual place of residence of such governor, so as to be available to him/her at least five clear days before the meeting.

2.3.2 Lack of service of the notice on any governor shall not affect the validity of a meeting.

- 2.3.3 In the case of a meeting called by Governors in default of the Chair, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the notice.
- 2.3.4 Failure to service such a notice on more than 66% of the Governors entitled to attend such a meeting will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

## **2.4 Setting the Agenda**

- 2.4.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. Such matters may be identified within these Council Standing Orders or following subsequent resolution shall be listed in an Appendix to these Council Standing Orders.
- 2.4.2 A Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 10 clear days before the meeting, subject to Council Standing Order 2.9. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.

## **2.5 Presiding**

- 2.5.1 At any meeting of the Council of Governors, the Chair, if present, shall preside, but if there be no such Chair or if at any meeting s/he shall not be present within fifteen minutes after the time appointed for holding the same, or shall be unwilling to take the chair, the Vice-Chair, if there is one and he/she is present, shall preside. If the Chair and the Vice-Chair are absent such other non-executive director as shall be available shall preside.
- 2.5.2 If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Vice-Chair, if present, shall preside. If the Chair and the Vice-Chair are absent, or disqualified from participating, such Governor as the Governors present shall choose shall preside.

## **2.6 Notices of Motion**

A Governor of the Trust desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Council Standing Order 2.11.

## **2.7 Withdrawal of Motion or Amendments**

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

## **2.8 Motion to Rescind a Resolution**

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Governor(s) who gives it and also the signature of three other Governors. When any such motion has been disposed of by the Council of Governors,

it shall not be competent for any Governor other than the Chair to propose a motion to the same effect within six months; however the Chair may do so if he/she considers it appropriate.

## **2.9 Motions**

- 2.9.1 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 2.9.2 When a motion is under discussion or immediately prior to discussion it shall be open to a governor to move:
- a) An amendment to the motion;
  - b) The adjournment of the discussion or the meeting;
  - c) That the meeting proceed to the next business; (\*)
  - d) The appointment of an ad hoc committee to deal with a specific item of business; or
  - e) That the motion be now put. (\*)
- 2.9.3 In the case of sub-paragraphs denoted by (\*) above (to ensure objectivity) motions may only be put by a governor who has not previously taken part in the debate.
- 2.9.4 No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

## **2.10 Chair's Ruling**

Statements of governors made at all meetings of the Trust shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevance, regularity and any other matters shall be observed at the meeting.

## **2.11 Voting**

- 2.11.1 Every motion at a meeting shall be determined by a simple majority of the votes of the governors and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.
- 2.11.2 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 2.11.3 If at least one-third of the Governors present so request the voting (other than by paper ballot) on any question may be recorded to show how each governor present voted or abstained.
- 2.11.4 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 2.11.5 A Governor may grant to the Chair or another Governor a 'Proxy' or their power to vote in their absence at a Council of Governors meeting.

- a) The proxy must be in writing and signed;
- b) The proxy must be lodged with the Director of Corporate Affairs at Trust Headquarters no later than 24 hours before the meeting. No proxies will be allowed after that deadline. Proxies will be date and time stamped on receipt;
- c) Proxies will be revoked by:
  - (i) The filing of a subsequent proxy (before the above time limit has passed) in which case the later proxy revokes the former;
  - (ii) The resignation or death of a Governor providing this is known before the above time limit; or
  - (iii) The attendance of the Governor in person at the meeting.

## **2.12 Minutes**

- 2.12.1 The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting.
- 2.12.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 2.12.3 The Chair shall sign a final and accurate set of the minutes and for those minutes where it was agreed that amendments needed to be made to them the Chair's initials will be placed next to each amendment.
- 2.12.4 Minutes shall be circulated in accordance with governors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public.

## **2.13 Suspension of Council Standing Orders**

- 2.13.1 Except where this would contravene any statutory provision, any one or more of the Council Standing Orders may be suspended at any meeting of the Council of Governors, provided that at least two-thirds of the Council are present and that a majority of those present vote in favour of suspension.
- 2.13.2 A decision to suspend Council Standing Orders shall be recorded in the minutes of the meeting.
- 2.13.3 A separate record of matters discussed during the suspension of Council Standing Orders shall be made and shall be available to the Governors.
- 2.13.4 No formal business may be transacted while Council Standing Orders are suspended.

## **2.14 Record of Attendance**

The names of the Governors present at the meeting shall be recorded in the minutes.

## **2.15 Quorum**

- 2.15.1 No business shall be transacted at a meeting of the Council of Governors unless a quorum as set out in the Trust's Constitution is present when the meeting proceeds to business.
- 2.15.2 If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Council Standing Order 3) he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

## **2.16 Written resolutions**

- 2.16.1 If all Governors entitled to attend and vote at a meeting of the Council of Governors instead of meeting, sign and return a copy of a resolution then that resolution will be deemed to have been passed notwithstanding that the Governors have not gathered in one place.
- 2.16.2 The effective date of the resolution is the date that the last Governor signs and returns the resolution.
- 2.16.3 Once the resolution is passed, a copy certified by the Director of Corporate Affairs must be recorded in the minute book.

## **2.17 Appointment of Committees of the Council of Governors**

- 2.17.1 The Council of Governors may appoint but not delegate its powers to committees consisting of its Members (and others) to assist it in carrying out its function. A committee appointed under this section may appoint a sub-committee.
- 2.17.2 Any committees or sub-committees established in accordance with paragraph 2.17.1 may appoint outside advisers, where appropriate, to help them in their tasks.
- 2.17.3 A committee, chaired by the Chair, shall be established to assist the Council of Governors with the nomination, appointment and remuneration of the Non-Executive Directors (the '**Nomination & Remuneration Committee for Non-Executive Directors**'). In the case of the nomination, appointment or remuneration of the Chair, the Nomination Committee for Non-Executive Directors shall be chaired by the Governor Vice Chair.

## **2.18 Standing Orders Relating to all Committees/Sub-Committees of the Council of Governors**

- 2.18.1 These Council Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Council of Governors.
- 2.18.2 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such as the Council of Governors shall

decide. Such terms of reference shall have effect as if incorporated into the Council Standing Orders.

- 2.18.3 The Council of Governors shall approve the appointments to each of the committees which it has formally constituted. Where the Council of Governors determines that persons, who are not Governors shall be appointed as advisors to a committee, the terms of such appointment shall be determined by the Council of Governors subject to the payment of travelling and other allowances being in accordance with such sum as may be determined by the Council of Governors and agreed with the Foundation Secretary.

## **2.19 Confidentiality**

- 2.19.1 A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter.
- 2.19.2 A Governor of the Trust or a member of a committee shall not disclose any matter reported to the Council of Governors or otherwise dealt with by the committee, notwithstanding that either matter has been reported or action has been concluded, if the Council or committee shall resolve that it is confidential.

## **3 STANDARDS OF BUSINESS CONDUCT**

### **3.1 Interests of Governors in Contracts**

- 3.1.1 If it comes to the knowledge of a Governor of the Trust that a contract in which s/he has any pecuniary interest not being a contract to which s/he is him/herself a party, has been, or is proposed to be, entered into by the Trust s/he shall, at once, give notice in writing to the Foundation Secretary of the fact that s/he is interested therein. In the case of married person or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 3.1.2 A Governor must also declare to the Foundation Secretary any other employment or business or other relationship of his, or of a cohabiting partner or other close relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 3.1.3 The Trust requires that interests, employment or relationships so declared by Governors to be entered in a register of interest of Governors.

### **3.2 Canvassing of, and Recommendations by, Governors in Relation to Appointments**

- 3.2.1 Canvassing of Governors of the Trust or members of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of these Council Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 3.2.2 A Governor of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Council Standing Order shall not preclude a Governor

from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

- 3.2.3 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

### **3.3 Relatives of Governors**

- 3.3.1 Candidates for any staff appointment shall when making application disclose in writing whether they are related to any director, governor or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
- 3.3.2 The Governors of the Trust shall disclose to the Foundation Secretary any relationship with a candidate of whose candidature that Governor is aware. It shall be the duty of the Foundation Secretary to report to the Board of Directors any such disclosure made.
- 3.3.3 On appointment, Governors should disclose to the Trust whether they are related to any other director or governor or holder of any office under the Trust.
- 3.3.4 Where the relationship of an officer or another director or governor to a governor of the Trust is disclosed, the Council Standing Order headed 'Disability of governors in proceedings on account of pecuniary interest' (CSO 4) shall apply.

## **4 DISABILITY OF GOVERNORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST**

- 4.1 Subject to the following provisions of this Council Standing Order, if a Governor of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at the meeting of the Trust at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 4.2 The Chair may exclude a Governor from any meeting of the Trust while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.
- 4.3 Any remuneration, compensation or allowances payable to a governor by virtue of paragraph 9 of Schedule 2 to the NHS & Civil Contingency Act 1990 shall not be treated as a pecuniary interest for the purpose of this Council Standing Order.
- 4.4 For the purpose of this Council Standing Order the Chair or Governor shall be treated, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 4.4.1 s/he, 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



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

and in the case of married persons living together, or persons living together as partners, the interest of one partner shall, if known to the other, be deemed for the purposes of this Council Standing Order to be also an interest of the other.

4.5 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

4.5.1 of their membership of a company or other body, if s/he has no beneficial interest in any securities of that company or other body; or

4.5.2 of an interest in any company, body or person with which s/he is connected as mentioned in CSO 3 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

4.6 Where a Governor:

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

4.6.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and

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

this Council 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.

4.7 This Council Standing Order applies to a committee or sub-committee of the Council of Governors as it applies to the Trust and applies to any member of any such committee or sub-committee (whether or not he is also a Governor of the Trust) as it applies to a Governor of the Trust.

## ANNEX 7

### PROVISIONS ABOUT THE ANNUAL MEMBERS' MEETING

#### 1 General

- 1.1 The Trust shall hold an annual general meeting of all members and Governors in each period of 8 months beginning with the day following the end of each financial year.
- 1.2 An annual general meeting shall be called by at least twenty-one clear days' notice. The notice shall specify the time and place of the meeting and shall be given to all members and to the Governors, directors and auditors of the Trust.
- 1.3 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.
- 1.4 Annual general meetings are to be open to members of the public.

#### 2 Proceedings at Annual General Meetings

- 2.1 The Chair of the Trust shall preside as Chair at every Annual General Meeting, but if there be no such Chair or if at any meeting he shall not be present within fifteen minutes after the time appointed for holding the same, or shall be unwilling to take the chair, the Deputy Chair, if there is one and he/she is present, shall preside. If the Chair and Deputy Chair are absent, a non-executive director nominated by the Chair, shall preside.
- 2.2 The business to be transacted at each Annual General Meeting shall include the presentation, by the directors to the members, of the annual accounts, any report of the auditor on them, and the annual report.
- 2.3 The quorum for an Annual General Meeting shall be five members personally present (not by proxy).
- 2.4 No business other than the appointment of the Chair of the meeting is to be transacted at an Annual General Meeting unless a quorum as set out in 2.3 above is present when the meeting proceeds to business.
- 2.5 If within half an hour from the time appointed for the holding of an Annual General Meeting a quorum is not present, the meeting shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, or at such other place as the Chair of the meeting may determine, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting the members present shall be a quorum.
- 2.6 The Chair may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, members shall not be entitled to any notice of an adjournment, or of the business to be transacted at an adjourned meeting.

### **3 Attendance and Speaking at Annual General Meetings**

- 3.1 A person is able to exercise the right to speak at an annual general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- 3.2 Only members of the Council of Governors are able to exercise the right to vote at an annual general meeting when:
- 3.2.1 that member is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
  - 3.2.2 that member's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- 3.3 The Chair may make whatever arrangements they consider appropriate to enable those attending an annual general meeting to exercise their rights to speak or vote at it.
- 3.4 In determining attendance at an annual general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.
- 3.5 Two or more members who are not in the same place as each other attend an annual general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

### **4 Voting**

- 4.1 A resolution put to the vote of an annual general meeting shall be decided on a show of hands unless a poll is duly demanded in accordance with paragraph 4.5 below.
- 4.2 Proxy votes shall not be permitted.
- 4.3 No objection may be raised to the qualification of any person voting at an annual members' meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- 4.4 Any such objection must be referred to the Chair of the meeting, whose decision is final.
- 4.5 A poll on a resolution may be demanded:
- 4.5.1 in advance of the annual general meeting where it is to be put to the vote, or
  - 4.5.2 at an annual general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- 4.6 A poll may be demanded by:
- 4.6.1 the Chair of the meeting;
  - 4.6.2 the directors;

4.6.3 the governors; or

4.6.4 two or more persons having the right to vote on the resolution.

4.7 A demand for a poll may be withdrawn if:

4.7.1 the poll has not yet been taken; and

4.7.2 the Chair of the meeting consents to the withdrawal.

4.8 Polls must be taken immediately and in such manner as the Chair of the meeting directs.

## **5 Amendments to resolutions**

5.1 A resolution to be proposed at an annual general meeting may be amended if:

5.1.1 the Chair of the meeting proposes the amendment at the annual general meeting at which the resolution is to be proposed, and

5.1.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

5.2 If the Chair of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the Chair's error does not invalidate the vote on that resolution.

## **6 Attendance and speaking by Directors and Governors**

6.1 Directors and Governors may attend and speak at an annual general meeting, whether or not they are members.

6.2 The Chair of the meeting may permit other persons who are not members of the Trust to attend and speak at an annual general meeting.