
Constitution of
The Christie NHS Foundation Trust
(A public benefit corporation)



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1. Interpretation and definitions

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

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

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

the 2006 Act is the National Health Service Act 2006.

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

the accounting officer means the person who from time to time discharges the functions specified in paragraph 25 of Schedule 7 to the 2006 Act. For the trust it shall be the chief executive.

Annual Members Meeting is defined in paragraph 10 of the constitution.

appointed governors means those governors appointed by the appointing organisations.

appointing organisations means those organisations named in this constitution who are entitled to appoint governors.

constitution means this constitution and all annexes to it.

director means a member of the Board of Directors.

elected governors means those governors elected by the public constituencies and the classes of the staff constituency.

financial year means:

- (a) the period beginning with the date on which the foundation trust is authorised and ending with the next 31 March; and
- (b) each successive period of twelve months beginning with 1 April.

lead governor means the governor appointed by the Council of Governors to fulfil the role described at paragraph 25 of Annex 5 below.

local authority governor means a governor appointed by one or more local authorities whose area includes the whole or part of an area forming the area of a public constituency of the foundation trust.

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

partner means, in relation to another person, a member of the same household living together as a family unit.

partnership governor means a governor appointed by a partnership organisation.

public governor means a governor elected by the members of one of the public constituencies.

secretary means the secretary of the foundation trust or any other person appointed to perform the duties of the secretary, including a joint, assistant or deputy secretary.

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

university governor means a governor appointed by the University of Manchester which provides a medical school to a hospital of the foundation trust.

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

2. Name

The name of the foundation trust is The Christie NHS Foundation Trust (the foundation trust).

3. Principal purpose

3.1 The principal purpose of the foundation trust is the provision of goods and services for the purposes of the health service in England.

3.2 The foundation trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

3.3 The foundation trust may provide goods and services for any purposes related to:

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

3.3.2 the promotion and protection of public health.

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

4. Powers

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

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

4.3 Any of these powers may be delegated to a committee of directors or to an executive director.

5. Membership and constituencies

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

- 5.1 a public constituency; and
- 5.2 a staff constituency.

Further provisions as to members meetings are set out in Annex 9.

6. Application for membership

An individual who is eligible to become a member of the foundation trust may do so on application to the foundation trust.

7. Public constituency

- 7.1 An individual who lives in an area specified in annex 1 as an area for a public constituency may become or continue as a member of the foundation trust.
- 7.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as a public constituency.
- 7.3 The minimum number of members in each area public constituency is specified in annex 1.

8. Staff constituency

- 8.1 An individual who is employed by the foundation trust under a contract of employment with the foundation trust may become or continue as a member of the foundation trust provided:
 - 8.1.1 he or she is employed by the foundation trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months.
- 8.2 Individuals who exercise functions for the purposes of the foundation trust, other than under a contract of employment with the foundation trust, may become or continue as members of the staff constituency. For the avoidance of doubt this includes individuals who assist or provide services to the foundation trust on a voluntary basis. 8.3 Those individuals who are eligible for membership of the foundation trust by reason of the previous provisions are referred to collectively as the staff constituency.
- 8.4 The staff constituency shall be divided into 4 descriptions of individuals who are eligible for membership of the staff constituency, each description of individuals being specified within annex 2 and being referred to as a class within the staff constituency.
- 8.5 The minimum number of members in each class of the staff constituency is specified in annex 2.
- 8.6 The secretary shall make a final decision about the class of which an individual is eligible to be a member.

Automatic membership by default – staff

- 8.7 An individual who is:
 - 8.7.1 eligible to become a member of the staff constituency, and

- 8.7.2 invited by the foundation trust to become a member of the staff constituency and a member of the appropriate class within the staff constituency

shall become a member of the foundation trust as a member of the staff constituency and appropriate class within the staff constituency without an application being made unless he or she informs the foundation trust that he or she does not wish to do so.

9. Restriction on membership

- 9.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 9.2 An individual who satisfies the criteria for membership of the staff constituency may not become or continue as a member of any constituency other than the staff constituency.
- 9.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the foundation trust are set out in annex 9.

10. Annual Members' Meeting

- 10.1 The foundation trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.
- 10.2 Further provisions about the Annual Members' Meeting are set out in paragraph 3 of annex 9.

11. Council of Governors – composition

- 11.1 The foundation trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 11.2 The composition of the Council of Governors is specified in annex 3.
- 11.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes or areas within a constituency, by their class or area within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class or area of each constituency, is specified in annex 3.

12. Council of Governors – election of governors

- 12.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules. The Board of Directors will decide which of the two voting methods set out in the Model Election Rules is to be used for any election.
- 12.2 The Model Election Rules for elections, as published from time to time by the Department of Health, form part of this constitution. The Model Election Rules current at the date of the foundation trust's authorisation are attached at annex 4.

12.3 A variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 45 of the constitution. For the avoidance of doubt, the foundation trust cannot amend the Model Election Rules.

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

13. Council of Governors - tenure

13.1 An elected governor shall normally hold office for a period of 3 years commencing immediately after the annual members meeting at which his or her election is announced.

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

13.3 An elected governor shall be eligible for re-election at the end of his or her term.

13.4 An elected governor may not hold office for more than nine consecutive years and shall not be eligible for re-election if he or she has already held office for more than six consecutive years.

13.5 Governors can stand for election to serve a further term of office on the Council of Governors after a minimum break of one year.

13.6 For the purposes of these provisions concerning terms of office for elected governors, "year" means a period commencing immediately after the conclusion of the annual members meeting and ending at the conclusion of the next annual members meeting.

13.7 Further provisions regarding the Council of Governors including as to the tenure for appointed governors are set out at annex 5.

14. Council of Governors – disqualification and removal

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

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

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

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

14.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.

14.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in annex 5.

15. Council of Governors – duties of governors

15.1 The general duties of the Council of Governors are:

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

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

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

16. Council of Governors – meetings of governors

16.1 The chair of the foundation trust (i.e. the chair of the Board of Directors, appointed in accordance with the provisions of paragraph 25.1 below) or, in his or her absence the deputy chair (appointed in accordance with the provisions of paragraph 27 below) or, in his or her absence, one of the non-executive directors, shall preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the vice chair of the Council of Governors (appointed in accordance with the provisions of paragraph 5 of annex 5) will chair that part of the meeting.

16.2 Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. Members of the public may be excluded from a meeting if they are interfering with or preventing the proper conduct of the meeting or for other special reasons.

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

17. Council of Governors – standing orders

The standing orders for the practice and procedure of the Council of Governors are attached at annex 7.

18. Council of Governors – referral to the Panel

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

18.1.1 to act in accordance with its constitution, or

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

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

19. Council of Governors - conflicts of interest of governors

- 19.1 Members of the Council of Governors shall disclose to the Council of Governors any material interests (as defined below) held by a governor, their spouse or partner, which shall be recorded in the register of interests of governors.
- 19.2 Subject to the exceptions below a material interest is:
- 19.2.1 any directorship of a company;
 - 19.2.2 any interest or position in any firm, company, business or organisation (including any charitable or voluntary organisation) which has or is likely to have a trading or commercial relationship with the foundation trust;
 - 19.2.3 any interest in an organisation providing health and social care services to the National Health Service;
 - 19.2.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
 - 19.2.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the foundation trust including but not limited to lenders or banks.
- 19.3 The exceptions which shall not be treated as interests or material interests for the purposes of these provisions are as follows:
- 19.3.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
 - 19.3.2 an employment contract with the foundation trust held by a staff governor;
 - 19.3.3 an employment contract with a local authority held by a local authority governor;
 - 19.3.4 an employment contract with a university held by a university governor;
 - 19.3.5 an employment contract with or other position of authority within a partnership organisation held by a partnership governor.
- 19.4 Any governor who has an interest in a matter to be considered by the Council of Governors (whether because the matter involves a firm, company, business or organisation in which the governor or his or her spouse or partner has a material interest or otherwise) shall declare such interest to the Council of Governors and:
- 19.4.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and
 - 19.4.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 19.5 Details of any such interest shall be recorded in the register of interests of governors.

19.6 Any governor who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining governors.

20. Council of Governors – travel expenses

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

21. Council of Governors – further provisions

Further provisions with respect to the Council of Governors are set out in annex 5.

22. Board of Directors – composition

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

22.2 The Board of Directors is to comprise:

22.2.1 a non-executive chair

22.2.2 other non-executive directors; and

22.2.3 executive directors

At least half the board, excluding the chair, will comprise non-executive directors.

22.3 One of the executive directors shall be the chief executive.

22.4 The chief executive shall be the accounting officer.

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

22.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

22.7 One of the executive directors is to be a registered nurse or a registered midwife.

23. Board of Directors – general duty

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

24. Board of Directors – qualification for appointment as a non-executive director

A person may be appointed as a non-executive director only if:

24.1 he or she is a member of a public constituency, or

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

24.3 he or she is not disqualified by virtue of paragraph 30 below or paragraph 3 of annex 6.

25. Board of Directors – appointment and removal of chair and other non-executive directors

25.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chair of the foundation trust and the other non-executive directors.

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

25.3 *Sentence deleted.*

25.4 Further provisions as to the appointment and removal of the chair and other non-executive directors are set out at annex 6.

26. Board of Directors – appointment of initial chair and initial other non-executive directors

Paragraph deleted.

27. Board of Directors – appointment of deputy chair

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chair. If the chair is unable to discharge his or her office as chair of the foundation trust the deputy chair of the Board of Directors shall be acting chair of the foundation trust.

28. Board of Directors - appointment and removal of the chief executive and other executive directors

28.1 The non-executive directors shall appoint or remove the chief executive.

28.2 The appointment of the chief executive shall require the approval of the Council of Governors.

28.3 *Sentence deleted.*

28.4 A committee consisting of the chair, the chief executive and other non-executive directors shall appoint or remove the other executive directors. Selection panels for board appointments should, as best practice, include at least one assessor from NHS England and/or the Greater Manchester Integrated Care Board (ICB) representative.

29. Board of Directors – appointment and removal of initial chief executive

Paragraph deleted.

30. Board of Directors – disqualification

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

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

- 30.2 a person who has made a composition or arrangement with, or granted a trust deed for, his or her creditors and has not been discharged in respect of it.
- 30.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him or her.
- 30.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out at annex 6.

31. Board of Directors – meetings

- 31.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 31.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

32. Board of Directors – standing orders

The standing orders for the practice and procedure of the Board of Directors are attached at annex 8.

33. Board of Directors - conflicts of interest of directors

- 33.1 The duties that a director of the foundation trust has by virtue of being a director include in particular:
- 33.1.1 a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the foundation trust.
 - 33.1.2 a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 33.2 The duty referred to in paragraph 33.1.1 is not infringed if:
- 33.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 33.2.2 the matter has been authorised in accordance with the constitution.
- 33.3 The duty referred to in paragraph 33.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.4 In paragraph 33.1.2, “third party” means a person other than:
- 33.4.1 the foundation trust, or
 - 33.4.2 a person acting on its behalf.

33.5 If a director of the foundation trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the foundation trust, the director must declare the nature and extent of that interest to the other directors.

33.5.1 Examples of direct interests that may need to be declared are:

33.5.1.1 any interest or any position held by a director in any firm, company or business that is proposing to enter into a transaction or arrangement with the Trust;

33.5.1.2 any connection with any organisation, entity or company that is proposing to enter into a financial arrangement or carry out a financial transaction with the Trust, including but not limited to lenders or banks.

33.5.2 Examples of indirect interests that may need to be declared are:

33.5.2.1 if a director is a partner of an individual who is proposing to enter into a transaction or arrangement with the Trust;

33.5.2.2 if a director's spouse or any person with whom he/ she is co-habiting has any interest in, or holds any position in, any firm, company or business that is proposing to enter into a transaction or arrangement with the Trust.

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

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

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

33.9 A director need not declare an interest:

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

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

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

33.9.3.1 by a meeting of the Board of Directors, or

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

33.10 Any director who has an interest in a matter that is required to be declared in accordance with this paragraph 33 shall declare such interest to the Board of Directors and:

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

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

33.11 Details of any such interest shall be recorded in the register of interests of the directors.

33.12 Any director who fails to disclose any interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a committee constituted in accordance with paragraph 28.4 and (in the case of a non-executive director) by three-quarters of the members of the Council of Governors.

34. Board of Directors – remuneration and terms of office

34.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the chair and the other non-executive directors.

34.2 The foundation trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the chief executive and other executive directors.

35. Registers

The foundation trust shall have:

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

35.2 a register of members of the Council of Governors;

35.3 a register of interests of governors;

35.4 a register of directors; and

35.5 a register of interests of the directors.

36. Admission to and removal from the registers

36.1 The secretary shall:

36.1.1 add to the register of members the name of any individual who is accepted as a member of the foundation trust under the provisions of this constitution; and

36.1.2 remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this constitution;

as soon as reasonably practicable and in any event within a period of 5 days of the secretary becoming aware or being notified of the requirement for such amendment.

36.2 The secretary is to send to NHSE a list of persons who were first elected or appointed as governors and directors.

37. Registers – inspection and copies

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

38. Documents available for public inspection

- 38.1 The foundation trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 38.1.1 a copy of the current constitution;
 - 38.1.2 a copy of the latest annual accounts and of any report of the auditor on them;
 - 38.1.3 a copy of the latest annual report;
 - 38.1.4 *paragraph deleted*
 - 38.1.5 *paragraph deleted*
- 38.2 The foundation trust shall also make the following documents relating to a special administration of the foundation trust available for inspection by members of the public free of charge at all reasonable times:
- 38.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
 - 38.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 38.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 38.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;

- 38.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act;
- 38.2.6 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(NHSE's decision), 65KB (Secretary of State's response to NHSE's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
- 38.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- 38.2.8 a copy of any final report published under section 65I (administrator's final report) of the 2006 Act;
- 38.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
- 38.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

38.4 If the person requesting a copy or extract is not a member of the foundation trust, the foundation trust may impose a reasonable charge for doing so.

39. Auditor

39.1 The foundation trust shall have an auditor.

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

39.3 Further provisions as to the auditor are set out at annex 10.

40. Audit committee

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

41. Accounts

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

41.2 NHSE may, with the approval of the Secretary of State, give directions to the foundation trust as to the content and form of its accounts.

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

41.4 The foundation trust shall prepare in respect of each financial year annual accounts in such form as NHSE may with the approval of the Secretary of State direct.

41.5 The functions of the foundation trust with respect to the preparation of the annual accounts shall be delegated to the accounting officer.

41.6 Further provisions as to accounts are set out at annex 10.

42. Annual report and forward plans and Non-NHS work

42.1 The foundation trust shall prepare an annual report and send it to NHSE. Further provisions as to annual reports are set out at annex 10.

42.2 The foundation trust shall give information as to its forward planning in respect of each financial year to NHSE.

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

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

42.5 Each forward plan must include information about –

42.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the foundation trust proposes to carry on, and

42.5.2 the income it expects to receive from doing so.

42.6 Where a forward plan contains a proposal that the foundation trust carry on an activity of a kind mentioned in paragraph 42.5.1 the Council of Governors must:

42.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the trust of its principal purpose or the performance of its other functions, and

42.6.2 notify the directors of the trust of its determination.

42.7 A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the foundation trust voting approve its implementation.

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

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

43.1.1 the annual accounts;

43.1.2 any report of the auditor on them;

43.1.3 the annual report.

43.2 The documents shall also be presented to the members of the foundation trust at the Annual Members' Meeting by at least one member of the Board of Directors

in attendance.

- 43.3 The foundation trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 43.1 with the Annual Members' Meeting.

44. Instruments

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

45. Amendment of the constitution

- 45.1 The foundation trust may make amendments to its constitution only if:
- 45.1.1 more than half of the members of the Council of Governors of the foundation trust voting approve the amendments; and
 - 45.1.2 more than half of the members of the Board of Directors of the foundation trust voting approve the amendments.
- 45.2 Amendments made under paragraph 45.1 take effect as soon as the conditions in that paragraph are satisfied, but the 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.
- 45.3 Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the foundation trust):
- 45.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
 - 45.3.2 the foundation trust must give the members an opportunity to vote on whether they approve the amendment.
- 45.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the foundation trust must take such steps as are necessary as a result.
- 45.5 Amendments by the foundation trust to its constitution are to be notified to NHSE. For the avoidance of doubt, NHSE's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

46. Mergers etc. and significant transactions

- 46.1 The foundation trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors
- 46.2 A significant transaction is as defined in NHSE's Risk Assessment Framework.

Annex 1 – The public constituencies

(Paragraphs 7.1 and 7.3)

The public constituencies are:

Bolton
Bury
Manchester
Oldham
Rochdale
Salford
Stockport
Tameside and Glossop
Trafford
Wigan
Cheshire

North West - consisting of the local authority areas of Cumbria County Council, Lancashire County Council and the seven councils previously in Merseyside or Cheshire - Halton Borough Council, Knowsley Council, Liverpool City Council, St. Helens Council, Sefton Council, Warrington Borough Council and Wirral Metropolitan Borough Council.

Remainder of England and Wales - consisting of all other local authority areas in England and Wales not already covered by the local authority areas in Greater Manchester and Cheshire and the North West.

The minimum number of members of each of the public constituencies is to be four.

Annex 2 – The staff constituency

(Paragraphs 8.4 and 8.5)

The classes of the staff constituency are:

Registered medical practitioners

Registered nurses

Other clinical professional staff

Non-clinical staff

The minimum number of members of each class of the staff constituency is to be four.

Annex 3 – Composition of Council of Governors

(Paragraphs 11.2 and 11.3)

- 1 The aggregate number of public governors is to be more than half of the total number of members of the Council of Governors.
- 2 The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:
 - 2.1 the interests of the community served by the foundation trust are appropriately represented;
 - 2.2 the level of representation of the public constituencies, the classes of the staff constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the foundation trust's affairs;and to this end, the Council of Governors:
 - 2.3 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy, and
 - 2.4 shall from time to time and not less than every three years review the policy for the composition of the Council of Governors, and
 - 2.5 when appropriate shall propose amendments to this constitution.
- 3 The Council of Governors of the foundation trust is to comprise:
 - 3.1 15 public governors from the following public constituencies:
 - 3.1.1 Bolton – one public governor
 - 3.1.2 Bury – one public governor
 - 3.1.3 Manchester – two public governors
 - 3.1.4 Oldham – one public governor
 - 3.1.5 Rochdale – one public governor
 - 3.1.6 Salford – one public governor
 - 3.1.7 Stockport – one public governor
 - 3.1.8 Tameside and Glossop – one public governor
 - 3.1.9 Trafford – one public governor
 - 3.1.10 Wigan – one public governor

- 3.1.11 Cheshire - two public governor
 - 3.1.12 North West – one public governor
 - 3.1.13 Remainder of England and Wales – one public governor
 - 3.2 4 staff governors from the following classes;
 - 3.2.1 Registered medical practitioners – one staff governor
 - 3.2.2 Registered nurses – one staff governor
 - 3.2.3 Other clinical professional staff – one staff governor
 - 3.2.4 Non-clinical staff – one staff governor
 - 3.3 *Paragraph deleted*
 - 3.4 two local authority governors one to be appointed by Manchester City Council and one to be appointed by the other local authorities comprised in the Association of Greater Manchester Authorities between them;
 - 3.5 one university governor to be appointed by the University of Manchester;
 - 3.6 six partnership governors to be appointed by partnership organisations, which are specified for the purposes of paragraph 9(7) of Schedule 7 to the 2006 Act.
- 4 The partnership organisations that may appoint a partnership governor are:
- 4.1 The Christie Charitable Fund;
 - 4.2 The Greater Manchester Cancer Provider Board to nominate a patient representative;
 - 4.3 Nominated BAME health agency;

Annex 4 – The model rules for elections

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Part 1 Interpretation

1. Interpretation

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

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

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

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

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

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

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

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

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

“Monitor” means the corporate body previously known as Monitor (now NHSE) as provided by section 61 of the 2012 Act;

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

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

“telephone short code” means a short telephone number used for the purposes of

submitting a vote by text message;

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

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

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

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

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

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

Part 2 Timetable for elections

2. Timetable

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

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

3. Computation of time

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

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

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

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

Part 3 Returning officer

4. Returning Officer

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

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

5. Staff

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

6. Expenditure

6.1 The corporation is to pay the returning officer:

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

7. Duty of co-operation

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

Part 4 Stages common to contested and uncontested elections

8. Notice of election

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

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

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

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

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

12. Declaration of eligibility

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

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

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

13. Signature of candidate

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

(a) they wish to stand as a candidate,

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

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

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

14. Decisions as to the validity of nomination

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

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

(b) decides that the nomination form is invalid,

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

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

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

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

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

- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

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

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

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

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

Part 5 Contested elections

19. Poll to be taken by ballot

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

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

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

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

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

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

(i) configured in accordance with these rules; and

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

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

(i) configured in accordance with these rules; and

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

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

(i) configured in accordance with these rules; and

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

20. The ballot paper

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

20.2 Every ballot paper must specify:

(a) the name of the corporation,

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

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

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

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

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

(g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

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

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

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

(a) that the voter is the person:

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

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

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

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

(“declaration of identity”)

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

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

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

Action to be taken before the poll

22. List of eligible voters

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

22.2 The list is to include, for each member:

(a) a postal address; and,

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

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

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

23. Notice of poll

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

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
- (g) the address for return of the ballot papers,
- (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

24. Issue of voting information by returning officer

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

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

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

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

contact details of the returning officer, ("e-voting information").

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

- (a) only be sent postal voting information; or
- (b) only be sent e-voting information; or
- (c) be sent both postal voting information and e-voting information; for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

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

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

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

26. E-voting systems

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

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

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

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

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

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

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

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

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

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

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

(a) require a voter to:

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

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

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

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

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

(i) the voter's voter ID number;

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

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

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

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

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

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

29. Spoilt ballot papers and spoilt text message votes

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

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

29.3 The returning officer may not issue a replacement ballot paper for a spoiled 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 spoiled ballot paper, the returning officer shall enter in a list ("the list of spoiled ballot papers"):

- (a) the name of the voter, and
- (b) the details of the unique identifier of the spoiled 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 "spoiled 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 spoiled 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 spoiled 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 spoiled text message vote, the returning officer shall enter in a list ("the list of spoiled text message votes"):

- (a) the name of the voter, and
- (b) the details of the voter ID number on the spoiled text message vote (if that officer was able to obtain it), and
- (c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

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

30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:

- (a) is satisfied as to the voter's identity,
- (b) has no reason to doubt that the voter did not receive the original voting information,

(c) has ensured that no declaration of identity, if required, has been returned.

30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list (“the list of lost ballot documents”):

(a) the name of the voter

(b) the details of the unique identifier of the replacement ballot paper, if applicable, and

(c) the voter ID number of the voter.

31. Issue of replacement voting information

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

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

(a) the name of the voter,

(b) the unique identifier of any replacement ballot paper issued under this rule;

(c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

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

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

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

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

34. Voting procedure for remote voting by telephone

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

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

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

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

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

35. Voting procedure for remote voting by text message

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

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

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

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

36. Receipt of voting documents

36.1 Where the returning officer receives:

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

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

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

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

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

37. Validity of votes

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

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

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

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

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

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

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

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

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

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

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

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

39. De-duplication of votes

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

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

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

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

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

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

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

40. Sealing of packets

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

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

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

Part 6 Counting the votes

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

“mark” means a figure, an identifiable written word, or a mark such as “X”, “non-transferable vote” means a ballot document:

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

or

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

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

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

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

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

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

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

“stage of the count” means:

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

(b) the transfer of a surplus of a candidate deemed to be elected, or

(c) the exclusion of one or more candidates at any given time,

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

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

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

42. Arrangements for counting of the votes

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

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

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

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

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

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

43. The count

43.1 The returning officer is to:

(a) count and record the number of:

(iii) ballot papers that have been returned; and

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

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

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

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

(b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,

(c) on which anything is written or marked by which the voter can be identified except the unique identifier, or

(d) which is unmarked or rejected because of uncertainty,

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

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

STV44.3 Any text voting record:

(a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,

(b) on which anything is written or marked by which the voter can be identified except the unique identifier, or

(c) which is unmarked or rejected because of uncertainty,

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

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

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

(a) to (c) of rule STV44.3.

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

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

(b) on which votes are given for more candidates than the voter is entitled to vote,

(c) on which anything is written or marked by which the voter can be identified except the unique identifier, or

(d) which is unmarked or rejected because of uncertainty,

shall, subject to rules FPP44.2 and FPP44.3, be rejected and not counted.

FPP44.2 Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

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

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

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

FPP44.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

FPP44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:

- (a) does not bear proper features that have been incorporated into the ballot paper,
- (b) voting for more candidates than the voter is entitled to,
- (c) writing or mark by which voter could be identified, and
- (d) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of ballot papers rejected in part.

FPP44.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,
- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty,

shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.

FPP44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

FPP448 A text voting record on which a vote is marked:

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

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

FPP44.9 The returning officer is to:

- (a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and
- (b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

FPP44.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:

- (a) voting for more candidates than the voter is entitled to,
- (b) writing or mark by which voter could be identified, and
- (c) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of text voting records rejected in part.

STV45. First stage

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

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

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

STV46. The quota

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

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

STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one

vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.

STV47. Transfer of votes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or

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

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

STV48. Supplementary provisions on transfer

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

(a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and

(b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.

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

(a) record the total value of the votes transferred to each candidate,

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

(c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and

(d) compare:

(i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with

(ii) the recorded total of valid first preference votes.

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

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

STV49. Exclusion of candidates

STV49.1 If:

(a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and

(b) subject to rule STV50, one or more vacancies remain to be filled,

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

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

(a) ballot documents on which a next available preference is given, and

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

STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.

STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub-parcels according to their transfer value.

STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot

documents (thereby passing over candidates who are deemed to be elected or are excluded).

STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.

STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.

STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub- parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.

STV49.10 The returning officer shall after each stage of the count completed under this rule:

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

STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.

STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.

STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and

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

STV50. Filling of last vacancies

STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

STV51. Order of election of candidates

STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.

STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP51. Equality of votes

FPP51.1 Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 Final proceedings in contested and uncontested elections

FPP52. Declaration of result for contested elections

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

(a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,

(b) give notice of the name of each candidate who he or she has declared elected:

(i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or

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

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

FPP52.2 The returning officer is to make:

(a) the total number of votes given for each candidate (whether elected or not), and

(b) the number of rejected ballot papers under each of the headings in rule FPP44.5,

(c) the number of rejected text voting records under each of the headings in rule FPP44.10, available on request.

STV52. Declaration of result for contested elections

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

(a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,

(b) give notice of the name of each candidate who he or she has declared elected –

(i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or

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

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

STV52.2 The returning officer is to make:

(a) the number of first preference votes for each candidate whether elected or not,

(b) any transfer of votes,

(c) the total number of votes for each candidate at each stage of the count at which such transfer took place,

(d) the order in which the successful candidates were elected, and

- (e) the number of rejected ballot papers under each of the headings in rule STV44.1,
- (f) the number of rejected text voting records under each of the headings in rule STV44.3, available on request.

53. Declaration of result for uncontested elections

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

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

Part 8 Disposal of documents

54. Sealing up of documents relating to the poll

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

- (a) the counted ballot papers, internet voting records, telephone voting records and text voting records,
- (b) the ballot papers and text voting records endorsed with “rejected in part”,
- (c) the rejected ballot papers and text voting records, and
- (d) the statement of rejected ballot papers and the statement of rejected text voting records, and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

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

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

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

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

- (a) its contents,

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

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

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

57. Retention and public inspection of documents

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

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

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

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

58.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing –
 - (i) any rejected ballot papers, including ballot papers rejected in part,
 - (ii) any rejected text voting records, including text voting records rejected in part,
 - (iii) any disqualified documents, or the list of disqualified documents,

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

(v) the list of eligible voters, or

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

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

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

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

(a) persons,

(b) time,

(c) place and mode of inspection,

(d) production or opening,

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

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

(a) in giving its consent, and

(b) in making the documents available for inspection

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

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

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

Part 9 Death of a candidate during a contested election

FPP59. Countermand or abandonment of poll on death of candidate

FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

(a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and

(b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.

FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.

FPP59.5 The returning officer is to:

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

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

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

FPP59.6 The returning officer is to endorse on each packet a description of:

(a) its contents,

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

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

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

FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate

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

(a) publish a notice stating that the candidate has died, and

(b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –

(i) ballot documents which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and

(ii) ballot documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

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

Part 10 Election expenses and publicity

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1 No person may:

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

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

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

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

(b) organise and hold such meetings to enable the candidates to speak and respond to questions, as it considers necessary.

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

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

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

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

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

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

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

Part 11 Questioning elections and the consequence of irregularities

66. Application to question an election

66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHSE.

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 NHSE 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 NHSE may require.

66.5 The application must be presented in writing within 21 days of the declaration of the result of the election.

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

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

66.8 The determination by the person or panel of persons nominated in accordance with rule 66.7 shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

66.9 NHSE may prescribe rules of procedure for the determination of an application including costs.

Part 12 Miscellaneous

67. Secrecy

67.1 The following persons:

(a) the returning officer,

(b) the returning officer's staff,

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

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

- (ii) the unique identifier on any ballot paper,
- (iii) the voter ID number allocated to any voter,
- (iv) the candidate(s) for whom any member has voted.

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

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

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

Annex 5 – Additional provisions – Council of Governors

(Paragraphs 13.7, 14.3 and 21)

Elected Governors

1. A member of a public constituency may not vote at an election for a public governor unless at the time of voting they have made and returned a declaration in the form specified in Annex 4, paragraph 21, that they are qualified to vote as a member of the relevant public constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

Appointed Governors

2. The secretary, having consulted Manchester City Council and the other local authorities comprised in the Association of Greater Manchester Authorities, is to adopt a process for agreeing the appointment of the local authority governors with those local authorities.
3. The secretary, having consulted the University of Manchester, is to adopt a process for agreeing the appointment of the university governor with that university.
4. The partnership governors are to be appointed by the partnership organisations, in accordance with a process agreed with the secretary.

Appointment of vice chair of the Council of Governors

5. The Council of Governors shall appoint one of the governors to be vice chair of the Council of Governors.

Tenure for appointed governors

6. An appointed governor:
 - 6.1 shall normally hold office for a period of three years commencing immediately after the annual members meeting at which his or her appointment is announced;
 - 6.2 shall be eligible for re-appointment at the end of his or her term;
 - 6.3 may not hold office for longer than nine consecutive years, and shall not be eligible for re-appointment if he or she has already held office for more than six consecutive years.
 - 6.4 Governors can stand for election to serve a further term of office on the Council of Governors after a minimum break of one year.
7. For the purposes of these provisions concerning terms of office for appointed governors, “year” means a period commencing immediately after the conclusion of the annual members meeting, and ending at the conclusion of the next annual members meeting.

8. An appointed governor shall cease to hold office if the appointing organisation which appointed him or her terminates the appointment.

Further provisions as to eligibility to be a governor

9. A person may not become a governor of the foundation trust, and if already holding such office will immediately cease to do so, if:
 - 9.1 they are a Director of the foundation trust or a governor or director of an NHS body (unless they are appointed by an appointing organisation which is an NHS body);
 - 9.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the foundation trust;
 - 9.3 they are a member of a local authority's scrutiny committee covering health matters;
 - 9.4 they are a director or (equivalent) of any local Healthwatch responsible for scrutinising the care provided by the foundation trust (or any organisation that is a successor to all or part of such a local Healthwatch's functions) unless such local Healthwatch is a partnership organisation which has appointed them as a partnership governor;
 - 9.5 they have been previously removed as a governor pursuant to paragraph 11 of this annex 5.
 - 9.6 being a member of a public constituency, they refuse to sign a declaration in the form specified by the secretary of particulars of their qualification to vote as a member of the foundation trust, and that they are not prevented from being a member of the Council of Governors;
 - 9.7 they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirement to register under current legislation;
 - 9.8 they have within the preceding two years been lawfully dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with an NHS body;
 - 9.9 they have been expelled for whatever reason from membership of or from the post of governor of another NHS Foundation Trust;
 - 9.10 they are a person whose tenure of office as the chair or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
10. A person holding office as a governor shall immediately cease to do so if:
 - 10.1 they resign by notice in writing to the secretary. For the avoidance of doubt, any such resignation does not need to be accepted by the Chief Executive or the Council of Governors to be effective;

- 10.2 they fail to attend three consecutive meetings of the Council of Governors, unless the other governors are satisfied that:
 - 10.2.1 the absences were due to reasonable causes; and
 - 10.2.2 they will be able to start attending meetings of the Council of Governors again within such a period as the other governors consider reasonable;
- 10.3 they have refused without reasonable cause to undertake any training which the Council of Governors requires all governors to undertake;
- 10.4 they have failed to sign and deliver to the secretary a statement in the form required by the secretary confirming acceptance of the code of conduct for governors;
- 10.5 in the case of an elected governor, they cease to be a member of the class or area of the constituency which elected them, which, for the avoidance of doubt, includes a public governor moving their principal residence from one public constituency to another;
- 10.6 in the case of an appointed governor, the appointing organisation terminates the appointment;
- 10.7 they are expelled from membership of the foundation trust;
- 10.8 they are removed from the Council of Governors under the following provisions.
- 11. A governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining governors present and voting on grounds including but not limited to that:
 - 11.1 they have committed a serious breach of the code of conduct; or
 - 11.2 they have acted in a manner detrimental to the interests of the foundation trust; and
 - 11.3 the Council of Governors consider that it is not in the best interests of the foundation trust for them to continue as a governor.

Vacancies amongst governors

- 12. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 13. Where the vacancy arises amongst the appointed governors, the secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
- 14. Where the vacancy arises amongst the elected governors, the Council of Governors shall be at liberty either:
 - 14.1 to call an election within three months to fill the seat for the remainder of that term of office; or

- 14.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office; or
- 14.3 if the unexpired period of the term of office is less than twelve months, to leave the seat vacant until the next elections are held provided that during the period that the seat is left vacant, the composition of the Council of Governors will continue to meet the requirement at paragraph 1 of Annex 3 of this constitution and the Council of Governors can still be quorate in accordance with the requirements of paragraph 17 below.

Further provisions as to meetings of governors

15. The Council of Governors is to meet at least four times each year.
16. Meetings of the Council of Governors shall be arranged in accordance with the relevant provisions of standing order 4 set out in Annex 7, standing orders for the practice and procedure of the Council of Governors.
17. Ten governors including no fewer than five public governors, not less than one staff governor and no fewer than two appointed governors shall form a quorum.
18. The Council of Governors may invite the chief executive or any other member or members of the Board of Directors, or a representative of the auditor or other advisors to attend and address a meeting of the Council of Governors. For the avoidance of doubt, such attendees shall not have the right to vote at such meetings.
19. The Chief Executive and/or any other member of the Board of Directors may attend and address any meeting of the Council of Governors but shall not have the right to vote at such meetings.
20. The Council of Governors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
21. Subject to the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.
 - 21.1 In case of an equality of votes the person presiding at or chairing the meeting shall have a second and casting vote.
 - 21.2 No resolution of the Council of Governors shall be passed if it is opposed by all of the public governors present.
22. The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of its members, directors, and other persons to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the secretary, request that advisors assist them or any committee they appoint in carrying out their duties.
23. All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was

a defect in the calling of the meeting, or the appointment of the governors attending the meeting.

Declaration

24. An elected governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the secretary of the particulars of their qualification to vote as a member of the foundation trust and that they are not prevented from being a member of the Council of Governors. An elected governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of elected governors.

25. Lead Governor

25.1 The Council of Governors shall appoint one of the governors as the lead governor. Subject to paragraph 25.2 below, such governor shall fulfil the role of the lead governor for the remainder of his term in office.

25.2 If the lead governor notifies the Council of Governors, prior to the end of his term in office, that he no longer wishes to be the lead governor then the Council of Governors shall appoint another governor as the lead governor.

25.3 The role and responsibilities of the lead governor shall include but not be limited to:

25.3.1 leading the Council of Governors where it would be inappropriate for the chair or deputy chair to do so, such circumstances to be determined by the senior independent director;

25.3.2 providing input to the senior independent director in respect of the evaluation of the chair; and

25.3.3 liaising with NHSE where it would be inappropriate for the chair to do so.

25.4 For the avoidance of doubt, the lead governor shall not deputise for the chair or deputy chair.

26. **Written Resolutions**

26.1 The Council of Governors may use the process for adopting a written resolution set out in this paragraph 26 to enable them to transact business between meetings of the Council of Governors. The process for adopting a written resolution shall not be used to replace meetings of the Council of Governors.

Proposing written resolutions

26.2 At the chair's request, the secretary shall propose a written resolution to the governors.

26.3 A written resolution is proposed by giving notice of the proposed resolution to the governors. Such notice shall stipulate:

26.3.1 the proposed resolution; and

26.3.2 the long-stop date by which the written resolution is to be adopted, which shall be not less than ten (10) days from the date the written resolution is dispatched by the secretary.

26.4 Notice of a proposed written resolution must be given in writing to each governor. Giving notice by post or e-mail is permitted.

Adopting written resolutions

26.5 A proposed written resolution shall be adopted when it has been signed and returned to the secretary by post or e-mail by a majority of the governors. This is subject to minimum quorum requirements as outlined at Annex 7, paragraph 4.12.

26.6 For the avoidance of doubt, the proposed written resolution shall lapse if it has not been signed and returned by the requisite number of governors pursuant to paragraph 26.5 above, by the longstop date.

26.7 Once a written resolution has been adopted, it shall be treated as if it had been a decision taken at a Council of Governors' meeting in accordance with this constitution.

26.8 The secretary shall ensure that the foundation trust keeps a record, in writing, of all written resolution for at least six (6) years from the date of their adoption.

Annex 6 – Additional provisions – Board of Directors

(Paragraphs 24.3, 25.4 and 30.4)

Appointment and removal of chair and other non-executive directors

1. The chair and the other non-executive directors are to be appointed by the Council of Governors using the following procedure.
 - 1.1 The Council of Governors will maintain a policy for the composition of the chair and the other non-executive directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.
 - 1.2 The Board of Directors may work with an external organisation recognised as expert at appointments to identify the skills and experience required for chairs and non-executive directors.
 - 1.3 The Council of Governors shall take into account the views of the Board of Directors on the qualifications, skills and experience required for each position when considering the appointment of non-executive directors to vacancies on the Board of Directors or of the chair.
 - 1.4 Appropriate candidates (not more than five for each vacancy) will be identified by a nominations committee through a process of open competition, which take account of the policy maintained by the Council of Governors and the skills and experience required.
 - 1.5 The nominations committee will comprise the chair of the foundation trust (or, when a chair is being appointed, the deputy chair unless he or she is standing for appointment, in which case another non-executive director), two elected governors and one appointed governor. A nominated representative from NHSE and/or the NHS Greater Manchester Integrated Care Board will be invited to act as an independent assessor to the nominations committee when a panel is convened to appoint or remove a chair or non-executive director..
 - 1.6 The nominations committee will convene an interview panel, conduct interviews and recommend a candidate to the Council of Governors for approval.
2. The removal of the chair or another non-executive director shall be in accordance with the following procedures.
 - 2.1 Any proposal for removal must be proposed by a governor and seconded by not less than ten governors including at least two elected governors and two appointed governors.
 - 2.2 Written reasons for the proposal shall be provided to the chair or other non-executive director in question, who shall be given the opportunity to respond to such reasons.
 - 2.3 In making any decision to remove the chair or other non-executive director, the Council of Governors shall take into account the annual

appraisal carried out by the chair or, where the removal of the chair is being considered, the annual appraisal carried out pursuant to Standing Order 4.1 of Annex 8.

- 2.4 If any proposal to remove the chair or other non-executive director is not approved at a meeting of the Council of Governors (failing to achieve the support required pursuant to paragraph 25.2 of the constitution), no further proposal can be put forward to remove the chair or such non-executive director based upon the same reasons within 12 months of the meeting.

Further provisions as to disqualification of directors

3. A person may not become or continue as a director of the foundation trust if:
 - 3.1 they are a member of the Council of Governors or a governor of another NHS body;
 - 3.2 they are a director (or equivalent) of any local Healthwatch responsible for scrutinising the care provided by the foundation trust (or any organisation that is a successor to all or part of such a local Healthwatch's functions);
 - 3.3 they are the spouse, partner, parent or child of a member of the Board of Directors of the foundation trust;
 - 3.4 they are a member of a local authority's scrutiny committee covering health matters;
 - 3.5 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - 3.6 they are a person whose tenure of office as a chair or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 3.7 they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirement to register under current legislation;
 - 3.8 they have within the preceding two years been lawfully dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with an NHS body;
 - 3.9 in the case of a non-executive director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors; or
 - 3.10 they have refused to sign and deliver to the secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for directors.

Meetings of the Board of Directors

4. Meetings of the Board of Directors shall be arranged in accordance with the relevant provisions of standing order 3 set out in Annex 8, standing orders for the practice and procedure of the Board of Directors.
5. Meetings of the Board of Directors shall be open to members of the public unless the Board of Directors decides otherwise in relation to all or part of such meeting for reasons of commercial confidentiality or on other proper grounds. The chair may exclude any member of the public from a meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting.
6. *Paragraph deleted.*
7. Five directors including not fewer than two executive directors (one of whom must be the chief executive or another executive director nominated by the chief executive), and not fewer than two non-executive directors (one of whom must be the chair or the deputy chair of the Board of Directors) shall form a quorum.
8. The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
9. The chair of the foundation trust or, in their absence, the deputy chair of the Board of Directors, is to chair meetings of the Board of Directors.
10. Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes.
 - 10.1 In case of an equality of votes the chair shall have a second and casting vote.
 - 10.2 No resolution of the Board of Directors shall be passed if it is opposed by all of the non-executive directors present or by all of the executive directors present.

Expenses

11. The foundation trust may reimburse executive directors' travelling and other costs and expenses incurred in carrying out their duties at such rates as the remuneration committee of non-executive directors decides. These are to be disclosed in the annual report.
12. The remuneration and allowances for directors are to be disclosed in bands in the annual report.

13. Written Resolutions

- 13.1 The Board of Directors may use the process for adopting a written resolution set out in this paragraph 13 to enable them to transact business between meetings of the Board of Directors. The process for adopting a written resolution shall not be used to replace meetings of the Board of Directors.

Proposing written resolutions

- 13.2 At the chair's request, the secretary shall propose a written resolution to the directors.
- 13.3 A written resolution is proposed by giving notice of the proposed resolution to the directors. Such notice shall stipulate:
 - 13.3.1 the proposed resolution; and
 - 13.3.2 the long-stop date by which the written resolution is to be adopted, which shall be not less than ten (10) days from the date the written resolution is dispatched by the secretary.
- 13.4 Notice of a proposed written resolution must be given in writing to each governor. Giving notice by post or e-mail is permitted.

Adopting written resolutions

- 13.5 A proposed written resolution shall be adopted when it has been signed and returned to the secretary by post or e-mail by a majority of the directors. This is subject to minimum quorum requirements as outlined at Annex 6, paragraph 7.
- 13.6 For the avoidance of doubt, the proposed written resolution shall lapse if it has not been signed and returned by the requisite number of directors pursuant to paragraph 13.5 above, by the longstop date.
- 13.7 Once a written resolution has been adopted, it shall be treated as if it had been a decision taken at a Board of Directors' meeting in accordance with this constitution.
- 13.8 The secretary shall ensure that the foundation trust keeps a record, in writing, of all written resolution for at least six (6) years from the date of their adoption.

Annex 7 – Standing orders for the practice and procedure of the Council of Governors

(Paragraph 17)

1. Interpretation

- 1.1. Any expression to which a meaning is given in the Health and Social Care (Community Health and Standards) Act 2003 (as amended by the National Health Service Act 2006) and/or the National Health Service Act 2006, or in regulations made under the Acts, shall have the same meaning in these standing orders and in addition:
 - 1.1.1. "accounting officer" means the person who from time to time discharges the functions specified in paragraph 25 of Schedule 7 to the 2006 Act. For the trust it shall be the chief executive;
 - 1.1.2. "appointed governors" means those governors appointed by the appointing organisations;
 - 1.1.3. "appointing organisations" means those organisations named in this constitution who are entitled to appoint governors;
 - 1.1.4. "board" means the Board of Directors, formally constituted in accordance with this constitution and consisting of the chair and non-executive directors appointed by the council, and the executive directors appointed by the non-executive directors and (except for his or her own appointment) by the chief executive;
 - 1.1.5. "budget" means a resource, expressed in financial terms, approved by the board for the purpose of carrying out, for a specific period, any or all of the functions of the trust;
 - 1.1.6. "chair" is the person appointed by the council to lead the board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole;
 - 1.1.7. "chief executive" means the chief officer of the trust;
 - 1.1.8. "committee of the board" means a committee appointed by the board with specific terms of reference, a chair, and membership approved by the Board;
 - 1.1.9. "committee of the council" means a committee appointed by the council with specific terms of reference, a chair, and membership approved by the council;
 - 1.1.10. "council" means the Council of Governors, formally constituted in accordance with this constitution and presided over by the chair;
 - 1.1.11. "council standing orders" means the standing orders set out in this Annex 7;
 - 1.1.12. "deputy chair" is the non-executive director appointed by the council to take on the chair's duties if the chair is absent from a meeting or is otherwise unavailable;
 - 1.1.13. "director" means a member of the board appointed in accordance with the terms of this constitution;
 - 1.1.14. "elected governors" means those governors elected by the public constituencies and the classes of the staff constituency;

- 1.1.15. “governor” means a person elected or appointed to the council in accordance with the terms of this constitution;
 - 1.1.16. “local authority governor” means a governor appointed by one or more local authorities whose area includes the whole or part of an area forming the area of a public constituency of the trust;
 - 1.1.17. “member” means a person who is a member of the foundation trust and whose name is recorded in the register of members;
 - 1.1.18. “NHSE” is the body corporate known as NHSE (previously known as Monitor), as provided by Section 61 of the 2012 Act;
 - 1.1.19. "motion" means a formal proposition to be discussed and voted on during the course of a meeting;
 - 1.1.20. "officer" means an employee of the trust or any other person holding a paid appointment or office with the foundation trust;
 - 1.1.21. “partner” means, in relation to another person, a member of the same household living together as a family unit;
 - 1.1.22. “partnership governor” means a governor appointed by a partnership organisation;
 - 1.1.23. “public governor” means a governor elected by the members of one of the public constituencies;
 - 1.1.24. “secretary” means the secretary of the trust or any other person appointed to perform the duties of the secretary, including a joint, assistant or deputy secretary;
 - 1.1.25. “staff governor” means a governor elected by the members of one of the classes of the staff constituency;
 - 1.1.26. “trust” means The Christie NHS Foundation Trust;
 - 1.1.27. “university governor” means a governor appointed by the University of Manchester which provides a medical school to a hospital of the trust;
 - 1.1.28. “vice chair” means the governor appointed as vice chair pursuant to paragraph 5 of Annex 5;
 - 1.1.29. “voluntary organisation” means a body, other than a public or local authority, the activities of which are not carried on for profit.
- 1.2. Subject to council standing order 4.7.2, save as permitted by law, the chair shall be the final authority on the interpretation of these council standing orders (on which they shall be advised by the chief executive and director of finance).
 - 1.3. *Paragraph deleted.*
 - 1.4. References to any statute, statutory provision, statutory instrument or guidance in these SFIs include reference to that statute, provision, instrument or guidance as replaced, amended, extended, re-enacted or consolidated from time to time.

2. General information

- 2.1. The purpose of the council standing orders is to ensure that the highest standards of corporate governance and conduct are applied to all council meetings and associated deliberations. The council shall at all times seek to comply with the NHS Foundation Trust Code of Governance.

- 2.2. The roles and responsibilities of the council which are to be carried out in accordance with the constitution include:
 - 2.2.1. to respond as appropriate when consulted by the board in accordance with the constitution;
 - 2.2.2. to undertake such functions as the board shall from time to time request;
 - 2.2.3. to prepare and from time to time review the trust's membership strategy and the policy for the composition of the council and of the non-executive directors;
 - 2.2.4. when appropriate to make recommendations for the revision of the constitution.
- 2.3. All business shall be conducted in the name of the trust.
- 2.4. A governor who has acted honestly and in good faith will not be required to meet out of their personal resources, any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs reasonably and necessarily incurred by a governor that are associated with such personal civil liability will be met by the trust.

3. Composition of the Council

- 3.1. The composition of the council shall be in accordance with paragraph 9 and annex 3 of the constitution.

4. Meetings of the Council

- 4.1. Meetings held in public
 - 4.1.1. Meetings of the council must be open to the public subject to the provisions of council standing order 4.1.2 below.
 - 4.1.2. The council may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that:
 - i. publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted following an appropriate resolution by the council; or
 - ii. there are special reasons stated in the resolution and arising from the nature of the business of the proceedings;
 - 4.1.3. The chair may exclude any member of public from the meeting of the council if he or she is interfering with or preventing the proper conduct of the meeting.
 - 4.1.4. Meetings of the council shall be held regularly at least four times each year at times and places that the council may determine.
 - 4.1.5. The council may invite the chief executive, and other appropriate directors, to attend any meeting of the council to enable governors to raise questions about the trust's affairs.
- 4.2. Calling meetings
 - 4.2.1. Subject to standing order 4.2.5 below meetings of the council shall be called by the secretary or in his/her absence, by the chair.
 - 4.2.2. The chair or ten governors (including at least two elected governors and two appointed governors) may requisition a

meeting by giving written notice to the secretary specifying the business to be carried out.

4.2.3. The secretary shall send a written notice to all governors as soon as possible after receipt of such a request.

4.2.4. The secretary shall call a meeting on at least five (5) clear days but not more than twenty-one (21) clear days notice to discuss the specified business.

4.2.5. If the secretary fails to call such a meeting then the chair or the ten governors who requisitioned the meeting, whichever is the case, shall call such a meeting.

4.3. Notice of meetings

4.3.1. Save in the case of emergencies or the need to conduct urgent business, the secretary shall give at least five (5) clear days written notice of the date and place of every meeting of the Council of Governors together with an agenda and any supporting papers to all governors. Notice will also be published in the foundation trust's member newsletter and on the foundation trust's website. Lack of service of the notice on any governor shall not affect the validity of a meeting subject to council standing order 4.3.2.

4.3.2. In the case of a meeting called by governors in default of the secretary, the notice shall be signed by those governors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice. Failure to serve such a notice on more than three quarters of governors will invalidate the meeting. A notice will be deemed to have been served seventy two (72) hours after posting, or in the case of a notice contained in an electronic communication, 72 hours after it was sent.

4.4. Setting the agenda

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

4.4.2. A governor desiring a matter to be included on an agenda shall make his or her request in writing to the chair at least twenty-one (21) clear days before the meeting. The governor should indicate whether the item of business is to be transacted in the presence of the public and should provide the appropriate paper, document or supporting information. Where a request for an item of business to be included on an agenda is made less than twenty-one (21) clear days but more than five (5) clear days before a meeting such item of business may, at the discretion of the chair, be included on the agenda and shall be tabled as an agenda item at the commencement of the relevant meeting.

4.5. Chair of meeting

4.5.1. The chair of the trust (i.e. the chair of the board) or in his or her absence the deputy chair or in their absence one of the non-executive directors shall preside at meetings of the council.

4.5.2. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the vice chair of the council will chair that part of the meeting.

4.6. Notices of motions

4.6.1. A governor desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the chair, who shall insert it into the agenda for the meeting. This council standing order 4.6.1, shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to council standing order 4.4 of these standing orders.

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

4.6.3. Notice of motion to amend or rescind any resolution or the general substance of any resolution, which has been passed within the preceding six calendar months, shall bear the signature of the governors who give it and also the signature of four other governors. When any such motion has been disposed of by the council it shall not be competent for any governor, other than the chair, to propose a motion to the same effect within six months; however the chair may do so if he or she considers it appropriate.

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

4.6.5. 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) the appointment of an ad hoc committee to deal with a specific item of business
- d) that the meeting proceed to the next business
- e) that the motion be now put
- f) a motion resolving to exclude the public, including the press

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

4.7. Chair's ruling

4.7.1. Statements of governors made at meetings of the council must be relevant to the matter under discussion at the material time and the decision of the chair of the meeting on questions of order,

relevance, regularity and any other matters shall be final and observed at the meeting.

- 4.7.2. Without prejudice to council standing order 1.2, save as permitted by law, at any meeting the person presiding shall be the final authority on the interpretation of these council standing orders in relation to that meeting.

4.8. Voting

- 4.8.1. Decisions at meetings shall be determined by a majority of the votes of the governors present and voting. In the case of any equality of votes, the person presiding as chair shall have a second or casting vote.
- 4.8.2. All decisions put to the vote shall, at the discretion of the person presiding as chair, 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.
- 4.8.3. 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.
- 4.8.4. If a governor so requests, his or her vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.8.5. In no circumstances may an absent governor vote by proxy. Absence is defined as being absent at the time of the vote.

4.9. Suspension of council standing orders

- 4.9.1. Except where this would contravene any statutory provision, any one or more of these council standing orders may be suspended at any meeting, provided that at least two-thirds of members of the council are present and that a majority of those present vote in favour of suspension.
- 4.9.2. A decision to suspend any council standing order shall be recorded in the minutes of the meeting.
- 4.9.3. A separate record of matters discussed during the suspension of any council standing order shall be made and shall be available to the directors and governors.
- 4.9.4. No formal business may be transacted by the council while any council standing order is suspended.
- 4.9.5. The trust's audit committee shall review every decision to suspend any council standing order.

4.10. Record of attendance

- 4.10.1. The names of the governors present at the meeting shall be recorded in the minutes.

4.11. Minutes

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

- 4.11.2. 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 such next meeting.
- 4.11.3. Minutes shall be circulated in accordance with the governors' wishes. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of council standing order 4.1 of these council standing orders

4.12. Quorum

- 4.12.1. No business shall be transacted at a meeting of the council unless ten governors including no fewer than five public governors, not less than one staff governor and no fewer than two appointed governors are present.
- 4.12.2. If a governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest he or 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.

5. Arrangements to assist the Council in the exercise of its functions

- 5.1. The powers which the council has retained to itself within these council standing orders or within the trust's schedule of reservation and delegation of powers may in an emergency be exercised by the chair after having consulted at least five elected governors. The exercise of such powers by the chair shall be reported to the next formal meeting of the council for ratification.
- 5.2. The council may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of its members, directors, and other persons to assist the council in carrying out its functions. The council may, through the secretary, request that advisors assist them or any committee they appoint in carrying out their duties.
- 5.3. The council may not delegate any of its powers to an individual governor but may request that an individual governor assists it in the exercise of its functions.

6. Committees

- 6.1. The nominations committee will comprise the chair, two elected governors and one appointed governor. When the chair is being appointed or reappointed, the deputy chair shall take his or her place, unless he or she is standing for appointment, in which case another non-executive director, shall take his or her place. When the chair's remuneration is being considered the deputy chair shall take his or her place. A nominated representative from NHSE and/or the NHS Greater Manchester Integrated Care Board will be invited to act as an independent assessor to the nominations committee when an interview panel is convened to appoint a new chair or non-executive director.

- 6.2. The council may appoint committees of the council consisting wholly of persons who are governors. Non-governors may attend such committees if appropriate under the committee's terms of reference but they shall have no vote.
- 6.3. A committee so appointed may appoint sub-committees consisting wholly of persons who are governors. Non-governors may attend such committees if appropriate under the committee's terms of reference but they shall have no vote.
- 6.4. These council standing orders, as far as they are applicable, shall apply also, with appropriate alteration, to meetings of any committees or sub-committees so established by the council.
- 6.5. Each such committee or sub-committee shall have such terms of reference and be subject to such conditions (as to reporting back to the council) as the council shall decide. Such terms of reference shall have effect as if incorporated into these standing orders.
- 6.6. The council shall approve the membership of all committees and sub-committees that it has formally constituted and shall approve the recommendation from the relevant committee to appoint the chair and, if applicable, the deputy chair of each committee and sub-committee.
- 6.7. A governor may participate in a duly convened meeting of a committee or subcommittee by means of a video conference, telephone or any other communications equipment which allows all persons to hear and speak to one another subject to reasonable notice and availability of the necessary equipment.

7. Confidentiality

- 7.1. Subject to council standing order 7.2 below, no member of the council nor any attendee at a committee of the council shall disclose any matter dealt with by, or brought before, the council or such committee of the council without the permission of the council or such committee (as applicable) until such matter shall have been concluded or in the case of a committee, until the committee shall have reported to the council.
- 7.2. A governor or a non-governor in attendance at a committee or the council shall not disclose any matter dealt with by the committee or the council, notwithstanding that the matter has been reported or concluded, if the council or committee resolves that such matter is to be kept confidential.

8. Declaration of interests and register of interests

- 8.1. Members of the council shall disclose to the council any material interests (as defined below) held by a governor, their spouse or partner. Any such interest disclosed shall be recorded in the register of interests of governors maintained by the secretary.
- 8.2. The responsibility for declaring an interest is solely that of the governor concerned and shall be declared to the secretary:
 - 8.2.1. Within 28 days of election or appointment; or
 - 8.2.2. If arising later, within 7 days of the governor becoming aware of the interest.
- 8.3. Subject to the exceptions in council standing order 8.4 below a material interest is:
 - 8.3.1. Any directorship of a company;

- 8.3.2. Any interest or position in any firm, company, business or organisation (including any charitable or voluntary organisation) which has or is likely to have a trading or commercial relationship with the trust;
 - 8.3.3. Any interest in an organisation providing health and social care services to the National Health Service;
 - 8.3.4. A position of authority in a charity or voluntary organisation in the field of health and social care;
 - 8.3.5. Any connection with any organisation, entity or company considering entering into a financial arrangement with the trust including but not limited to lenders or banks.
- 8.4. The exceptions which shall not be treated as interests or material interests for the purposes of these provisions are as follows:
- 8.4.1. Shares held in any company whose shares are listed on any public exchange not exceeding 2% of the total number of shares issued;
 - 8.4.2. An employment contract with the trust held by a staff governor;
 - 8.4.3. An employment contract with a local authority held by a local authority governor;
 - 8.4.4. An employment contract with a university held by a university governor;
 - 8.4.5. An employment contract with or other position of authority within a partnership organisation held by a partnership governor.
- 8.5. Any governor who has an interest in a matter to be considered by the council (whether because the matter involves a firm, company, business or organisation in which the governor or his or her spouse or partner has a material interest or otherwise) shall declare such interest to the council and;
- 8.5.1. shall withdraw from the meeting and play no part in the relevant discussion or decision; and
 - 8.5.2. shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted); and
 - 8.5.3. details of any such interest shall be recorded in the register of interests of governors.
- 8.6. Any governor who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining governors.
- 8.7. If a governor has any doubt about the relevance of an interest, he or she should discuss it with the chair who shall advise him whether or not to disclose the interest.
- 8.8. Governors' directorships of companies that may seek to do business with the trust should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding annual reports.
- 8.9. Register of interests

- 8.9.1. The secretary will ensure that a register of interests is established to record formally the declarations of interests of governors.
- 8.9.2. Information included in the register will be kept up to date and reviewed annually.
- 8.9.3. The register will be available to the public.

9. Compliance - other matters

- 9.1. Governors shall comply with standing financial instructions prepared by the director of finance and approved by the board for the guidance of all staff employed by the trust.
- 9.2. Governors should act at all times in accordance with the trust's schedule of reservation and delegation of powers.
- 9.3. Governors must conduct themselves at all times in accordance with the NHS Foundation Trust Code of Governance. Governors must:
 - 9.3.1. actively support the vision and aims of the trust in developing as a successful NHS Foundation Trust
 - 9.3.2. act in the best interest of the trust at all times and recognise the need for corporate responsibility
 - 9.3.3. contribute to the work of the council in order for it to fulfil its role as described in the trust's constitution, including as set out in these council standing orders
 - 9.3.4. recognise that the council has no managerial role within the trust
 - 9.3.5. value and respect governor colleagues, and all members of staff of the trust they come into contact with
 - 9.3.6. respect the confidentiality of information they receive in their role as governor
 - 9.3.7. act with integrity and objectivity and in the best interests of the trust, without any expectation of personal benefit
 - 9.3.8. attend meetings of the council and all training events for governors, on a regular basis
 - 9.3.9. conduct themselves in a manner that reflects positively on the trust, acting as ambassador for the trust
 - 9.3.10. abide by the trust's policies and procedures
 - 9.3.11. recognise that the trust is an apolitical organisation and act in an apolitical way in their role as governor
 - 9.3.12. if a public or staff governor is a member of any trade union, political party or other organisation, recognise that they do not in their role as governor represent those organisations (or the views of those organisations) but represent the constituency (public or staff) that elected them
 - 9.3.13. be honest and act with integrity and probity at all times
 - 9.3.14. respect and treat with dignity and fairness, the public, patients, relatives, carers, NHS staff and partners in other agencies
 - 9.3.15. accept responsibility for their own actions

- 9.3.16. show their commitment to working as a team member by working with all their colleagues in the NHS and the wider community
- 9.3.17. ensure that the membership constituency they represent is provided with regular updates on the work of the trust and able to influence services
- 9.3.18. ensure that no one is discriminated against because of their religion, belief, race, colour, gender, marital status, disability, sexual orientation, age, social and economic status or national origin
- 9.3.19. respect the confidentiality of individual patients and comply with the confidentiality policies of the trust
- 9.3.20. not make, permit or knowingly allow to be made, any untrue or misleading statement relating to their own duties or the functions of the trust
- 9.3.21. ensure that the best interests of the public and patients/clients are upheld in decision making and that decisions are not improperly influenced by gifts or inducements
- 9.3.22. support and assist the accounting officer of the trust in his or her responsibility to answer to NHSE, commissioners and the public in terms of fully and faithfully declaring and explaining the use of resources and the performance of the trust

9.4. Each governor will uphold the seven principles of public life as detailed by the Nolan Committee:

9.4.1. **Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends

9.4.2. **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties

9.4.3. **Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit

9.4.4. **Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office

9.4.5. **Openness**

Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands

9.4.6. **Honesty**

Holders of public office have a duty to declare any private interest relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest

9.4.7. **Leadership**

Holders of public office should promote and support these principles by leadership and example

10. Resolution of disputes with Board

10.1. The council has three main roles:

10.1.1. Strategic – to use the breadth of experience of the governors to help determine the trust's future direction and support it in delivering its plans.

10.1.2. Advisory – to act as a critical friend providing support, feedback and advice.

10.1.3. Representative – to use the views of their electorate or organisation to enhance and inform the work of the trust.

10.2. The board has overall responsibility for running the affairs of the trust.

Its role is to:

10.2.1. Set a strategic direction.

10.2.2. Set organisational and operational targets.

10.2.3. Minimise risk.

10.2.4. Assess achievement against the above objectives.

10.2.5. Ensure that action is taken to eliminate or minimise, as appropriate, adverse deviations from objectives.

10.2.6. Ensure that the highest standards of corporate governance are applied throughout the organisation.

10.3. Should a dispute arise between the council and the board then the disputes resolution procedure set out below recognises the different roles of the council and the board as described above and should be followed in the event of any dispute.

10.3.1. The chair, or deputy chair (if the dispute involves the chair) shall first endeavour through discussion with appropriate representatives of the governors and the directors to achieve the earliest possible resolution of the matter in dispute to the reasonable satisfaction of both parties.

10.3.2. Failing resolution under council standing order 10.3.1 above then the board or the council, as appropriate, shall at its next formal meeting approve the precise wording of a disputes statement setting out clearly and concisely the issue or issues giving rise to the dispute.

10.3.3. The chair or deputy chair (if the dispute involves the chair) shall ensure that the disputes statement produced in accordance with council standing order 10.3.2 above, without amendment or

abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the board or council as appropriate (i.e. the body that does not issue the disputes statement). That meeting shall agree the precise wording of a response to the disputes statement.

10.3.4. The chair or deputy chair (if the dispute involves the chair) shall immediately or as soon as is practical, communicate the outcome to the other party and deliver the written response to the disputes statement. If the matter remains unresolved or only partially resolved then the procedure outlined in council standing order 10.3.1 above shall be repeated.

10.3.5. If, in the opinion of the chair or deputy chair (if the dispute involves the chair), and following the further discussions prescribed in council standing order 10.3.4, there is no further prospect of a full resolution using the process described above or, if at any stage in the whole process, in the opinion of the chair or deputy chair (as the case may be), there is no prospect of a resolution (partial or otherwise) using the process described above then he or she shall appoint a special committee comprising equal numbers of directors and governors to consider the circumstances and to make recommendations to the council and the board with a view to resolving the dispute.

10.3.6. On the satisfactory completion of this disputes process the board or the council (as applicable) shall implement any changes agreed by both parties.

10.3.7. If the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the chair may refer the dispute to an external mediator appointed by the Centre for Effective Dispute Resolution or other such organisation as he or she considers appropriate.

10.4. Nothing in this procedure shall prevent the council, if it so desires, from informing NHSE that, in the council's opinion, the board has not responded constructively to concerns of the council that the trust is not meeting the terms of its licence.

11. Council performance

11.1. The chair shall, at least annually, lead a performance assessment process for the council to enable the council to review its roles, structure, composition and procedures taking into account emerging best practice.

12. An amendment of council standing orders

12.1. These council standing orders shall be amended only in accordance with paragraph 45 of the constitution

12.2. *Sentence deleted*

Annex 8 – Standing orders for the practice and procedure of the Board of Directors

(Paragraph 26)

Foreword

The trust board of directors has a responsibility to agree standing orders and schedules of reservation and delegation of powers. These documents, together with standing financial instructions, provide a regulatory framework for the conduct of business by the trust. They fulfil the dual role of protecting the trust's interests by ensuring, all transactions maximise the benefit to the trust and protecting staff from possible accusations that they have acted less than properly.

The standing orders, schedule of reservation and delegation of powers document and standing financial instructions provide a comprehensive business framework. All board directors and all staff should be aware of the existence of these documents and, where necessary, be familiar with their detailed provisions to the extent required for the proper conduct of their duties.

Section A - Interpretation and definitions

1. Interpretation and definitions

- 1.1. Save as otherwise permitted by law, at any meeting the chair of the trust shall be the final authority on the interpretation of standing orders, the schedule of reservation and delegation of powers and/or the standing financial instructions (on which he or she should be advised by the chief executive.)
- 1.2. Any expression to which a meaning is given in the Health and Social Care (Community Health and Standards) Act 2003 (as amended by the National Health Service Act 2006), the National Health Service Act 2006, or in regulations made under the Acts, shall have the same meaning in these standing orders and in addition:
 - 1.2.1. "accounting officer" means the person who from time to time discharges the functions specified in paragraph 25 of schedule 7 to the National Health Services Act 2006. For the trust it shall be the chief executive;
 - 1.2.2. "board" means the Board of Directors, formally constituted in accordance with this constitution and consisting of the chair, independent non executive directors appointed by the council and the executive directors appointed by the non-executive directors and (except for his or her own appointment) by the chief executive;
 - 1.2.3. "budget" means a resource, expressed in financial terms, approved by the board for the purpose of carrying out, for a specific period, any or all of the functions of the trust;
 - 1.2.4. "chair" is the person appointed by the council to lead the board, and to ensure that it discharges its overall responsibility for the trust as a whole;
 - 1.2.5. "chief executive" means the chief officer of the trust;
 - 1.2.6. "committee" means a committee appointed by the board;
 - 1.2.7. "committee members" means persons formally appointed by the board to sit on or to chair specific committees;
 - 1.2.8. "council" means the Council of Governors, formally constituted in accordance with the constitution and presided over by the chair;
 - 1.2.9. "deputy chair" is the independent non executive director appointed by the council of governors to take on the chair's duties if the chair is absent from a meeting or is otherwise unavailable;
 - 1.2.10. "director of finance" means the chief financial officer of the trust;
 - 1.2.11. "executive director" means a member of the board who is an officer of the trust;
 - 1.2.12. "non-executive director" means a member of the board who is not an officer of the trust.
 - 1.2.13. "member" in the context of this document, means the executive or independent non-executive members of the board;
 - 1.2.14. "NHSE" is the body corporate known as NHSE (previously known as Monitor), as provided by Section 61 of the 2012 Act;

- 1.2.15. "nominated officer" means an officer charged with the responsibility for discharging specific tasks within standing orders and standing financial instructions;
 - 1.2.16. "officer" means an employee of the trust or any other person holding a paid appointment or office with the trust;
 - 1.2.17. "partner" means, in relation to another person, a member of the same household living together as a family unit;

 - 1.2.18. "secretary" means the secretary of the trust or any other person appointed to perform the duties of the secretary, including a joint, assistant or deputy secretary;
 - 1.2.19. "senior independent director" means the senior independent non executive director, appointed by the chair after consultation with the council;
 - 1.2.20. "SFIs" means standing financial instructions;
 - 1.2.21. "SOs" means these standing orders set out in this Annex 8;
 - 1.2.22. "trust" means The Christie NHS Foundation Trust;
- 1.3. *Paragraph deleted.*
- 1.4. References to any statute, statutory provision, statutory instrument or guidance in these SFIs include reference to that statute, provision, instrument or guidance as replaced, amended, extended, re-enacted or consolidated from time to time.

Section B – Standing orders

1. Introduction

Statutory framework

- 1.1. The principal place of business of the trust is The Christie, Wilmslow Road, Withington, Manchester, M20 4BX
- 1.2. NHS Foundation Trusts are governed by a regulatory framework that confers the functions of the trust and comprises: Acts of Parliament and in particular the National Health Service Act 2006 their constitutions and the terms of their licence granted by NHSE.
- 1.3. As a statutory body the board has specified powers to contract in the name of the trust and to act as a corporate trustee. In the latter role the board is accountable to the Charity Commission for those funds deemed to be charitable, as well as to NHSE.
- 1.4. The regulatory framework requires the trust to adopt SOs for the regulation of its proceedings and business. The trust must also adopt SFIs as an integral part of the SOs setting out the responsibilities of individuals, additional responsibilities and additional detailed provisions.

Reservation of powers

- 1.5. The board has resolved that certain powers and decisions may only be exercised by the board in formal session. These powers and decisions are set out in a separate document entitled the schedule of reservation and delegation of powers and shall have effect as if incorporated into these standing orders. This document also details those powers which it has delegated to committees of directors and individual executive directors.

2. The Board

Composition

- 2.1. The composition of the board shall comprise both executive and independent non-executive directors. The board is to comprise:
 - 2.1.1. a non-executive chair
 - 2.1.2. other independent non-executive directors; and
 - 2.1.3. executive directors; and
- 2.2. At least half the board, excluding the chair will comprise independent non-executive directors.
- 2.3. Of the executive directors
 - 2.3.1. one of the executive directors shall be the chief executive;
 - 2.3.2. the chief executive shall be the accounting officer;
 - 2.3.3. one of the executive directors shall be the director of finance;
 - 2.3.4. one of the directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984);
 - 2.3.5. one of the executive directors is to be a registered nurse or registered midwife.

Appointment of chair and members of the board

- 2.4. The council, at a general meeting of the council, shall appoint the chair and other independent non-executive directors, having followed the process of appointment specified in Annex 6 of the constitution.
- 2.5. The council will make the terms and conditions of appointment of the independent non-executive directors available for inspection.
- 2.6. The independent non-executive directors shall appoint or remove the chief executive, having followed the process specified in the constitution. The appointment of the chief executive shall require the approval of the council.
- 2.7. A committee consisting of the chair, the chief executive (except in the case of appointment of the chief executive) and other independent non-executive directors shall appoint or remove the executive directors, having followed the process specified in the constitution and good employment practice.
- 2.8. *Paragraph deleted.*

Terms of office

- 2.9. The chair and the independent non-executive directors will:
 - 2.9.1. serve terms of office of no longer than three years;
 - 2.9.2. be eligible for re-appointment at the end of the three years;
 - 2.9.3. not hold office for longer than six consecutive years without being subject to review and approval sought from NHSE;
 - 2.9.4. be subject to the review and approval process noted in 2.9.3 for each consecutive year after six years and up to a maximum of a further three years, making the maximum term nine years in total;
 - 2.9.5. not be eligible for re-election (after nine years) until there has been a minimum break of one year.
 - 2.9.6. An individual who serves three years as a non-executive director can go on to spend up to six years as chair without requiring NHSE agreement.
- 2.10. For the purposes of the maximum number of consecutive years of office allowed, service as an independent non-executive director of the Christie Hospital NHS Foundation Trust will count towards the total of nine consecutive years of service as an independent non-executive director of the trust.
- 2.11. The chief executive and executive directors will normally hold non time limited contracts of employment.

Appointment and powers of deputy chair

- 2.12. The council, at a general meeting of the council, shall appoint one of the independent non-executive directors as deputy chair of the board. If the chair is unable to discharge his or her office as chair of the trust, the deputy chair of the board shall be acting chair of the trust.
- 2.13. Any board member so appointed may at any time resign from the office of deputy chair by giving notice in writing to the chair. The council may thereupon appoint another independent non-executive director as deputy chair in accordance with the constitution.

Joint members

- 2.14. Where more than one person is appointed jointly as a member of the board, those persons shall count for the purpose of SO 2.1 as one person.
- 2.15. Where the office of a member of the board is split or shared by more than one person:
 - 2.15.1. Either or both those persons may attend or take part in meetings of the board;
 - 2.15.2. If both are present at a meeting they should cast one vote if they agree;
 - 2.15.3. In the case of disagreements no vote should be cast;
 - 2.15.4. The presence of either or both those persons should count as the presence of one person for the purpose of SO 3.39 quorum.

Role of Members

- 2.16. The board will function as a corporate decision-making body. Executive and independent non-executive directors will be full and equal members. Their role as director will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions.
 - 2.16.1. Executive Directors

Executive directors shall exercise their authority within the terms of these SOs, the SFIs and the schedule of reservation and delegation of powers.
 - 2.16.2. Chief Executive

The chief executive shall be responsible for the overall performance of the executive functions of the trust. He or she is the accounting officer for the trust and shall be responsible for ensuring the discharge of obligations under any relevant guidance from NHSE and in line with the requirements of the Accounting Officer Memorandum as detailed in section 5 of the schedule of reservation and delegation of powers.
 - 2.16.3. Director of Finance

The director of finance shall be responsible for the provision of financial advice to the trust and to its members and for the supervision of financial control and accounting systems. He or she shall be responsible along with the chief executive for ensuring the discharge of obligations under any relevant guidance from NHSE and as detailed in the relevant parts of sections 7, 8 and 9 schedule of reservation and delegation of powers.
 - 2.16.4. Independent Non-Executive Directors

The independent non-executive directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the trust. They may however, exercise collective authority when acting as members of or when chairing a committee of the trust which has delegated powers and in particular in relation to those matters detailed in the relevant parts of sections 7, 8 and 9 of the schedule of reservation and delegation of powers.
 - 2.16.5. Chair

The chair shall be responsible for the operation of the board and chair all board meetings when present. The chair has certain delegated executive powers. The chair must comply with the terms of appointment and with these SOs.

The chair shall liaise with the council over the appointment of independent non-executive directors and once appointed shall take responsibility either directly or indirectly for their induction, their portfolios of interests and assignments, and their performance.

The chair shall work in close harmony with the chief executive and shall ensure that key and appropriate issues are discussed by the board in a timely manner with all the necessary information and advice being made available to the board to inform the debate and ultimate resolutions.

The chair shall comply with those duties delegated to him or her in sections 6 and 7 of the schedule of reservation and delegation of powers.

2.16.6. Senior Independent Director

The chair shall, following consultation with the council appoint one of the independent non-executive directors to be the senior independent director.

The senior independent director shall make himself or herself available to members and governors who have concerns that they do not feel they can raise with the chair or any executive director of the trust. Recourse to the senior independent director shall not replace the right to instigate the dispute resolution procedure at Annex 10 of the constitution.

Corporate role of the Board

2.17. All business shall be conducted in the name of the trust.

Charitable Funds

2.18. All gifts shall be received and held in the name of the trust and administered in accordance with the trust's policy. Attention is also drawn to the requirements of the Charities Act 1993. Officers should not hold bank accounts for funds holding donated monies and income which should have been paid into charitable or endowment funds.

2.19. All charitable funds received in trust shall be held in the name of the trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised by the trust in any other capacity.

2.20. The trust's role as corporate trustee includes the duty to administer separately charitable funds received by the trust for which it is accountable to the Charity Commission, as the relevant regulator.

3. Meetings of the Board

Calling a meeting

3.1. Ordinary meetings of the board shall be held at such times and places as the board may determine.

3.2. Subject to Standing Order 3.3 below, meetings of the board shall be called by the secretary or in his/her absence, by the chair. The chair or four directors may requisition a meeting of the board by giving written notice to the secretary specifying the business to be carried out. The secretary shall send a written notice to all directors as soon as possible after receipt of such a request.

3.3. The secretary shall call a meeting on at least three (3) clear days but not more than seventeen (17) clear days' notice to discuss the specified

business. If the secretary fails to call such a meeting then the chair or the four directors who give written notice pursuant to SO 3.2 above, whichever is the case, shall call such a meeting.

- 3.4. Save in the case of emergencies or the need to conduct urgent business, the secretary shall give to all directors at least three (3) clear days written notice of the date and place of every meeting of the board.
- 3.5. Meetings of the board shall be open to members of the public unless the board decides otherwise in accordance with SO 3.43.
- 3.6. Nothing in these standing orders shall require the board to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place, without the prior agreement of the board.
- 3.7. The board may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

Notice of meetings

- 3.8. Before each meeting of the board, a notice of the meeting, specifying the business to be transacted at it, and signed by the chair or by an officer authorised by the chair to sign on his or her behalf shall be delivered to every board member, or sent by post to the usual place of residence of such member, so as to be available to him or her at least three (3) clear days but not more than ten (10) clear days before the meeting.
- 3.9. Want of service of the notice on any member shall not affect the validity of a meeting.
- 3.10. In the case of a meeting called by the chair or board members in default of the secretary, the notice shall be signed by the chair, or those board members who gave notice pursuant to SO 3.2 above, and no business shall be transacted at the meeting other than that specified in the notice.

Agenda

- 3.11. Agendas will be sent to members at least three (3) clear days before the meeting. Supporting papers shall accompany the agenda, save in an emergency. An agenda shall be presumed to have been served 72 hours after posting, or in the case of an agenda contained in an electronic communication, 72 hours after it was sent.
- 3.12. The board shall use its annual reporting cycle and actions arising from previous board meetings to determine the main content of the agenda.
- 3.13. A board member desiring other matters to be included on an agenda shall make his or her request known to the chair, in writing at least ten (10) clear days before the meeting. The board member should indicate whether the item of business is to be transacted in the presence of the public and should provide the appropriate paper, document or supporting information. Where a request for an item of business to be included on an agenda is made less than ten (10) clear days but more than three (3) clear days before a meeting such item of business may, at the discretion of the chair, be included and shall be tabled as an agenda item at the commencement of the relevant meeting.

Petitions

- 3.14. Where a petition has been received by the trust the chair shall include it as an item for the agenda of the next board meeting.

Chairing of meetings

- 3.15. The chair of the trust or, in his or her absence, the deputy chair of the board is to chair meetings of the board. If both the chair and the deputy chair are absent, the board members present shall choose a independent non-executive director who is present to chair the meeting.
- 3.16. If the chair stands down temporarily, on the grounds of a declared conflict of interest, the deputy chair, if present, shall chair that part of the meeting. If the chair and deputy chair are both absent, or disqualified from participating on the grounds of a declared conflict of interest, the board members present shall choose a independent non-executive director who is present to chair the meeting.

Notices of motion

- 3.17. A member of the board desiring to move or amend a motion shall send a written notice thereof at least ten (10) clear days before the meeting to the chair. The chair shall insert in the agenda for the meeting all notices so received. This SO 3.17 shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda.

Withdrawal of motion or amendments

- 3.18. 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.

Motion to rescind a resolution

- 3.19. Notice of motion to amend or rescind any resolution, or the general substance of any resolution passed within the preceding 6 calendar months, shall bear the signature of the member who gives it and also the signature of 4 other board members. When any such motion has been disposed of by the board, it shall not be competent for any member other than the chair to propose a motion to the same effect within 6 months; the chair may do so, however, if he or she considers it appropriate.

Motions

- 3.20. The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.21. When a motion is under discussion, or immediately prior to discussion, it shall be open to a member to move:
 - 3.21.1. an amendment to the motion
 - 3.21.2. the adjournment of the discussion or the meeting
 - 3.21.3. the appointment of an ad hoc committee to deal with a specific item of business
 - 3.21.4. that the meeting proceed to the next business
 - 3.21.5. that the motion be now put
 - 3.21.6. a motion resolving to exclude the public, including the press

Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the original motion shall be admitted if, in the opinion of the chair of the meeting, the amendment negates the substance of the original motion. In the case of motions under SO 3.21.4 and SO 3.21.5, to ensure objectivity motions may only be put by a governor who has not previously taken part in the debate on the original motion.

Chair's ruling

- 3.22. Statements of directors made at meetings of the board must be relevant to the matter under discussion at the material time and the decision of the chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final and observed at the meeting.

Voting

- 3.23. Subject to the following provisions of this SO 3.23, questions arising at a meeting of the board shall be decided by a majority of votes.
 - 3.23.1. In case of an equality of votes the person presiding as chair shall have a second and casting vote.
 - 3.23.2. No resolution of the board shall be passed if it is opposed by all of the independent non-executive directors present or by all of the executive directors present.
- 3.24. All questions put to the vote shall, at the discretion of the chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the members present so request.
- 3.25. If at least one-third of the members present so request, the voting (other than by paper ballot), on any question may be recorded to show how each member present voted or abstained.
- 3.26. If a member so requests, his or her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.27. In no circumstances may an absent member vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.28. An officer who has been appointed formally by the board to act up for an executive director of the board during his or her absence, or to cover a vacant executive director post, shall be entitled to exercise the voting rights of the executive director. An officer attending the board to represent an executive director without formal acting up status may not exercise the voting rights of the executive director. An officer's status when attending a meeting shall be recorded in the minutes.

Minutes

- 3.29. Minutes of every meeting of the board must be kept. Minutes of meetings will be read at the next meeting and signed by the chair of that meeting. The signed minutes will be conclusive evidence of the events of that meeting.
- 3.30. 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 such next meeting.
- 3.31. Minutes shall be circulated in accordance with members' wishes. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of SO 3.43.

Suspension of standing orders by the board

- 3.32. Except where this would contravene any statutory provision, any direction made by NHSE, or any term or condition set out in the trust's constitution, any one or more of the standing orders may be suspended at any meeting, provided that at least two-thirds of the board are present, including one executive director and one independent non-executive director, and that a majority of those present vote in favour of suspension.
- 3.33. A decision to suspend standing orders shall be recorded in the minutes of the meeting.
- 3.34. A separate record of matters discussed during the suspension of standing orders shall be made and shall be available to the chair and members of the board.
- 3.35. No formal business may be transacted while standing orders are suspended.
- 3.36. The audit committee shall review every decision to suspend standing orders.

Variation and amendment of standing orders

- 3.37. These standing orders shall be amended only in accordance with paragraph 45 of the Constitution.

Record of attendance at board meetings

- 3.38. The names of the chair, the board members present, and individuals in attendance at each board meeting shall be recorded and this record shall be made available to the council upon its request.

Quorum

- 3.39. Five board members, including not less than two executive directors, one of whom must be the chief executive or another executive director nominated by the chief executive and not less than two independent non executive directors, one of whom must be the chair of the trust or the deputy chair of the board, shall form a quorum.
- 3.40. An officer in attendance for an executive director but without formal acting up status may not count towards the quorum.
- 3.41. If the chair or another member has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 8 or 9), he or she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The requirement at 3.39 for at least two executive directors to form part of the quorum shall not apply where the executive directors are excluded from a meeting, or part of a meeting; for example when the board considers the recommendations of the remuneration committee.
- 3.42. The board may agree that its members can participate in its meeting by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

Admission of public to board meetings

- 3.43. The board may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that:

- i. publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted following an appropriate resolution by the board; or
 - ii. there are special reasons stated in the resolution and arising from the nature of the business of the proceedings;
- 3.44. The chair may exclude any member of the public from a meeting of the board if they are interfering with or preventing the proper conduct of the meeting.

4. Review of chair

- 4.1. As part of a process for the appraisal of the chair, which should be agreed with the council, the independent non-executive directors, led by the senior independent director, should meet at least annually without the chair to evaluate the chair's performance.

5. Arrangements for the exercise of powers by delegation

- 5.1. Subject to such directions as may be given by NHSE, the board may make arrangements for the exercise, on behalf of the board, of any of its powers:
 - 5.1.1. by a committee of directors; or
 - 5.1.2. by an executive director of the trust;in each case subject to such restrictions and conditions as the board thinks fit.

Emergency powers

- 5.2. The powers which the board has retained to itself within these standing orders may, in emergency, be exercised by the chief executive and the chair, after having consulted with at least two independent non executive directors. The exercise of such powers by the chief executive and chair shall be reported to the next formal meeting of the board in public session for ratification.

Delegation to committees

- 5.3. The board shall agree from time to time to the delegation of executive powers to be exercised by committees formally constituted in accordance with SO 6.1 below. The constitution and terms of reference of these committees and their specific executive powers shall be approved by the board.

Delegation to officers

- 5.4. Those functions of the trust which have not been retained as reserved by the board or delegated to a committee shall be exercised on behalf of the trust by the chief executive. The chief executive shall determine which functions he or she will perform personally and shall nominate other executive directors to undertake the remaining functions for which he or she will still retain accountability to the board.
- 5.5. The chief executive shall prepare a scheme of delegation identifying his or her proposals, which shall be considered and approved by the board, subject to any amendment agreed during the discussion. The chief executive may periodically propose amendments to the scheme of delegation that shall also be considered and approved by the board.
- 5.6. Nothing in the scheme of delegation shall impair the discharge of the direct accountability to the board of the director responsible for finance to provide information and advise the board in accordance with statutory or regulatory requirements. Outside these statutory requirements the role of the director

responsible for finance shall be accountable to the chief executive for operational matters.

Overriding standing orders

- 5.7. If for any reason these standing orders are not complied with, full details of the non-compliance, any justification for non-compliance and the circumstances surrounding the non-compliance, shall be reported to the next formal meeting of the board for action or ratification. All members of the board and staff have a duty to disclose any non-compliance with these standing orders to the chief executive as soon as possible.

6. Committees

Appointment

- 6.1. Subject to such directions as may be given by NHSE, the board may and, if directed by NHSE to do so, shall establish committees, reporting to the board, consisting solely of directors of the trust.
- 6.2. The Board of Directors may appoint committees or sub-committees consisting wholly or partly of directors of the trust or wholly of persons who are not directors of the trust for any purpose that is calculated or likely to contribute to or assist it in the exercise of its powers but it may not delegate the exercise of any of its powers to any such committee or sub-committee.
- 6.3. The board shall have the power to dismiss the members of any committee or sub-committee that is established under the power afforded to the board under SO 6.1 or 6.2 above from that committee or sub-committee as applicable.

Applicability of standing orders

- 6.4. The standing orders of the trust, so far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the board. In which case the term chair is to be read as a reference to the chair of the committee as the context permits, and the term member is to be read as a reference to a member of the committee also as the context permits. There is no requirement for committees established under SO 6.1 and SO 6.2 above or sub-committees, to hold meetings in public.

Terms of reference

- 6.5. Each committee established by the board or sub-committee shall have terms of reference and powers and be subject to such conditions, such as to reporting back to the board, as the board shall decide and shall act in accordance with any legislation and regulation or direction issued by NHSE. Such terms of reference shall have effect as if incorporated into these standing orders.

Approval of appointments

- 6.6. The board shall approve the appointments to each of the committees which it has formally constituted. Where the board determines, that persons, who are neither members nor officers, shall be appointed to a committee the board shall define the role of such appointees and may agree allowances, including reimbursement for loss of earnings, and/or expenses.
- 6.7. The board may elect to change the committees and sub committees as necessary without the requirement to amend these standing orders. Save that the trust shall at all times have an audit committee and a remuneration committee.

Committees Established by the Board

6.8. The committees and sub committees to be established by the board shall include the following:

6.8.1. Audit Committee

An audit committee will be established and constituted to provide the board with an independent and objective review on its financial systems, financial information and compliance with relevant laws and guidance. The Terms of Reference will be approved by the committee and reviewed on a periodic basis.

The NHS Foundation Trust Code of Governance recommends that the committee is composed of non-executive directors including a minimum of two independent non-executive directors, of which one must have significant, recent and relevant financial experience. Neither the vice chair nor senior independent director should chair the committee

The duties and decisions to be taken by the committee are contained in the relevant part of section 4 in the schedule of reservation and delegation of powers.

6.8.2. Quality Assurance/Governance Committee

A quality assurance / governance committee will be established and constituted to provide assurance to the board along with the audit committee and the workforce committee, that the trust is properly governed and well managed across the full range of activities undertaken by the trust. The Terms of Reference will be approved by the committee and reviewed on a periodic basis.

The duties and decisions to be taken by the committee are contained in the relevant part of section 4 in the schedule of reservation and delegation of powers.

6.8.3. Workforce Committee

A workforce committee will be established and constituted to provide assurance to the board along with the audit committee and the quality assurance / governance committee, that the trust is properly governed and well managed across the full range of activities undertaken by the trust. The Terms of Reference will be approved by the committee and reviewed on a periodic basis.

The duties and decisions to be taken by the committee are contained in the relevant part of section 4 in the schedule of reservation and delegation of powers.

6.8.4. Risk Committee

A risk committee will be established and constituted to provide information and assurances to the trust board that the trust is safely managing all issues relating to risk and governance.

The duties and decisions to be taken by the committee are contained in the relevant part of section 4 in the schedule of reservation and delegation of powers.

6.8.5. Remuneration Committee

A remuneration committee will be established and constituted. The duties and decisions to be taken by the committee are contained in the relevant part of section 4 in the schedule of reservation and delegation of powers.

The NHS Foundation Trust Code of Governance recommends the committee be comprised exclusively of non-executive directors and should include at least three independent non-executive directors. When setting remuneration for non-executive directors, including the chair, foundation trusts should use the Chair and non-executive director remuneration structure as set by NHSE.

6.8.6. Charitable Funds Committee

In line with its role as corporate trustee for any charitable funds, the trust will establish a charitable funds committee to administer those funds in accordance with any statutory or other legal requirements or best practice required by the Charity Commission.

The provisions of this SO 6.8.5 must be read in conjunction with SO 2.18-2.20 (inclusive) and SFI 17.

The duties and decisions to be taken by the charitable funds committee are contained in the relevant part of section 4 in the schedule of reservation and delegation of powers.

Confidentiality

- 6.9. Subject to SO 6.10 no member of a committee established by the board or any member of any sub-committee shall disclose any matter dealt with by or brought before the committee or its sub-committee without its permission until the committee or sub-committee (as applicable) shall have reported to the board or shall otherwise have concluded that matter.
- 6.10. No director of the trust nor any member of the committee or sub-committee shall disclose any matter reported to the board or otherwise dealt with by the committee, sub-committee or the board notwithstanding that the matter has been reported or action has been concluded if the board or committee or sub-committee shall resolve that such matter is to be kept confidential.

7. Other Trust Policy Statements/Procedures

- 7.1. The board will from time to time agree and approve policy statements/procedures which will apply to all or specific groups of staff employed by the trust. The decisions to approve such policies and procedures will be recorded in an appropriate board minutes and will be deemed where appropriate to be an integral part of these standing orders and the SFIs.

8. Declarations of interests and registers of interests

Declaration of interests

- 8.1. Board members are required to declare interests in accordance with paragraph 33 of the Constitution. All existing board members should declare such interests. Any board members appointed subsequently should do so on appointment.
- 8.2. The responsibility for declaring an interest is solely that of the director concerned and shall be declared to the secretary:
 - 8.2.1. Within 28 days of appointment; or
 - 8.2.2. If arising later, within 7 days of the director becoming aware of the interest.
- 8.3. At the time board members' interests are declared they should be recorded in the board minutes. Any changes in interests should be declared at the board meeting following the change occurring.

- 8.4. If board members have any doubt about the relevance of an interest, this should be discussed with the chair.

Register of Interests

- 8.5. The chief executive will ensure that a register of interests is established to record formally declarations of interests of board members.
- 8.6. These details will be kept up to date by means of an annual review of the register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 8.7. The register will be available to the public and the chief executive will take reasonable steps to bring the existence of the register to the attention of the local population and to publicise arrangements for viewing it.

9. *Paragraph deleted*

10. Standards of business conduct policy

Policy

- 10.1. Directors of the trust shall comply with standing financial instructions prepared by the director of finance and approved by the board for the guidance of all staff employed by the trust.
- 10.2. Directors of the trust must behave in accordance with the NHS Foundation Trust Code of Governance.
- 10.3. Each director will uphold the seven principles of public life as detailed by the Nolan Committee:

10.3.1. Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends

10.3.2. Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties

10.3.3. Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit

10.3.4. Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office

10.3.5. Openness

Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands

10.3.6. **Honesty**

Holders of public office have a duty to declare any private interest relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest

10.3.7. **Leadership**

Holders of public office should promote and support these principles by leadership and example

Interests of officers in contracts

- 10.4. If it comes to the knowledge of any officer of the trust that a contract in which he or she has any pecuniary interest, whether or not it is a contract to which he or she is a party, has been, or is proposed to be, entered into by the trust, he or she shall at once, give notice in writing to the chief executive of the fact that he or she is interested therein. In the case of persons cohabiting as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 10.5. An officer should also declare to the chief executive any other employment or business or other relationship of his, or of a cohabiting partner, that conflicts, or might reasonably be predicted could conflict with the interests of the trust. The Trust requires interests, employment or relationships declared, to be entered in a register of interests of staff.

Canvassing of and recommendations by, members of the board in relation to appointments

- 10.6. Canvassing of members of the board or of any committee established by the board or sub committee of the board, either directly or indirectly for any appointment under the trust shall disqualify the candidate for such appointment. The contents of this SO 10.6 shall be included in application forms or otherwise brought to the attention of applicants.
- 10.7. A member of the board shall not solicit for any person any appointment under the trust or recommend any person for such appointment. This SO 10.7 shall not, however, preclude a member of the board from giving written testimonial of a candidate's ability, experience or character for submission to the trust.
- 10.8. Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

Relatives of members of the board or officers of the trust

- 10.9. Candidates for any appointment under the trust shall, when making applications, disclose in writing to the trust whether they are related to any member of the board or a holder of any office under the trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him or her liable to instant dismissal.
- 10.10. The chair and every member of the board and officer of the trust shall disclose to the chief executive any relationship between himself and a candidate of whose candidature that member or officer is aware. It shall be the duty of the chief executive to report to the board any such disclosure made.
- 10.11. Prior to acceptance of an appointment as an executive director, executive directors of the board, should disclose to the board whether they are related to any other member of the board or holder of any office in the trust. Any

non-executive director shall, on appointment, disclose to the board whether they are related to any other member of the board or holder of any office within the trust.

- 10.12. Where the relationship to a member of the board is disclosed, SO 9 may apply.

Gifts and hospitality

- 10.13. Members of the board and officers of the trust are expected to maintain high standards of personal conduct in all work related business. Under the Prevention of Corruption Acts they must not accept from any organisation, firm or individual any inducement or reward which might influence them to make a decision not in the best interests of the trust. Any breach of the Acts renders the employee liable to instant dismissal.
- 10.14. Any gifts received from or offer of gifts by a contractor or potential contractor must be reported immediately to the chief executive. In the context of these instructions contractor means any supplier of goods, and/or services to the trust. Exception may be made only for items valued at less than £25; otherwise staff should decline all offers of gifts.
- 10.15. Similarly, all offers of hospitality must be treated on the same basis. Visits to contractors or potential contractors or to another site to inspect their installations must be made at the trust's expense not the contractor's. Exception to this rule may be granted by the chief executive where reasonable. Otherwise only minimal hospitality should be accepted from a contractor or potential contractor and immediate explanation must be given to the chief executive if a breach of the rules occurs. As with gifts, unless it is of a minor nature, hospitality and entertainment should be declined.

Relationships

- 10.16. Members of the board and officers of the trust should, as far as reasonable, avoid private transactions with contractors if they have official dealings with them. Obtaining or receiving additional discounts, a lower than usual price or free services by virtue of the officer's business contacts is not permissible except at a trivial level.
- 10.17. There are a number of circumstances where employees may have a personal employment or commercial relationship with a contractor to the trust, or other interest in such a contractor. It is important that not only should the full circumstances be reported to the chief executive, but that the officer also demonstrates that, as far as possible, the relationship has not and will not have any adverse affect on the trust. Advice should also be sought where the relationship may lead to some form of patent, copyright or other form of development rights, prior to entering into any agreement with the contractor.
- 10.18. The chief executive will ensure that a record of incidents concerning gifts and hospitality, and a register of second employments with, or interests in, contractors by employees, are maintained.

Patents and copyrights

- 10.19. In the course of their official duties employees may enter a situation where their work should be registered for patent or non-academic copyright. Income may be received as a consequence. By virtue of the patent or non-academic copyright being developed whilst in the employment of the trust, officers must ensure that timely and proper action is taken to protect their own, and the trust's, interests.

- 10.20. All patents and non-academic copyrights must be reported to the chief executive who will prepare an agreement between the officer and the trust. That agreement must state clearly the ownership of intellectual property rights. Where the work involved is wholly funded by the trust, ownership rests with the trust. The agreement will specify the respective shares which parties will receive. All income due to the trust must be paid into the trust's official funds.
- 10.21. All arrangements relating to patents and copyrights include the development of computer software.

Second employments

- 10.22. For full time staff their main employment necessarily takes precedence over any other paid or voluntary activities undertaken. Officers should not engage in any second or spare time job which affects in any way their performance or the discharge of their duties with the trust.
- 10.23. Second or spare time jobs are permissible, subject to SO 10.24 without the need for registration or authorisation, and may only be pursued where permitted under any officer of the trust's employment contract and where the activity is not with a supplier or contractor to the trust or with any other NHS organisation. Where an officer has reason to believe that his or her second employer has any business dealings whatsoever with the trust the facts must be reported to the chief executive.
- 10.24. Subject to the terms of any employees employment contract second or spare time jobs, whether regular or occasional, may not be with a supplier or contractor to the trust unless specifically approved by the chief executive who will keep a register detailing the personnel, the activity, the employer, and any other such details as are deemed desirable. Details of such situations must be submitted as and when these arise and confirmed on an annual basis.
- 10.25. Particular care must be taken to disclose any employment, even if only on a temporary or supply basis, with another NHS or private health care body.

Register of commercial interests and affiliations

- 10.26. The trust shall keep a register of commercial interests and affiliations, the register being held by the chief executive. It is essential that any member of staff who feels there may be conflict of interest makes an appropriate submission to the chief executive.

Disciplinary action

- 10.27. Failure to follow the principles and guidance in these standing orders may result in disciplinary action.

11. Custody of seal and sealing of documents

Custody of seal

- 11.1. The common seal of the trust shall be the responsibility of the secretary and kept in a secure place.

Sealing of documents

- 11.2. The seal of the trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the board or of a committee established by the board where the board has delegated its powers to authorise the application of the trust's seal.

- 11.3. Before any building, engineering, property or capital document is sealed it must be approved and signed by the director of finance, or an officer nominated by him or her and authorised and countersigned by the chief executive, or an officer nominated by him or her who shall not be within the originating directorate.
- 11.4. All deeds entered into by the trust and all documents conveying an interest in land must be executed by the application of the trust's seal.

Register of sealing

- 11.5. 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 approved and authorised the document and those who attested the seal. A report of all sealings shall be made to the board at least annually. The report shall contain details of the seal number, the description of the document and date of sealing.

12. Signature of documents

- 12.1. Where the signature of any document will be a necessary step in legal proceedings involving the trust, it shall be signed by the chief executive or nominated executive director unless any enactment or otherwise requires or authorises, or the board shall have delegated the necessary authority to another executive director for the purpose of such proceedings.
- 12.2. The chief executive or nominated officer shall be authorised, by resolution of the board, to sign on behalf of the trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the board or any committee established by the board with delegated authority.

13. Miscellaneous

Standing orders to be given to members of the board and officers of the trust

- 13.1. It is the duty of the chief executive to ensure that existing board members and officers of the trust and all new appointees are notified of and understand their responsibilities within the standing orders, schedule of reservation and delegation of powers and standing financial instructions. Updated copies shall be issued to staff designated by the chief executive. New designated officers shall be informed in writing and shall receive copies where appropriate.

Documents having the standing of standing orders

- 13.2. SFIs and the schedule of reservation and delegation of powers shall have effect as if incorporated into these standing orders.

Review of standing orders

- 13.3. SOs shall be reviewed periodically by the board. The requirement for review extends to all documents having the effect as if incorporated in standing orders.

Annex 9 – Additional provisions – members

(Paragraphs 4 and 8.3)

1. Disqualification from membership

1.1. An individual may not become a member of the foundation trust if:

- 1.1.1. they are under 16 years of age; or
- 1.1.2. they have been involved as a perpetrator in a serious incident of physical or verbal aggression at any of the foundation trust's hospitals or facilities or against any of the foundation trust's employees or other persons who exercise functions for the purposes of the foundation trust, or against any registered volunteer.

2. Termination of membership

2.1. A member shall cease to be a member if:

- 2.1.1. they resign by notice to the secretary;
- 2.1.2. they die;
- 2.1.3. they are expelled from membership under this constitution;
- 2.1.4. they cease to be entitled under this constitution to be a member of any of the public constituencies or of any of the classes of the staff constituency;
- 2.1.5. it appears to the secretary that they no longer wish to be a member of the foundation trust, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to demonstrate that they wish to continue to be a member of the foundation trust.

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

- 2.2.1. Any member may complain to the secretary that another member has acted in a way detrimental to the interests of the foundation trust.
- 2.2.2. If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
 - 2.2.2.1. dismiss the complaint and take no further action; or
 - 2.2.2.2. for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this constitution; or
 - 2.2.2.3. arrange for a resolution to expel the member complained of to be considered at the next general meeting of the Council of Governors.
- 2.2.3. If a resolution to expel a member is to be considered at a general meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.

- 2.2.4. At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- 2.2.5. If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 2.3. A person expelled from membership will cease to be a member of the foundation trust upon the declaration by the chair of the meeting that the resolution to expel them is carried.
- 2.4. No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a general meeting.

3. Members meeting

- 3.1. The foundation trust shall hold its Annual Members' Meeting within nine months of the end of each financial year.
- 3.2. All members meetings other than the Annual Members' Meetings are called special members' meetings.
- 3.3. Members meetings are open to all members of the foundation trust, governors and directors, and representatives of the auditor. Annual Members' Meetings shall be open to members of the public but special members' meetings shall not be open to members of the public unless the Council of Governors decides otherwise. The Council of Governors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the foundation trust to attend a members' meeting.
- 3.4. All members' meetings are to be convened by the secretary by order of the Council of Governors.
- 3.5. The Council of Governors may decide where a members' meeting is to be held and may also for the benefit of members:
 - 3.5.1. arrange for the Annual Members' Meeting to be held in different venues each year:
 - 3.5.2. make provisions for a members' meeting to be held at different venues simultaneously or at different times. In making such provision the Council of Governors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.
- 3.6. At the Annual Members' meeting:
 - 3.6.1. the Board of Directors shall present to the members:
 - 3.6.1.1. the annual accounts;
 - 3.6.1.2. any report of the auditor;
 - 3.6.1.3. forward planning information for the next financial year
 - 3.6.2. the Council of Governors shall present to the members a report on:
 - 3.6.2.1. steps taken to secure that (taken as a whole) the actual membership of the public constituencies and of the classes of the staff constituency is representative of those eligible for such membership;
 - 3.6.2.2. the progress of the membership strategy; and

- 3.6.2.3. any proposed changes to the policy for the composition of the Council of Governors and of the non-executive directors
- 3.6.3. the results of the election and appointment of governors and the appointment of non-executive directors will be announced.
- 3.7. Notice of a members' meeting is to be given:
 - 3.7.1. by notice to all members;
 - 3.7.2. by notice prominently displayed at the head office and at all of the foundation trust's places of business; and
 - 3.7.3. by notice on the foundation trust's website

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

 - 3.7.4. be given to the Council of Governors and the Board of Directors, and to the auditor;
 - 3.7.5. state whether the meeting is an Annual Members' Meeting or a special members' meeting;
 - 3.7.6. in the case of a special members' meeting, state whether the meeting is to be open to members of the public;
 - 3.7.7. give the time, date and place of the meeting; and
 - 3.7.8. indicate the business to be dealt with at the meeting.
- 3.8. Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is one member present from each of the foundation trust's constituencies.
- 3.9. The foundation trust may make arrangements for members to vote by post, or by using electronic communications.
- 3.10. It is the responsibility of the Council of Governors, the chair of the meeting and the secretary to ensure that at any members meeting:
 - 3.10.1. the issues to be decided are clearly explained;
 - 3.10.2. sufficient information is provided to members to enable rational discussion to take place.
- 3.11. The chair of the foundation trust, or in their absence the deputy chair of the Board of Directors, shall act as chair at all members meetings of the foundation trust. If neither the chair nor the deputy chair of the Board of Directors is present, the members of the Council of Governors present shall elect one of their number to be chair and if there is only one governor present and willing to act they shall be chair.
- 3.12. If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
- 3.13. A resolution put to the vote at a members meeting shall be decided upon by a poll.
- 3.14. Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the chair of the meeting is to have a second and casting vote.

3.15. The result of any vote will be declared by the chair and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

Annex 10 – Further provisions

1. Commitments

- 1.1. The foundation trust shall exercise its functions effectively, efficiently and economically.

Representative membership

- 1.2. The foundation trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end:
- 1.2.1. the foundation trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time, and at least every three years,
 - 1.2.2. the Council of Governors shall present to each Annual Members' Meeting a report on:
 - 1.2.2.1.steps taken to secure that (taken as a whole) the actual membership of the public constituencies and of the classes of the staff constituency is representative of those eligible for such membership;
 - 1.2.2.2.the progress of the membership strategy;
 - 1.2.2.3.any changes to the membership strategy.

Co-operation with NHS bodies and local authorities

- 1.3. In exercising its functions the foundation trust shall co-operate with NHS bodies and local authorities.

Openness

- 1.4. In conducting its affairs, the foundation trust shall have regard to the need to provide information to members and conduct its affairs in an open and accessible way.

Prohibiting distribution

- 1.5. The profits or surpluses of the foundation trust are not to be distributed either directly or indirectly in any way at all among members of the foundation trust.

2. Framework

- 2.1. The affairs of the foundation trust are to be conducted by the Board of Directors, the Council of Governors and the members in accordance with this constitution and the foundation trust's authorisation. The members, the Council of Governors and the Board of Directors are to have the roles and responsibilities set out in this constitution.

Members

- 2.2. Members may attend and participate at members meetings, vote in elections to, and stand for election to, the Council of Governors, and take such other part in the affairs of the foundation trust as is provided in this constitution.

Council of Governors

- 2.3. The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with this constitution are:
- 2.3.1. at a general meeting:
 - 2.3.1.1. to appoint or remove the chair and the other non-executive directors;
 - 2.3.1.2. to approve an appointment (by the non-executive directors) of the chief executive;
 - 2.3.1.3. to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors;
 - 2.3.1.4. to appoint or remove the foundation trust's auditor;
 - 2.3.1.5. to be presented with the annual accounts, any report of the auditor on them and the annual report;
 - 2.3.2. to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the foundation trust's forward planning;
 - 2.3.3. to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;
 - 2.3.4. to undertake such functions as the Board of Directors shall from time to time request;
 - 2.3.5. to prepare and from time to time review the foundation trust's membership strategy and its policy for the composition of the Council of Governors and of the non-executive directors and when appropriate to make recommendations for the revision of this constitution.

Board of Directors

- 2.4. The business of the foundation trust is to be managed by the Board of Directors, who shall exercise all the powers of the foundation trust, subject to any contrary provisions of the 2006 Act as given effect by this constitution.

3. Secretary

- 3.1. The foundation trust shall have a secretary who may be an employee. The secretary may not be a governor, or the chief executive or the finance director. The secretary's functions shall include:
- 3.1.1. acting as secretary to the Council of Governors and the Board of Directors, and any committees;
 - 3.1.2. summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;
 - 3.1.3. keeping the register of members and other registers and books required by this constitution to be kept;
 - 3.1.4. having charge of the foundation trust's seal;
 - 3.1.5. publishing to members in an appropriate form information which they should have about the foundation trust's affairs;
 - 3.1.6. preparing and sending to NHSE and any other statutory body all returns which are required to be made.

- 3.2. Minutes of every members meeting, of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be read at the next relevant meeting and signed by the chair of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.
- 3.3. The secretary is to be appointed and removed by the Board of Directors, in consultation with the Council of Governors.
- 3.4. The Board of Directors of the applicant NHS trust shall appoint the first secretary of the foundation trust.
4. **Further provisions as to auditor**
 - 4.1. A person may only be appointed as the auditor if he or she (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.
 - 4.2. An officer of the Audit Commission may be appointed as auditor with the agreement of the Audit Commission. Where an officer of the Audit Commission is appointed as auditor, the Commission is to charge the foundation trust such fees for his or her services as will cover the full cost of providing them.
 - 4.3. The auditor is to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHSE on standards, procedures and techniques to be adopted.
 - 4.4. The maximum contractual period for the auditor is ten years with the expectation that audit services are refreshed more frequently.
5. **Further provisions as to accounts**
 - 5.1. The following documents will be made available to the Comptroller and Auditor General for examination at his or her request:
 - 5.1.1. the accounts;
 - 5.1.2. the records relating to them; and
 - 5.1.3. any report of the auditor on them.
 - 5.2. In preparing its annual accounts, the accounting officer shall cause the foundation trust to comply with any directions given by NHSE with the approval of the Secretary of State as to:
 - 5.2.1. the methods and principles according to which the accounts are to be prepared;
 - 5.2.2. the content and form of the accounts;and shall be responsible for the functions of the foundation trust as set out in paragraph 25 of Schedule 7 to the 2006 Act.
 - 5.3. The accounting officer shall cause the foundation trust to:
 - 5.3.1. lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
 - 5.3.2. once it has done so, send copies of those documents to NHSE within such period as NHSE may direct.
6. **Further provisions as to annual reports**
 - 6.1. The annual reports are to give:

- 6.1.1. information on any steps taken by the foundation trust to secure that (taken as a whole) the actual membership of each public constituency and of the classes of the staff constituency is representative of those eligible for such membership;
 - 6.1.2. information on any occasions in the period to which the report relates on which the Council of Governors exercised its power under paragraph 16.3 of the constitution;
 - 6.1.3. information on the foundation trust's policy on pay and on the work of the committee established under paragraph 34.2 of the constitution and such other procedures as the foundation trust has on pay;
 - 6.1.4. information on the remuneration of the directors and on the expenses of the governors and the directors; and
 - 6.1.5. any other information NHSE requires.
- 6.2. The foundation trust is to comply with any decision NHSE makes as to:
- 6.2.1. the form of the reports;
 - 6.2.2. when the reports are to be sent to it;
 - 6.2.3. the periods to which the reports are to relate.

7. Indemnity

Members of the Council of Governors and the Board of Directors and the secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs reasonably and necessarily incurred by a governor or a director that are associated with such personal civil liability will be met by the foundation trust. The foundation trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors and the Board of Directors and the secretary.

8. Dispute resolution procedures

- 8.1. Every unresolved dispute which arises out of this constitution between the foundation trust and:
- 8.1.1. a member; or
 - 8.1.2. any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or
 - 8.1.3. any person bringing a claim under this constitution; or
 - 8.1.4. an office-holder of the foundation trust
- is to be submitted to an arbitrator agreed by the parties or in the absence of agreement to be nominated by NHSE. The arbitrator's decision will be binding and conclusive on all parties.
- 8.1.5. Any person bringing a dispute must, if required to do so, deposit with the foundation trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.

9. **Dissolution**

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

10. **Head office**

The foundation trust's head office is The Christie, Wilmslow Road, Manchester M20 4BX or such other place as the Board of Directors shall decide.

11. **Notices**

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

11.2. To prove service it shall be sufficient to prove that:

11.2.1. in the case of post, the envelope containing the notice was properly addressed, prepaid and posted;

11.2.2. in the case of transmission by fax, that the notice was transmitted by fax to the fax number of the relevant party and confirmation of full transmission was received; or

11.2.3. in the case of e-mail, that the e-mail containing the notice was sent to the correct e-mail address.

11.3. A notice shall be treated as delivered 72 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 72 hours after it was sent.

11.4. Any reference to days for service of notices, forms or declarations in this constitution shall be clear days. Therefore, the number of days specified does not include the two days between which the interval is measured. For example, if notice is to be given a number of clear days before a meeting, neither the date notice is delivered (or deemed to be delivered) nor the date of the meeting is to be taken into account.

12. *Paragraph deleted*