

BIRMINGHAM WOMEN'S NHS FOUNDATION TRUST

(A PUBLIC BENEFIT CORPORATION)

CONSTITUTION

As amended to 30th June, 2015

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1 Name

- 1.1 The name of the Trust is to be “Birmingham Women’s NHS Foundation Trust”.

2 Principal Purpose

- 2.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.
- 2.2 The Trust does not fulfil its principal purpose unless, in each financial year, the Trust's income from the provision of goods and services for the purposes of the health service in England exceeds its income from all other purposes.

3 Powers

- 3.1 The Trust is to have all the powers of an NHS Foundation Trust set out in the 2006 Act, subject to any restrictions in the terms of Authorisation.
- 3.2 In the exercise of its powers the Trust shall have regard to the core principles of the NHS and the Trust as set out in Appendix 1 of Annex 9.
- 3.3 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 3.4 Subject to any restriction contained in this Constitution or the 2006 Act, and to paragraph 3.5 below, any of these powers may be delegated to a committee of Directors or to an executive Director.
- 3.5 Where the Trust is exercising functions of the managers pursuant to Section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised by the Board of Directors, each of whom must be neither an executive Director of the Trust, nor an employee of the Trust.

4 Other Purposes

- 4.1 Without prejudice to the provisions of paragraph 2.1 above, the other purposes of the Trust are to provide goods and services, including education, training and research, and other facilities for purposes related to the provision of health care, in accordance with its statutory duties and the terms of its Authorisation.
- 4.2 The Trust may carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others.
- 4.3 The Trust may also carry on other activities than those mentioned in paragraphs 4.1 and 4.2 above subject to any restrictions in the Authorisation. These activities must be for the purpose of making additional income available in order to carry out the Trust's principal purpose better.

5 Membership and Constituencies

- 5.1 The Trust shall have Members, each of whom shall be a member of one of the following constituencies:
- 5.1.1 a public constituency; or
 - 5.1.2 a staff constituency; or
 - 5.1.3 a patients' and carers' constituency (referred to in the 2006 Act as the "patients' constituency").

6 Application for Membership

- 6.1 An individual who is eligible to become a Member of the Trust may do so on application to the Trust as set out in paragraphs 7, 8 and 9 below.

7 Public Constituency

- 7.1 Subject to the provisions of paragraphs 1, 2, and 3 of Appendix 2 of Annex 9 an individual who lives in an area specified in column 2 of Annex 1, as an area for a public constituency may become or continue as a Member of the Trust.
- 7.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the "Public Constituency".
- 7.3 The minimum number of members in each area for the Public Constituency is specified in column 3 of Annex 1.
- 7.4 An eligible individual shall become a Member upon entry to the Register of Members pursuant to an application by them.
- 7.5 On receipt of an application for membership and subject to being satisfied that the applicant is eligible the Secretary shall cause the applicant's name to be entered in the Trust's Register of Members.

8 Staff Constituency

- 8.1 Subject to the provisions of paragraphs 1, 2, and 3 of Appendix 2 of Annex 9 an individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided:
- 8.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Subject to the provisions of paragraphs 1, 2, and 3 of Appendix 2 of Annex 9 individuals are eligible to become members of the Staff Constituency if they are employed by a designated Trust Subcontractor and otherwise exercise functions for

the purposes of the Trust provided such individuals have exercised these functions continuously for a period of at least 12 months.

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

8.4 The Staff Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified in paragraphs 1.1.1 to 1.1.5 of 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 paragraphs 1.2.1 to 1.2.5 of Annex 2.

8.6 An individual who is:

8.6.1 eligible to become a member of the Staff Constituency under paragraph 8.1 above; and

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

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

8.7 Any individual who is eligible to become a member of the Staff Constituency under paragraph 8.2 above shall become a Member upon entry to the Register of Members pursuant to an application by them.

8.8 On receipt of an application for membership as described in paragraph 8.7 above and subject to being satisfied that the applicant is eligible and is included in the register mentioned in paragraph 8.11 below, the Secretary shall cause the applicant’s name to be entered in the Trust’s Register of Members.

8.9 Individuals who are eligible to be a member of the Staff Constituency may not become or continue as a member of more than one staff class and individuals who are eligible to join more than one staff class shall be allocated by the Secretary in his absolute discretion to the staff class for which they are primarily employed by the Trust, or a Trust Subcontractor (as the case may be).

8.10 Any individual who is both a Volunteer and employed either by the Trust or a Trust Subcontractor will be assigned to “Non-Clinical Support Staff Class” of the Staff Constituency until such time as he shall notify the Secretary in writing that he wishes to be allocated to the staff class for which he is primarily employed by the Trust or a Trust Subcontractor (as the case may be).

8.11 The Trust shall designate individuals as Trust Subcontractors who exercise functions on behalf of the Trust for the purpose of paragraph 8.2 above, and the Secretary shall maintain a register of Trust Subcontractors.

9 Patients’ and Carers’ Constituency

- 9.1 Subject to the provisions of paragraphs 1, 2, and 3 of Appendix 2 of Annex 9 an individual who has, within the period specified in paragraph 9.2 below, attended any of the Trust's Hospitals as either a Patient or as the Carer of a Patient may become or continue as a Member of the Trust.
- 9.2 The period referred to in paragraph 9.1 above shall be the period of 10 years.
- 9.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the "Patients' and Carers' Constituency".
- 9.4 An individual providing care in pursuance of a contract (including a contract of employment) with a Voluntary Organisation, or who is a Volunteer, does not come within the category of those who qualify for membership of the Patients' and Carers' Constituency.
- 9.5 The minimum number of members in the Patients' and Carers' Constituency is specified in paragraph 1.1 of Annex 3.
- 9.6 An eligible individual shall become a Member upon entry to the register of Members pursuant to an application by them.
- 9.7 On receipt of an application for membership and subject to being satisfied that the applicant is eligible the Secretary shall cause the applicant's name to be entered in the Trust's Register of Members.
- 9.8 Where an individual is eligible for admission to both the Public Constituency and the Patients' and Carers' Constituency, he may specify which constituency he wishes to belong to either in his application or subsequently in writing to the Secretary (but once he has made such a specification he shall not be entitled to subsequently change constituencies unless he shall cease to be entitled to be a member of the constituency of which he has chosen to be a member).
- 9.9 If such an individual does not specify a preference, in accordance with paragraph 9.8 above, or his specification is unclear, he will be allocated by the Secretary to the Public Constituency until such time as he shall notify the Secretary in writing that he wishes to be allocated to the Patients' and Carers' Constituency.

10 Restriction on Membership

- 10.1 An individual, who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 10.3 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Trust are set out in Appendix 2 of Annex 9.

10A Annual Member's Meeting

- 10A.1 The Trust shall hold an Annual Meeting of the members of the Trust, (the Annual Members' Meeting) to consider the following business:
- 10A.1.1 The annual accounts of the Trust for the financial year ended immediately previous to the meeting
 - 10A.1.2 The report of the auditor on those accounts
 - 10A.1.3 The Annual Report of the Board of Directors associated with those accounts
 - 10A.1.4 An Annual Report on the activities of the Council of Governors for the period since the previous Annual Members' Meeting
 - 10A.1.5 If required, to consider and (if thought fit) to approve amendments to the Trust Constitution made since the previous Annual Member's Meeting, which affect the powers, duties or role within the Trust of the Council of Governors
- 10A.2 The Annual Member's Meeting shall be held no later than the end of September in each year, and may be combined (in respect of the business to be considered at the Annual Members' Meeting) with the Annual Meeting of the Council of Governors.
- 10A.3 The Annual Member's Meeting shall be open to the public
- 10A.4 Not less than 4 week's notice of the Annual Member's Meeting shall be given:
- 10A.4.1 by notification to each member of the Trust
 - 10A.4.2 by publication of notice in a newspaper circulating within the Trust's area of operation
 - 10A.4.3 by public notice displayed within the Trust's offices
- 10A.5 It is the duty of the Board of Directors to ensure that a Director presents the items listed in 10A.1.1 to 10A.1.3 to the Annual Member's Meeting, and makes themselves available to answer reasonable questions arising from those items asked by those attending the meeting.
- 10A.6 It is the duty of the Council of Governors to ensure that a Governor presents any item to be considered under 10A.1.4 or 10A.1.5 to the Annual Member's Meeting.
- 10A.7 Subject to any provision that may be made by law, at an Annual Member's Meeting the voting on any question shall be taken by a show of hands, and each member of the Trust shall have one vote. A question having an equality of votes for and against shall be considered not to be agreed by the meeting.
- 10A.8 The Board of Directors, with the consent of the Council of Governors, may make further provision for the calling, organisation and holding of the Annual Member's Meeting.

11 Council of Governors – Composition

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

- 11.2 The composition of the Council of Governors is specified in paragraph 1.1 of Annex 4.
- 11.3 The Elected Governors shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.
- 11.4 The Appointed Governors shall be chosen by the relevant sponsoring organisation in accordance with the process set out in paragraph 2 of Annex 4. The number of Governors to be appointed is specified in paragraph 1.1 of Annex 4.
- 11.5 The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

11A General Duties and powers of the Council of Governors

- 11A.1 The Council of Governors shall have the following general duties in ensuring the effective governance and operation of the Trust:
 - 11A.1.1 to hold the Non-Executive Directors of the Trust to account, both individually and collectively, for the performance of the Trust;
 - 11A.1.2 to represent the interests of the Trust's membership as a whole;
 - 11A.1.3 to represent the interests of the public in the operation of the Trust.
- 11A.2 The Trust must take all reasonable steps to ensure that the Governors are equipped with the necessary skills and knowledge to discharge their responsibilities as Governors of the Trust. Governors must co-operate with the provision of such skills and knowledge.
- 11A.3 If the Council of Governors considers it necessary for:
 - 11A.3.1 the obtaining of information about the performance of the Trust; or
 - 11A.3.2 the obtaining of information related to the performance of their duties by the Board of Directors; or
 - 11A.3.3 consideration of a proposal to hold a vote of the Council of Governors on a motion related to the performance of the Trust or its Directors;

12 Council of Governors – Election of Governors

- 12.1 Subject to paragraphs 12.2 and 12.3 below, elections for Elected Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time, and are attached at Annex 5.
- 12.2 The Trust shall, prior to each election for Elected Governors, determine whether the election in question will be conducted using the rules governing first-past-the post elections (marked "FPP") or single transferable voting elections (marked "STV") in the Model Rules for Elections.
- 12.3 Once the Trust has made a determination in accordance with paragraph 12.2 above, the Trust shall ensure that the returning officer conducts the election in accordance with the rules marked "FPP" or "STV", as appropriate.
- 12.4 An election, if contested, shall be by secret ballot.

- 12.5 A person may not vote at an election for or stand for election as an Elected Governor unless within the specified period stated in the Model Rules for Elections he has made a declaration in the specified form setting out the particulars of his qualification to vote or stand as a member of the constituency for which the election is being held. It is an offence (other than in relation to the Staff Constituency) to knowingly or recklessly make such a declaration which is false in a material particular.

13 Council of Governors - Tenure

13.1 Elected Governors

- 13.1.1 An Elected Governor may hold office for a term of up to three years.
- 13.1.2 An Elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 13.1.3 Subject to paragraph 13.1.4 below, an Elected Governor shall be eligible for re-election at the end of his term.
- 13.1.4 An Elected Governor may hold office for a maximum of nine consecutive years.

13.2 Appointed Governors

- 13.2.1 An Appointed Governor shall hold office for a period of three years.
- 13.2.2 An Appointed Governor shall cease to hold office if the sponsoring organisation withdraws its sponsorship of him by notice in writing to the Trust.
- 13.2.3 Subject to paragraph 13.2.4 below, an Appointed Governor shall be eligible for re-appointment at the end of his term.
- 13.2.4 An Appointed Governor may hold office for a maximum of nine consecutive years.

14 Council of Governors – Disqualification, Removal, and Termination

Disqualification

- 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 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;

- 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 Appendix 1 of Annex 6.

Removal and Termination

- 14.4 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary, whereupon he shall cease to hold office.
- 14.5 A Governor shall cease to hold office on his death.
- 14.6 If a Governor fails to attend any meeting of the Council of Governors for a consecutive period of six months or alternatively two consecutive meetings of the Council of Governors, his tenure of office is to be considered for termination by the Council of Governors at the next scheduled meeting of the Council of Governors. A Governor's tenure of office may not be terminated if the Council of Governors is satisfied that:
 - 14.6.1 the absence was due to a reasonable cause; and
 - 14.6.2 the Governor concerned will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.
- 14.7 The Council of Governors may by resolution terminate a Governor's tenure of office if for reasonable cause it considers that he has acted in a manner inconsistent with:
 - 14.7.1 the core principles of the NHS and/or the Trust as set out in Appendix 1 of Annex 9; or
 - 14.7.2 the Authorisation; or
 - 14.7.3 the Standing Orders for the Practice and Procedure of the Members' Council ("the Standing Orders for Governors"), as set out in Annex 7; or
 - 14.7.4 the Governor's Code of Conduct, or
 - 14.7.5 he has failed to declare an interest as required by this Constitution or the Standing Orders for Governors or, he has spoken or voted at a meeting on a matter in which he has an interest contrary to this Constitution or the Standing Orders for Governors, and in this paragraph "interest" includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect, and he is adjudged to have so acted by a majority of not less than 75% of the Council of Governors then the Governor shall vacate his office immediately.

- 14.8 Upon disqualification, removal, or termination of a Governor's office under this paragraph 14, the Secretary shall cause his name to be removed immediately from the Register of Governors.
- 14.9 Any decision of the Council of Governors to terminate a Governor's tenure of office under paragraphs 14.6 or 14.7 above may be referred by the Governor concerned to the dispute resolution procedure under paragraph 2 of Appendix 4 to Annex 9 within 28 days of the date upon which notice in writing of the Council of Governor's decision is given to the Governor concerned.
- 14.10 The Standing Orders for Governors shall provide for the process to be adopted in cases relating to the termination of a Governor's tenure.
- 14.11 A Governor who resigns under paragraph 14.4 above or whose office is terminated under this paragraph 14, or paragraph 1 of Appendix 1 of Annex 6, shall not be eligible to stand for re-election to the Council of Governors for a period of three years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of, whichever is the later.

15 Council of Governors – Meetings of Governors

- 15.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 22.1 or paragraph 23.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 24 below), shall preside at meetings of the Council of Governors and the person chairing the meeting shall have a casting vote. Standing Orders may provide for who shall preside at meetings of Council of Governors if the Deputy Chairman is also unable or unwilling to preside.
- 15.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons by resolution of the Council of Governors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or the proceedings.

16 Council of Governors – Standing Orders

- 16.1 The Standing Orders for Governors, as may be varied from time to time, are attached at Annex 7.

16A. Council of Governors- Senior Governor

- 16A.1 The Council of Governors shall elect one of its members, in accordance with this section, to be the Senior Governor, for a term ending at the following Annual Meeting of the Council of Governors.
- 16A.2 The Senior Governor shall be elected at each Annual Meeting of the Council of Governors. In the event of a vacancy in office, the Council of Governors shall proceed to the election of one of its members to fill the vacancy.
- 16A.3 The Standing Orders for Governors may provide for the duties of the Senior Governor.

16A.4 Save as provided by this Constitution and the Standing Orders, the Senior Governor shall enjoy no special status beyond that of Governors generally.

17 Council of Governors - Conflicts of Interest of Governors

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

18 Council of Governors– Travel Expenses

18.1 The Trust may pay travelling and other costs and expenses to members of the Council of Governors at such rates as the Trust decides.

19 Council of Governors – Further Provisions

19.1 Further provisions with respect to the Council of Governors are set out in Annex 6, these include:

19.1.1 Eligibility to be on the Council of Governors;

19.1.2 Roles and responsibilities of Governors;

19.1.3 Remuneration;

19.1.4 Vacancies;

19.1.5 Meetings; and

19.1.6 Committees.

19A. The following are defined as significant transactions in this Trust, for the purposes of Section 167 of the Health and Social Care Act 2012:

19A.1 The merger of the Trust, or all (or substantially all) of its business, with another organisation

19A.2 The acquisition by the Trust of all (or substantially all) of another organisation's business

19A.3 The acquisition by the Trust of all (or substantially all) of another organisation's business that is NHS-funded

19A.4 The disposal by the Trust of a significant part of its business.

20 Board of Directors – Composition

20.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive Directors.

- 20.2 The Board of Directors is to comprise:
- 20.2.1 a non-executive Chairman;
 - 20.2.2 up to a maximum of six other non-executive Directors; and
 - 20.2.3 up to a maximum of six other executive Directors, which shall include the executive directors described in paragraphs 20.3, 20.5, 20.6, and 20.7.
- 20.3 One of the executive Directors shall be the Chief Executive.
- 20.4 The Chief Executive shall be the Accounting Officer.
- 20.5 One of the executive Directors shall be the Finance Director.
- 20.6 One of the executive Directors is to be a registered medical practitioner (within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984).
- 20.7 One of the executive Directors is to be a registered nurse or a registered midwife.
- 20.8 In the event that the number of non-executive Directors (including the Chairman) is equal to the number of executive Directors, the Chairman (and in his absence, the Deputy Chairman), shall have a casting vote at meetings of the Board of Directors in accordance with the Standing Orders for Directors attached at Annex 8.
- 20.9 The validity of any act of the Board of Directors is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

20A Board of Directors- General Duties and Conflicts of Interest

- 20A.1 It is the duty of each Director, and of the Board of Directors collectively, to act with a view to promoting the success of the Trust, so as:
- 20A.1.1 to maximise the benefits received by the members of the Trust as a whole; and
 - 20A.1.2 to maximise the benefits received by the public generally

21 Board of Directors – Qualification for Appointment as a Non Executive Director

- 21.1 Subject to paragraph 23.3 below, a person may be appointed as a non-executive Director only if:
- 21.1.1 he is a member of the Public Constituency, or
 - 21.1.2 he is a member of the Patients' and Carers' Constituency, or
 - 21.1.3 he exercises functions for the purposes of the University, and
 - 21.1.4 he is not otherwise disqualified by virtue of paragraph 27 below.

22 Board of Directors – Appointment and Removal of Chairman and Other Non Executive Directors

- 22.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other non-executive Directors.
- 22.2 Removal of the Chairman or another non-executive Director shall require the approval of three-quarters of the members of the Council of Governors.
- 22.3 The initial Chairman and the initial non-executive Directors are to be appointed in accordance with paragraph 23 below.
- 22.4 Subject to the provisions of paragraph 23, the process for appointing non-executive Directors and the Chairman will be as set out in paragraph 1 of Appendix 3 of Annex 9.

23 Board of Directors – Appointment of Initial Chairman and Initial Other Non Executive Directors

- 23.1 The chairman of the Applicant NHS Trust shall be appointed as the initial Chairman of the Trust if he wishes to be appointed.
- 23.2 The power of the Council of Governors to appoint the other non-executive Directors of the Trust is to be exercised, so far as possible, by appointing as the initial non-executive Directors of the Trust any of the non-executive directors of the Applicant NHS Trust (other than the chairman) who wish to be appointed.
- 23.3 The criteria for qualification for appointment as a non-executive Director set out in paragraph 21 above (other than disqualification by virtue of paragraph 27 below) do not apply to the appointment of the initial Chairman and the initial other non-executive Directors in accordance with the procedures set out in this paragraph.
- 23.4 An individual appointed as the initial Chairman or as an initial non-executive Director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as chairman or (as the case may be) non-executive director of the Applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

24 Board of Directors – Appointment of Deputy Chairman

- 24.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive Directors as a Deputy Chairman.

25 Board of Directors - Appointment and Removal of the Chief Executive and Other Executive Directors

- 25.1 The non-executive Directors shall appoint or remove the Chief Executive.
- 25.2 The appointment of the Chief Executive is subject to the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

- 25.3 The initial Chief Executive is to be appointed in accordance with paragraph 26 below.
- 25.4 A committee consisting of the Chairman, the Chief Executive and the other non-executive Directors shall appoint or remove the other executive Directors.

26 Board of Directors – Appointment and Removal of Initial Chief Executive

- 26.1 The chief officer of the Applicant NHS Trust shall be appointed as the initial Chief Executive of the Trust if he wishes to be appointed.
- 26.2 The appointment of the chief officer of the Applicant NHS Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.

27 Board of Directors – Disqualification

- 27.1 The following may not become or continue as a member of the Board of Directors:
- 27.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 27.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
 - 27.1.3 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;
 - 27.1.4 a person whose tenure of office as a chairman or member or director of a Health Service Body or other public service body has been terminated on the grounds that his appointment is not in the interests of the service, for non attendance at meetings or for non disclosure of a pecuniary interest;
 - 27.1.5 a person who has had his name removed from a list maintained under regulations pursuant to sections 91, 106, 123 or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list;
 - 27.1.6 a person who has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body or other public service body;
 - 27.1.7 a person who is an executive or non-executive director of another NHS Foundation Trust, or a governor, non-executive Director, chairman, or chief executive officer of another Health Service Body or a body corporate whose business includes the provision of healthcare services;

- 27.1.8 a person who is a non-executive Director, but who no longer satisfies the provisions of paragraph 21 (except in the case in the case of any appointment of the Chairman or a non-executive Director under paragraph 23);
 - 27.1.9 a person who is a member of a “Patient and Public Involvement Forum”;
 - 27.1.10 a person who is a member of a local authority's “Health Overview and Scrutiny Committee”;
 - 27.1.11 a person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
 - 27.1.12 a person in respect of whom the Independent Regulator has issued an order under section 52 of the 2006 Act whether in relation to the Trust or some other NHS Foundation Trust;
 - 27.1.13 a person who has failed without reasonable cause to fulfil any training requirement established by the Board of Directors;
 - 27.1.14 a person who has failed or refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Directors’ Code of Conduct;
 - 27.1.15 a person who is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
 - 27.1.16 a person who is an Immediate Family Member of a Director; or
 - 27.1.17 a person who is the subject of a Sex Offenders Order and/or whose name is included in the Sex Offenders Register.
- 27.2 A person may become or continue as a Director, notwithstanding that they are a Director of a Foundation Trust, or a Chairman, Chief Executive, Director or Governor of another Health Service Body, if-
- a. The external appointment is approved by a majority of the Governors eligible to vote, at a meeting of the Council of Governors
 - b. The external appointment is approved by a majority of the Directors eligible to vote, at a meeting of the Board of Directors

If a person has a number of appointments falling within Section 27.1.7 above, each must be approved separately by the Governors and the Directors. In considering whether to grant approval under this section, the Board and Council must give consideration to any potential conflicts of interest that could reasonably be anticipated to arise.

28 Board of Directors – Standing Orders

- 28.1 The standing orders for the practice and procedure of the Board of Directors (“Standing Orders for the Board of Directors”), as may be varied from time to time, are attached at Annex 8.

29 Board of Directors - Conflicts of Interest of Directors

29.1 It is the duty of each Director:

29.1.1 To avoid all situations where they have, or could have, a direct or indirect interest that conflicts or could conflict with the interests of the Trust; and

29.1.2 To refuse all benefits offered by a third party in connection with doing, or refraining from doing, anything as a Director

29.2 Section 29.1 does not extend to situations where:

29.2.1 The circumstances are such that it would be unreasonable to regard it as giving rise to a conflict of interest; or

29.2.2 The conflict or potential conflict has been reported and authorised in accordance with the Trust Constitution.

29.3 Annex 8 of this Constitution (Standing Orders of the Board of Directors) makes further provision related to the declaration, reporting and authorisation of conflicts of interest.

30 Board of Directors – Remuneration and Terms of Office

30.1 Subject to the provisions of Appendix 3 of Annex 9, the Council of Governors at a general meeting of the Council of Governors shall decide the period of office, remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive Directors.

30.2 The Trust shall establish a committee of non-executive Directors to decide the period of office, remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive Directors, but pending the establishment of such a committee and its decisions, these matters are to be decided in accordance with the period of office, remuneration and allowances, and other terms and conditions of office of the respective officers as employed by the Applicant NHS Trust.

31 Board of Directors – Further Provisions

31.1 Further provisions with respect to the Board of Directors are set out in Appendix 3 of Annex 9. These include the process for appointing new non-executive Directors and the Chairman.

32 Registers

32.1 The Trust shall have:

32.1.1 a register of members showing, in respect of each Member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs (“Register of Members”);

32.1.2 a register of members of the Council of Governors (“Register of Governors”);

32.1.3 a register of Governors’ interests of the members of the Council of Governors (“Register of Governors’ Interests”);

- 32.1.4 a register of Directors (“Register of Directors”); and
 - 32.1.5 a register of interests of the Directors (“Register of Directors’ Interests”).
- 32.2 The Secretary shall be responsible for compiling and maintaining the registers and the registers may be kept in either paper or electronic form. Removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 14 days of receipt.

33 Admission to and Removal from the Registers

Register of Members

- 33.1 Subject to paragraph 8.6 applicants for membership of the Trust must complete and sign an application in the form prescribed by the Secretary.
- 33.2 The Secretary shall maintain the Register of Members in two parts. Part one, which shall be the register referred to in the 2006 Act, shall include the name of each Member and the constituency or class to which they belong, and shall be open to inspection by the public in accordance with paragraphs 34 and 35 below. Part two shall contain all the information from the application form and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party. Notwithstanding this provision the Trust shall extract such information as it needs in aggregate to satisfy itself that the actual membership of the Trust is representative of those eligible for membership and for the administration of the provisions of this Constitution.

33.3 Register of Governors

- 33.3.1 The Register of Governors shall list the names of Governors, their category of membership of the Council of Governors (public, staff, patients’ and carers, primary care trust, local authority, university or other partnership organisation) and an address through which they may be contacted which may be the Secretary.

33.4 Register of Governors’ Interests

- 33.4.1 The Register of Governors’ Interests shall contain the names of each Governor, whether he has declared any interests and, if so, the interests declared in accordance with this Constitution or the Standing Orders for Governors.

33.5 Register of Directors

- 33.5.1 The Register of Directors shall list the names of Directors, their capacity on the Board of Directors and an address through which they may be contacted which may be the Secretary.

33.6 Register of Directors’ Interests

- 33.6.1 The Register of Directors' Interests shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with this Constitution or the Standing Orders for the Board of Directors.

34 Registers – Inspection and Copies

- 34.1 The Trust shall make the registers specified in paragraph 33 above available for inspection by members of the public, except in the circumstances set out below in paragraphs 34.2 to 34.4 or as otherwise prescribed by regulations.
- 34.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:
- 34.2.1 any member of the Patients' and Carers' Constituency; or
- 34.2.2 any other Member of the Trust, if he so requests.
- 34.3 So far as the registers are required to be made available:
- 34.3.1 they are to be available for inspection free of charge at all reasonable times; and
- 34.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 34.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

35 Documents Available for Public Inspection

- 35.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 35.1.1 a copy of the current Constitution;
- 35.1.2 a copy of the latest annual accounts and of any report of the Auditor on them;
- 35.1.3 a copy of the latest annual report;
- 35.1.4 a copy of any notice given under section 52 of the 2006 Act.
- 35.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 35.3 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

36 Auditor

- 36.1 The Trust is to have an Auditor.

- 36.2 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Trust's Auditor.
- 36.3 The Auditor is to carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted.

37 Audit Committee

- 37.1 The Trust shall establish a committee of non-executive Directors as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

38 Accounts

- 38.1 The Trust shall keep accounts in such form as the Independent Regulator may with the approval of the Secretary of State direct.
- 38.2 The accounts are to be audited by the Trust's Auditor.
- 38.3 The Trust shall prepare in respect of each Financial Year annual accounts in such form as the Independent Regulator may with the approval of the Secretary of State direct.
- 38.4 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

39 Annual Report and Forward Plans

- 39.1 The Trust shall prepare an Annual Report and send it to the Independent Regulator.
- 39.2 The Trust shall give information as to its forward planning in respect of each Financial Year to the Secretary of State.
- 39.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 39.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 39.5 The forward plan information prepared under 39.2 above shall include information disclosing:
- 39.5.1 The activities which the Directors anticipate the Trust undertaking during the year, where those activities do not relate to the provision of goods and services for the purpose of the health service in England; and
- 39.5.2 The amount of income that the Directors anticipate that the Trust will receive within the year from undertaking those activities.
- 39.6 Where the Directors anticipate the Trust undertaking activities under 39.5.1 above:

- 39.6.1 They must notify the Council of Governors that they anticipate carrying on those activities;
- 39.6.2 The Council of Governors must consider the anticipated activities, and determine whether it is satisfied that they would not interfere with the fulfilment by the Trust of its principal purpose, or the performance of its other functions; and for this purpose the Directors are under a duty to provide reasonable information to assist the Council of Governors in making their assessment;
- 39.6.3 The Council of Governors must advise the Directors of their determination under 39.6.2; and the Board of Directors must have regard to the views of Council under that section.
- 39.7 Where the Directors anticipate the Trust undertaking activities under 39.5.1 above, and the proportion of the Trust's income from those activities is anticipated to increase by 5% or more, the Directors may only implement those proposals if:
- 39.7.1 The proposals have been laid before a formal meeting of the Council of Governors; and
- 39.7.2 At a formal meeting of the Council of Governors, more than half of the Governors present and voting have voted in favour of a formal motion to approve the implementation of the proposals.

40 Meeting of the Council of Governors to Consider Annual Accounts and Reports

- 40.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 40.1.1 the annual accounts;
- 40.1.2 any report of the Auditor on them; and
- 40.1.3 the annual report.

41 Instruments

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

42 Definitions

- 42.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act.
- 42.2 References in this Constitution to legislation include all amendments, replacements or re-enactments made.
- 42.3 References to legislation include all regulations, orders, statutory guidance or directives.
- 42.4 Headings are for ease of reference only and are not to affect interpretation.

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

42.6 In this Constitution:

"2006 Act"

means the National Health Service Act 2006;

"Accounting Officer"

means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;

"Applicant NHS Trust"

means the Birmingham Women's Health Care NHS Trust which has made the application to become the Trust;

"Appointment Committee"

means a committee appointed by the Members' Council pursuant to paragraphs 1.2.5 and 1.2.6 of Appendix 3 of Annex 9;

"Appointed Governors"

means a PCT Governor, a University Governor, a Local Authority Governor, or an Other Partnership Governor;

"Area of the Trust"

means the area, consisting of all the areas, specified in Annex 1, as an area for a public constituency;

"Audit Committee"

means a committee of the Board of Directors as established pursuant to paragraph 37;

"Auditor"

means the Auditor of the Trust appointed by the Members' Council pursuant to paragraph 36;

"Authorisation"

means the authorisation issued to the Trust by the Independent Regulator;

"Board of Directors"

means the Board of Directors as constituted in accordance with this Constitution;

"Carer"

means an individual who provides or was providing a substantial amount of care to a Patient, other than an individual providing care in pursuance of a contract (including a contract of employment) or as a volunteer for a Voluntary Organisation, and who attended the Hospital in that capacity in the period of 3 years immediately preceding the date of an application by them to become a Member of the Trust;

"Chairman"

means the Chairman of the Trust;

"Chief Executive"

means the Chief Executive of the Trust;

"Constitution"

means this Constitution together with the annexes and appendices attached hereto;

"Complaints Handling Policy"

means the complaints handling policy of the Trust, as adopted by the Applicant NHS Trust and as amended by the Trust from time to time;

"Deputy Chairman"

means the Deputy Chairman of the Trust;

"Director"

means a member of the Board of Directors, and includes both executive and non-executive Directors;

"Directors' Code of Conduct"

means the code of conduct for Directors of the Trust, as adopted by the Applicant NHS Trust and as amended from time to time by the Board of Directors, which all Directors must subscribe to;

"Elected Governors"

means a Staff Governor, a Patients' and Carers' Governor, or a Public Governor;

"Financial Year"

means:

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

"Finance Director"

means the Finance Director of the Trust;

"Governor"

means a member of the Council of Governors;

"Governor's Code of Conduct "

means the code of conduct for Governors of the Trust, as adopted by the Applicant NHS Trust and as amended from time to time by the Council of Governors, which all Governors must subscribe to;

"Health Service Body"

shall have the meaning ascribed to it in section 65(1) of the 2006 Act

"Hospital"

means the Birmingham Women's Hospital, Metchley Park Road, Edgbaston, Birmingham, B15 2TG and all associated hospitals and facilities at which the Trust provides services;

"Immediate Family Member"

means either:

- (a) a spouse; or
- (b) a person (whether or not of the opposite sex) whose status is that of Partner as defined in the Civil Partnerships Act 2004;

"Independent Regulator"

means the Independent Regulator of NHS Foundation Trusts as provided by Section 31 of the 2006 Act;

"Local Authority Governor"

means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of the Area of the Trust;

"Member"

means a member of the Trust;

"Model Rules for Elections"

means the election rules set out in Annex 5 of the Constitution;

"Other Partnership Governor"

means a member of the Council of Governors other than a PCT Governor, Local Authority Governor, or University Governor;

"Patient"

means an individual who has attended the Hospital and has been treated in the period of 3 years immediately preceding the date of an application by them to become a Member of the Trust;

"Patients' and Carers' Governor"

means a member of the Council of Governors elected by the members of the Patients' and Carers' Constituency;

"Public Governor"

means a member of the Council of Governors elected by the members of one of the public constituencies;

"Secretary"

means the Secretary of the Trust or any other person, partnership, or body corporate appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;

"Sex Offenders Order"

means a Sexual Offences Preventative Order or a Risk of Sexual Harm Order made under Part II of the Sexual Offences Act 2003;

"Sex Offenders Register"

means the register of sex offenders maintained under Part I of the Sex Offenders Act 1997 (as amended by the Sexual Offences Act 2003);

"Staff Governor"

means a member of the Council of Governors elected by the members of the classes of the Staff Constituency;

"Trust"

means the Birmingham Women's NHS Foundation Trust;

"Trust Subcontractor"

means a contractor to the Trust whose employees exercise functions on behalf of the Trust and which is listed in the register maintained by the Secretary pursuant to paragraph 8.11;

"University"

means the University of Birmingham whose head office is at Edgbaston, Birmingham, B15 2TT;

"University Governor"

means a member of the Council of Governors appointed by the University;

"Voluntary Organisation"

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

"Volunteer"

means an individual or Voluntary Organisation that carries out functions on behalf of the Trust on a voluntary basis under a scheme designated by the Secretary and which is listed in the register maintained by the Secretary pursuant to paragraph 8.11.

Annex 1 - The Public Constituency

(Paragraph 7)

PUBLIC CONSTITUENCIES OF THE TRUST

NAME OF CONSTITUENCY	AREA	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
South Birmingham	<p>The following electoral wards within the Birmingham City Council area:</p> <ul style="list-style-type: none"> ○ Acocks Green ○ Bartley Green; ○ Billesley; ○ Bournville; ○ Brandwood; ○ Edgbaston; ○ Hall Green; ○ Harbourne; ○ Kings Norton; ○ Ladywood ○ Longbridge; ○ Moseley and Kings Heath; ○ Northfield; ○ Quinton ○ Selly Oak; ○ Soho ○ Sparkbrook ○ Springfield ○ South Yardley ○ Weoley, 	50	5

<p>Midlands North</p>	<p>The electoral wards within the following areas:</p> <p>Staffordshire County Council</p> <p>City of Stoke-on-Trent</p> <p>Dudley Metropolitan Borough Council</p> <p>Walsall Metropolitan Borough Council</p> <p>Wolverhampton City Council</p> <p>North Warwickshire Borough Council</p> <p>Telford and Wrekin Borough Council</p> <p>The following electoral wards within the Birmingham City Council area:</p> <ul style="list-style-type: none"> ○ Aston; ○ Bordesely Green; ○ Erdington; ○ Handsworth Wood;; ○ Hodge Hill; ○ Kingstanding; ○ Lozells and East Handsworth; ○ Nechells ○ Oscott; ○ Perry Barr; ○ Shard End; ○ Sheldon; ○ Stockland Green; ○ Stretford and Yardley North; ○ Sutton Four Oaks; ○ Sutton New Hall; ○ Sutton Trinity; ○ Suttun Vesey; ○ Tyburn; and ○ Washwood Heath. <p>The following electoral Divisions in the County of Shropshire:</p> <ul style="list-style-type: none"> ● Abbey ● Albrighton ● Bagley ● Battlefield ● Bayston Hill, Column and Sutton 	<p>50</p>	<p>2</p>
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	<ul style="list-style-type: none"> • Belle Vue • Bowbrook • Burnell • Castlefields and Ditherington • Cheswardine • Chirbury and Worthen • Cophorne • Ellsmere Urban • Harlescott • Hodnet • Llanymynech • Longden • Loton • Market Drayton East • Market Drayton West • Meole • Minsterley • Monkmoor • Much Wenlock • Oswestry East • Oswestry South • Oswestry West • Porthill • Prees • Quarry and Coton Hill • Radbrook • Ruyton and Baschurch • Selattyn and Gobowen • Severn Valley • Shawbury • Shifnal North • Shifnal South and Cosford • St Martin's • St Oswald • Sundorne • Tern • The Meres • Underdale • Wem • Whitchurch North • Whitchurch South • Whittington • Worfield 		
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<p>Midlands South</p>	<p>The electoral wards within the following areas:</p> <ul style="list-style-type: none"> • City of Coventry Metropolitan Borough Council • Herefordshire County Council • Nuneaton and Bedworth District Council • Rugby District Council • Sandwell Metropolitan Borough Council; • Solihull Metropolitan Borough Council; • Warwick District Council • Stratford –upon-Avon District Council • Worcestershire County Council. <p>The following electoral Divisions of the County of Shropshire:</p> <ul style="list-style-type: none"> • Alveley and Claverley • Bishops' Castle • Bridgenorth East and Astley Abbots • Bridgenorth West and Tasley • Brown Clee • Church Stretton and Craven Arms • Clee • Cleobury Mortimer • Clun • Corvedale • Highley • Ludlow East • Ludlow North • Ludlow South 	<p>50</p>	<p>3</p>

	Minimum Membership	150	
	Public Governors		10

Annex 2 - The Staff Constituency

(Paragraph 8)

1 Staff Constituency: Classes

- 1.1 There shall be five classes of staff members as follows:
 - 1.1.1 the Medical Staff Class for those members who are employed by the Trust or a Trust Subcontractor and who are on the register of medical practitioners maintained by the General Medical Council, including (where appropriate) those with provisional registration (“Medical Staff Class”);
 - 1.1.2 the Midwifery Staff Class for those members who are employed by the Trust or a Trust Subcontractor as midwives and who are on the statutory register maintained by the Nursing and Midwifery Council (“Midwifery Staff Class”);
 - 1.1.3 the Nursing Staff Class for those members employed by the Trust or a Trust Subcontractor as nurses and who are on the statutory register maintained by the Nursing and Midwifery Council (“Nursing Staff Class”);
 - 1.1.4 the Clinical Support Staff Class for those members who are employed by the Trust or a Trust Subcontractor and who are subject to professional registration with the Council for the Regulation of Healthcare Professionals, except those included in the Medical Staff Class, the Midwifery Staff Class, or the Nursing Staff Class (“Clinical Support Staff Class”); and
 - 1.1.5 the Non-Clinical Support Staff Class for all other employees of the Trust or a Trust Subcontractor who do not fall within the preceding classes, (“Non-Clinical Support Staff Class”).
- 1.2 The minimum number of members required for each staff class shall be:
 - 1.2.1 Medical Staff Class – 20;
 - 1.2.2 Midwifery Staff Class – 20;
 - 1.2.3 Nursing Staff Class – 20;
 - 1.2.4 Clinical Support Staff Class – 20; and
 - 1.2.5 Non-Clinical Support Staff Class – 20.

Annex 3- The Patients' and Carers' Constituency

(Paragraph 9)

1 Patients' and Carers' Constituency: Minimum Number

- 1.1 The minimum number of members required for the Patients' and Carers' Constituency shall be 50.

Annex 4 - Composition of the Council of Governors

(Paragraph 11)

The composition of the Council of Governors shall be as follows:

1 Composition

1.1 The Council of Governors shall comprise:

1.1.1 **10 Public Governors;**

1.1.2 **5 Staff Governors comprised of the following:**

1.1.2.1 1 being elected by the "Medical Staff Class";

1.1.2.2 1 being elected by the "Midwifery Staff Class";

1.1.2.3 1 being elected by the "Nursing Staff Class";

1.1.2.4 1 being elected by the "Clinical Support Staff Class"; and

1.1.2.5 1 being elected by the "Non-Clinical Support Staff and Volunteers Class";

1.1.3 **4 Patients' and Carers' Governors;**

1.1.4 **1 Local Authority Governor;**

1.1.5 **1 University Governor;** and

1.1.6 **3 Other Partnership Governors.**

1.2 The aggregate number of Public Governors and Patients' and Carers' Governors is to be more than half of the total membership of the Council of Governors.

1.3 The organisations currently specified as partnership organisations that may appoint members of the Council of Governors are:

1.3.1 Birmingham City University;

1.3.2 Regional Action West Midlands;

1.3.3 South Birmingham Member of Parliament.

2 Appointed Governors

2.1 Local Authority Governors

- 2.1.1 Birmingham City Council or its successor organisation may appoint one Local Authority Governor by notice in writing signed by the chair of the Council or a member of the Council executive, and delivered to the Secretary.

2.2 University Governors

- 2.2.1 The University of Birmingham may appoint one University Governor in writing signed by the Vice-Principal of the University and delivered to the Secretary.

2.3 Other Partnerships Governors

- 2.3.1 Birmingham City University of Perry Barr, Birmingham, B42 2SU, or its successor organisation, may appoint one Other Partnership Governor by notice in writing signed by the Dean of the Faculty for Health and delivered to the Secretary.
- 2.3.2 Regional Action West Midlands of Waterlinks House, Richard Street, Birmingham B7 4AA, or its successor organisation, may appoint one Other Partnership Governor by notice in writing signed by the Network Director and delivered to the Secretary.
- 2.3.3 Those Members of Parliament (“MPs”) who are elected to represent those electoral wards that cover South Birmingham, may appoint one Other Partnership Governor jointly by notice in writing signed by any one or all of the MPs in question and delivered to the Secretary.

Annex 5 - The Model Rules for Elections

(Paragraph 12.1)

Model Rules for Elections to the Council of Governors

Part 1 – Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

4. Returning officer
5. Staff
6. Expenditure
7. Duty of co-operation

Part 4 - Stages Common to Contested and Uncontested Elections

8. Notice of election
9. Nomination of candidates
10. Candidate's consent and particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination papers
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination papers
17. Withdrawal of candidates
18. Method of election

Part 5 – Contested elections

- 19. Poll to be taken by ballot
- 20. The ballot paper
- 21. The declaration of identity

Action to be taken before the poll

- 22. List of eligible voters
- 23. Notice of poll
- 24. Issue of voting documents
- 25. Ballot paper envelope and covering envelope

The poll

- 26. Eligibility to vote
- 27. Voting by persons who require assistance
- 28. Spoilt ballot papers
- 29. Lost ballot papers
- 30. Issue of replacement ballot paper
- 31. Declaration of identity for replacement ballot papers

Procedure for receipt of envelopes

- 32. Receipt of voting documents
- 33. Validity of ballot paper
- 34. Declaration of identity but no ballot paper
- 35. Sealing of packets

Part 6 - Counting the votes

- STV36. Interpretation of Part 6
- 37. Arrangements for counting of the votes
- 38. The count
- STV39. Rejected ballot papers

- FPP39. Rejected ballot papers
- STV40. First stage
- STV41. The quota
- STV42. Transfer of votes
- STV43. Supplementary provisions on transfer
- STV44. Exclusion of candidates
- STV45. Filling of last vacancies
- STV46. Order of election of candidates
- FPP46. Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

- FPP47. Declaration of result for contested elections
- STV47. Declaration of result for contested elections
- 48. Declaration of result for uncontested elections

Part 8 – Disposal of documents

- 49. Sealing up of documents relating to the poll
- 50. Delivery of documents
- 51. Forwarding of documents received after close of the poll
- 52. Retention and public inspection of documents
- 53. Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during a contested election

- FPP54. Countermand or abandonment of poll on death of candidate
- STV54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

- 55. Expenses incurred by candidates
- 56. Expenses incurred by other persons
- 57. Personal, travelling, and administrative expenses

Publicity

- 58. Publicity about election by the corporation
- 59. Information about candidates for inclusion with voting documents
- 60. Meaning of “for the purposes of an election”

Part 11 – Questioning elections and irregularities

- 61. Application to question an election

Part 12 – Miscellaneous

- 62. Secrecy
 - 63. Prohibition of disclosure of vote
 - 64. Disqualification
 - 65. Delay in postal service through industrial action or unforeseen event
-

Part 1 – Interpretation

- 1. **Interpretation** – (1) In these rules, unless the context otherwise requires –

“corporation” means the public benefit corporation subject to this constitution;

“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 board of governors;

“the regulator” means the Independent Regulator for NHS foundation trusts; and

“the 2006 Act” means the National Health Service Act 2006.

(2) Other expressions used in these rules and in Schedule 7 to the 2006 Act have the same meaning in these rules as in that Schedule.

Part 2 – Timetable for election

2. Timetable - 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
Close of the close of the poll.	Close of the poll By 5.00pm on the final day of the election.

3. Computation of time - (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.

(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 – (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.

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

5. Staff – Subject to rule 64, 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 - 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 – 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 – 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 board 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 papers may be obtained;
- (e) the address for return of nomination papers 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, and
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates – (1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

- (a) is to supply any member of the corporation with a nomination paper, and
- (b) is to prepare a nomination paper 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.

10. Candidate's particulars – (1) The nomination paper must state the candidate's -

- (a) full name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests – The nomination paper 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 – The nomination paper must include a declaration made by the candidate–

- (a) that he or she is not prevented from being a member of the board 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 – The nomination paper must be signed and dated by the candidate, 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.

14. Decisions as to the validity of nomination – (1) Where a nomination paper 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 paper 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.
- (2) The returning officer is entitled to decide that a nomination paper 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 papers, 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, as required by rule 13.
- (3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.

(4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.

(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 paper.

15. Publication of statement of candidates – (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

(2) The statement must show –

(a) the name, contact 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 paper.

(3) The statement must list the candidates standing for election in alphabetical order by surname.

(4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers –

(1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.

(2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

17. Withdrawal of candidates - 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 – (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 board of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

(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 board of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

(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 board 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 – (1) The votes at the poll must be given by secret ballot.

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

20. The ballot paper – (1) The ballot of each voter 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.

(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 board 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,

(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.

(3) Each ballot paper must have a unique identifier.

(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) – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.

(2) The declaration of identity is to include a declaration –

(a) that the voter is the person to whom the ballot paper was addressed,

(b) that the voter has not marked or returned any other voting paper in the election, and

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

(3) The declaration of identity is to include space for –

(a) the name of the voter,

(b) the address of the voter,

(c) the voter's signature, and

(d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

22. List of eligible voters – (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 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

(2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll - 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 board 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 address for return of the ballot papers, and the date and time of the close of the poll,

(g) the address and final dates for applications for replacement ballot papers, and

(h) the contact details of the returning officer.

24. Issue of voting documents by returning officer – (1) 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 documents to each member of the corporation named in the list of eligible voters–

(a) a ballot paper and ballot paper envelope,

(b) a declaration of identity (if required),

(c) information about each candidate standing for election, pursuant to rule 59 of these rules, and

(d) a covering envelope.

(2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope – (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.

(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.

(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 declaration of identity if required, and

(b) the ballot paper envelope, with the ballot paper sealed inside it.

The poll

26. Eligibility to vote – 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.

27. Voting by persons who require assistance – (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

(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.

28. Spoilt ballot papers – (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 a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

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

(3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she –

(a) is satisfied as to the voter’s identity, and

(b) has ensured that the declaration of identity, if required, has not been returned.

(4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”) –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the 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. Lost ballot papers – (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper 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 ballot paper, and
- (c) has ensured that the declaration of identity if required has not been returned.

(3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper– (1) If a person applies for a replacement ballot paper under rule 28 or 29 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 a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(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.

(2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31. Declaration of identity for replacement ballot papers (public and patient constituencies)

- (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
- (b) of the particulars of that member’s qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.

- (3) The declaration of identity is to include space for –
- (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter's signature, and
 - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for receipt of envelopes

32. Receipt of voting documents – (1) Where the returning officer receives a –

- (a) covering envelope, or
 - (b) any other envelope containing a declaration of identity 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 33 and 34 are to apply.
- (2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, 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.
- (3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33. Validity of ballot paper – (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 a declaration of identity if required that has been correctly completed, signed, and dated.

- (2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to –
- (a) put the declaration of identity if required in a separate packet, and
 - (b) put the ballot paper aside for counting after the close of the poll.
- (3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to –
- (a) mark the ballot paper “disqualified”,
 - (b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper,

- (c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and
- (d) place the document or documents in a separate packet.

34. Declaration of identity but no ballot paper (public and patient constituency) – Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

- (a) mark the declaration of identity “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 declaration of identity in a separate packet.

35. Sealing of packets – As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing–

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the declarations of identity if required,
- (c) the list of spoilt ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

Part 6 - Counting the votes

STV36. Interpretation of Part 6 – In Part 6 of these rules –

“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 paper –

- (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 STV44(4) below,

“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

(b) 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 STV41 below,

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

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule STV42 below.

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

38. The count – (1) The returning officer is to –

(a) count and record the number of ballot papers that have been returned, and

(b) count the votes according to the provisions in this Part of the rules.

(2) The returning officer, while counting and recording the number of ballot papers 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.

(3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

STV39. Rejected ballot papers – (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.

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

(3) 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 paragraph (1).

FPP39. Rejected ballot papers – (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 paragraphs (2) and (3) below, be rejected and not counted.

(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.

(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.

(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 paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

(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.

STV40. First stage – (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

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

(3) The returning officer is to also ascertain and record the number of valid ballot papers.

STV41. The quota – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

(2) The result, increased by one, of the division under paragraph (1) above (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”).

(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 paragraphs (1) to (3) of rule 44 has been complied with.

STV42. Transfer of votes – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers 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 papers for any continuing candidate, or

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

(2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

(3) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above 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 papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

(5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers 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 papers for any continuing candidate, or

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

(6) The returning officer is, in accordance with this rule and rule STV43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

(7) The vote on each ballot paper transferred under paragraph (6) shall be at –

(a) a transfer value calculated as set out in paragraph (4)(b) above, 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.

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

(9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

(10) Transferable papers 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.

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

STV43. Supplementary provisions on transfer – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers 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 papers 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 papers of the candidate on whom the lot falls shall be transferred first.

(2) The returning officer shall, on each transfer of transferable papers under rule STV42 above –

(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.

(3) All ballot papers transferred under rule STV42 or STV44 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 paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule STV42 or STV44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper 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.

STV44. Exclusion of candidates – (1) If—

(a) all transferable papers which under the provisions of rule STV42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and

(b) subject to rule STV45 below, 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 paragraph (12) below applies, the candidates with the then lowest votes).

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—

- (a) ballot papers on which a next available preference is given, and
- (b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).
- (3) The returning officer shall, in accordance with this rule and rule STV43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.
- (4) The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- (5) If, subject to rule STV45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.
- (6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).
- (7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.
- (8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- (9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.
- (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.

(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 paragraphs (5) to (10) of rule STV42 and rule STV43.

(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.

(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.

STV45. Filling of last vacancies – (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.

(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.

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

STV46. Order of election of candidates – (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 STV42(10) above.

(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.

(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.

(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.

FPP46. Equality of votes – 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

FPP47. Declaration of result for contested elections – (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 board 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 Birmingham Women's NHS Foundation Trust by section 33 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.

(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 FPP39(5), available on request.

STV47. Declaration of result for contested elections – (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 Birmingham Women's NHS Foundation Trust by section 33 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.

(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 STV39(1), available on request.

48. Declaration of result for uncontested elections – 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

49. Sealing up of documents relating to the poll – (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,
 - (b) the ballot papers endorsed with “rejected in part”,
 - (c) the rejected ballot papers, and
 - (d) the statement of rejected ballot papers.
- (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 declarations of identity,
 - (c) the list of spoilt ballot papers,
 - (d) the list of lost ballot papers,
 - (e) the list of eligible voters, and
 - (f) the list of tendered ballot papers.
- (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.

50. Delivery of documents – Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49, the returning officer is to forward them to the chair of the corporation.

51. Forwarding of documents received after close of the poll – 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 ballot papers are made too late to enable new ballot papers 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.

52. Retention and public inspection of documents – (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 regulator, cause them to be destroyed.

(2) With the exception of the documents listed in rule 53(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.

(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.

53. Application for inspection of certain documents relating to an election –

(1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters, by any person without the consent of the Regulator.

(2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator 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

(3) The Regulator'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.

(4) On an application to inspect any of the documents listed in paragraph (1), –

(a) in giving its consent, the regulator, and

(b) and making the documents available for inspection, the corporation, must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –

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

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

Part 9 – Death of a candidate during a contested election

FPP54. Countermand or abandonment of poll on death of candidate – (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 ballot papers have 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.

(2) Where a new election is ordered under paragraph (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.

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.

(5) The returning officer is to –

(a) count and record the number of ballot papers that have been received, and

(b) seal up the ballot papers into packets, along with the records of the number of ballot papers.

(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.

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

STV54. Countermand or abandonment of poll on death of candidate – (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 papers 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 papers 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.

(2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity

Election expenses

55. Election expenses – 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 to the regulator under Part 11 of these rules.

56 Expenses and payments by candidates - 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.

57. Election expenses incurred by other persons – (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.

(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 58 and 59.

Publicity

58. Publicity about election by the corporation – (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.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, 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.

(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.

59. Information about candidates for inclusion with voting documents - (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.

(2) The information must consist of –

(a) a statement submitted by the candidate of no more than 250 words, and

(b) a photograph of the candidate.

60. Meaning of “for the purposes of an election” - (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.

(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

61. Application to question an election – (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

(2) An application may only be made once the outcome of the election has been declared by the returning officer.

(3) An application may only be made to the Regulator by –

(a) a person who voted at the election or who claimed to have had the right to vote, or

(b) a candidate, or a person claiming to have had a right to be elected at the election.

(4) The application must –

(a) describe the alleged breach of the rules or electoral irregularity, and

(b) be in such a form as the Regulator may require.

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

(6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

a. The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.

b. The determination by the person or persons nominated in accordance with Rule 61(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.

c. The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy – (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 a ballot paper or who has or has not voted,

(ii) the unique identifier on any ballot paper,

(iii) the candidate(s) for whom any member has voted.

(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.

(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.

63. Prohibition of disclosure of vote – 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.

64. Disqualification – 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.

65. Delay in postal service through industrial action or unforeseen event – 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 and declarations of identity, the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

Annex 6 - Further Provisions: Council of Governors

(Paragraph 19)

Appendix 1: Eligibility to be on the Council of Governors

- 1** A person may not become or continue as a Governor of the Trust if:
 - 1.1.1 in the case of an Elected Governor, he is not or ceases to be a member of the constituency (or class) by which he was elected;
 - 1.1.2 in the case of an Appointed Governor, the sponsoring organisation withdraws their sponsorship of him;
 - 1.1.3 he has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body or other public service body;
 - 1.1.4 the Independent Regulator has exercised its powers to remove that person as a member of the Council of Governors of the Trust or has suspended him from office or has disqualified him from holding office as a Governor of the Trust for a specified period or has exercised any of those powers in relation to the person concerned at any other time whether in relation to the Trust or some other NHS Foundation Trust;
 - 1.1.5 he is a person whose tenure of office as the chairman or as a member or director of a Health Service Body or other public service body has been terminated on the grounds that his appointment is not in the interests of the service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 1.1.6 he is an executive or non-executive Director of the Trust, or a governor, non-executive director, chairman, or chief executive officer of another NHS Foundation Trust, or a body corporate whose business competes with the "mandatory services" of the Trust. For the avoidance of doubt, the phrase "mandatory services" shall have the meaning ascribed to it in the Trust's terms of Authorisation;
 - 1.1.7 he has failed or refused to sign and deliver to the Secretary a statement in the form required by the Trust confirming acceptance of the Governor's Code of Conduct;
 - 1.1.8 he has had his name removed, other than by reason of resignation, by from any list prepared under section 28X of the 1977 Act or Part II of that Act, and has not subsequently had his name included in such a list;
 - 1.1.9 he is a member of a "Local Involvement Network";
 - 1.1.10 he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;

- 1.1.11 he has refused without reasonable cause to undertake any training which the Trust and/or the Members' Council requires all Governors to undertake;
 - 1.1.12 he is the subject of a Sex Offenders Order and /or his name is included in the Sex Offenders Register.
- 1.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under paragraphs 14.1 or 14.2 of the Constitution or paragraph 1.1 of this Appendix, he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which render him disqualified. The Secretary shall forthwith remove him from the Register of Governors.
- 1.3 If it comes to the notice of the Secretary that the Governor is disqualified otherwise then pursuant to paragraph 1.2 of this Appendix, whether at the time of the Governor's appointment or later, the Secretary shall immediately declare that the individual in question is disqualified and give notice to him in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration. In the event that a Governor shall dispute that he is disqualified the Governor may refer the matter to the dispute resolution procedure set out in paragraph 2 of Appendix 4 to Annex 9 within 28 days of the date upon which notice in writing is given to the Governor.

Appendix 2

Roles and Responsibilities of Governors

- 1 The roles and responsibilities of the Governors are:
 - 1.1 at a general meeting:
 - 1.1.1 Subject to paragraphs 22 and 23 of the Constitution, to appoint or remove the Chairman and the other non-executive Directors;
 - 1.1.2 to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors as provided in paragraph 30 of the Constitution;
 - 1.1.3 to appoint or remove the Auditor as provided in paragraph 36.2 of the Constitution;
 - 1.1.4 to be presented with the annual accounts, any report of the Auditor on them and the annual report as provided in paragraph 40 of the Constitution;
 - 1.1.5 to consider disputes as to membership referred to it pursuant to paragraph 2.1 of Appendix 4 of Annex 9; and/or
 - 1.1.6 to consider resolutions to remove a Governor pursuant to paragraph 14.7 of the Constitution.
 - 1.2 at a general meeting or otherwise:
 - 1.2.1 approve (by a majority of the Governors voting) an appointment (by the non-executive Directors) of the Chief Executive (and Accounting Officer) other than the initial Chief Executive appointed in accordance with paragraph 19 (5) of schedule 7 to the 2006 Act;
 - 1.2.2 to be consulted by the Board of Directors of the Trust regarding the information to be given to the Independent Regulator as to the Trust's forward planning in respect of each Financial Year and to give their views to the Board of Directors for the purposes of the preparation by the Board of Directors of any document containing such information which is to be given to the Independent Regulator;
 - 1.2.3 consider the annual accounts, any report of the Auditor on them and the annual report as provided in paragraph 40 of the Constitution; and/or
 - 1.2.4 respond as appropriate when consulted by the Directors.
 - 1.2.5 to hold the Non-Executive Directors to account, individually and collectively, for the performance of the Board of Directors in operating the Trust
 - 1.2.6 to represent the public interest in the operation of the Trust

- 1.2.7 to represent the collective interest of the Trust's membership
- 1.3 The Governors also have the specific role and function of:
 - 1.3.1 supporting the Directors in setting the longer-term vision for the Trust, to influence proposals to make changes to services, and to act in a way that is consistent with NHS and Trust values and the terms of the Trust's Authorisation;
 - 1.3.2 engaging in dialogue with and provide advice to the Directors with regard to the Trust's future vision and strategy and to act as a source of ideas about how the Trust can provide its services in ways that meet the needs of the community it serves;
 - 1.3.3 reviewing annually the extent to which the Trust is meeting its objective of delivering high quality services;
 - 1.3.4 working with the Board of Directors on such other matters for the benefit of the Trust as may be agreed between them;
 - 1.3.5 developing membership;
 - 1.3.6 representing the interests of the Members; and
 - 1.3.7 holding the Board of Directors to account in relation to the Trust's performance in accordance with the terms of the Authorisation.
- 1.4 Notwithstanding the provisions of paragraphs 1.1 to 1.3 of this Appendix, the Governors may exercise other functions at the request of the Board of Directors.

Appendix 3

Council of Governors: Additional Provisions

1 Remuneration

1.1 Governors are not to receive remuneration, provided that this shall not prevent the remuneration of Governors by their employer.

1A. Classes for election

1A.1 At the first meeting of the Council of Governors following the retirement of the first Governors to be elected (that is, following 31st January 2011) the Elected Governors shall be divided, as closely as may be, into three classes. The Secretary shall make arrangements for the division of Governors into classes, which shall include the selection of class for a Governor by lot.

1A.2 The arrangements shall be made so as to ensure that no Elected Governor shall serve for a term in excess of three years. The arrangements shall, so far as possible, ensure that the Public, Staff and Patient and Carer Constituencies each have members in every class under this paragraph.

1A.3 For those Governors in office at the division into classes, the Governors in the first class shall retire from office on 31st January 2012; the Governors in the second class shall retire from office on 31st January 2013; and the Governors in the third class shall retire from office on 31st January 2014.

1A.4 After 31st January 2014, each class shall serve for three years, and one class shall retire at the 31st January in each year.

1A.5 Any Governor elected in a by-election under para 2.2 below shall serve only for the balance of the term of the relevant class.

2 Vacancies

2.1 In the event of an Elected Governor's seat falling vacant for any reason before the end of the term of office it shall be filled by the second place candidate in the last held election for that seat provided that the second place candidate achieved at least five percent of the vote in the last held election for that seat. If that individual declines it shall be filled by the third place candidate provided that the third place candidate achieved at least five percent of the vote in the last held election for that seat (the "Reserve Governor"). If the vacancy is filled in this way the Reserve Governor shall be eligible to serve two full 3 year terms (subject to re-election) in addition to the partial term served. If the vacancy is not filled in this way Elected Governors shall be replaced by by-elections, in accordance with the Election Scheme.

2.2 In the event that a Reserve Governor is not available a by-election shall be held in connection with the next election of a class of Elected Governors.

2.3 In the event of an Appointed Governor's seat falling vacant for any reason before the end of the term of office, the Trust will request that the relevant partnership organisation appoint a "Replacement Governor" within 30 days. Appointed Governors

shall be replaced in accordance with the processes agreed pursuant to paragraph 2 of Annex 4.

3 Meetings

- 3.1 The Council of Governors is to meet at least four times per year, including an annual meeting no later than 30 September in each year apart from the first year, when the Council of Governors are to receive and consider the annual accounts, any report of the Auditor on them, and the annual report.
- 3.2 The Secretary shall call meetings in accordance with paragraph 3.1 of this Appendix.

4 Committees

- 4.1 The Council of Governors may appoint committees consisting wholly or partly of its members to assist it in carrying out its functions.
- 4.2 The Council of Governors may appoint members to serve on joint committees with the Board of Directors or on committees of the Board of Directors at the request of the Board of Directors.
- 4.3 These committees may call upon outside advisers to assist them in their tasks, provided that the financial and other implications of seeking outside advisers has been discussed and agreed by the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph will be determined in accordance with the dispute resolution procedure set out in paragraph 2 of Appendix 4 of Annex 9.

Annex 7 – Standing Orders for the Practice and Procedure of the Council of Governors

(Paragraph 16.1)

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1 INTRODUCTION

- 1.1 The Birmingham Women's NHS Foundation Trust ("the Trust") became a Public Benefit Corporation on 1st February 2008 following authorisation by the Independent Regulator of NHS Foundation Trusts (the "Independent Regulator" and the office now known as Monitor) pursuant to the National Health Service Act 2006 (the "2006 Act").
- 1.2 The principal place of business of the Trust is currently at Metchley Park Road, Edgbaston, Birmingham, B15 2TG.
- 1.3 The Trust is governed by the 2006 Act, its Constitution and its Terms of Authorisation granted by the Independent Regulator (the Regulatory Framework). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Governors of the Trust to adopt Standing Orders for the regulation of its proceedings and business and to adhere at all times to the Code of Conduct for Governors.

2 DEFINITIONS

- 2.1 In these Standing Orders:

"Board of Directors"

means the Board of Directors of the Trust as constituted in accordance with the Constitution;

"Chairman"

means the Chairman of the Trust;

"Chief Executive"

means the Chief Executive of the Trust;

"Clear Day"

means a day of the week not including Saturday, Sunday or a public holiday;

"Constitution"

means the Constitution of the Trust;

"Deputy Chairman"

means one of the Non Executive Directors appointed by Members' Council as Deputy Chairman under Section 24.1 of the Constitution;

"Governor"

means a member of the Council of Governors elected or appointed as provided by the Constitution;

"Senior Governor"

means the Governor elected to be Senior Governor under S16A of the Constitution;

"Non-Executive Director"

means a Member of the Board of Directors who does not hold an executive office of the Trust;

"Officer"

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

"Secretary"

means a person appointed by the Trust in accordance with the Constitution to be the Trust Secretary.

2.2 Words importing the masculine gender include the feminine gender and vice versa.

3 THE COUNCIL OF GOVERNORS

3.1 The roles and responsibilities of the Governors are set out in Appendix 2 of Annex 6 of the Constitution and also have effect as if incorporated into the Standing Orders. Certain powers and decisions may only be exercised by the Council of Governors in formal session. These powers and decisions are set out in paragraph 1.1 of Appendix 2 of Annex 6 of the Constitution.

3A. Senior Governor

3A.1 The Senior Governor shall be responsible, in accordance with any applicable guidance, for assisting liaison between the Council of Governors and the Board.

3A.2 The Senior Governor may take the Chair of Council in the circumstances set out in Standing Order 4.7.4.

3A.3 On the specific resolution of the Council of Governors (and under no other circumstances), the Senior Governor may refer concerns expressed by the Council of Governors directly to Monitor. The Senior Governor may act as a communication channel if requested by Monitor, for direct communication with the Council of Governors.

3A.4 The Senior Governor shall be elected by ballot of the Council of Governors, on the following basis:

3A.4.1 The Secretary shall invite nominations for election at least 21 days before the meeting of Council, to be received no later than 10 days before the meeting. Governors may self-nominate for election.

3A.4.2 On the close of nominations, the Secretary shall publish a list of nominations received.

3A.4.3 The election of the Senior Governor shall be the first substantive item on the agenda of the meeting of Council. The Secretary shall make arrangements for a paper ballot to be taken.

3A.4.4 If only one nomination is received, the Secretary shall report the same to Council of Governors, which shall proceed to vote by paper ballot on the question "That X be elected as the Senior Governor". If the question is defeated, the post shall be treated as vacant.

3A.4.5 If more than one nomination is received, a candidate will be declared elected if they receive more than half the votes cast. If no candidate receives more than half the votes cast, the candidate with the fewest votes shall be eliminated and Council of Governors shall proceed to a further paper ballot.

4 MEETINGS OF THE COUNCIL OF GOVERNORS

4.1 Admission of the Public

- 4.1.1 The public and representatives of the Press shall be afforded facilities to attend all formal meetings of the Council of Governors except where it resolves that members of the public and representatives of the Press be excluded from all or part of a meeting on the grounds that:
- 4.1.1.1 any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or
- 4.1.1.2 for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Council of Governors believes are special reasons for excluding the public from the meeting in accordance with the Constitution.
- 4.1.2 Nothing in these Standing Orders shall require the Council of Governors to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council of Governors.
- 4.1.3 If the Council of Governors resolves to exclude the Press and public under this Standing Order, the Directors shall be entitled to remain at the meeting unless:
- 4.1.3.1 the Council of Governors resolves that the Directors withdraw; or
- 4.1.3.2 The Directors have a declarable interest (but this shall only require the withdrawal of those Directors with that interest)

4.2 Calling Meetings

- 4.2.1 Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine and there shall be at least 4 meetings in any year including:
- 4.2.1.1 an annual meeting no later than the 30 September in each year apart from the first year, when the Council of Governors are to receive and consider the annual accounts, any report by the Auditor, the Quality Accounts and any certification thereof, and the annual report; and
- 4.2.1.2 any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.
- 4.2.2 The Secretary may call a meeting of the Council of Governors at any time. If the Secretary refuses to call a meeting after a requisition for

that purpose, signed by at least one third of the whole number of the Governors and specifying the business to be transacted at the meeting, has been presented to him, or if, without so refusing, the Secretary does not call a meeting within 5 Clear Days after such requisition has been presented to him at the Trust's Headquarters, such one third or more of the Governors may forthwith call a meeting for the purpose of conducting that business.

4.3 Notice of Meetings

- 4.3.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, shall be delivered to, or sent by post to the usual place of residence of every Governor, so as to be available to him at least 6 Clear Days before the meeting save in the case of emergencies. Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and the public part of the Agenda, shall, insofar as it is available, be displayed at the Trust's Headquarters at least 3 Clear Days before the meeting.
- 4.3.2 Want of service of the notice on any Governor shall not affect the validity of a meeting, but failure to serve the notice on more than three Governors shall invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of posting.
- 4.3.3 In the case of a meeting called by Governors in default of the Secretary, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the requisition.
- 4.3.4 Agendas will be sent to Governors before the meeting and supporting papers, whenever possible, shall accompany the Agenda, but will certainly be despatched no later than 3 Clear Days before the meeting, save in the case of emergencies.

4.4 Annual Meeting

- 4.4.1 The Council of Governors shall hold an annual meeting of the Council of Governors no later than 30th September in every calendar year and shall present to that meeting:
 - 4.4.1.1 A report on the proceedings of its meetings held since the last annual meeting;
 - 4.4.1.2 A report on the progress since the last annual meeting in developing the membership strategy including the steps taken to ensure that the actual membership is fully representative of the persons who are eligible to be members under the Constitution;
 - 4.4.1.3 A report on any change to the Governors which has taken place since the last annual meeting; and

- 4.4.1.4 A report containing such comments as it wishes to make regarding the performance of the Trust and the accounts of the Trust for the preceding financial year and the future service development plans of the Trust.
- 4.4.2 The reports for the first annual meeting shall cover the period from the Authorisation of the Trust as a Foundation Trust to the date of that meeting.

4.5 Setting the Agenda

- 4.5.1 The Council of Governors may determine that certain matters shall appear on every Agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.5.2 A Member of the Council of Governors desiring a matter to be included on an Agenda, including a formal proposition for discussion and voting on at a meeting, shall make his request in writing to the Secretary at least 10 Clear Days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 Clear Days before a meeting may be included on the Agenda at the discretion of the Chairman.

4.6 Petitions

- 4.6.1 Where a petition has been received by the Trust, the Secretary shall include the petition as an item for the Agenda of the next Council of Governors meeting.

4.7 Chairman of Meeting

- 4.7.1 At any Members' Council meeting, the Chairman, if present, shall preside.
- 4.7.2 If the Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Deputy Chairman shall preside.
- 4.7.3 If the Deputy Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director as shall be appointed by the Council of Governors shall preside.
- 4.7.4 If no Non-Executive Director is able or willing to preside (either by absence or owing to a conflict of interest), the Senior Governor shall take the Chair. They shall preside only for those items where no Non-Executive Director is able or willing to take the Chair, and shall immediately leave the Chair if a Non-Executive Director indicates that they are willing to preside.

4.8 Agenda Proposals

- 4.8.1 Where a Governor has requested inclusion of a matter on the Agenda in accordance with Standing Order 4.5.2 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this Standing Order 4.8 shall apply in respect of the proposition:
- 4.8.2 The mover of the proposition shall have a right of reply at the close of any discussion on the proposition or any amendment thereto.
- 4.8.3 When a proposition is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- 4.8.3.1 an amendment to the proposition;
 - 4.8.3.2 the adjournment of the discussion or the meeting;
 - 4.8.3.3 that the meeting proceed to the next business;
 - 4.8.3.4 the appointment of an ad hoc committee to deal with a specific item of business;
 - 4.8.3.5 that the motion be now put;
 - 4.8.3.6 that the public be excluded from the meeting in relation to the discussion concerning the proposition under Standing Order 4.1.1.
- 4.8.4 No amendment to the proposition shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the proposition.
- 4.8.5 The mover of a proposition shall have a maximum of five minutes to move and three minutes to reply. Once a proposition has been moved, no Governor shall speak more than once or for more than three minutes.

4.9 Chairman's Ruling

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

4.10 Voting

- 4.10.1 A Governor may not vote at a meeting of the Council of Governors unless at the beginning of his tenure or at a time subsequent to that to be agreed by the Secretary, he has made a declaration of eligibility in the form specified within Schedule A of these Standing Orders.

Where a Governor's circumstances in respect of his declaration have changed, he shall make a new declaration in the form specified within Schedule A of these Standing Orders within seven days.

- 4.10.2 Subject to paragraph 4.10.4 below, every question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question.
- 4.10.3 Whoever is Chairman of the meeting of the Council of Governors shall in the case of an equality of votes on any question or proposal have a casting vote.
- 4.10.4 A resolution for the removal of the Chairman or a Non-Executive Director shall be passed only if three quarters of the total number of Governors vote in favour of it.
- 4.10.5 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 4.10.6 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question shall be recorded to show how each Governor present voted or abstained.
- 4.10.7 If a Governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.10.8 A Governor may only vote if present at the time of the vote on which the question is to be decided; no Governor may vote by proxy.
- 4.10.9 In certain circumstances which must be approved in advance by the Council of Governors and included in a Schedule to these Standing Orders, the Chairman may specify in a notice of a meeting any matter which requires approval by a written resolution and such a matter may be approved in writing provided that at least three quarters of the Governors, and a majority of Governors who are members of the public constituency of the Trust, approve the resolution in writing within the timescale imposed in such a notice.

4.11 Special Provisions relating to Termination of Governor's Tenure:

- 4.11.1 Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under paragraphs 14.1 or 14.2 of the Constitution or paragraph 1.1 of Appendix 1 of Annex 6 of the Constitution, he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of the first becoming aware of those matters which render him disqualified. The Secretary shall forthwith remove him from the Register of the Governors.
- 4.11.2 If it comes to the notice of the Secretary that the Governor is disqualified pursuant to SO 4.11.1, whether at the time of the

Governor's appointment or later, the Secretary shall immediately declare that the individual in question is disqualified and give him notice in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration. In the event that the Governor shall dispute that he is disqualified the Governor may refer the matter to the dispute resolution procedure set out in paragraph 2 of Appendix 4 to Annex 9 of the Constitution within 28 days of the date upon which the notice was given to the Governor.

- 4.11.3 The Chairman shall be authorised to take such action as may be immediately required, including but not limited to exclusion of the Governor concerned so that any allegation made against a Governor on the following grounds can be investigated;
 - 4.11.3.1 non-compliance with the Regulatory Framework, Code of Conduct, Standing Orders and Standing Financial Instructions; or
 - 4.11.3.2 misconduct detrimental to the Trust; or
 - 4.11.3.3 a failure to attend any meeting of the Council of Governors for a consecutive period of six months or alternatively two consecutive meetings of the Council of Governors unless the Council of Governors is satisfied by a two thirds majority that:
 - 4.11.3.3.1 the absence was due to reasonable cause; and
 - 4.11.3.3.2 the Governor concerned will be able to start attending meetings of the Members' Council again within such period as they consider reasonable.
- 4.11.4 Where any grounds within 4.11.3.1 or 4.11.3.2 are alleged, it shall be open to the Council of Governors to decide, by two-thirds majority of those present and voting, to lay a formal charge of non-compliance or misconduct.
- 4.11.5 The Governor in question will be notified in writing of the allegations, detailing the specific behaviour which is considered to be detrimental to the Trust, and inviting and considering his response within a defined appropriate and reasonable timescale.
- 4.11.6 The Governor may be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.
- 4.11.7 The Council of Governors, by two-thirds majority of those present and voting and a majority of Governors who are members of the public constituency of the Trust, may find the charge of non-compliance or misconduct detrimental to the Trust to be made out.
- 4.11.8 The Council of Governors can impose such sanctions as shall be deemed appropriate. Such sanctions will range from the issuing of a written warning in accordance with SO 4.11.5 as to the Governor's

future conduct and consequences, non-payment of expenses and removal of the Governor from office.

- 4.11.9 Upon disqualification in accordance with SO 4.11.7, removal or termination of a Governor's office under this Standing Order, the Secretary shall cause his name to be removed immediately from the Register of Governors.
- 4.11.10 Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by the Governor concerned to the Dispute Resolution Procedure under Paragraph 2 of Appendix 4 to Annex 9 within 28 days of the date upon which notice in writing of the Council of Governors' decision made in accordance with SO 4.11.7 is communicated to the Governor concerned.
- 4.11.11 A Governor may resign from that office at any time during the term of that office by giving notice to the Secretary in writing, upon which he shall cease to hold office.
- 4.11.12 A Governor who resigns under paragraph 4.11.11 above or whose office is terminated under this Standing Order or paragraph 1 of Annex 6 of the Constitution shall not be eligible to stand for re-election to the Council of Governors for a period of three years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of whichever is later.
- 4.11.13 In the event that an elected Governor's seat falls vacant before the end of the term of office, the provisions as set out at paragraphs 2.1 to 2.3 of Appendix 3 of Annex 6 of the Constitution shall apply.

4.12 Minutes

- 4.12.1 The Minutes of the proceedings of a meeting shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting where they will be signed by the Chairman presiding at it.
- 4.12.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.13 Suspension of Standing Orders

- 4.13.1 Except where this would contravene any statutory provision, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Governors are present, there is a majority of Governors who are members of the public constituency of the Trust, and that a majority of those present vote in favour of suspension.
- 4.13.2 A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.

4.13.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and Governors.

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

4.14 Variation and Amendment of Standing Orders

4.14.1 These Standing Orders shall be amended only if:

4.14.1.1 a notice of proposal under Standing Order 4.5.2 has been given; and

4.14.1.2 no fewer than half the total number of Governors vote in favour of amendment at a meeting of the Council of Governors; and

4.14.1.3 at least one half of the total number of Governors is present at that meeting; and

4.14.1.4 the variation proposed does not contravene a statutory provision.

4.15 Record of Attendance

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

4.16 Quorum

4.16.1 No business shall be transacted at a meeting unless at least 8 Governors consisting of 3 Governors who are members of the public constituency, 2 Governors who are members of the staff constituency, 2 appointed Governors and 1 patient & carer Governor are present

4.16.2 If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for 5 Clear Days and upon reconvening, those present shall constitute a quorum.

4.16.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest as provided in Standing Order 7 he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

4.17 Committees

- 4.17.1 The Council of Governors may appoint committees of the Council of Governors to assist it in the proper performance of its functions under the Constitution and the Regulatory Framework.
- 4.17.2 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors with the terms “Chairman” to be read as a reference to the Chairman of the committee, and the term “Governor” to be read as a reference to a member of the committee as the context permits.
- 4.17.3 Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the Regulatory Framework, but the Council of Governors shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council of Governors at a formal meeting.
- 4.17.4 Any committee established under this Standing Order 4.17 may call upon outside advisers to assist them with their tasks, subject to the advance agreement of the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph shall be determined in accordance with the Dispute Resolution Procedure as set out at Appendix 4 of Annex 9 of the Constitution.
- 4.17.5 The Council of Governors shall approve the appointments to each of the committees which it has formally constituted.
- 4.17.6 Where the Council of Governors is required to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Council of Governors, such appointments shall be made in accordance with applicable statute and regulations and with guidance issued by the Independent Regulator.
- 4.17.7 Where the Council of Governors determines that persons who are neither Governors, nor Directors or Officers of the Trust, shall be appointed to a committee, the terms of such appointment shall be determined by the Council of Governors subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Board of Directors.
- 4.17.8 The Council of Governors may appoint members to serve on joint committees with the Board of Directors or committees of the Board of Directors.

5 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

5.1 Declaration of Interests

- 5.1.1 The Regulatory Framework and the Constitution require each Governor to declare to the Secretary:

- 5.1.1.1 any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in Standing Order 5.2.1; and
- 5.1.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, as described in Standing Orders 5.2.2 and 5.2.3; and
- 5.1.1.3 any actual or potential family interest, direct or indirect, of which the Governor is aware, as described in Standing Order 5.2.5.
- 5.1.2 Such a declaration shall be made either at the time of the Governor's election or appointment or as soon thereafter as the interest arises, but within 5 Clear Days of becoming aware of the existence of that interest, and in such manner as the Secretary may prescribe from time to time.
- 5.1.3 In addition, if a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter.
- 5.1.4 Subject to Standing Order 5.2.4, if a Governor has declared a pecuniary interest (as described in Standing Orders 5.2.2 and 5.2.3) he shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the Governor's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 5.1.5 This Standing Order 5 applies to any committee, sub-committee or joint committee of the Council of Governors and applies to any member of any such committee, sub-committee, or joint committee (whether or not he is also a Governor).
- 5.1.6 The interests of Governors in companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

5.2 Nature of Interests

- 5.2.1 Interests which should be regarded as "relevant and material" are as follows:
 - 5.2.1.1 directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies); or

- 5.2.1.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or
- 5.2.1.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS; or
- 5.2.1.4 a position of authority in a charity or voluntary organisation in the field of health and social care; or
- 5.2.1.5 any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or
- 5.2.1.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks.
- 5.2.2 A Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
 - 5.2.2.1 he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 5.2.2.2 he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 5.2.3 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
 - 5.2.3.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; or
 - 5.2.3.2 of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or
 - 5.2.3.3 of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.
- 5.2.4 Where a Governor:
 - 5.2.4.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
 - 5.2.4.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and

- 5.2.4.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.
- 5.2.5 A family interest is an interest of the spouse or partner or any parent, child, brother or sister of a Governor which if it were the interest of that Governor would be a personal interest or a pecuniary interest of his.
- 5.2.6 If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including General Practitioners should also be considered.

5.3 Register of Governors

- 5.3.1 The Register of Governors shall list the names of Governors, their category of membership of the Members' Council and an address through which they may be contacted which may be the Secretary.

5.4 Register of Governors' Interests

- 5.4.1 The Secretary shall keep a Register of Interests of Governors which shall contain the names of each Governor, whether he has declared any interest, and if so, the interest declared.

6 STANDARDS OF BUSINESS CONDUCT

- 6.1 Members of the Members' Council shall comply with the Trust's Code of Conduct.

7 APPOINTMENTS AND RECOMMENDATIONS

- 7.1 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this paragraph of this Standing Order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.
- 7.2 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

- 7.3 Candidates for any staff appointment under the Trust shall, when making such an application, disclose in writing to the Trust whether they are related to any Governor or the holder of any office within the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 7.4 The Chairman and every Governor shall disclose to the Chief Executive or his delegated officer any relationship between himself and a candidate of whose candidature that Governor or Officer is aware. It shall be the duty of the Chief Executive or his delegated officer to report to the Council of Governors any such disclosure made.
- 7.5 On appointment, Members of the Council of Governors should disclose to the Council of Governors whether they are related to any other Member of the Council of Governors or holder of any office in the Trust.
- 7.6 Where the relationship to a Member of the Council of Governors of the Trust is disclosed, Standing Order 7 shall apply.

8 MISCELLANEOUS

- 8.1 The Secretary shall provide a copy of these Standing Orders to each Governor and endeavour to ensure that each Governor understands his responsibilities within these Standing Orders.
- 8.2 These Standing Orders including all documents having effect as if incorporated in them shall be reviewed every three years by the Board of Directors and the Council of Governors.
- 8.3 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All Governors have a duty to disclose any non-compliance with these Standing Orders to the Chairman as soon as possible.

Schedule A

Declaration to the Secretary of Birmingham Women's NHS Foundation Trust

Elected Governors

'I hereby declare that I am, at the date of this declaration, a member of the [Public/ Staff/ Patient & Carer] Constituency of the Trust; and that I am not disqualified from the office of Governor-

- a. under the provisions of paragraph 8 of Schedule 7 of the National Health Service Act 2006;
or
- b. any provision of the Trust's Constitution, particularly Appendix 1 of Annex 6.'

Appointed Governors

'I hereby declare that, at the date of this declaration, I am not disqualified from the office of Governor-

- a. under the provisions of paragraph 8 of Schedule 7 of the National Health Service Act 2006;
or
- b. any provision of the Trust's Constitution, particularly Appendix 1 of Annex 6.'

Annex 8 - Standing Orders for the Practice and Procedure of the Board of Directors

(Paragraph 28)

INTRODUCTION

Statutory Framework

The **BIRMINGHAM WOMEN'S NHS FOUNDATION TRUST** (the "Trust") became a Public Benefit Corporation on 1st February 2008 following authorisation by the Independent Regulator of NHS Foundation Trusts (Independent Regulator and the office now known as Monitor) pursuant to the National Health Service Act 2006 (the 2006 Act).

The principal place of business of the Trust is at the Trust Headquarters at Mindlesohn Way, Edgbaston, Birmingham B15 2TG

The Trust shall deal with Monitor in an open and co-operative manner and shall promptly notify Monitor of anything relating to the Trust of which Monitor would reasonably expect prompt notice, including, without prejudice to the foregoing generality, any anticipated failure or anticipated prospect of failure on the part of the Trust to meet its obligations under its Authorisation or any financial or performance thresholds which Monitor may specify from time to time.

The Chairman, Chief Executive or any other person giving information to the public on behalf of the Trust shall ensure that they follow the principles set out by the Committee on Standards in Public Life and that they will adhere to the principles set out within the Independent Commission's Good Governance Standard for Public Service. They will also ensure that they follow The NHS Foundation Trust Code of Governance 2006 (as revised) published by Monitor.

1 INTERPRETATION

- 1.1 Save as otherwise permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive and Secretary).
- 1.2 Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in this interpretation and in addition:

"Accounting Officer"

means the Officer responsible for discharging the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act. For this Trust it shall be the Chief Executive;

"Applicant NHS Trust"

means Birmingham Womens' Health Care NHS Trust;

"Authorisation"

means the Terms of Authorisation provided by Monitor;

"Board of Directors"

means the Board of Directors as constituted in accordance with the Constitution;

"Budget"

means a resource, expressed in financial terms, proposed by the Board of Directors for the purpose of carrying out, for a specific period, any or all of the functions of the Trust;

"Chairman"

means the Trust Chairman. The expression "the Chairman" shall include the Deputy Chairman or any other non-Executive Director appointed in accordance with SO 2.12.3 if the Chairman is absent from the meeting or is otherwise unavailable;

"Chief Executive"

means the Chief Executive officer of the Trust;

"Clear Days"

means a day of the week not including a Saturday, Sunday or Public Holiday;

"Constitution"

means the Constitution of the Trust, together with the Appendices attached hereto as approved by Monitor;

"Deputy Chairman"

means the Deputy Chairman appointed under section 24.1 of the Constitution;

"Director"

means a member of the Board of Directors appointed in accordance with the Constitution, and includes both Executive and non-Executive Directors;

"Finance Director"

means the Finance Director of the Trust;

"Funds held on Trust"

means those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Section 14 of Part 2, Schedule 4 of the 2006 Act. Such funds may or may not be charitable;

"Member"

means a member of the Trust;

"Monitor"

means the Independent Regulator of NHS Foundation Trusts;

"Motion"

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

"Nominated Officer"

means an Officer charged with the responsibility for discharging specific tasks within the SOs and SFIs;

"Officer"

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

“Scheme of Delegation”

means the Reservation of Powers to the Board of Directors and Delegation of Powers;

"Secretary"

means the Secretary of the Trust;

"SFIs”

means Standing Financial Instructions;

"SOs"

means these Standing Orders;

"Trust"

means the Birmingham Womens’ NHS Foundation Trust;

“Trust Headquarters”

means Metchley Park Road, Edgbaston, Birmingham B15 2TG;

"2006 Act"

means the National Health Service Act 2006;

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

2 THE BOARD OF DIRECTORS

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

2.1A As a foundation trust, the Trust shall have all the powers set out in the Constitution and in the 2006 Act.

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

2.3 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 as a Trust.

2.4 Directors acting on behalf of the Trust as corporate trustees are acting as quasi-trustees. Accountability for charitable Funds held on Trust is to be made to the Charity Commission.

2.5 The powers of the Trust established under statute shall be exercised by the Board of Directors meeting in public session except as otherwise provided for in SO 3.

2.6 The Trust may resolve that certain powers and decisions may only be exercised or made by the Board of Directors in formal session..

2.7 Composition of the Board of Directors

2.7.1.1 The Board of Directors shall be composed as set out in the Trust Constitution.

2.7.2 In the event that the number of non-Executive Directors (including the Chairman) is equal to the number of Executive Directors, the Chairman (and in his absence Deputy Chairman) shall have the casting vote at meetings of the Board of Directors.

2.7.3 The validity of any act is not affected by any vacancy among the Directors or defect in the appointment of a Director.

2.8 Register of Directors

2.8.1 The Register of Directors shall list the names of the Directors, their capacity on the Board of Directors and an address through which they may be contacted which may be the Secretary.

2.9 Remuneration and Terms Of Office of the Chairman and non-Executive Directors

2.9.1 The Chairman and the non-Executive Directors are to be appointed for a period of office by the Council of Governors at General Meeting.

2.9.2 At a General Meeting the Council of Governors shall decide the:

2.9.2.1 period of office;

2.9.2.2 remuneration and allowances; and

2.9.2.3 the other terms and conditions of office

of the Chairman and other Non-Executive Directors. These decisions shall be reviewed as considered appropriate by the Council of Governors.

2.9.3 Pending the establishment of the Council of Governors, the matters referred to at SO 2.11.2 shall be determined in accordance with terms and conditions of the respective officers as employed by the Trust.

2.10 Appointment and Powers of Deputy Chairman

2.10.1 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman, the Council of Governors shall appoint a Deputy Chairman in accordance with section 24.1 of the Constitution.

2.10.2 Any Director so appointed may at any time resign from the office of Deputy Chairman by giving notice in writing to the Secretary on behalf of the Council of Governors.

2.10.3 Where the Chairman of the Trust has died or has ceased to hold office, or where he has been unable to perform his duties as Chairman owing to illness or any other cause, the Deputy Chairman

shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes his duties, as the case may be.

- 2.10.4 Where both the Chairman and Deputy Chairman are unable to perform their duties owing to illness, conflict of interest or any other cause, another non-Executive Director as may be appointed by the Council of Governors shall act as Chairman.

2.11 Remuneration and Terms of Office of the Chief Executive and Executive Directors

- 2.11.1 The Trust shall establish a Committee of non-Executive Directors in accordance with SO 5 to decide the:
- 2.11.1.1 period of office;
 - 2.11.1.2 remuneration and Allowances; and
 - 2.11.1.3 the other terms and conditions of office
- of the Chief Executive and other Executive Directors.
- 2.11.2 Pending the establishment of such a committee of non-Executive Directors the matters referred to at SO 2.15.1 shall be determined in accordance with the terms and conditions of the respective officers employed by the Trust.

2.12 Disqualification

- 2.12.1 A Director will be subject to the disqualification criteria included at paragraph 27 of the Constitution.

3 MEETINGS OF THE TRUST

3.1 Admission of the Public and the Press

- 3.1.1 The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Board of Directors but shall be required to withdraw upon the Board of Directors resolving as follows:
- “That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest”.*
- 3.1.2 The Chairman shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board of Directors business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public

will be required to withdraw upon the Board of Directors resolving as follows:

“That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete business without the presence of the public”.

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

3.2 Calling Meetings

- 3.2.1 Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 3.2.2 The Chairman may call a meeting of the Board of Directors at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of members of the Board of the Directors, and this has been presented to him, or if, without so refusing, the Chairman does not call a meeting within 7 days after such requisition has been presented to him, at the Trust’s Headquarters, such one third or more members of the Board of Directors may forthwith call a meeting.

3.3 Notice of Meetings

- 3.3.1 Before each meeting of the Trust a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman, or by an Officer of the Trust authorised by the Chairman to sign on his behalf, shall be delivered to every Director, or sent by post to the usual place of residence of every Director, so as to be available to him at least three Clear Days before the meeting.
- 3.3.2 Want of service of the notice on any member of the Board of Directors shall not affect the validity of a meeting.
- 3.3.3 In the case of a meeting called by Directors in default of the Chairman, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.
- 3.3.4 Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 3.3.5 In the event of an emergency giving rise to the need for an immediate meeting, SOs 3.3.1 to 3.3.4 shall not prevent the calling of such a meeting without the requisite 3 Clear Days notice provided that every effort is made to make personal contact with every

Director who is not absent from the United Kingdom and the Agenda for the meeting is restricted to matters arising in that emergency.

3.4 Agendas

- 3.4.1 Agendas will be sent to members of the Board of Directors 6 Clear Days before the meeting and supporting papers, whenever possible, shall accompany the Agenda, but will certainly be dispatched no later than 3 Clear Days before the meeting, save in emergency. Failure to serve such a notice on more than three members of the Board of Directors will invalidate the meeting. A notice sent by post shall be presumed to have been served one day after posting.
- 3.4.2 Before each meeting of the Board of Directors a public notice of the time and place of the meeting, and the public part of the Agenda, shall be displayed at the Trust's Headquarters at least 3 Clear Days before the meeting.
- 3.4.3 The Secretary, on behalf of the Board of Directors, shall send to each member of the Council of Governors a copy of the notice and agenda for each meeting of the Board of Directors; and the agenda shall state the business to be transacted, including those items of business proposed to be transacted in private.

3.5 Setting the Agenda

- 3.5.1 The Board of Directors may determine that certain matters shall appear on every Agenda for a meeting of the Trust and shall be addressed prior to any other business being conducted. (Such matters may be identified within these SOs or following subsequent resolution shall be listed in an Appendix to the SOs).
- 3.5.2 A Director desiring a matter to be included on an Agenda shall make his request in writing to the Chairman at least 10 Clear Days before the meeting, subject to SO3.3. Requests made less than 10 Clear Days before a meeting may be included on the Agenda at the discretion of the Chairman. . The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 Clear Days before a meeting may be included on the Agenda at the discretion of the Chairman.

3.6 Petitions

- 3.6.1 Where a petition has been received by the Trust the Chairman shall include the petition as an item for the Agenda of the next Board of Directors meeting.

3.7 Chairman of Meeting

- 3.7.1 At any meeting of the Board of Directors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Deputy Chairman, if there is one and he is present, shall preside. If the

Chairman and Deputy Chairman are absent such non-Executive Director (who is not also an Officer of the Trust) as the remaining members of the Board of Directors shall choose shall preside.

- 3.7.2 If the Chairman is absent temporarily on the grounds of a declared conflict of interest the Deputy Chairman, if present, shall preside. If the Chairman and Deputy Chairman are absent, or are disqualified from participating, such non-Executive Director as the remaining members of the Board of Directors shall choose shall preside.

3.8 Written Motions

- 3.8.1 In urgent situations and with the consent of the Chairman, business may be affected by a Director's written motion to deal with business otherwise required to be conducted at general meetings.
- 3.8.2 If all Directors have been notified of the proposal and a simple majority of Directors entitled to attend and vote at a general meeting of the Board of Directors sign and return a copy of a written motion within five Clear Days of dispatch then the motion will be deemed to have been resolved notwithstanding that the Directors have not gathered in one place.
- 3.8.3 The effective date of the resolution shall be the date that the last copy is signed and, until that date a Director who has previously indicated acceptance can withdraw and the motion shall fail.
- 3.8.4 Once the resolution is passed, a copy certified by the Secretary shall be recorded in the minutes of the next ensuring meeting where it will be signed by the person presiding at it.

3.9 Chairman's Ruling

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

3.10 Voting

- 3.10.1 Every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chairman of the meeting shall have a second or casting vote.
- 3.10.2 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 3.10.3 If at least one-third of the members of the Board of Directors present so request, the voting (other than by paper ballot), on any question

may be recorded to show how each Director present voted or abstained.

- 3.10.4 If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.10.5 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.10.6 An Officer who has been appointed formally by the Board of Directors to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

3.11 Minutes

- 3.11.1 The minutes of the proceedings of a meeting shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting, where they will be signed by the person presiding at it.
- 3.11.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting. Minutes shall be retained in the Chief Executive's office.
- 3.11.3 Minutes of meetings of the Board of Directors shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public as required by Code of Practice on Openness in the NHS.
- 3.11.4 The Secretary, on behalf of the Board of Directors, shall send to each member of the Council of Governors a copy of the draft minutes of each meeting of the Board of Directors, when the draft minutes have been approved by the Chairman of that meeting of the Board of Directors. The minutes circulated shall include the consideration of matters that were conducted in private by the Board of Directors.

3.12 Suspension of Standing Orders

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

- 3.12.2 A decision to suspend SOs shall be recorded in the minutes of the meeting.
- 3.12.3 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Directors.
- 3.12.4 No formal business may be transacted while SOs are suspended.
- 3.12.5 The Audit Committee shall review every decision to suspend SOs.

3.13 Variation and Amendment of Standing Orders

- 3.13.1 These Standing Orders shall be amended only if:
 - 3.13.1.1 relevant notice of a meeting has been served in accordance with SO3.3;
 - 3.13.1.2 no fewer than half the total of the Trust's non-Executive Directors vote in favour of amendment;
 - 3.13.1.3 at least two-thirds of the Directors are present; and
 - 3.13.1.4 the variation proposed does not contravene the Regulatory Framework, any statutory provisions or any guidance made by Monitor.

3.14 Record of Attendance

- 3.14.1 The names of the Directors present at the meeting shall be recorded in the minutes.

3.15 Quorum

- 3.15.1 No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors are present including at least one Executive Director and one non-Executive Director.
- 3.15.2 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 3.15.3 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO7) he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Remuneration Committee).

3.16 Meetings: Electronic Communication

- 3.16.1 In this Standing Order “communication” and “electronic communication” shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 3.16.2 A Director in electronic communication with the Chairman and all other parties to a meeting of the Board of Directors or of a committee or sub-committee of the Directors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
- 3.16.3 A meeting at which one or more of the Directors attends by way of electronic communication is deemed to be held at such a place as the Directors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Directors attending the meeting are physically present, or in default of such a majority, the place at which the Chairman of the meeting is physically present.
- 3.16.4 Meetings held in accordance with this SO are subject to SO3.19 (Quorum). For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.
- 3.16.5 The Minutes of a meeting held in this way must state that it was held by electronic communication and that the Directors were all able to hear each other and were present throughout the meeting.

4 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 4.1 Subject to SO 2.6 (Board of Directors) and such guidance as may be given by Monitor, the Board of Directors may make arrangements for the exercise of any of its functions by a committee or sub-committee appointed by virtue of SO 5.1 below or by a Director or an Officer of the Trust in each case subject to such restrictions and conditions as the Board of Directors considers appropriate.

4.2 Emergency Powers

- 4.2.1 The powers which the Board of Directors has retained to itself within these SOs may in emergency be exercised by the Chief Executive and the Chairman after having consulted at least two non-Executive Directors. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the Board of Directors for ratification.

4.3 Delegation to committees

- 4.3.1 The Board of Directors shall agree from time to time to the delegation of Executive powers to be exercised by committees or subcommittees, or joint committees, which it has formally constituted. The constitution and terms of reference of these committees, or subcommittees, and their specific executive powers shall be as approved by the Board of Directors.

4.4 Delegation to Officers

- 4.4.1 Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee or subcommittee or joint-committee shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate Officers to undertake the remaining functions for which he will still retain accountability to the Board of Directors.
- 4.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals, which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.
- 4.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Finance Director or other Executive Director to provide information and advise the Board of Directors in accordance with any statutory requirements. Outside these statutory requirements the Finance Director shall be accountable to the Chief Executive for operational matters.

4.5 Duty to Report Non-Compliance with Standing Orders

- 4.5.1 If for any reason these SOs or the SFI's are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All members of the Board of Directors and staff have a duty to disclose any non-compliance with these SOs or the SFI's to the Secretary as soon as possible.

5 COMMITTEES

5.1 Appointment of Committees

- 5.1.1 Subject to SO 2.6 (Board of Directors) and such guidance issued by Monitor, the Board of Directors may appoint committees of the Trust

consisting wholly or partly of Directors or wholly of persons who are not Directors of the Trust.

- 5.1.2 A committee appointed under SO 5.1 may, subject to such guidance as may be given by Monitor or the Board of Directors or other health service bodies in question, appoint sub-committees consisting wholly or partly of Directors (whether or not they are Directors of the Trust in question); or wholly of persons who are not Directors of the Trust or the committee of the Trust.
- 5.1.3 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors, in which case the term "Chairman" is to be read as a reference to the Chairman 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 to hold meetings of committees, established by the Trust in public.)
- 5.1.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide in accordance with any legislation.
- 5.1.5 Where committees are authorised to establish sub-committees they may not delegate Executive powers to the sub-committee unless expressly authorised by the Board of Directors.
- 5.1.6 The Board of Directors shall approve the appointments to each of the committees, which it has formally constituted. Where the Board of Directors determines, and regulations permit, that persons, who are neither Directors nor Officers, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board of Directors. The Board of Directors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.
- 5.1.7 Where the Board of Directors is required to appoint persons to a committee and/or to undertake statutory functions as required by the Secretary of State and/or Monitor, and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with the guidance made by Monitor.
- 5.1.8 The committees and sub-committees established by the Board of Directors shall include:
- 5.1.8.1 Audit Committee;
- 5.1.8.2 Remuneration Committee;
- 5.1.9 The terms of reference of those Committees shall be agreed by the Board of Directors.

- 5.1.10 The Board of Directors may also operate as a committee in accordance with SO 4.3.2. Any decisions taken by the Board of Directors in Committee must be brought to the next meeting of the Board of Directors.

5.2 Confidentiality

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

6 INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS

- 6.1 The Board of Directors will cooperate with the Council of Governors as far as possible in order to comply with the Regulatory Framework in all respects and in particular in relation to the following matters which are set out specifically within the Constitution.
- 6.2 The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to Monitor.
- 6.3 The Directors are to present to the Council of Governors at a general meeting the annual accounts, any report of the Auditor on them, and the annual report.
- 6.4 The annual reports are to give:
- 6.4.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its Public Constituency and Patients' Constituency is representative of those eligible for such membership; and
 - 6.4.2 any other information Monitor requires.
- 6.5 In order to comply with the Regulatory Framework in all respects and in particular in relation to the matters which are set out above, the Council of Governors may request that a matter which relates to paragraphs 39 and/or 40 of the Constitution is included on the Agenda for a meeting of the Board of Directors.

- 6.6 If the Council of Governors so desires such a matter as described within SO 6.5 to be included on an Agenda item, they shall make their request in writing to the Chairman at least 14 Clear Days before the meeting of the Board of Directors, subject to SO 3.3. The Chairman shall decide whether the matter is appropriate to be included on the Agenda. Requests made less than 14 Clear Days before a meeting may be included on the Agenda at the discretion of the Chairman.

7 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 7.1 If a Director has an interest within Section 29 of the Trust Constitution, they must declare it to the other Directors.
- 7.2 A declaration of interests may be made at a meeting of the Board of Directors, or may be advised to the Secretary; if made to the Secretary, it is the duty of the Secretary to ensure that the declaration is advised to all Directors and formally reported to the next meeting of the Board of Directors.
- 7.3 If the interest impacts on a contract, transaction or other commitment to be entered into by the Trust, it is the duty of the Director to declare the interest to the other Directors (that is to say, not by advising the Secretary) before the Trust enters into that contract, transaction or commitment.
- 7.4 Standing Order 7.3 does not apply where the Director is unaware, and could not reasonably be aware, of either the interest or the contract, transaction or commitment.
- 7.5 If a Director has declared an interest in any contract, transaction, arrangement or other matter being considered by the Board of Directors, they shall (subject to this paragraph) withdraw from the meeting whilst the matter is under consideration; shall not be counted towards a quorum; and shall have no vote or voice in the consideration of that item.
- 7.5.1 The Board of Directors may, by specific vote, authorise a Director to participate in the consideration of a matter or arrangement (but not to vote) where they have declared an interest, notwithstanding Standing Order 7.5 above. No such authorisation shall be granted unless the Board shall be satisfied that participation is necessary in the interests of the Trust.
- 7.6 Notwithstanding the restrictions in Section 29 of the Trust Constitution, the Board of Directors may authorise a Director to have a conflict of interest, on such terms as the Board may consider appropriate.
- 7.6.1 A proposal to authorise a conflict of interest by a Director shall be considered in a meeting of the Board
- 7.6.2 A proposal to authorise a conflict of interest by a Director shall only be considered if specifically included on the agenda of the meeting of the Board of Directors
- 7.6.3 Each interest shall be the subject of separate consideration and (if thought fit) approval
- 7.6.4 No Director shall vote or count in the quorum if they share the interest for which authorisation is sought

- 7.6.5 Authorisation shall only be granted with the approval of a majority of the Directors present and voting.
- 7.7 Members of the Board of Directors of companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.
- 7.8 In the case of persons living together the interest of one partner or spouse shall, if known to the other, shall be deemed for the purposes of the Constitution and the SOs to be also an interest of the other.
- 7.9 If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chief Executive. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including General Practitioners should also be considered.
- 7.10 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 of Schedule 7 of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this SO.

7.11 Register of Interests

- 7.11.1 The Register of Interests shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with the Constitution or these SOs.
- 7.11.2 It is the obligation of the Director to inform the Secretary in writing within 7 Clear Days of becoming aware of the existence of a relevant or material interest. The Secretary must amend the appropriate Register of Interests upon receipt within 3 Clear Days.
- 7.11.3 The Register of Interests will be available to the public and the Chairman will take reasonable steps to bring the existence of the Register of Interests to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the Register of Interests must be provided to Members of the Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the Register of Interests.
- 7.11.4 In establishing, maintaining, updating and publicising the Register of Interests, the Trust shall comply with all guidance issued from time to time by Monitor. The details of Directors' interests recorded in the Register of Interests will be kept up to date by means of a regular review as necessary of the Register of Interests by the Chief Executive or Secretary during which any changes of interests recently declared will be incorporated.

8 STANDARDS OF BUSINESS CONDUCT

8.1 Policy

- 8.1.1 Directors and Officers should comply with the NHS Foundation Trust Code of Governance 2006, the Trust Code of Conduct and Department of Health Guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff" and the "Code of Conduct for NHS Managers 2002 ". and any amendments or replacements to those documents. This section of SOs should be read in conjunction with this document.

8.2 Interest of Directors and Employees in Contracts

- 8.2.1 If it comes to the knowledge of Director or an Officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Chief Executive or Secretary of the fact that he is interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 8.2.2 A Director or Officer must also declare to the Chief Executive or Secretary any other employment or business or other relationship of his, or of a cohabiting spouse or partner, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust in accordance with SO7. The Trust shall require such interests to be recorded in the register of Directors interests.

8.3 Canvassing of, and Recommendations by, Directors in Relation to Appointments

- 8.3.1 Canvassing of Directors or members of any committee of the Board of Directors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of these SOs shall be included in application forms or otherwise brought to the attention of candidates.
- 8.3.2 A Director of the Board of Directors shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this SO shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.
- 8.3.3 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

8.4 Relatives of Directors or Officers

- 8.4.1 Candidates for any staff appointment shall when making an application disclose in writing whether they are related to any Director or the holder of any office under the Trust. Failure to

disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.

- 8.4.2 The Directors and every member 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 Trust any such disclosure made.
- 8.4.3 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Board of Directors whether they are related to any other member of the Board of Directors or holder of any office in the Trust.
- 8.4.4 Where the relationship to an Officer or another Director to a Director of the Trust is disclosed, SO 7 shall apply.

8.5 External Consultants

- 8.5.1 SO8 will apply equally to all external consultants or other agents acting on behalf of the Trust. The Trust's Scheme of Delegation should be adhered to at all times.

8.6 Authorisation of Tenders and Competitive Quotations

- 8.6.1 Providing all the conditions and circumstances set out in Standing Orders and the Standing Financial Instructions have been fully complied with, formal authorisation and awarding of a contract may be decided by the following staff to the value of the contract as follows:
 - 8.6.1.1 Contracts awarded to the lowest bidder**
 - 8.6.1.1.1 Below £50,000 - main list authorised signatory
 - 8.6.1.1.2 Above £50,000 - main list authorised signatory and an Executive Director
 - 8.6.1.2 The Finance Director must approve any contracts not awarded to lowest bidder.**
 - 8.6.1.2.1 Below £150,000 - Director of Finance or Chief Executive
 - 8.6.1.2.2 Above £150,000 - Chief Executive and Chairman (and reported to Board of Directors)
 - 8.6.1.3 Contracts above £3,000,000 (over the full period of the contract) need to be approved by the Board of Directors.**

- 8.6.2 Formal authorisation must be put in writing. In the case of authorisation by the Board of Directors this shall be recorded in their minutes.

The Board shall approve SFI's to provide appropriate financial governance for the Trust, and may from time to time review and amend the same. The SFI's shall be implemented by all Directors, Officers and employees of the Trust, and breach of the SFI's shall be reported under SO4.5.1

9 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

9.1 Custody of Seal

- 9.1.1 The Common Seal of the Trust shall be kept by the Chief Executive or Nominated Officer in a secure place.

9.2 Sealing of Documents

- 9.2.1 The Common Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board of Directors or of a committee, thereof or where the Board of Directors has delegated its powers.

- 9.2.2 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Finance Director (or an Officer nominated by him/her) and authorised and countersigned by the Chief Executive (or an Officer nominated by him/her who shall not be within the originating Directorate).

9.3 Register of Sealing

- 9.3.1 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Board of Directors at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

10 SIGNATURE OF DOCUMENTS

- 10.1 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, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.
- 10.2 The Chief Executive or Nominated Officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors or committee or sub-committee to which the Board of Directors has delegated appropriate authority.

11 MISCELLANEOUS

11.1 Standing Orders to be given to Members and Officers

- 11.1.1 It is the duty of the Chief Executive to ensure that existing Directors and Officers and all new appointees are notified of and understand their responsibilities within Standing Orders and SFIs. 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 of SOs.

11.2 Documents having the standing of Standing Orders

11.3 Review of Standing Orders

- 11.3.1 Standing Orders shall be reviewed triennially by the Trust. The requirement for review extends to reviewing the SFI's and the Schedule of Delegations.

11.4 Corporate Documents

- 11.4.1 Corporate documents specific to the setting up of the Trust shall be held in a secure place by the Chief Executive.

Annex 9 - Further Provisions

Appendix 1:

(Paragraph 3.2)

NHS and Trust Core Principles

1 NHS Core Principles

- 1.1.1 The NHS will provide a universal service for all based on clinical need, not ability to pay. The NHS will provide a comprehensive range of services. The NHS will shape its services around the needs and preferences of individual patients, their families and their carers.
- 1.1.2 The NHS will respond to different needs of different populations.
- 1.1.3 The NHS will work continuously to improve quality services and to minimise errors.
- 1.1.4 The NHS will support and value its staff; public funds for healthcare will be devoted solely to NHS patients.
- 1.1.5 The NHS will work together with others to ensure a seamless service for patients.
- 1.1.6 The NHS will help keep people healthy and work to reduce health inequalities.
- 1.1.7 The NHS will respect the confidentiality of individual patients and provide open access to information about services, treatment and performance.

2 Trust Core Principles: General

- 2.1.1 The Trust aims to provide the best possible patient care, based on evidence and in a culture that encourages continuous improvement.
- 2.1.2 The Trust will listen to patients and understand what they have to say and encourage their involvement in decisions about their care.
- 2.1.3 The Trust will aim to provide a clean, healthy and welcoming hospital environment for patients, visitors and staff.
- 2.1.4 The Trust will aim to improve the patient's experience of care provided at its Hospitals and by its services respecting their privacy and preserving their dignity.
- 2.1.5 The Trust will have open and honest communications between staff and patients.

- 2.1.6 The Trust will recognise the contribution of staff by developing and supporting them to do their jobs better, and involving them in decision making.
- 2.1.7 The Trust will aim to provide high quality services through working in partnership.
- 2.1.8 The Trust shall exercise its functions effectively, efficiently and economically.

3 Trust Core Principles: Representative Membership

- 3.1 The Trust shall at all times strive to ensure that, taken as a whole, its actual membership is representative of those eligible for membership. To this end:
 - 3.1.1 the Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors and shall be reviewed by them from time to time and at least annually; and
 - 3.1.2 the Council of Governors shall present to each annual members meeting:
 - 3.1.2.1 a report on steps taken to secure that, taken as a whole, the actual membership of its constituencies and the classes of constituencies is representative of those eligible for such membership; and
 - 3.1.2.2 the progress of the membership strategy; and
 - 3.1.2.3 any changes to the membership strategy.

4 Trust Core Principles: Co-operation with health service and other bodies

- 4.1 In exercising its functions the Trust shall co-operate with Health Service Bodies and any local authority with which the Trust has a Local Authority Partnership Agreement under section 75 of the 2006 Act, or otherwise.

5 Trust Core Principles: Respects for rights of people

- 5.1 In conducting its affairs, the Trust shall respect the rights of the members of the community it serves, its employees and people dealing with the Trust as set out in the Charter of Fundamental Rights of the European Union.

Appendix 2:

(Paragraph 10.3)

Membership

1 Disqualification from membership of the Trust

- 1.1 A person may not be a Member of the Trust if he is under 14 years of age at the time of his application to become a Member.
- 1.2 A person may not become or remain a Member of the Trust if during the 5 years prior to his application, he has demonstrated aggressive or violent behaviour at any Hospital or towards any person working for a Health Service Body and following such behaviour he has been asked to leave, has been removed or excluded from any Hospital or other Health Service Body establishment under either the Trust's or other Health Service Body's policy for withholding treatment from violent/aggressive patients (zero tolerance), or equivalent.
- 1.3 A person may not become or remain a Member of the Trust if he is ineligible under paragraphs 7, 8, or 9 of this Constitution to be a Member.
- 1.4 A person may not become or remain a Member of the Trust if he has been confirmed as a 'vexatious complainant' in accordance with the Trust's Complaints Handling Policy.
- 1.5 A person may not become or remain a Member of the Trust if he has been removed as a member from another NHS Foundation Trust.
- 1.6 A person may not become or remain a Member of the Trust if he is the subject of a Sex Offenders Order and/or their name is included in the Sex Offenders Register.
- 1.7 A person may not remain a Member of the Trust if the Council of Governors resolves (in accordance with the procedure for expulsion set out at paragraph 2 of this Appendix) that for reasonable cause his so doing would, or would be likely to:
 - 1.7.1 prejudice the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions; or
 - 1.7.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or
 - 1.7.3 adversely affect public confidence in the goods or services provided by the Trust; or
 - 1.7.4 otherwise bring the Trust into disrepute.
- 1.8 It is the responsibility of each Member to ensure his eligibility at all times and not the responsibility of the Trust to do so on his behalf. A Member who becomes aware of

his ineligibility shall inform the Trust as soon as practicable and that person shall thereupon be removed forthwith from the Register of Members and shall cease to be a Member.

- 1.9 Where the Trust has reason to believe that a Member or an applicant for membership may be ineligible for membership or may be disqualified for membership under this Constitution, the Secretary shall carry out reasonable enquiries to establish if this is the case.
- 1.10 Where the Secretary considers that there may be reasons for concluding that a Member or an applicant for membership may be ineligible or be disqualified for Membership he shall advise that individual of those reasons in summary form and invite representations from the Member or applicant for membership within 21 days or such other reasonable period as the Secretary may in his absolute discretion determine. Any representations received shall be considered by the Secretary and he shall make a decision on the Member's or applicant's eligibility or disqualification as soon as reasonably practicable and shall give notice in writing of that decision to the Member or applicant within 14 days of the decision being made.
- 1.11 If no representations are received within the period of 21 days or longer period (if any) permitted under paragraph 1.10 above, the Secretary shall be entitled nonetheless to proceed and make a decision on the Member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from him.
- 1.12 Upon a decision being made under paragraphs 1.10 or 1.11 above that the Member or applicant is ineligible or disqualified for membership the Member's name shall be removed from the Register of Members forthwith and he shall thereupon cease to be a Member.
- 1.13 Any decision made under paragraphs 1.10, 1.11, and 1.12 to disqualify a Member or an applicant for membership may be referred by the Member or applicant concerned to the dispute resolution procedure under paragraph 2 of Appendix 4 to Annex 9.

2 Expulsion from membership of the Trust

- 2.1 A Member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:
 - 2.1.1 Any Member or Director may complain to the Secretary that another Member has acted in a way detrimental to the interests of the Trust, or is otherwise disqualified as set out in paragraph 1 above.
 - 2.1.2 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:
 - 2.1.2.1 dismiss the complaint and take no further action; or
 - 2.1.2.2 arrange for a resolution of the Council of Governors to expel the Member complained of to be considered at the next meeting of the Council of Governors.

3 Termination of Membership

3.1 A Member shall cease to be a Member on:

3.1.1 death;

3.1.2 resignation by notice in writing to the Secretary;

3.1.3 ceasing to fulfil the requirements of paragraphs 7, 8, or 9 of the Constitution, as the case may be;

3.1.4 being disqualified pursuant to paragraph 10 of the Constitution or paragraph 1 above; or

3.1.5 being expelled pursuant to paragraph 2 above.

Appendix 3

(Paragraph 31)

Board of Directors – Further Provisions

1 Appointment of Chairman and non-executive Directors

1.1 The Council of Governors shall appoint as the initial Chairman and non-executive Directors of the Trust, the chairman and non-executive directors of the Applicant NHS Trust for the unexpired period of their respective terms of office as chairman or non-executive director of the Applicant NHS Trust, or twelve months whichever is the longer unless they notify the Council of Governors that they do not wish to be appointed.

1.2 Subject to the provisions of paragraph 1.1 above, the process for appointing new non-executive Directors and the Chairman will be as follows:

1.2.1 The Chairman and other non-executive Directors may be reappointed to office if, in the judgement of the Council of Governors:

- a. the performance of the individual proposed for re-election continues to be effective and to demonstrate commitment to the role; and
- b. it is in the interests of the Trust to make a re-appointment without competition.

In all other cases a Chairman or Non-Executive Director are to be appointed by the Council of Governors following a process of open competition.

1.2.2 If Council does not make a re-appointment under 1.2.1 above, six months before the end of the term of office of the Chairman, the Council of Governors will appoint an Appointment Committee for the Chairman to seek a suitable replacement. The Appointment Committee will be constituted in accordance with paragraphs 1.2.5 below. Consideration of vacancies in respect of Non-Executive Directors will be undertaken by the Standing Appointments Committee under paragraph 1.2.6 below.

1.2.3 Notwithstanding the provisions of paragraph 1.2.2 above, the post will be advertised.

1.2.4 The Standing Appointment Committee or the Appointments Committee for the Chairman, as appropriate will make recommendations to the Council of Governors, including recommendations about pay.

1.2.5 The Appointment Committee for the Chairman will consist of

- Two Public Governors
- One Patient and Carers' Governor
- One Staff Governor
- One Appointed Governor

- Four Non-Executive Directors (appointed by the Non-Executive Directors)

If the number of Governors prepared to serve on the Appointment Committee is greater than the number of places available, the committee members will be selected by election by their peer Governors. A Public Governor will chair the Appointment Committee. Each member of the Appointment Committee will have one vote.

- 1.2.6 The Standing Appointment Committee for the non-executive Directors will consist of
the Chairman
two Public Governors
one Patient and Carers' Governor
one Staff Governor
one Appointed Governor
two Non-Executive Directors (appointed by the Non-Executive Directors)
The Governor members shall be elected by the Council of Governors at each Annual Meeting. The Chief Executive will attend in an advisory capacity only. If the number of Governors prepared to serve on the Standing Appointment Committee is greater than the number of places available, the committee members will be selected by election by their peer Governors. A Public Governor or Patient and Carer Governor will chair the Appointment Committee. Each member of the Appointment Committee will have one vote. The Council of Governors may refer other matters to the consideration of the Standing Appointments Committee, provided that they relate to the service or performance of Non-Executive Directors.
- 1.2.7 The Appointment Committees constituted under paragraphs 1.2.5 and 1.2.6 of Appendix 3 above will be supported by appropriate advice from the Trust's Director of Workforce and Organisational Development.
- 1.2.8 The Council of Governors will not consider nominations for membership of the Board of Directors other than those made by the appropriate Appointment Committee.

Appendix 4:

Further Provisions – General

1 Indemnity

- 1.1 Members of the Council of Governors and Board of Directors 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 board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 1.2 The Trust may take out insurance either through the NHS Litigation Authority or otherwise in respect of directors and officers liability, including liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

2 Dispute Resolution Procedures

- 2.1 In the event of any dispute about the entitlement to membership the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the Member is aggrieved at the decision of the Secretary he may appeal in writing within 14 days of the Secretary's decision to the Council of Governors whose decision shall be final.
- 2.2 In the event of dispute between the Council of Governors and the Board of Directors:
 - 2.2.1 in the first instance the Chairman on the advice of the Secretary, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute;
 - 2.2.2 if the Chairman is unable to resolve the dispute he shall appoint a special ad hoc committee comprising equal numbers of Directors and Governors ("Dispute Resolution Committee") to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute;
 - 2.2.3 if the recommendations (if any) of the Dispute Resolution Committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute back to the Board of Directors who shall make the final decision.

3 Amendment of the Constitution

- 3.1 The Trust Constitution may be amended where the amendment is:
 - 3.1.1 Considered at a meeting of the Council of Governors and approved by at least half of the Governors present and voting on the question of approval
 - 3.1.2 Considered at a meeting of the Board of Directors and approved by at least half of the Directors present and voting on the question of approval

- 3.2 A proposal to amend the Trust Constitution maybe made to either the Council of Governors or the Board of Directors, and if approved shall be referred to the other body for consideration.
- 3.3 When considering a proposal to amend the Trust Constitution, which has been approved by one body, the Board of Directors or Council of Governors may approve the proposal conditional on such amendments as they may consider appropriate; and the proposal shall be referred back for the consideration of the body that initially considered it.
- 3.4 When receiving a proposal with amendments, the body receiving the proposal may:
 - 3.4.1 Accept the amendments, in which case the proposal as amended is approved
 - 3.4.2 Decline to accept the amendments and invite the other body to recede from them
 - 3.4.3 Decline to accept the amendments and propose further amendments in their place, which shall be sent for consideration as if they were original amendments under 3.3. above
- 3.5 If a body declines to accept amendments under section 3.4.2 above, the body who made the amendments may:
 - 3.5.1 Insist on its amendments, and request the approval of the other body
 - 3.5.2 Accept any further amendments proposed by the other body
 - 3.5.3 Recede from its amendments and accept the proposals without them
 - 3.5.4 Recede from its amendments and propose alternative amendments in their place, which shall be considered under 3.3 above
- 3.6 An amendment to the Trust Constitution has force and effect (subject to 3.7 below) when both the Council of Governors and the Board of Directors have agreed the wording of the amendment; but this shall not prevent the amendment setting out a later date on which the change in the Trust Constitution shall be effective.
- 3.7 Any amendment to the Trust Constitution which affects the powers, duties or role within the Trust of the Council of Governors shall be presented to the Annual Member's Meeting which immediately follows the entry into force of that amendment; and at that meeting there shall be taken a question on whether the amendment shall remain in force. If the amendment shall not be supported by a majority of the members present and voting, it shall cease to have effect, but without prejudice to any actions taken whilst the amendment was in effect.
- 3.8 The Trust Secretary shall be responsible for ensuring that all amendments to the Trust Constitution are registered in accordance with the requirements of Monitor.

4 Dissolution of the Trust

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