

BURTON HOSPITALS NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)
CONSTITUTION

As approved by the Council of Governors on 20 April 2016 and the Board of Directors on 5 May 2016 and thus taking effect from 5 May 2016.

Burton Hospitals NHS Foundation Trust Constitution

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1 Name

The name of the foundation trust is Burton Hospitals NHS Foundation Trust (the 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, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

2.3 The trust may provide goods and services for any purposes related to:-

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

2.3.2 the promotion and protection of public health.

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

3 Powers

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

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

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

4 Membership and constituencies

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

4.1 a public constituency

4.2 a staff constituency

5 Application for membership

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

6 Public Constituency

- 6.1** An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the trust.
- 6.2** Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.
- 6.3** The minimum number of members in each area for the Public Constituency is specified in Annex 1.

7 Staff Constituency

- 7.1** An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided:
 - 7.1.1** 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
 - 7.1.2** he has been continuously employed by the trust under a contract of employment for at least 12 months.
- 7.2** Individuals who exercise functions for the purposes of the trust, otherwise than under a contract of employment with the trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt this shall include individuals who assist or provide services to the trust on a voluntary basis through Burton Hospitals Volunteers but shall not include any other individual volunteers.
- 7.3** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 7.4** 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 within Annex 2 and being referred to as a class within the Staff Constituency.
- 7.5** The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

Automatic membership by default – staff

- 7.6** An individual who is:

7.6.1 eligible to become a member of the Staff Constituency, and

7.6.2 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 trust that he does not wish to do so.

8 Restriction on membership

8.1 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.

8.2 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.

8.3 An individual must be at least 16 years old to become a member of the trust.

8.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 8 – Further Provisions.

9 Annual Members' Meeting

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

9.2 Further provisions about the Annual Members Meeting are set out in Annex 9.

10 Council of Governors – composition

10.1 The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.

10.2 The composition of the Council of Governors is specified in Annex 3.

10.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes 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 3.

11. Council of Governors – election of governors

- 11.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time. The Board of Directors will decide which of the two voting methods set out in the Model Rules for Elections is to be used.
- 11.2 The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at Annex 4.
- 11.3 A variation of the Model Rules shall not constitute a variation of the terms of this constitution. For the avoidance of doubt, the trust cannot amend the Model Rules.
- 11.4 An election, if contested, shall be by secret ballot.

12. Council of Governors - tenure

- 12.1 An elected governor may hold office for a period of up to 3 years commencing immediately after the annual members meeting at which his election is announced.
- 12.2 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.
- 12.3 An elected governor shall be eligible for re-election at the end of his term, subject to paragraph 12.4 below.
- 12.4 An elected governor may not hold office for more than nine consecutive years and shall not be eligible for re-election if he has already held office for more than six consecutive years.
- 12.5 For the purposes of these provisions concerning terms of office for elected governors, “year” means a period commencing immediately after the conclusion of an Annual Members Meeting, and ending at the conclusion of the next Annual Members Meeting.
- 12.6 Further provisions as to tenure for elected governors are set out at Annex 5.
- 12.7 An appointed governor may hold office for a period of up to 3 years.
- 12.8 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 12.9 An appointed governor shall be eligible for re-appointment at the end of his term. subject to paragraph 12.10 below.

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

13 Further provisions relating to election and voting of governors

13.1 A person may not vote at an election for a governor unless at the time of voting, he makes a declaration in the form approved from time to time by the Secretary of the trust of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held.

13.2 A person may not stand for election to the Council of Governors unless:

13.2.1 he has at the time of his nomination made a declaration in the form approved from time to time by the Secretary of the trust of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held, and

13.2.2 he is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or any provision of the trust's constitution.

13.3 A person elected to the Council of Governors may not vote at a meeting of the Council of Governors unless:

13.3.1 he has within the month prior to and including the day of the meeting-made a declaration in the form approved from time to time by the Secretary of the trust of the particulars of his qualification to vote as a member of the trust, and

13.3.2 he is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or any provision of the trust's constitution.

14 Council of Governors – disqualification and removal

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

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

14.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986;

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

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

14.2 Governors must be at least 18 years of age at the date they are nominated for election or appointment.

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

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

14.4.1 they have committed a serious breach of the Code of Conduct;
or

14.4.2 they have acted in a manner detrimental to the interests of the trust; and

14.4.3 the Council of Governors considers that it is not in the best interests of the trust for them to continue as a Governor.

15 Council of Governors – duties of governors

15.1 The general duties of the Council of Governors are:

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

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

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

16 Council of Governors – meetings of governors

16.1 The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 25) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 26 below), shall preside at meetings of the Council of Governors. If the Chairman and Deputy Chairman are absent or have conflicts of interest, such Non-Executive Director or Governor as the Members of the Council

present shall choose shall preside unless he/she has a conflict of interest. The person presiding at the meeting shall have a casting vote.

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

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

17 Council of Governors – standing orders

The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6.

18 Council of Governors – referral to the Panel

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

18.1.1 to act in accordance with its constitution, or

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

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

19 Council of Governors - conflicts of interest of governors

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

20 Council of Governors – travel expenses

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

21 Council of Governors – further provisions

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

22 Board of Directors – composition

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

22.2 The Board of Directors is to comprise:

22.2.1 a non-executive Chairman*

22.2.2 Up to six* other non-executive directors; and

22.2.3 Up to six* executive directors.

* Code of Governance for Foundation Trusts - Provision B.1.2: *“At least half the board, excluding the chairperson, should comprise of non-executive directors determined by the board to be independent.”* Under the comply or explain principle, in the event of parity on the Board between Executive and Non-Executive Directors, the chair has a second casting vote.

22.3 One of the executive directors shall be the Chief Executive.

22.4 The Chief Executive shall be the Accounting Officer.

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

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

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

23 Board of Directors – general duty

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

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

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

- 24.1** he is a member of a Public Constituency, or
- 24.2** where any of the trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and
- 24.3** he is not disqualified by virtue of paragraph 28 below or Annex 8.

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

- 25.1** The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the trust and the other non-executive directors.
- 25.2** Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors, not just those who attend the meeting to determine the removal.
- 25.3** Further provisions as to the appointment and removal of the Chairman and other non executive directors are set out at Annex 8.

26 Board of Directors – appointment of deputy chairman

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. If the Chairman is unable to discharge his office as Chairman of the trust the Deputy Chairman shall be acting Chairman of the trust.

27 Board of Directors - appointment and removal of the Chief Executive and other executive directors

- 27.1** The non-executive directors shall appoint or remove the Chief Executive.
- 27.2** The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 27.3** A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

27.4 The Chief Executive shall appoint one of the Executive Directors as Deputy Chief Executive, subject to the approval of the Board of Directors.

28 Board of Directors – disqualification

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

- 28.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 28.2** 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.
- 28.3** 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.
- 28.4** Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out in Annex 8.

29 Board of Directors – meetings

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

30 Board of Directors – standing orders

The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 7.

31 Board of Directors - conflicts of interest of directors

- 31.1** The duties that a director of the trust has by virtue of being a director include in particular:
 - 31.1.1** A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust.

- 31.1.2** A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 31.2** The duty referred to in sub-paragraph 31.1.1 is not infringed if:
- 31.2.1** The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 31.2.2** The matter has been authorised in accordance with the constitution.
- 31.3** The duty referred to in sub-paragraph 31.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 31.4** In sub-paragraph 31.1.2, “third party” means a person other than:
- 31.4.1** The trust, or
- 31.4.2** A person acting on its behalf.
- 31.5** If a director of the trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, the director must declare the nature and extent of that interest to the other directors.
- 31.6** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 31.7** Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 31.8** This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 31.9** A director need not declare an interest:
- 31.9.1** If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 31.9.2** If, or to the extent that, the directors are already aware of it;
- 31.9.3** If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered:
- 31.9.3.1** By a meeting of the Board of Directors, or
- 31.9.3.2** By a committee of the directors appointed for the purpose under the constitution.

32. Board of Directors – remuneration and terms of office

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

32.2 The trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

33. Registers

The trust shall have:

33.1 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;

33.2 a register of members of the Council of Governors;

33.3 a register of interests of governors;

33.4 a register of directors; and

33.5 a register of interests of the directors.

34. Admission to and removal from the registers

The Secretary shall remove from the register of members the name of any member who appears to the Secretary to have ceased to be entitled to be a member under the provisions of this constitution.

35. Registers – inspection and copies

35.1 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 or as otherwise prescribed by regulations.

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

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

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

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

35.4 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.

36. Documents available for public inspection

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

36.1.1 a copy of the current constitution;

36.1.2 a copy of the latest annual accounts and of any report of the auditor on them, and

36.1.3 a copy of the latest annual report, and

36.1.4 a copy of the trust's Membership Strategy.

36.2 The trust shall also make the following documents relating to a special administration of the trust available for inspection by members of the public free of charge at all reasonable times:

36.2.1 A copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.

36.2.2 A copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.

36.2.3 A copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.

36.2.4 A copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.

36.2.5 A copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.

36.2.6 A copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (the Independent Regulator's decision), 65KB (Secretary of State's response to the Independent Regulator's decision), 65KC (action following Secretary of State's rejection of final report), or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.

36.2.7 A copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.

36.2.8 A copy of any final report published under section 65I (administrator's final report).

36.2.9 A copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.

36.2.10A copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

36.4 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.

37. Auditor

37.1 The trust shall have an auditor.

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

38. Audit committee

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.

39. Accounts

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

39.2 The Independent Regulator may with the approval of the Secretary of State give directions to the trust as to the content and form of its accounts.

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

39.4 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.

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

39.6 Further provisions as to the accounts are set out at Annex 8.

40 Annual report and forward plans and non-NHS work

- 40.1** The trust shall prepare an Annual Report and send it to the Independent Regulator.
- 40.2** The trust shall give information as to its forward planning in respect of each financial year to the Independent Regulator.
- 40.3** The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 40.4** In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 40.5** Each forward plan must include information about:
 - 40.5.1** The activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and
 - 40.5.2** The income it expects to receive from doing so.
- 40.6** Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 40.5.1 the Council of Governors must:
 - 40.6.1** Determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the trust of its principal purpose or the performance of its other functions, and
 - 40.6.2** Notify the directors of the trust of its determination.
- 40.7** A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the trust voting approve its implementation.

41 Presentation of the annual accounts and reports to the governors and members

- 41.1** The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
 - 41.1.1** The annual accounts
 - 41.1.2** Any report of the auditor on them
 - 41.1.3** The annual report.

41.2 The documents shall also be presented to the members of the trust at the Annual Members Meeting by at least one member of the Board of Directors in attendance.

41.3 The trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 41.1 with the Annual Members Meeting.

42 Instruments

40.1 The trust shall have a seal.

42.2 The seal shall not be affixed except under the authority of the Board of Directors.

43. Dispute Resolution Procedures

43.1 Following a majority vote by either the Council of Governors or the Board of Directors that a dispute exists, disputes between the Board of Directors and the Council of Governors shall be resolved in accordance with the dispute resolution procedure as set out in Annex 8.

43.2 Disputes relating to claims by governors or members in relation to disqualification shall be resolved in accordance with the dispute resolution procedure as set out in Annex 8.

44 Amendment of the constitution

44.1 The trust may make amendments of its constitution only if:

44.1.1 More than half of the members of the Council of Governors of the trust in attendance and voting approve the amendments, and

44.1.2 More than half of the members of the Board of Directors of the trust in attendance and voting approve the amendments.

44.2 Amendments made under paragraph 44.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.

44.3 Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust):

44.3.1 At least one member of the Council of Governors must attend the next Annual Members Meeting and present the amendment, and

44.3.2 The trust must give the members an opportunity to vote on whether they approve the amendment.

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

- 44.4** Amendments by the trust of its constitution are to be notified to the Independent Regulator. For the avoidance of doubt, the Independent Regulator's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

45. Mergers etc. and significant transactions

- 45.1** The trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors in attendance and voting.

- 45.2** The trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the trust in attendance and voting approve entering into the transaction.

- 45.3** "Significant transaction" means a transaction:

45.3.1 Assets – where the gross assets* subject to the transaction exceeds 25% of the gross assets of the foundation trust, or

45.3.2 Income – where the annual income attributable to the assets or the contract associated with the transaction exceeds 25% of the annual income of the foundation trust, or

45.3.3 Expenditure – where the annual expenditure attributable to the assets or the contract associated with the transaction divided by the annual income of the foundation trust is 25% or greater, or

45.3.4 Capital – where the gross capital** of the organisation being acquired / divested or the effect on the total capital*** of the foundation trust exceeds 25% of the total capital*** of the foundation trust following completion.

* Gross assets is the total of fixed assets and current assets

** Gross capital equals the market value of the target's shares and debt securities, plus the excess of current liabilities over current assets

*** Total capital of the foundation trust equals taxpayers' equity

46. Dissolution of the trust

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

47. Interpretation and definitions

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

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

“the 2006 Act”	means the National Health Service Act 2006;
“the 2012 Act”	means the Health and Social Care Act 2012;
“the Accounting Officer”	means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;
“appointed governors”	means those governors appointed by the appointing organisations;
“appointing Organisations”	means those organisations named in this constitution who are entitled to appoint governors;
“Annual Members Meeting”	is defined in paragraph 9 of the constitution;
“authorisation”	means an authorisation given by the Monitor;
“Board of Directors”	means the Board of Directors as constituted in accordance with this constitution;
“Code of Conduct for Governors”	means the trust’s Code of Conduct for Governors as amended from time to time (by resolution of the Board of Directors and the Council of Governors);
“Constitution”	means this constitution and all annexes to it.
“Council of Governors”	means the Council of Governors as constituted in accordance with this constitution, which has the same meaning as the Board of Governors in the 2006 Act;
“Director”	means a member of the Board of Directors;
“Elected Governors”	means those governors elected by the public constituencies and classes of staff constituency;

“Financial Year”	<p>means:</p> <p>(a) the period beginning with the date on which the trust is authorised and ending with the next 31 March; and</p> <p>(b) each successive period of twelve months beginning 1 April</p>
“Local Authority Governor”	means a Governor appointed by one or more local authorities whose area includes the whole or part of one of the areas of the trust;
“Monitor”	means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act; Monitor was replaced as the Independent Regulator by NHS Improvement in April 2016
“Member”	means a member of the trust;
“Partnership Governor”	means a governor appointed by a partnership organisation;
“Public Governor”	means a governor elected by the members of one of the public constituencies;
“Public Constituency”	means (collectively) those members living in one of the areas of the trust;
“Secretary”	means the Secretary of the trust or any other person appointed to perform the duties of the Secretary;
“Staff Governor”	means a governor elected by one of the classes of the staff constituency;
“Staff Constituency”	means (collectively) those members of the five classes comprising the staff constituency;
“the trust”	means Burton Hospitals NHS Foundation Trust;
“Voluntary organisation”	means a body, other than a public or local authority, the activities of which are not carried out for profit.

ANNEX 1 – THE PUBLIC CONSTITUENCIES

(Paragraphs 6.1 and 6.3)

1. The areas for public constituencies are as follows:
 - 1.1 The electoral area covered by East Staffordshire Borough Council
 - 1.2 The electoral areas covered by South Derbyshire District Council
 - 1.3 The electoral area covered by North West Leicestershire District Council and the rest of England (excluding the trust's other public constituencies)
 - 1.4 The electoral areas covered by Lichfield and Tamworth Borough Council areas

The minimum number of members of each of the areas of the Public Constituency is to be twenty.

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 7.4 and 7.5)

1. The classes of the staff constituency are:
 - (a) Medical and Dental staff
 - (b) Nursing and Midwifery staff
 - (c) Other clinical staff not in a or b above
 - (d) Other staff not in a, b or c above – to be known as ‘non-clinical staff’
 - (e) Burton Hospitals Volunteers

The minimum number of members of each of the classes of the staff constituency is to be twenty.

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraph 10)

1. The aggregate number of Public Governors is to be more than half of the total number of Members of the Council of Governors.
2. The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors;
 - 2.1 the interests of the community serviced by the trust are appropriately represented;
 - 2.2 the level of representation of the Public Constituency, the Staff Constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the trust's affairs;and to this end, the Council of Governors;
 - 2.3 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the Membership Strategy; and
 - 2.4 shall from time to time and at least every three years review the policy for the composition of the Council of Governors; and
 - 2.5 when appropriate shall propose amendments to this constitution.
3. The Council of Governors of the trust is to comprise:
 - 3.1 Thirteen Public Governors elected from the following areas of the Public Constituency;
 - 3.1.1 East Staffordshire – 6 Public Governors
 - 3.1.2 South Derbyshire – 2 Public Governors.
 - 3.1.3 Lichfield and Tamworth – 4 Public Governors
 - 3.1.4 North West Leicestershire and the rest of England (excluding the trust's other public constituencies) – 1 Public Governor
 - 3.2 Five Staff Governors elected from the following staff groups:
 - 3.2.1 Medical and Dental Staff – 1 Staff Governor
 - 3.2.2 Nursing and Midwifery staff – 1 Staff Governor
 - 3.2.3 Other Clinical staff not in 3.2.1 or 3.2.2 above – 1 Staff Governor
 - 3.2.4 Other staff not in 3.2.1, 3.2.2 or 3.2.3 above – to be known as 'non clinical staff' - 1 Staff Governor
 - 3.2.5 Burton Hospitals Volunteers – 1 Staff Governor
 - 3.3 Two Local Authority Governors to be appointed by Staffordshire County Council (with the agreement of the other Councils listed below) from the following:

- 3.3.1 East Staffordshire Borough Council
- 3.3.2 South Derbyshire District Council
- 3.3.3 North West Leicestershire District Council
- 3.3.4 Lichfield District Council
- 3.3.5 Tamworth Borough Council
- 3.3.6 Staffordshire County Council
- 3.3.7 Derbyshire County Council
- 3.3.8 Leicestershire County Council

pursuant to a process agreed by Staffordshire County Council and the trust.

- 3.4 Two Partner Governors to be appointed from the following organisations:

- 3.4.2 Support Staffordshire – 1 Partner Governor
- 3.4.3 Higher Education – 1 Partner Governor

Following consultation with the Council of Governors, the Chairman and Chief Executive will approach one of the following organisations for a nomination:

University of Wolverhampton
University of Staffordshire
University of Leicester
University of Derby
Keele University
Burton and South Derbyshire College/UTC

ANNEX 4 –THE MODEL RULES FOR ELECTIONS

(Paragraph 11.2)

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

- 36. Receipt of voting documents
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- 60. Election expenses
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- 67. Secrecy
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PART 1: INTERPRETATION

1. Interpretation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

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

5. Staff

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

6. Expenditure

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

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

contest.

9. Nomination of candidates

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

9.2 The returning officer:

- (a) is to supply any member of the corporation with a nomination form, and
 - (b) is to prepare a nomination form for signature at the request of any member of the corporation,
- but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

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

12. Declaration of eligibility

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

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

13. Signature of candidate

- 13.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:
- (a) they wish to stand as a candidate,
 - (b) their declaration of interests as required under rule 11, is true and correct, and
 - (c) their declaration of eligibility, as required under rule 12, is true and correct.

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

14. Decisions as to the validity of nomination

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

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

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

- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

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

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

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

the decision to that address.

15. Publication of statement of candidates

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

these rules.

- 18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:
- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
 - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

voting system.

20. The ballot paper

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
- (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
 - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
 - (g) the contact details of the returning officer.
- 20.3 Each ballot paper must have a unique identifier.
- 20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

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

("declaration of identity")

and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of

identity by each voter, whether by the completion of a paper form (“ID declaration form”) or the use of an electronic method.

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

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

Action to be taken before the poll

22. List of eligible voters

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

22.2 The list is to include, for each member:

(a) a postal address; and,

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

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

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

23. Notice of poll

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

(a) the name of the corporation,

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

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

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

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

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

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

(h) the uniform resource locator (url) where, if internet voting is a

- method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

24. Issue of voting information by returning officer

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

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

("postal voting information").

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

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

("e-voting information").

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

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

for the purposes of the poll.

24.4 If the corporation determines, in accordance with rule 22.3, that the e-

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

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

25. Ballot paper envelope and covering envelope

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

- 25.2 The covering envelope is to have:

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

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

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

26. E-voting systems

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

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

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

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

- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity; in order to be able to cast his or her vote;
- (b) specify:

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

26.5

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

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

- (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

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

- (a) require a voter to:
 - (i) provide his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
 in order to be able to cast his or her vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (ii) the candidate or candidates for whom the voter has voted; and
 - (iii) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

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

29. Spoilt ballot papers and spoilt text message votes

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

30. Lost voting information

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

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

- (a) is satisfied as to the voter's identity,
- (b) has no reason to doubt that the voter did not receive the original voting information,
- (c) has ensured that no declaration of identity, if required, has been returned.

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

- (a) the name of the voter
- (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
- (c) the voter ID number of the voter.

31. Issue of replacement voting information

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

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

- (a) the name of the voter,
- (b) the unique identifier of any replacement ballot paper issued under this rule;
- (c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

34. Voting procedure for remote voting by telephone

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

35. Voting procedure for remote voting by text message

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

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

36. Receipt of voting documents

- 36.1 Where the returning officer receives:
- (a) a covering envelope, or
 - (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,
- before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.
- 36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:
- (a) the candidate for whom a voter has voted, or
 - (b) the unique identifier on a ballot paper.
- 36.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

37. Validity of votes

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) put the ID declaration form if required in a separate packet, and
 - (b) put the ballot paper aside for counting after the close of the poll.
- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) mark the ballot paper “disqualified”,
 - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
 - (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
 - (d) place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been

correctly made.

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

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

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

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

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

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

39. De-duplication of votes

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

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

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

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

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;

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

- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

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

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

40. Sealing of packets

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

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

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

PART 6: COUNTING THE VOTES

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

elected candidates, and the transfer of the votes of the excluded candidates,

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

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

“non-transferable vote” means a ballot document:

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

or

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

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

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

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

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

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

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

“stage of the count” means:

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

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

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

“transferable vote” means a ballot document on which, following a first preference, a second or subsequent preference is recorded in

consecutive numerical order for a continuing candidate,

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

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

42. Arrangements for counting of the votes

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

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

- (a) the board of directors and the council of governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and
- (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

43.1 The returning officer is to:

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

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

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated

into the other ballot papers to prevent them from being reproduced,

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

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

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

STV44.3 Any text voting record:

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

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

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

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

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

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

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

FPP44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of

any vote where no uncertainty arises, and that vote is to be counted.

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

STV45. First stage

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

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

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

STV46. The quota

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

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

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

STV47. Transfer of votes

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

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

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

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

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

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

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

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

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

- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:
- (a) a transfer value calculated as set out in rule STV47.4(b), or
 - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,
- whichever is the less.
- STV47.8 Each transfer of a surplus constitutes a stage in the count.
- STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
 - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
- STV47.11 This rule does not apply at an election where there is only one vacancy.

STV48. Supplementary provisions on transfer

- STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:
- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
 - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.
- STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:
- (a) record the total value of the votes transferred to each candidate,
 - (b) add that value to the previous total of votes recorded for each candidate and record the new total,

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

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

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

STV49. Exclusion of candidates

STV49.1 If:

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

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

STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

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

STV49.3 The returning officer shall, in accordance with this rule and rule

STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.

- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
 - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
 - (d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.

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

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

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

STV50. Filling of last vacancies

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

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

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

STV51. Order of election of candidates

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

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

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

STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide

between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP51. Equality of votes

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

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

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

FPP52.2 The returning officer is to make:

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule FPP44.5,
- (c) the number of rejected text voting records under each of the headings in rule FPP44.10,

available on request.

STV52. Declaration of result for contested elections

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

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

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

STV52.2 The returning officer is to make:

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

available on request.

53. Declaration of result for uncontested elections

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

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

rejected text voting records,

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

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

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

57. Retention and public inspection of documents

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

directors of the corporation, cause them to be destroyed.

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

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

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

58.1 The corporation may not allow:

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

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

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

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

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

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

58.4 On an application to inspect any of the documents listed in rule 58.1

the board of directors of the corporation must:

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

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

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

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

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

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

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

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

FPP59.5 The returning officer is to:

- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
- (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and

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

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

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

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

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1 No person may:

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

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

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

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

as it considers necessary.

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

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

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

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

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

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

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel (IEAP).

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

- 66.3 An application may only be made to the Independent 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.
- 66.4 The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as the independent panel may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by the Independent Regulator.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

PART 12: MISCELLANEOUS

67. Secrecy

67.1 The following persons:

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

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

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

67.2 No person may obtain or attempt to obtain information as to the

candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter or the voter ID number allocated to a voter.

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

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

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

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraphs 11, 12, 14, 17 and 21)

Contents

- a) Further provisions as to eligibility to be a governor
- b) Requirement of governor to notify Trust
- c) Termination of office and removal of governor
- d) Vacancies amongst governors
- e) Additional roles and responsibilities
- f) Appointment and removal of Non Executive Director (including Chair and Deputy Chair)
- g) Lead Governor
- h) Performance Evaluation

a) Further provisions as to eligibility to be a Governor

a1.1. A person may not become, or continue as, a Governor of the trust, and if already holding such office will immediately cease to do so, if:

a1.1.1. they are a Director (whether Executive or Non Executive) or an Associate Director (or equivalent, as determined by the Chairman and Chief Executive) of the trust or a Governor or Director (whether Executive or Non Executive) of an NHS body (unless they are appointed as an appointed Governor by an appointing organisation which is an NHS body)

a1.1.2 they are under 18 years of age

a1.1.3 they are the spouse, partner, parent, child, sister or brother of a member of the Board of Directors or Associate Director (or equivalent, as determined by the Chair and Chief Executive) of the trust

a1.1.4 they are a member of any Overview and Scrutiny Committee established under the Local Government Act 2000 with responsibility for, or whose powers extend to the services provided by the Trust, unless the Council of Governors is satisfied that any conflict could be managed via declaration of interests. .

a1.1.5 they are a board member, employee or Enter and View participant of a Local Healthwatch unless that Local Healthwatch is a partnership organisation of the trust and has appointed them as a Partnership Governor

a1.1.6 they are deemed to be a vexatious complainant, as determined in accordance with the trust's complaints procedure

a1.1.7 they have been previously removed as a Governor pursuant to paragraph c of this Annex 5 or they have been removed as a Governor or expelled from membership of another foundation trust

a1.1.8 being a member of the Public Constituency, they refuse to make a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the trust, and that they are not prevented from being a member of the Council of Governors

a1.1.9 they refuse a Disclosure and Barring Service check or information revealed by the check means they are no longer eligible under this constitution to be a Governor

a1.1.10 they are subject to a sex offender order

a1.1.11 they have within the last five years been involved as a perpetrator in a serious incident of violence at any of the trust's hospitals or facilities or against any of the trust's service users, employees or other persons who exercise functions for the purposes of the trust, or against any registered volunteer

- a1.1.12** they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body
- a1.1.13** they are a person whose tenure of office as the Chairman or as a member, Governor or Director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of pecuniary interest.
- a1.1.14** The Independent Regulator has exercised its powers to remove that person as a governor or has suspended him from office or has disqualified him from holding office as a governor for a specified period or The Independent Regulator 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;
- a1.1.15** If a Staff Governor is suspended from duties for any reason they will also be suspended from their role as governor for the duration of their suspension. Whilst a Staff Governor is under suspension, the Staff Governor cannot attend meetings of the Council of Governors as a member of the Council of Governors, but missing any meetings of the Council of Governors will not count as failure to attend for the purposes of section c of Annex 5 of this Constitution.
- a.1.16** If an Appointed Governor is suspended from their duties for any reason by the appointing organisation they will also be suspended from their role as Governor for the duration of their suspension. Whilst an Appointed Governor is under suspension, the governor cannot attend meetings of the Council of Governors as a member of the Council of Governors, but missing any meetings of the Council of Governors will not count as failure to attend for the purposes of section C of Annex 5 of this Constitution.
- a1.1.17** they have made a claim against the Trust and has issued legal proceedings in respect of such claim;

b) Requirement of governor to notify Trust

- b1.** Where a person has been elected or appointed to be a governor and he becomes disqualified from that appointment he shall notify the Trust in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which rendered him disqualified.
- b2.** If it comes to the notice of the Trust that a governor is disqualified, the Trust shall immediately declare him disqualified and shall give him notice in writing to that effect as soon as practicable and in any event within 14 days.
- b3.** Upon the giving of notice under sections 1 and 2 above, that person's tenure of office as a governor shall thereupon be terminated and he shall cease to

be a governor and his name shall be removed from the Register of Governors.

- b4.** A governor who resigns or whose tenure of office is terminated under this section shall not be eligible to stand for re-Election for a period of 3 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.

c) Termination of office and removal of governors

- c1.** A Governor's term of office shall be terminated;

c1.1 if they resign by notice in writing to the Secretary

c1.2 If they notify the Trust or are notified by the Trust that they are disqualified by virtue of this constitution.

c1.3 If they are removed by the Council of Governors, by a resolution approved by not less than three-quarters of the remaining governors present and voting on the grounds that;

c1.3.1 they fail to attend three consecutive meetings of the Council of Governors, unless the other Governors are satisfied that:

- the absences were due to reasonable causes; and
- they will be able to start attending meetings of the Council of Governors again within such a period as the other governors consider reasonable

c1.3.2 they have committed a serious breach of the Code of Conduct;

c1.3.3 they have acted in a manner detrimental to the interests of the trust;

c1.3.4 the Council of Governors consider that it is not in the best interests of the trust for them to continue as a governor

c1.3.5 information revealed by a CRB check means it would be inappropriate for them to continue as a governor on the grounds that this would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute.

c1.3.6 they are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;

c1.3.7 they have refused without reasonable cause to undertake any training which the Council of Governors requires all governors to undertake

c1.4 in the case of an elected governor, they cease to be a member of the constituency or class of constituency by whom they were elected

- c1.5** in the case of an appointed governor, the appointing organisation terminates the appointment
- c1.6** they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the Code of Conduct for Governors
- c1.7** Where a person's term of office as a governor has been terminated (otherwise than as a consequence of their own resignation) that person may refer the matter to the dispute resolution procedure outlined in Annex 8 within 14 days of the date upon which notice in writing of the termination is given to the governor.

d) Vacancies amongst Governors

d1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply:

d1.1 Where the vacancy arises amongst the appointed governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.

d1.2 Where the vacancy arises amongst the elected governors, the Council of Governors shall be at liberty either:

d1.2.1 to call an election within three months to fill the seat for the remainder of that term of office; or

d1.2.2 to invite the candidate for that seat at the most recent election who of those not elected received the highest number of first preference votes, or if that person is not willing to take office the candidate who received the next highest first preference votes (or if that person is not willing to take office, the next candidate who received the next highest first preference votes, and so on), to fill the seat until the next annual election; or

d1.2.3 to leave the seat vacant until the next annual elections are held provided that the number of Public Governors does not fall below the majority on the Council of Governors.

e) Additional Roles and Responsibilities

e1. The roles and responsibilities of the Council of Governors in addition to the roles and responsibilities set out elsewhere in the constitution, which are to be carried out in accordance with this constitution and the trust's NHS Provider Licence, include the following:

- to appoint or remove the Chairman and the other Non Executive Directors;
- to approve an appointment (by the Non Executive Directors) of the Chief Executive;

- to decide the remuneration and allowances, and the other terms and conditions of office, of the Non Executive Directors;
- to appoint or remove the trust's independent auditor;
- to receive the annual accounts, any report of the independent auditor on them and the annual report;
- to require one or more directors to attend a meeting (of the council) to obtain information on the performance of the trust and to help them to decide whether to propose a vote on the performance of the trust. Foundation Trusts must report on the number of times this power is used each year in their annual report
- to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Foundation Trust's forward planning.
- to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;
- to undertake such functions as the Board of Directors shall from time to time request.
- to prepare and from time to time review the trust's Membership Strategy and its policy for the composition of the Council of Governors and of the Non Executive Directors.
- to appoint one of the Non Executive directors as a Deputy Chairman.
- to decide whether the trust's non-NHS work would significantly interfere with its principal purpose, which is to provide goods and services for the health service in England, or the performance of its other functions.
- to approve a proposal to increase by 5% or more the proportion of the trust's total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England.
- to approve application by the trust to enter into a merger, acquisition, separation or dissolution.
- to approve significant transactions as defined in Paragraph 45.
- to approve amendments to the trust's constitution.

f) Appointment and Removal of Chairman and other Non Executive Directors (paragraph 25)

f1. Non Executive Directors are to be appointed by the Council of Governors using the procedure outlined within the Terms of Reference of the Council of Governors Appointments Committee.

f2. The removal of the Chairman or another Non Executive Director shall be in accordance with the following procedures.

f2.1 Any proposals for removal must be proposed by a Governor and will require the approval of three-quarters of the members of the Council of Governors, not just those who attend the meeting to determine the removal. This must include at least two elected governors and one appointed governor.

f2.2 Written reasons for the proposal shall be provided to the Non Executive Director in question, who shall be given the opportunity to respond to such reasons.

f2.3 In making any decision to remove a Non Executive Director, the Council of Governors shall take into account the annual appraisal carried out by the Chairman.

f2.4 If any proposal to remove a Non Executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such Non Executive Director based upon the same reasons within 12 months of the meeting.

g) Lead Governor

g1. The Council of Governors shall appoint a Lead Governor in line with a process agreed by the Council of Governors.

g2. To be eligible to be the Lead Governor, a Governor must have been a Governor for 12 months

g3. In the event of a vacancy, for any reason other than expiry of term of office, the Chairman of the Trust will appoint the chairman of one of the sub-committees of the Council of Governors to act as Lead, until a new Lead Governor is elected for the remainder of that term of office.

g4. Removal of the Lead Governor would be through a recommendation received from the Appointments Committee which is considered and approved by 75% of the Council of Governors present at the meeting considering the recommendation.

h) Performance Evaluation

The Chairman, with the assistance of the Trust Secretary, shall lead, at least annually, an assessment of the collective performance of the Council. This process will act as the basis for determining the Governor Development and Training Programme.

ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

(Paragraph 17)

BURTON HOSPITALS NHS FOUNDATION TRUST

STANDING ORDERS

FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

FOREWARD

The Burton Hospitals NHS Foundation Trust is a Public Benefit corporation established under the National Health Service Act 2006.

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

These Standing Orders (SOs) are for the regulation of the trust's Council of Governors' proceedings and business.

A Code of Business Conduct lays down certain procedures where there is a concern about possible conflicts of interest of Governors.

A Code of Practice on Openness in the NHS sets out the requirements for public access to information on the NHS.

The Burton Hospitals NHS Foundation Trust believes that public service values lie at its heart. High standards of corporate and personal integrity, based on recognition that service users and carers come first, is a fundamental value of the trust.

1. INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

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 they should be advised by the Chief Executive or Secretary to the Board).

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:

"Accountable Officer" means the NHS Officer responsible and accountable for funds entrusted to the trust. The officer shall be responsible for ensuring the proper stewardship of public funds and assets. For this trust it shall be the Chief Executive.

"trust" means the Burton Hospitals NHS Foundation Trust.

"Board of Directors" and (unless the context otherwise requires) **"Board"**, means the Chairman and Non Executive Directors appointed by the Council of Governors and the Executive Directors appointed by the Non Executive Directors and (except his/her own appointment) by the Chief Executive collectively as a body.

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

"Chairman" is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the trust as a whole. The expression "the Chairman of the trust" shall be deemed to include the Non Executive Director appointed by the Council of Governors to take on the Chairman's duties if the Chairman is absent from the meeting or is otherwise unavailable.

"Chief Executive" means the chief officer of the trust.

"Committee" means a committee or sub-committee appointed by the Council of Governors.

"Committee members" means persons formally appointed by the Council of Governors to sit on or to chair specific committees.

"Council of Governors" means the Board of Governors of the trust as defined in the 2006 Act as constituted by the Constitution.

"Code of Conduct for Governors" means the trust's Code of Conduct for Governors as amended from time to time (by resolution of the Board of Directors and the Council of Governors)

"Director" means a person appointed to the Board of Directors in accordance with the trust's Constitution and includes the Chairman.

“Executive Director” means a Member of the Board of Directors who holds an executive office of the trust. **“Associate Director”** means a person appointed by the Board of Directors to assist the Directors in specific functions.

“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 Standing Orders.

“Non Executive Director” means a Member of the Board of Directors who does not hold an executive officer of the trust.

“Officer” means employee of the trust.

“SOs” means Standing Orders.

“Secretary” means the Foundation Trust Secretary appointed by the Chief Executive and Chairman jointly with responsibility for the administration of corporate governance.

“Senior Independent Director” means the Non Executive Director appointed by the Board of Directors, in consultation with the Council of Governors to fulfill the duties described in the job description.

2. GENERAL INFORMATION

- 2.1** The purpose of the Council of Governors’ Standing Orders is to ensure that the highest standards of Corporate Governance and Conduct are applied to all Council meetings and associated deliberations.
- 2.2** All business shall be conducted in the name of the trust.
- 2.3** The Board of Directors shall appoint trustees to administer separately charitable funds received by the trust and for which they are accountable to the Charity Commission.

3. COMPOSITION OF COUNCIL OF GOVERNORS

- 3.1** The composition of the Council of Governors shall be in accordance with paragraph 10 and Annex 3 of the trust’s constitution.
- 3.2** Appointment and removal of the Chairman and Deputy Chairman of the Council of Governors will be made by the Governors in accordance with the trust’s constitution.

4. MEETINGS OF THE COUNCIL OF GOVERNORS

4.1 Meetings Held in Public

- 4.1.1** Meetings of the Council of Governors must be open to the public.
- 4.1.2** The Council of Governors may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that
 - 4.1.2.1** publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
 - 4.1.2.2** there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- 4.1.3** The Chairman may also exclude any member of the public from the meeting of the Council of Governors if he is interfering with or preventing any conduct of the meeting.
- 4.1.4** Meetings of the Council of Governors shall be held at least 4 times each year at times and places that the Council of Governors may determine.
- 4.1.5** The trust will hold an annual meeting nine months of the end of each financial year. Further provisions in relation to the Annual Members Meeting are stated in Annex 9.

4.2 Calling meetings

- 4.2.1** Notwithstanding 4.1.4 above, the Chairman may, in exceptional circumstances, call a meeting of the Council of Governors at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by a majority of the Governors and specifying the business to be transacted at the meeting, or if without so refusing the Chairman does not call a meeting within fourteen days after requisition to do so, then the Governors may forthwith call a meeting for the purpose of concluding 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, 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 Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him at least five clear days before the meeting. Lack of service of the notice on any Governor shall not affect the validity of a meeting.
- 4.3.2** Notwithstanding the above requirement for notice, the Chairman may waive notice on written receipt of the agreement of at least 50% of Governors.

4.3.3 In the case of a meeting called by Governors in default of the Chairman, the notice shall be signed by those Governors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice.

4.3.4 Failure to serve such a notice on more than three quarters of Governors will invalidate the meeting. A notice will be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

4.4 Setting the Agenda

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

4.4.2 A Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.

4.5 Chairman of Meeting

4.5.1 At any meeting of the Council of Governors, the Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 25) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 26) shall preside at meetings of the Council of Governors. If the Chairman and Deputy Chairman are absent or have conflicts of interest, such Non-Executive Director or Governor as the Members of the Council present shall choose shall preside unless he/she has a conflict of interest. The person presiding at the meeting shall have a casting vote.

4.6 Notices of Motions

4.6.1 A Governor of the trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting. All notices so received are subject to the notice given being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to section 4.3 of these Standing Orders.

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

4.6.3 Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the

preceding six calendar months, shall bear the signature of the Governors who give it and also the signature of four other Governors. When any such motion has been disposed of by the Council it shall not be competent for any Governor, other than the Chairman, to propose a motion to the same effect within six months; however, the Chairman may do so if he/she considers it appropriate.

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

4.6.5 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move;

- a) An amendment to the motion.
- b) The adjournment of the discussion or the meeting.
- c) The appointment of an adhoc committee to deal with a specific item of business.
- d) That the meeting proceeds to the next business.
- e) That the motion be now put.

Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

In the case of motions under (d) and (e), to ensure objectivity, motions may only be put by a Governor who has not previously taken part in the debate.

4.7 Chairman's Ruling

4.7.1 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 observed at the meeting.

4.8 Voting

4.8.1 Unless specified to the contrary, decisions at meetings shall be determined by a majority of the votes of the governors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.

4.8.2 All decisions 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.

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

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

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

4.9 Variation and Amendment of Standing Orders

4.9.1 These Standing Orders shall be amended only if

- a) A notice of motion has been given; and
- b) No fewer than half the total of the governors vote in favour of amendment; and
- c) At least two-thirds of the governors are present; and
- d) The variation proposed does not contravene a statutory provision.

4.10 Record of Attendance

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

4.11 Minutes

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

4.11.2 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.

4.11.3 Minutes shall be circulated in accordance with the governors wishes. The Minutes of the meeting shall be made available to the public except for minutes relating to the business conducted when members of the public are excluded under the terms of Section 4.1 of these Standing Orders (required by the Code of Practice on Openness in the NHS which has been adopted by the trust).

4.12 Quorum

4.12.1 No business shall be transacted at a meeting unless at least one-third of the whole number of the Council of Governors (including at least three Public Governors and one Staff Governor) are present. There will be a majority of public Governors present at any meeting. If a quorum is not present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand

adjourned until the same time and place seven days later and at such reconvened meeting those present shall constitute a quorum.

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

5. SENIOR INDEPENDENT DIRECTOR

5.1 The Council of Governors is entitled to be consulted by the Non Executive Directors on the appointment of the trust's Senior Independent Director.

5.2 The role of the Senior Independent Director is as set out in the trust's "Senior Independent Director Job Specification" as amended from time to time.

6. COMMITTEES

6.1 The Council of Governors may appoint committees of the Council consisting wholly of persons who are Governors. Non-Governors may attend such committees if appropriate under the Committee's terms of reference but they shall have no vote.

6.2 A committee so appointed may appoint sub-committees consisting wholly of persons who are governors. Non-Governors may attend such committees if appropriate under the Committee's terms of reference but they shall have no vote.

6.3 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees so established by the Council of Governors.

6.4 Each such committee or sub-committee shall operate in an advisory capacity only and have such terms of reference and be subject to such conditions (as to reporting back to the Council of Governors) as the Council shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.

6.5 Committees may not delegate their powers to a sub-committee unless expressly authorised by the Council of Governors.

6.6 The Council of Governors shall approve the membership to all committees/sub committees that it has formally constituted and shall determine the Chairman of each committee/sub committee.

7. CONFIDENTIALITY

- 7.1** A member of the Council of Governors or an attendee on a committee of the Council shall not disclose a matter dealt with by, or brought before, the Council of Governors without its permission or until the committee shall have reported to the Council or shall otherwise have concluded on that matter.
- 7.2** A governor or a non-governor in attendance at a committee shall not disclose any matter dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee resolves that it is confidential.

8 DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

8.1 Declaration of Interests

Governors are required to comply with the trust's Standards of Business Conduct and to declare interests that are relevant to the Council. All governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.

8.1.1 Interests regarded as "relevant and material" are:

- 8.1.1.1** Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies);
 - 8.1.1.2** Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
 - 8.1.1.3** Employment with any private company, business or consultancy;
 - 8.1.1.4** Significant share holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS;
 - 8.1.1.5** A position of authority in a charity or voluntary organisation in the field of health and social care;
 - 8.1.1.6** Any connection with a voluntary or other organisation contracting for NHS services.
 - 8.1.1.7** Any connection with any organisation, entity or company considering entering into financial arrangements with the trust including but not limited to lenders or banks.
- 8.1.2** If a governor has any doubt about the relevance of an interest, he should discuss it with the Chairman who shall advise him whether or not to disclose the interest.

- 8.1.3** At the time Governors interests are declared, they should be recorded in the Council of Governors minutes and entered on a Register of interests of Governors to be maintained by the Secretary. Any changes in interests should be declared at the next Council meeting following the change occurring.
- 8.1.4** Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the trust's Annual Report.
- 8.1.5** During the course of a Council meeting, if a conflict of interest is established, the governor concerned shall, unless two thirds of those governors present agree, otherwise withdraw from the meeting and play no part in the relevant discussion or decision.

There is no requirement for the interests of governors spouses or partners to be declared. (Note however, that regulations require that the interest of governors' spouses, if living together, in contracts should be declared).

8.2 Register of interests

- 8.2.1** The Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Governors.
- 8.2.2** Details of the Register will be kept up to date and reviewed monthly.
- 8.2.3** The Register will be available to the public.

9. COMPLIANCE - OTHER MATTERS

- 9.1** All governors shall comply with the Code and Standards of Business Conduct set by the Board of Directors for the guidance of staff employed by the trust.

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

(Paragraph 30)

1. INTRODUCTION

- 1.1 Statutory Framework
- 1.2 Delegation of Powers

2. INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

3. THE BOARD OF DIRECTORS

- 3.1 Conduct of business
- 3.2 Role of the Board
- 3.3 Funds received in trust
- 3.4 Accountability for funds held on trust
- 3.5 Schedule of Matters reserved to the Board and Scheme of Delegation
- 3.6 Composition of the Board of Directors
- 3.7 Appointment of Chairman and Non Executive Directors
- 3.8 Appointment of the Executive Directors
- 3.9 Terms of office of the Chairman and other Members of the Board
- 3.10 Appointment and Powers of Senior Independent Director
- 3.11 Associate Directors

4. MEETINGS OF THE BOARD OF DIRECTORS

- 4.1 Calling Meetings
- 4.2 Annual Public Meeting
- 4.3 Notice of Meetings and the Business to be transacted
- 4.4 Agenda and Supporting Papers
- 4.5 Petitions
- 4.6 Notices of Motion
- 4.7 Chairman of meeting
- 4.8 Chairman's ruling
- 4.9 Voting
- 4.10 Minutes
- 4.11 Waiver of Standing Orders
- 4.12 Variation and amendment of Standing Orders
- 4.13 Record of Attendance
- 4.14 Quorum
- 4.15 Observers at trust meetings

5. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

- 5.1 Appointment of Committees
- 5.2 Appointment of Sub-Committees
- 5.3 Applicability of Standing Orders and Standing Financial Instructions to Committees
- 5.4 Terms of Reference
- 5.5 Delegation of Powers by Committees to Sub-Committees
- 5.6 Approval of Appointments to Committees
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6. ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION

- 6.1 Delegation of functions to Committees, Officers or other bodies
- 6.2 Emergency powers and urgent decisions
- 6.3 Delegation of Committees
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- 6.5 Schedule of matters reserved to the Board and Scheme of Delegation of Powers
- 6.6 Duty to report non-compliance with Standing Orders and Standing Financial Instructions

7. OVERLAP WITH OTHER TRUST POLICY STATEMENTS, PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS

- 7.1 Policy statements: general principles
- 7.2 Specific Policy statements
- 7.3 Standing Financial Instructions
- 7.4 Specific guidance

8. DUTIES AND OBLIGATIONS OF BOARD MEMBERS, DIRECTORS AND SENIOR MANAGERS UNDER THE STANDING ORDERS AND STANDING FINANCIAL INSTRUCTIONS

- 8.1 Declaration of Interests
 - 8.1.1 Requirements for Declaring Interests and applicability to Board
 - 8.1.2 Interests which are relevant and material
 - 8.1.3 Advice on Interests
 - 8.1.4 Record of Interests in Board minutes
 - 8.1.5 Publication of declared interests in Annual Report
 - 8.1.6 Conflicts of interest which arise during the course of a meeting
- 8.2 Register of Interests
- 8.3 Exclusion of Chairman and Members in Proceedings on Account of Pecuniary Interest

9. STANDARDS OF BUSINESS CONDUCT

- 9.1 Trust Policy and National Guidance
- 9.2 Interest of Officers in Contracts
- 9.3 Canvassing of, and Recommendations by, Members in relation to appointments
- 9.4 Relatives of Members or Officers

10. CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS

- 10.1 Custody of Seal
- 10.2 Sealing of Documents
- 10.3 Register and Report of Sealing

11. SIGNATURE OF DOCUMENTS

12. SENIOR INDEPENDENT DIRECTOR

13. MISCELLANEOUS

- 13.1 Standing Financial Instructions and Reservation of Powers
- 13.2 Review of Standing Orders

BURTON HOSPITALS NHS FOUNDATION TRUST

STANDING ORDERS

1. INTRODUCTION

1.1 Statutory Framework

The Burton Hospitals NHS Foundation Trust is a Public Benefit corporation established under the National Health Service Act 2006.

The trust is governed by Acts of Parliament mainly the 2006 Act, as amended, by its constitution and by the terms of Authorisation granted and subsequent Licence issued by the Independent Regulator of Foundation Trusts (the Regulatory framework). The functions of the Corporation are conferred by the Regulatory framework which requires the Board of Directors to adopt Standing Orders for the regulation of its proceedings and business

The trust has specific powers to contract in its own name and to act as a corporate trustee. In its latter role the trust is accountable to the Charity Commission for those funds deemed to be charitable. The trust also has a common law duty as a bailee for patients' property held on behalf of patients.

1.2 Delegation of Powers

Subject to the Regulatory Framework and such guidance, if any, as may be given by the Independent Regulator, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by a committee or sub committee appointed by virtue of Standing Order 5 below, in each case subject to such restrictions and conditions as the Board thinks fit. Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers) which has effect as if incorporated into the Standing Orders.

2. INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

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 they should be advised by the Chief Executive or Secretary to the Board).

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 these Standing Orders and in addition:

"Accountable Officer" means the NHS Officer responsible and accountable for funds entrusted to the trust. The officer shall be responsible for ensuring the proper stewardship of public funds and assets. For this trust it shall be the Chief Executive.

"trust" means Burton Hospitals NHS Foundation Trust.

"Board" means the Chairman, and Non Executive Directors, appointed by the Council of Governors, and the Executive Directors appointed by the relevant Committee of the trust.

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

"Budget holder" means the director or employee with delegated authority to manage finances (Income and Expenditure) for a specific area of the organisation.

"Chairman" is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the trust as a whole. The expression "the Chairman of the trust" shall be deemed to include the Deputy-Chairman of the trust if the Chairman is absent from the meeting or is otherwise unavailable.

"Chief Executive" means the chief officer of the trust.

"Audit Committee" means a committee whose functions are concerned with the arrangements for the purpose of monitoring and improving the quality of healthcare for which Burton Hospitals NHS Foundation Trust has responsibility.

"Commissioning" means the process for determining the need for and for obtaining the supply of healthcare and related services by the trust within available resources.

"Committee" means a committee or sub-committee created and appointed by the trust.

"Committee members" means persons formally appointed by the trust to sit on or to chair specific committees.

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

"Director of Finance" means the Chief Financial Officer of the trust and their current job title is Director of Finance, Information, Performance and Estates.

"Funds held on trust" shall mean those funds which the trust holds at its date of incorporation, receives on distribution by statutory instrument. Such funds may or may not be charitable.

"Director" means a person appointed as a Director in accordance with the trust's constitution and includes the Chairman.

“Associate Director” shall mean a person appointed by the Board to assist the Directors in specific functions.

"Nominated officer" means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.

"Non-officer member" means a member of the trust who is not an officer of the Trust.

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

"Officer member" means a member of the trust who is also an officer of the trust.

"Secretary" means a person appointed by the Chief Executive and Chairman jointly to act independently of the Board to provide advice on corporate governance issues to the Board and the Chairman and monitor the trust's compliance with the law, Standing Orders, and observance of NHS Executive guidance.

“Senior Independent Director” means the Non Executive Director appointed by the Board of Directors, in consultation with the Council of Governors to fulfill the duties described in the job description.

"SFIs" means Standing Financial Instructions.

"SOs" means Standing Orders.

"Deputy Chairman" means the Non Executive Director appointed by the trust to take on the Chairman's duties if the Chairman is absent for any reason.

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

3. THE BOARD OF DIRECTORS

3.1 All business shall be conducted in the name of the trust. The board is collectively responsible for the exercise of the powers and the performance of the trust.

3.2 The board will provide active leadership within a framework of prudent and effective controls which enables risk to be assessed and managed and is responsible for ensuring compliance with the trust's Licence, its constitution, mandatory guidance issued by Monitor, relevant statutory requirements and obligations. All directors have joint responsibility for every decision of the Board of Directors regardless of their individual skills or status.

3.3 All funds received in trust shall be in the name of the trust as corporate trustee. In relation to funds held on trust, powers exercised by the trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a trust.

3.4 Directors acting on behalf of the trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission and to Monitor – Independent Regulator of NHS Foundations Trusts (hereafter known as Monitor). Accountability for non-charitable funds held on trust is only to Monitor.

3.5 Schedule of Matters reserved to the Board and Scheme of Delegation

The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in the 'Schedule of Matters Reserved to the Board' and shall have effect as if incorporated into the Standing Orders. Those powers which it has delegated to officers and other bodies are contained in the Scheme of Delegation.

3.6 Composition of the Board of Directors

The composition of the Board will be in accordance with the constitution. The composition of the Board of Directors shall ensure there is not a majority of Executive Directors over Non-Executive Directors. The Board of Directors shall be:

A Non Executive Chairman
Up to 6 Non Executive Directors
Up to 6 Executive Directors including:

- One of the executive directors shall be the Chief Executive.
- The Chief Executive shall be the Accounting Officer.
- One of the executive directors shall be the finance director.
- One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists

Act 1984).

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

3.7 Appointment of Chairman and Non Executive Directors

The Chairman and Non-Executive Directors are appointed by the Council of Governors.

3.8 Appointment of the Executive Directors

The Chief Executive is appointed by the Non Executive Directors, subject to the approval of the Council of Governors. The other Executive Directors are appointed by a committee consisting of the Chairman, the other Non Executive Directors and the Chief Executive.

3.9 Terms of Office of the Chairman and other members of the Board of Directors

The regulations setting out the period of tenure of office of the Chairman and other Members of the Board of Directors and for the termination or suspension of office of the Chairman and other members of the Board of Directors are contained in the Constitution of the trust.

3.10 Appointment and Powers of Senior Independent Director

The Board of Directors should appoint one of the independent Non-Executive Directors to be the Senior Independent Director, in consultation with the Council of Governors. The Senior Independent Director should be available to Members and Governors if they have concerns which contact through the normal channels of the Chairman and Chief Executive has failed to resolve or for which contact is appropriate. The Senior Independent Director could be the Deputy Chairman.

3.11 Associate Directors

The Board of Directors may appoint an Associate Director(s) to assist the Board in exercising its specific functions.

Associate Directors may attend Board meetings by invitation and advise any Committee or Sub-Committee appointed under Standing Order 5.

They are not members of the Board and are not entitled to vote on any resolution of the Board of Directors, Committee or Sub-Committee.

4. MEETINGS OF THE BOARD OF DIRECTORS

4.1 Calling Meetings

Ordinary meetings of the Board shall be held at such times and places as the Board may determine. Meetings of the Board of Directors are generally

held monthly. The Chairman of the trust may call a meeting of the Board at any time.

One third or more members of the Board may requisition a meeting in writing. If the Chairman refuses, or fails, to call a meeting within seven days of a requisition being presented, the Directors signing the requisition may forthwith call a meeting.

4.2 Annual Members Meeting

The trust will publicise and hold an Annual Members Meeting.

4.3 Notice of Meetings and the Business to be transacted

4.3.1 Save in the need to conduct urgent business, the Secretary shall give to all Directors at least five days written notice of the date and place of every meeting of the Board of Directors. The notice shall be signed by the Chairman or by an officer authorised by the Chairman to sign on their behalf.

4.3.2 Lack of service of such a notice on any member shall not affect the validity of a meeting.

4.3.3 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 other than that specified in the notice.

4.3.4 Before each meeting of the Board 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 principal offices at least three clear days before the meeting, (required by the Public Bodies (Admission to Meetings) Act 1960 Section 1 (4) (a)).

4.4 Agenda and Supporting Papers

4.4.1 Setting the Agenda

The Board may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders).

4.4.2 The Agenda will be sent to Directors 5 working days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three clear days before the meeting, save in emergency.

4.4.3 A Director who wishes to add an item to an agenda shall make his/her request in writing to the Chairman at least 5 clear days before the meeting and 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 informally or made less than 5 days before a meeting may be included on the agenda at the discretion of the Chairman.

4.5 Petitions

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 meeting.

4.6 Notices of Motion

4.6.1 Subject to the provision of Standing Orders a Director of the Board wishing to move a motion shall send a written notice to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

4.6.2 Emergency Motions

Subject to the agreement of the Chairman, and subject also to the provision of Standing Order 4.6.5 'Motions', a Director of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chairman's decision to include the item shall be final.

4.6.3 Withdrawal of Motion or Amendments

A motion, or an amendment to a motion, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.

4.6.4 Motion to Rescind a Resolution

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of three other Directors, and before considering any such motion of which notice shall have been given, the Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation.

When any such motion has been dealt with by the Board it shall not be competent for any Director other than the Chairman to propose a motion to the same effect within six months, however the Chairman may do so if he/she considers it appropriate. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

4.6.5 Motions

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

When a motion is under discussion or immediately prior to discussion it shall be open to a Member of the Board to move:

- An amendment to the motion
- The adjournment of the discussion or the meeting
- That the meeting proceed to the next business (*)
- The appointment of an adhoc committee to deal with a specific item of business
- That the motion be now put (*)

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

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

4.7 Chairman of meeting

At any meeting of the Board the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Deputy Chairman (if the Board has appointed one), if present, shall preside.

If the Chairman and Deputy Chairman are absent, another Non Executive Director as the members present shall choose, shall preside.

4.8 Chairman's ruling

The decision of the Chairman of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

4.9 Voting

4.9.1 Save as provided in Standing Order 4.12 - Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of members present and voting on the question. In the case of an equal vote, the person presiding (i.e.: the Chairman of the meeting) shall have a second, and casting vote.

4.9.2 At the discretion of the Chairman all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chairman directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.

- 4.9.3** If at least one third of the Directors present so request, the voting on any question may be recorded so as to show how each Director present voted or did not vote (except when conducted by paper ballot).
- 4.9.4** If a Director so requests, their vote shall be recorded by name.
- 4.9.5** In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.9.6** An Officer who has been formally appointed 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 meeting 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.

4.10 **Minutes**

The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they shall be signed by the person presiding at it.

No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate.

4.11 **Waiver of Standing Orders**

4.11.1 Except where this would contravene any statutory provision or any guidance issued by Monitor, any one or more of the Standing Orders may be waived at any meeting, provided at least two thirds of the Board are present, including one Executive and one Non Executive Director, and that a majority of those present vote in favour of waiver.

4.11.2 A decision to waive Standing Orders shall be recorded in the minutes of the meeting.

4.11.3 The Audit Committee shall review every decision to waive Standing Orders.

4.12 **Variation and amendment of Standing Orders**

4.12.1 These Standing Orders shall not be varied except in the following circumstances:

- upon a notice of motion under Standing Order 4.6
- upon a recommendation of the Chairman or Chief Executive included on the agenda for the meeting;
- that two thirds of the Directors are present at the meeting where the variation or amendment is being discussed, and that at least half of the trust's Non-Executive Directors vote in favour of the amendment;

- providing that any variation or amendment does not contravene a statutory provision or direction made by Monitor.

4.13 Record of Attendance

The names of the Chairman and Directors/members present at the meeting shall be recorded.

4.14 Quorum

4.14.1 No business shall be transacted at a meeting unless at least one-third of the whole number of the Chairman and Directors (including at least one Executive Director of the trust and one Non Executive Director) are present. An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum. If a quorum is not present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned until the same time and place seven days later and at such reconvened meeting those present shall constitute a quorum.

4.14.2 If the Chairman or Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see SO No.8) that person 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.

4.15 Observers at trust meetings

The trust will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Board's meetings and may change, alter or vary these terms and conditions as it deems fit.

5. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

5.1 Subject to such guidance as may be issued by the Independent Regulator, the Board may and, if directed by the Independent Regulator, shall appoint committees of the Board, consisting of one or more members of the Board.

5.2 A committee appointed under SO5.1 may, subject to such guidance as may be given by the Independent Regulator or the Board, appoint sub-committees consisting wholly or partly of members of the committee (but may only include Directors of the trust).

5.3 The Standing Orders and Standing Financial Instructions of the trust, as far as they are applicable, shall as appropriate apply to meetings and any committees established by the trust. In which case the term "Chairman" is to be read as a reference to the Chairman of other committee as the context permits, and the term "member" is to be read as a reference to a

member of other committee also as the context permits. (There is no requirement to hold meetings of committees established by the trust in public.)

5.4 Terms of Reference

Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide and shall be in accordance with any legislation and the regulatory framework and any guidance issued by the Independent Regulator. Such terms of reference are to be read in conjunction with the Standing Orders.

5.5 Delegation of Powers by Committees to Sub-Committees

Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board.

5.6 Approval of Appointments to Committees

The Board shall approve the appointments to each of the committees which it has formally constituted.

5.7 Appointments for Statutory functions

Where the Board is required to appoint persons to undertake statutory functions, and where such appointments are to operate independently of the Board, such appointments shall be made in accordance with applicable statute and regulations and with guidance issued by the Independent Regulator.

6. ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION

6.1 Delegation of Functions to Committees, Officers or other bodies

Subject to the Regulatory Framework and such guidance, if any, as may be given by the Independent Regulator, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by a committee, sub-committee appointed by virtue of Standing Order 5, or by an Officer of the trust (provided such officer is a Director of the trust), in each case subject to such restrictions and conditions as the Board thinks fit.

6.2 Emergency Powers and urgent decisions

The powers which the Board has reserved to itself within these Standing Orders (see Standing Order 3.5) may in emergency or for an urgent decision 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 Chairman shall be reported to the next formal meeting of the Board for noting.

6.3 Delegation to Committees

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

6.4 Delegation to Officers

6.4.1 Those functions of the trust which have not been retained as reserved by the Board or delegated to other committees or sub-committees shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate Officers (who are also Directors) to undertake the remaining functions for which he/she will still retain accountability to the Board.

6.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board. The Chief Executive may periodically propose amendments to the Scheme of Delegation which shall be considered and approved by the Board.

6.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance to provide information and advise the Board in accordance with statute or the Independent Regulator's requirements. Outside these regulatory requirements the Director of Finance shall be accountable to the Chief Executive for operational matters.

6.5 Schedule of Matters Reserved to the Board and Scheme of Delegation of powers

The arrangements made by the Board as set out in the "Schedule of Matters Reserved to the Board" and "Scheme of Delegation" of powers are to be read in conjunction with the Standing Orders.

6.6 Duty to report non-compliance with Standing Orders and Standing Financial Instructions

If for any reason these Standing Orders are not complied with, 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 Audit Committee. All members of the trust Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

7. OVERLAP WITH OTHER TRUST POLICY STATEMENTS, PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS

7.1 Policy statements: general principles

The Board will from time to time agree and approve Policy statements/ procedures which will apply to all or specific groups of staff employed by Burton Hospitals NHS Foundation Trust. The decisions to approve such policies and procedures will be recorded in an appropriate Board minute and will be deemed where appropriate to be an integral part of the trust's Standing Orders and Standing Financial Instructions.

7.2 Specific Policy statements

Notwithstanding the application of SO 7.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following Policy statements:

- the Standards of Business Conduct for Burton Hospitals NHS Foundation Trust staff; and
- the staff Disciplinary and Appeals Procedures adopted by the trust both of which are to be read in conjunction with the Standing Orders.

7.3 Standing Financial Instructions

Standing Financial Instructions adopted by the Board in accordance with the Financial Regulations are to be read in conjunction with the Standing Orders.

7.4 Specific guidance

Notwithstanding the application of SO 7.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following guidance and any other issued by the Independent Regulator:

- Caldicott Guardian 1997;
- Human Rights Act 1998;
- Freedom of Information Act 2000.

8. DUTIES AND OBLIGATIONS OF BOARD MEMBERS/DIRECTORS AND SENIOR MANAGERS UNDER THESE STANDING ORDERS

8.1 Declaration of Interests

8.1.1 The NHS Code of Accountability which has been adopted by the trust, requires trust Board Members to declare interests which are relevant and material to the NHS Board of which they are a member. All existing Board

members should declare such interests. Any Board members appointed subsequently should do so on appointment.

8.1.2 Interests which are relevant and material

Interests which should be regarded as "relevant and material" are:

- a) Directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies);
- b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- d) A position of Authority in a charity or voluntary organisation in the field of health and social care;
- e) Any connection with a voluntary or other organisation contracting for NHS services;
- f) To the extent not covered above, any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the trust, including but not limited to lenders or banks.
- g) Any other commercial interest in the decision before the meeting.

8.1.3 Advice on Interests

If Board members have any doubt about the relevance of an interest, this should be discussed with the Chairman of the trust or with the Secretary.

8.1.4 Recording of Interests in Board minutes

At the time Board members' interests are declared, they should be recorded in the Board minutes.

Any changes in interests should be declared at the next Board meeting following the change occurring and recorded in the minutes of that meeting.

8.1.5 Publication of declared interests in Annual Report

Board members' directorships 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.

8.1.6 Conflicts of interest which arise during the course of a meeting

During the course of a Board meeting, if a conflict of interest is established, the Board member concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

8.2 Register of Interests

- 8.2.1** A Register of Interests will be established to formally record declarations of interests of Board or Committee members. In particular the Register will include details of all directorships and other relevant and material interests (as defined in SO 8.1.2) which have been declared by both Executive and Non-Executive Board members.
- 8.2.2.** These details will be kept up to date by a monthly review of the Register in which any changes to interests declared during the preceding month will be incorporated.
- 8.2.3** The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of local residents and to publicise arrangements for viewing it.

8.3 Exclusion of Chairman and Members in proceedings on account of pecuniary interest

- 8.3.1** Subject to the following provisions of this Standing Order, if the Chairman or another Member of the Board has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract or other matter is the subject of consideration, he shall at the meeting as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 8.3.2** For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order:
- (i) **"spouse"** shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);
 - (ii) **"contract"** shall include any proposed contract or other course of dealing.
 - (iii) **"Pecuniary interest"** Subject to the exceptions set out in this Standing Order, a person shall be treated as having an indirect pecuniary interest in a contract if:-
 - a) he/she, or a nominee of his/her, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or
 - b) he/she is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.
 - iv) **Exception to Pecuniary interests**

A person shall not be regarded as having a pecuniary interest in any contract if: -

- a) neither he/she or any person connected with him/her has any beneficial interest in the securities of a company of which he/she or such person appears as a member, or
- b) any interest that he/she or any person connected with him/her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract, or
- c) those securities of any company in which he/she (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.

Provided however, that where paragraph (c) above applies the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 8.1.

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

8.3.3 Any remuneration, compensation or allowance payable to the Chairman or a Member shall not be treated as a pecuniary interest for the purpose of this Standing Order.

8.3.4 This Standing Order applies to a committee or sub-committee as it applies to the Board and applies to a member of any such committee or sub-committee (whether or not he/she is also a member of the trust) as it applies to a member of the Board.

9 STANDARDS OF BUSINESS CONDUCT

9.1 Trust Policy and National Guidance

All trust staff must comply with the NHS Code of Conduct for NHS Managers, the NHS Code of Conduct for private practice, the Confidentiality: NHS Code of Practice, the trust's Standards of Business Conduct and any guidance issued by the Independent Regulator.

9.2 Interest of Officers in Contracts

- i) If it comes to the knowledge of a Director or an Officer that a contract in which he has a pecuniary interest has entered into or proposes to enter into a contract in which he/she or any person connected with him/her (as defined in SO 8) has any pecuniary interest, direct or indirect, the Officer shall declare their interest by giving notice in

writing of such fact to the Chief Executive or Secretary as soon as practicable.

- ii) An Officer should also declare to the Chief Executive any other employment or business or other relationship of his/her, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the trust.
- iii) The trust will require interests, employment or relationships so declared to be entered in a register of interests of staff.

9.3 Canvassing of and Recommendations by Members in Relation to Appointments

- i) Canvassing of members of the Board or of any Committee of the trust directly or indirectly for any appointment under the trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- ii) Members of the trust shall not solicit for any person any appointment under the trust or recommend any person for such appointment. This Standing Order shall not preclude a member from giving written testimonial of a candidate's ability, experience or character for submission to the trust.
- iii) Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

9.4 Relatives of Members or Officers

- i) Candidates for any staff appointment under the trust shall, when making an application, disclose in writing to the trust whether they are related to any member 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.
- ii) The Chairman and every member and officer of the trust shall disclose to the Board any relationship between himself and a candidate of whose candidature that member or officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.
- iii) On appointment, members (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the trust whether they are related to any other member or holder of any office under the trust.
- iv) Where the relationship to a member of the trust is disclosed, the Standing Order (SO 8.) shall apply.

10. CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS

10.1 Custody of Seal

The common seal of the trust shall be kept by the Chief Executive or a nominated Manager by him/her in a secure place.

10.2 Sealing of Documents

The seal of the trust shall not be fixed to any document unless the sealing has been authorised by a resolution of the Board or of a Committee thereof or where the Board has delegated its powers.

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

10.3 Register and Report of Sealing

An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealings shall be made to the Board at least every six months.

11. SIGNATURE OF DOCUMENTS

Where any document will be a necessary step in legal proceedings on behalf of the trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any Executive Director.

In land transactions, the signing of certain supporting documents will be delegated to Managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

12. SENIOR INDEPENDENT DIRECTOR

12.1 Subject to SO 12.2 below, the Board of Directors (in consultation with the Council of Governors) may appoint any Member of the Board, who is also a Non-Executive Director, to be the Senior Independent Director, for such period, not exceeding the remainder of his term as a Member of the Board, as they may specify on appointing him. The Senior Independent Director shall perform the role set out in the trust's "Senior Independent Director Job Description", as amended from time to time by resolution of the Board.

12.2 Any Member of the Board so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chairman. The Board of Directors (in consultation with the Council of Governors) may thereupon appoint another Member of the Board as Senior Independent Director in accordance with the provisions of Standing Order 12.1.

13. MISCELLANEOUS (see overlap with SFIs)

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

13.2 Review of Standing Orders

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

ANNEX 8 – FURTHER PROVISIONS

1. **COMMITMENTS**

1.1 The trust shall exercise its functions effectively, efficiently and economically.

1.2 **Representative membership**

The trust shall at all times strive to ensure that the actual membership of the public constituencies is representative of those eligible for membership. To this end:

1.2.1 the trust shall at all times have in place and pursue a Membership Strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time, and at least every three years,

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

1.2.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the staff constituency is representative of those eligible for such membership;

1.2.2.2 the progress of the Membership Strategy;

1.2.2.3 any changes to the Membership Strategy.

1.3 **Co-operation with health service and other public bodies**

In exercising its functions the trust shall co-operate with health service bodies and other public bodies serving the community served by the trust.

1.4 **Openness**

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

1.5 **Prohibiting distribution**

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

2. **FRAMEWORK**

2.1 The affairs of the trust are to be conducted by the Board of Directors, the Council of Governors and the Members in accordance with this constitution and the trust's Licence. The Members, the Council of Governors and the

Board of Directors are to have their roles and responsibilities set out in this constitution.

3. MEMBERS

3.1 Members may attend and participate at members' meetings, vote in elections to, and stand for election to, the Council of Governors, and take such other part in the affairs of the trust as is provided in this constitution.

3.2 Disqualification from Membership

A person may **not** be a member of the trust if he/she is:

3.2.1 Under 16 years of age

3.2.2 If within the last 5 years they have perpetrated a serious incident or violence towards any of the trust's hospitals or facilities or against any of the trust's employees or registered volunteers in association with their employment with the trust.

3.2.3 If, in the opinion of the Council of Governors there are reasonable grounds to believe that they are likely to act in a way detrimental to the interests of the trust.

3.2.4 If the trust has been correctly notified that their name appears on the sex offenders register.

3.2.5 They have habitually and persistently and without reasonable grounds instituted complaints against the trust and are classified as a vexatious complainant.

3.2.6 If they have, within the preceding two years, been dismissed, otherwise than by reason of redundancy, from any paid employment with any NHS body.

3.2.7 If they fail to agree to abide by the values of the trust principles.

3.2.8 They have been expelled from membership of the trust, or of any other foundation trust.

3.3 Termination of Membership

3.3.1 A member will cease to be a member if:

3.3.1.1 they resign by giving notice to the Secretary;

3.3.1.2 they cease to be entitled under this constitution to be a member of the Public Constituency or of the Staff Constituency;

3.3.1.3 they are disqualified from membership for any of the reasons described above;

3.3.1.4 they die;

3.3.1.5 they are expelled from membership under this constitution;

- 3.3.1.6** it appears to the Secretary that they no longer wish to be a member of the trust, and after enquiries made in accordance with the process approved by the Council of Governors, they fail to demonstrate that they wish to continue to be a member of the trust.
- 3.3.2** A member may be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a General Meeting. The following procedure is to be adopted.
- 3.3.2.1** Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the trust.
- 3.3.2.2** If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either
- (a) dismiss the complaint and take no further action, or
 - (b) for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this constitution;
 - (c) arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
- 3.3.3** If a resolution to expel a member is to be considered at a General Meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 3.3.4** At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- 3.3.5** If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 3.3.6** A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.
- 3.3.7** No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a General Meeting.

4. ADDITIONAL PROVISIONS BOARD OF DIRECTORS

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

4.2 Appointment and Removal of Chairman and other Non-Executive Directors (paragraph 25)

4.2.1 Non-Executive Directors are to be appointed by the Council of Governors using the procedure outlined in the Terms of Reference of the Appointments Committee.

4.2.2 The removal of the Chairman or another Non Executive Director shall be in accordance with the following procedures.

4.2.2.1 Any proposals for removal must be proposed by a Governor and will require the approval of three-quarters of the members of the Council of Governors, not just those who attend the meeting to determine the removal. This must include at least two elected governors and one appointed governor.

4.2.2.2 Written reasons for the proposal shall be provided to the Non Executive Director in question, who shall be given the opportunity to respond to such reasons.

4.2.2.3 In making any decision to remove a Non-Executive Director, the Council of Governors shall take into account the annual appraisal carried out by the Chairman.

4.2.2.4 If any proposal to remove a Non-Executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such Non-Executive Director based upon the same reasons within 12 months of the meeting.

4.3 Further provisions as to disqualification of Directors (paragraph 28)

4.3.1 A person may not become or continue as a Director of the trust if:

4.3.1.1 they are a member of the Council of Governors or a Governor or (unless the Board of Directors approves the dual directorship) a director of an NHS body;

4.3.1.2 they are a member of a Local Healthwatch covering the trust

4.3.1.3 they are the spouse, partner, parent or child of a member of the Board of Directors of the trust;

- 4.3.1.4 they are a member of the local authority's Scrutiny Committee covering health matters;
 - 4.3.1.5 they are subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - 4.3.1.6 they are a person whose tenure of office as a Chairman or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non attendance at meetings, or for non disclosure of a pecuniary interest;
 - 4.3.1.7 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;
 - 4.3.1.8 in the case of a Non-Executive Director they have refused without reasonable cause to fulfill any training requirement established by the Board of Directors; or
 - 4.3.1.9 they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.
- 4.3.2 Directors must declare to the Chairman of the trust, with immediate effect where they are involved in, either directly or indirectly, any conduct which could prejudice whether they remain fit and proper in accordance with Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) 'fit and proper persons test'. All Directors are required to make annual declarations confirming that they remain fit and proper.

4.4 Expenses

- 4.4.1 The trust may reimburse Executive Directors travelling and other costs and expenses incurred in carrying out their duties at such rates as the Nominations and Remuneration Committee of Non-Executive Directors decides. These are to be disclosed in the annual report.
- 4.4.2. The remuneration and allowances for Directors are to be disclosed in bands in the annual report.

5. SECRETARY

- 5.1 The trust shall have a Secretary who may be an employee. The Secretary may not be a governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:

- 5.1.1 acting as the Secretary to the Council of Governors and the Board of Directors, and any committees;
 - 5.1.2 summoning and attending all meetings of the Council of Governors and the Board of Directors, and ensuring minutes are kept of those meetings;
 - 5.1.3 keeping the Register of Governors, a Register of Directors' interests and other registers and books required by this constitution to be kept;
 - 5.1.4 having charge of the trust's seal;
 - 5.1.5 publishing to members in an appropriate form information which they should have about the trust's affairs;
 - 5.1.6 preparing and sending to the Independent Regulator and any other statutory body all returns which are required to be made.
- 5.2 Minutes of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be read at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of that meeting.
- 5.3 The Secretary is to be appointed and removed by the Chairman and the Chief Executive acting jointly.

6. FURTHER PROVISIONS AS TO AUDITOR AND OTHER EXTERNAL AUDITORS

- 6.1 A person may only be appointed as the auditor if they (or in the case of a firm each of its members) are a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 7 to the 2006 Act.
- 6.2 The auditor is to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.
- 6.3. The Board of Directors shall nominate auditors to be appointed by the Council of Governors and may resolve that other external auditors be appointed to review and publish a report on any other aspect of the trust's performance. Any such auditors are to be appointed by the Council of Governors.

7. FURTHER PROVISIONS AS TO ACCOUNTS

- 7.1 The following documents will be made available to the Comptroller and Auditor General for examination at his request;
 - 7.1.1 the accounts;
 - 7.1.2 any records relating to them; and

7.1.3 any report of the auditor on them.

7.2 In preparing its annual accounts, the Accounting Officer shall cause the trust to comply with any directions or guidance given by Monitor with the approval of the Secretary of State as to:

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

7.2.2 the information to be given in the accounts;

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

7.3 The annual accounts, any report of the auditor on them, and the annual report are to be presented to the Council of Governors at a general meeting.

7.4 The Accounting Officer shall cause the trust to:

7.4.1 lay a copy of the Annual Accounts, and any report of the auditor on them, before Parliament; and

7.4.2 once it has done so, send copies of those documents to Monitor.

8. **FURTHER PROVISIONS AS TO ANNUAL REPORTS**

8.1 The annual reports are to give:

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

8.1.2 any other information Monitor requires.

8.2 The trust is to comply with any decision Monitor makes as to:

8.2.1 the form of the reports;

8.2.2 when the reports are to be sent to him;

8.2.3 the periods to which the reports are to relate.

9. **INDEMNITY**

9.1 Members of the Council of Governors and the Board of Directors and the Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, including (but not limited to) any liability arising by reason of the trust acting as a Corporate Trustee save where they have acted recklessly. Any costs arising in this way will be met by the trust.

- 9.2** The trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors and the Board of Directors and the Secretary and may participate in risk pooling schemes, including (but not limited to) insurance and schemes operated by the NHS Litigation Authority.

10. DISPUTE RESOLUTION PROCEDURES

- 10.1** Every unresolved dispute which arises out of this constitution between the trust and:

10.1.1 a member; or

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

10.1.3 any person bringing a claim under this constitution; or

10.1.4 an office-holder of the trust

is to be submitted to the Senior Independent Director (or to another non-executive director, if the Senior Independent Director has a conflict of interest), acting as an expert, for adjudication. The expert's decision will be binding and conclusive on all parties.

- 10.2** Any person bringing a dispute must, if required to do so, deposit with the trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Secretary. The expert will decide how the cost of the adjudication will be paid and what should be done with the deposit.

11. NOTICES

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

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

12. DISPUTE RESOLUTION PROCEDURE

DISPUTES BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS

- 12.1** If a dispute arises between the Board of Directors and the Council of Governors (the 'Boards') in relation to law, or power of authority of one of

the Boards, the matter is to be referred to the Chairman of the trust, or the Senior Independent Director if the dispute is with the Chairman and, following such a referral, the parties shall attempt to negotiate a settlement in good faith.

12.2 If any such dispute cannot be resolved in accordance with Section 13.1, the dispute may, by agreement between the relevant parties, be referred to mediation in accordance with Condition 13.3.

12.3 The procedure for any such mediation shall be as follows:

12.3.1 A neutral person, being an accredited mediator, (the 'Mediator') shall be chosen by agreement between the Boards. Alternatively, either Board may, within seven days from the date of the proposal to appoint a mediator, or within seven days of notice to any party that the chosen mediator is unable and unwilling to act, apply to the Centre for Dispute Resolution ('CEDR') to appoint a Mediator.

12.3.2 The Boards shall, within seven days of the appointment of the Mediator, agree a timetable for the exchange of all relevant and necessary information and the procedure to be adopted for the mediation. If appropriate, the Boards may at any stage seek from CEDR guidance on a suitable procedure.

12.3.3 All negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the Boards in any future proceedings.

12.3.4 All information (whether oral or in the form of documents, tapes, etc.) produced for, during, or as a result of, the mediation will be without prejudice, privileged and not admissible as evidence or discoverable in any litigation or arbitration relating to the dispute. This does not apply to any information which would in any event have been admissible or discoverable in any such litigation or arbitration.

12.3.5 The Mediator's reasonable fees and other expenses of the mediation will be borne by the Foundation Trust. The Foundation Trust will bear the reasonable costs and expenses of the participation in the mediation.

12.3.6 If the Boards reach agreement on the resolution of the dispute that agreement shall be reduced to writing and shall be binding upon the relevant parties.

12.3.7 For a period of ninety days from the date of the appointment of the Mediator, or such other period as the Boards may agree, neither Board may commence any proceedings in relation to the matters referred to the Mediator.

12.3.8 If the Boards are unable to reach a settlement at the mediation and only if both Boards so request and the Mediator agrees, the Mediator will produce for the parties a non-binding recommendation on terms of settlement. This will not attempt to anticipate what a court might

order but will set out what the Mediator suggests are appropriate settlement terms in all of the circumstances. Such opinion shall be provided on a without prejudice basis.

12.4 Nothing in this procedure shall prevent the Council of Governors, if it considers it appropriate following advice from the Senior Independent Director, Lead Governor and the Trust Secretary from:

- a. informing the Independent Regulator that it believes the Board has not responded constructively to concerns about the Trust's compliance with its Licence.
- b. Referring a matter to the Independent Regulator's Panel in accordance with paragraph 18 of the Constitution.
- c. Making a direct referral to the Care Quality Commission if it considers the issue giving rise to the dispute will lead to the Trust failing to comply with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009.

ANNEX 9 – ANNUAL MEMBERS MEETING

The trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public. Any Members' Meetings other than the Annual Members' Meeting shall be called "Special Members' Meetings".

1. At the Annual Members Meeting:

1.1 the Board of Directors shall present to the members:

- the annual report and accounts
- any report of the independent auditor on the annual report and accounts
- any report of any other external auditor of the Foundation Trust's affairs
- forward planning information for the next financial year

1.2 the Council of Governors shall present to the members:

- a report on steps taken to secure that (taken as a whole) the actual membership of its public constituencies and of the classes of the staff constituency is representative of those eligible for such membership;
- the progress of the membership strategy;
- any proposed changes to the policy for the composition of the Council of Governors and of the Non Executive Directors;
- the results of the election and appointment of Governors and the appointment of Non Executive Directors will be announced;
- other reports or documentation it considers necessary or otherwise required by Monitor or the 2006 Act.

2. Notice

2.1 Notice of a members meeting is to be given by the Secretary

- by notice to all members;
- by notice prominently displayed at the head office and at all of the Foundation Trust's places of business; and
- by notice on the Foundation Trust's website at least 14 clear days before the date of the meeting. The notice must: given to the Council of Governors and the Board of Directors, and to the independent auditor;

2.2 The notice is to:

- state whether the meeting is an annual or special members meeting;
- give the time, date and place of the meeting; and
- indicate the business to be dealt with at the meeting.

3. Additional invites

The trust may invite representatives of the media, and any experts or advisors, whose attendance they consider to be in the best interests of the trust to attend a Members' Meeting.

4. Quorum

4.1 Before a members meeting can do business there must be a quorum present. A quorum is 5 members, which can include Governors.

4.2 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.

5. General

5.1 It is the responsibility of the Council of Governors, the Chairman of the meeting and the Secretary to ensure that at any members meeting:

- the issues to be decided are clearly explained;
- sufficient information is provided to members to enable rational discussion to take place.

6 Chairing

6.1 The Chairman of the trust, or in their absence the Deputy Chairman shall act as chairman at all members meetings of the trust. If neither the Chairman nor Deputy Chairman is present, the Lead Governor shall act as Chairman. If neither the Chairman, Deputy Chairman or Lead Governor is present, the members of the Council of Governors present shall elect one of their number to be Chairman and if there is only one Governor present and willing to act they shall be Chairman.

7 Resolutions and voting

7.1 A resolution put to the vote at a members meeting shall be decided upon by a poll.

7.2 Every member present is to have one vote. In the case of an equality of votes the Chairman of the meeting is to have a second or casting vote.

7.4 The result of any vote will be declared by the Chairman and entered in the minute book. The minute book will be conclusive evidence of the result of the vote

8 Venue

8.1 The Trust may make provision for Members' Meetings to be held at different venues whether simultaneously or at different times.