

**East London
NHS Foundation Trust
Constitution**

East London NHS Foundation Trust Constitution

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1. Name

- 1.1 The name of the foundation trust is East London 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. The Trust does not fulfill its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 2.2 The Trust may provide good and services for any purposes related to:
- 2.2.1 The provision of services provided to individuals for in connection with the prevention, diagnosis or treatment of illness, and
- 2.2.2 The promotion of public health
- 2.3 Without prejudice to the Trust's principal purpose, the further purpose of the Trust shall be to provide goods and services for purposes related to the provision of health care in accordance with its statutory powers and duties and the terms of Monitor's authorisation.
- 2.4 The Trust may also carry on activities other than those mentioned above subject to any restrictions contained in Monitor's authorisation. These activities shall be for the purpose of making additional income available in order to carry on the Trust's principal purpose better.
- 2.5 The Trust may carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others.

3. Powers

- 3.1 The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the license. These powers include the provision of education and training, research and the provision of accommodation and goods and services for the purposes related to the provision of healthcare.
- 3.2 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. The Board of Directors shall also establish the sub-committees referred to in paragraphs 28.2 and 34.

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

- 5.1 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 in 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 he¹ 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, and in either case are acknowledged in writing by the Trust as so doing for the purposes of this paragraph, 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.
- 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.

¹ In this constitution words importing the masculine gender only shall include the feminine gender.

- 7.4 The staff constituency shall be divided into two 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 member of the 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 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 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 9 – Further Provisions.

9 Annual Members' Meeting²

- 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.

10 Council of Governors – composition

- 10.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed council members
- 10.2 The composition of the Council of Governors is specified in Annex 4.
- 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 council members to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.
- 10.4 The appointed council members are to be appointed by the partnership organisations and affiliated medical schools provided by a university, in accordance with a process agreed with the Secretary.

11 Council of Governors – election of governors

- 11.1 Elections for elected governors of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.
- 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 5.
- 11.3 A variation of the Model Rules by the Department of Health 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.
- 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, for a period of up to three years.

13 Council of Governors – duties of governors

- 13.1 The general duties of the Council of Governors are –
 - 13.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and

13.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

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

14 Council of Governors – disqualification and removal

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

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

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

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

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

14.3 Further provisions as to the circumstances in which an individual may not become or continue as a governor of the Council of Governors are set out in Annex 6.

14.4 Upon a governor resigning or being disqualified under this constitution or upon the Council of Governors resolving to terminate a governors' tenure of office under Annex 6 that governors shall cease to be a governor of the Council of Governors and his name shall be forthwith removed from the Register of Governors.

14.5 The Standing Orders adopted by the Council of Governors shall contain provisions governing the procedure for termination of tenure of a governor.

14.6 Where a governor becomes disqualified for appointment he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which render him disqualified.

14.7 If it comes to the notice of the Secretary that a governor is disqualified, the Secretary shall immediately declare that the individual in question is disqualified and give notice to him in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration.

14.8 Upon the giving of notice under paragraph 12.6 or 12.7 above that governor's tenure of office, if any, shall be terminated and he shall cease to be a governor and his name shall be removed from the Register of Governors.

15 Council of Governors– meetings of governors

15.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 21.1 or paragraph 22.1 below) or, in his absence another person, shall preside at meetings of the Council of Governors in accordance with the Standing Orders of the Council of Governors .

15.2 Meetings of the Council of Governors shall be open to members of the public.

15.3 The Council of Governors may invite the Chief Executive or any other member of the Board of Directors, or a representative of the auditor, or other advisors to attend a meeting of the Council of Governors.

15.4 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.

15.5 Members of the public may be excluded from all or any part of a meeting by a resolution of the Council of Governors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the business or nature of the proceedings.

15.6 The Chair may exclude any person present from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

15.7 The Chair may exclude any person present from a meeting of the Council of Governors for a breach of the Standing Orders relating to the conduct of meetings.

15.8 The Chair or in his absence the other person presiding at the meeting, is to have a casting vote in the event of deadlock at a meeting of the Council of Governors.

16 Council of Governors– standing orders

16.1 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 7.

17 Council of Governors – referral to the Panel

- 17.1 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation Trust may refer a question as to whether the Trust has failed or is failing—
- 17.2 To act in accordance with its constitution, or to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 17.3 A governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

18 Council of Governors- conflicts of interest of governors

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

19 Council of Governors – travel expenses

- 19.1 The Trust may pay traveling and other expenses to governors of the Council of Governors at rates determined by the Trust.

20 Council of Governors– further provisions

- 20.1 The Council of Governors may not delegate its powers to a committee, but may appoint committees consisting wholly or partly of its governors to assist it in carrying out its functions, including but not limited to those functions set out in paragraph 20 and 28.1 of the constitution below. A committee appointed under this paragraph may appoint a sub-committee. Their recommendations shall be reported back to the Council of Governors.
- 20.2 The Council of Governors may, at the request of the Board of Directors, appoint governors to serve on joint committees with the Board of Directors or committees of the Board of Directors.
- 20.3 These committees or sub-committees may call upon outside advisors to help them in their tasks, provided that the financial and other implications of seeking outside advisors have been discussed and agreed by the Board of Directors.

- 20.4 The Secretary or his representative shall attend a committee or sub-committee appointed by the Council of Governors under paragraph 17.1 and take minutes of any proceedings.
- 20.5 Further provisions with respect to the Council of Governors are set out in Annex 6.

21 Board of Directors – composition

- 21.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.
- 21.2 The Board of Directors is to comprise:
- 21.2.1 a non-executive Chair
 - 21.2.2 not less than five nor more than seven other non-executive directors; and
 - 21.2.3 not less than five nor more than seven executive directors, but in any event, not more than the number of non-executive directors.
- 21.3 One of the executive directors shall be the Chief Executive.
- 21.4 The Chief Executive shall be the Accounting officer.
- 21.5 One of the executive directors shall be the finance director.
- 21.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 21.7 One of the executive directors is to be a registered nurse or a registered midwife.
- 21.8 The Trust may confer on senior staff the title “Director” as an indication of their responsibility within the Trust but such persons are not Directors of the Trust for the purposes of the 2006 Act (“statutory directors”) unless they are a member of the Board of Directors and will not have the voting rights of statutory directors or any power to bind the Trust.
- 21.9 The post of an executive director may be held by two individuals on a job share basis (the executive positions of doctor and nurse cannot be shared between the two professions) but where such an agreement is in force the two individuals may only exercise one vote between them at any meeting of the Board of Directors. In the case of disagreements, no vote may be cast

22 Board of Directors – general duty

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

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

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

23.1.1 He is a member of the Public Constituency, or

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

23.1.3 He is not disqualified by virtue of paragraph 25 below.

23.1.4 The Chair shall not be a former chief executive of the Trust, or a current Chair or director of another NHS Trust or NHS foundation Trust.

24 Board of Directors – appointment and removal of Chair and other non-executive directors

24.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other non-executive directors.

24.2 Removal of the Chair or another non-executive director shall require the approval of three-quarters of the governors of the Council of Governors.

24.3 The initial Chair and the initial non-executive directors are to be appointed in accordance with paragraph 21 below.

24.4 The Chair and non-executive directors shall be appointed for specified terms subject to re-appointment thereafter at intervals of no more than three years, and to the 2006 Act provisions relating to the removal of a director.

24.5 The validity of any act of the Trust is not affected by any vacancy among the Board of Directors or by any defect in the appointment of any director.

25 Board of Directors – appointment of initial Chair and initial other non-executive directors

25.1 The Chair of the applicant NHS Trust shall be appointed as the initial Chair of the Trust if he wishes to be appointed.

25.2 The power of the Council of Governors to appoint the other non-executive directors of the Trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the Trust any of the non-executive directors of the applicant NHS Trust (other than the Chair) who wish to be appointed.

25.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 19 above (other than disqualification by virtue of paragraph 25 below) do not apply to the appointment of the initial Chair and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

25.4 An individual appointed as the initial Chair or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chair or (as the case may be) non-executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

26 Board of Directors – appointment of vice Chair and senior independent director

26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the independent non-executive directors as a vice Chair.

26.2 The Board of Directors shall appoint one of the independent non-executive directors to be the senior independent director, who shall have consulted with the Council of Governors before so doing. The senior independent director may be the vice Chair.

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 The initial Chief Executive is to be appointed in accordance with paragraph 24 below.

27.4 A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

28 Board of Directors – appointment and removal of initial Chief Executive

28.1 The chief officer of the applicant NHS Trust shall be appointed as the initial Chief Executive of the Trust if he wishes to be appointed.

28.2 The appointment of the chief officer of the applicant NHS Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.

29 Board of Directors – disqualification

- 29.1 The following may not become or continue as a member of the Board of Directors:
- 29.2 A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 29.3 A person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it.
- 29.4 A person who within the preceding five years has been convicted in anywhere in the world of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 29.5 A person whose tenure of office as a Chair or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of the public service for non-attendance at meetings or for non-disclosure of a pecuniary interest.
- 29.6 A person who has had his name removed other than by reason of resignation from any list prepared under sections 91, 106, 123 or 146 of the 2006 Act, and has not subsequently had his name included on such a list.
- 29.7 A person who has within the preceding two years been dismissed or otherwise than by reason of redundancy or ill health from any paid employment with a Health Service Body.
- 29.8 A person who is a director of another NHS Trust or a director or governor of another NHS Foundation Trust.
- 29.9 In the case of a non-executive director he no longer satisfies paragraph 19.1 or 19.3 (except in the case of any appointment of the Chair or a non-executive director under paragraph 21).

30 Board of Directors – meetings

- 30.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 30.2 Before holding a meeting, the Board of Directors 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 minute of the meeting to the Council of Governors.

31 Board of Directors – standing orders

- 31.1 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 8.

32 Board of Directors - conflicts of interest of directors

- 32.1 The duties that a director of the Trust has by virtue of being a director include in particular –
- 32.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
 - 32.1.2 A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 32.2 The duty referred to in sub-paragraph 36.1.1 is not infringed if –
- 32.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 32.2.2 The matter has been authorized in accordance with the constitution.
- 32.3 The duty referred to in sub-paragraph 36.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4 In sub-paragraph 36.1.2, “third party” means a person other than –
- 32.4.1 The Trust, or
 - 32.4.2 A person acting on its behalf.
- 32.5 If a director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the director must declare the nature and extent of that interest to the other directors.
- 32.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 32.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 32.8 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 32.9 A director need not declare an interest –
- 32.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;

32.9.2 If, or to the extent that, the directors are already aware of it;

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

32.9.3.1 By a meeting of the Board of Directors, or

32.9.3.2 By a committee of the directors appointed for the purpose under the constitution.

33 Board of Directors – remuneration and terms of office

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

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

34 Registers

34.1 The Trust shall have:

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

34.3 a register of governors of the Council of Governors ;

34.4 a register of interests of governors;

34.5 a register of directors; and

34.6 a register of interests of the directors.

35 Admission to and removal from the registers

35.1 The Secretary shall be responsible for compiling and maintaining the registers and the registers may be kept in either paper or electronic form. Removal from any register shall be in accordance with the provisions of this constitution. The

Secretary shall update the registers with new or amended information as soon as is practical and in any event within 14 days of receipt.

35.2 In all cases where a person ceases to be a member the Secretary shall cause that person's name to be removed from the Register of Members forthwith and that person's membership shall cease.

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

35.3.1 the member is no longer eligible or is disqualified;

35.3.2 the member is deceased;

35.3.3 the member is a council member whose tenure of office has been terminated; or

35.3.4 the member gives notice that they do not wish to continue as a member.

36 Registers – inspection and copies

36.1 The Trust shall make the registers specified in paragraph 30 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

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

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

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

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

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 Documents available for public inspection

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

37.1.1 a copy of the current constitution;

37.1.2 a copy of the current licence;

37.1.3 a copy of the latest annual accounts and of any report of the auditor on them;

- 37.1.4 a copy of the latest annual report;
 - 37.1.5 a copy of the latest information as to its forward planning; and
 - 37.1.6 a copy of any notice given under section 52 of the 2006 Act.
- 37.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 37.2.1 a copy of any order made under section 65D (appointment of Trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L(Trusts coming out of administration) or 65LA (Trusts to be dissolved) of the 2006 Act.
 - 37.2.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.
 - 37.2.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act.
 - 37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 37.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act.
 - 37.2.6 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
 - 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 37.2.8 a copy of any final report published under section 65I (administrator's final report),
 - 37.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
 - 37.2.10 a copy of any information published under section 65M

(replacement of Trust special administrator) of the 2006 Act.

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

37.4 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.

38 Auditor

38.1 The Trust shall have an auditor, and is to provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under the 2006 Act.

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

38.3 A person may only be appointed auditor if he (or in the case of a firm each of its members) is a member of one or more of the bodies referred to in paragraph 23(4) to Schedule 7 to the 2006 Act.

39 Audit committee

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

40 Accounts

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

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

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

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

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

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

41 Annual report, forward plans and non-NHS work

- 41.1 41.1The Trust shall prepare an Annual Report and send it to Monitor.
- 41.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 41.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 41.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 41.5 Each forward plan must include information about –
- 41.5.1 The activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
- 41.5.2 the income it expects to receive from doing so.
- 41.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 45.5.1 the Council of Governors must –
- 41.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and
- 41.6.2 notify the directors of the Trust of its determination.
- 41.7 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.

42 Meeting of Council of Governors to consider annual accounts and reports

- 42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 42.1.1 the annual accounts
- 42.1.2 any report of the auditor on them
- 42.2 the annual report.

- 42.3 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance
- 42.4 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 37.3 with the Annual Members' Meeting.

43 Amendment of the Constitution

- 43.1 The Trust may make amendments of its constitution only if –
- 43.1.1. More than half of the members of the Council of Governors of the Trust voting approve the amendments, and
- 43.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 43.2 Amendments made under paragraph 48.1 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.
- 43.3 Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –
- 43.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
- 43.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.
- 43.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 43.5 Amendments by the Trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor'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.

44 Instruments

- 44.1 The Trust shall have a seal.
- 44.2 The seal shall not be affixed except under the authority of the Board of Directors.
- 44.3 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and unless the contrary is proved taken to be so executed or signed.

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.
- 45.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 45.3 "Significant transaction" means a transaction defined as significant by Monitor;

46. Interpretation and definitions

- 46.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006.
- 46.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 46.3 the **2006 Act** is the National Health Service Act 2006.
- 46.4 The 2012 Act is the Health and Social Care Act 2012.
- 46.5 Monitor is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act
- 46.6 voluntary **organisation** is a body, other than a public or local authority, the activities of which are not carried on for profit.
- 46.7 the **Accounting officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.
- 46.8 the **Chair** is the Chair of the Trust

46.9 a **director** means a member of the Board of Directors in accordance with clause 18 of this constitution. Persons who fall under clause 18.8 are not interpreted as being a director for the purposes of this constitution.

46.10 a **governor** is a person who is a governor of the Council of Governors

46.11 the **Secretary** is the Secretary of the Trust or any other person appointed by the Trust to perform the duties of the Secretary under this constitution, including a joint, assistant or deputy secretary

ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 6.1 and 6.3)

| Area: | Minimum Number of Members: |
|---|-----------------------------------|
| The electoral area covered by the City of London | 10 |
| The electoral area covered by the London Borough of Hackney | 50 |
| The electoral area covered by the London Borough of Newham | 50 |
| The electoral area covered by the London Borough of Tower Hamlets | 50 |
| The electoral area covered by the Rest of England boroughs | 10 |
| The electoral area covered by the Borough of Bedford | 50 |
| The electoral area covered by the Borough of Central Bedfordshire | 50 |
| The electoral area covered by the Borough of Luton | 50 |

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 7.4-7.5)

| Class: | Minimum number of members: |
|---------------|-----------------------------------|
| Staff | 150 |

ANNEX 3 – THE PATIENTS’ CONSTITUENCY

Not applicable

ANNEX 4 – COMPOSITION OF Council of Governors

Elected governors:

| Constituency: | Number of governors: |
|--|-----------------------------|
| Public residing in the City of London | 1 |
| Public residing in the London Borough of Hackney | 5 |
| Public residing in the London Borough of Newham | 5 |
| Public residing in the London Borough of Tower Hamlets | 5 |
| Public residing in the Rest of England | 1 |
| Public residing in the Borough of Luton | 3 |
| Public residing in the Borough of Bedford | 2 |
| Public residing in the Borough of Central Bedfordshire | 4 |
| Staff | 9 |

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

| Organisation: | Number of governors: |
|--|-----------------------------|
| Tower Hamlets PCT | 1 |
| City of London | 1 |
| London Borough of Hackney | 1 |
| London Borough of Newham | 1 |
| London Borough of Tower Hamlets | 1 |
| Luton Unitary Authority appointed | 1 |
| Bedford Unitary Authority appointed | 1 |
| Central Bedfordshire Unitary Authority | 1 |
| Voluntary Organisation which demonstrates commitment to equality and diversity | 1 |

The organisations specified as an affiliated medical school provided by a university that may appoint a governor of the Council of Governors are:

| Organisation: | Number of governors: |
|---------------------------------|-----------------------------|
| Relevant Academic Universities* | 1 |

*Academic seat to be rotated amongst a group of organisations on a three year basis

ANNEX 5 –THE MODEL RULES FOR ELECTIONS 2014

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2. Timetable
3. Computation of time

PART 3: RETURNING OFFICER

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5. Staff
6. Expenditure
7. Duty of co-operation

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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9. Nomination of candidates
10. Candidate's particulars
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27. Eligibility to vote

28. Voting by persons who require assistance
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33. Procedure for remote voting by internet
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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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- STV44. Rejected ballot papers and rejected text voting records
- FPP44. Rejected ballot papers and rejected text voting records
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- STV46. The quota
- STV47. Transfer of votes
- STV48. Supplementary provisions on transfer
- STV49. Exclusion of candidates
- STV50. Filling of last vacancies
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54. Sealing up of documents relating to the poll
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56. Forwarding of documents received after close of the poll
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- FPP59. Countermand or abandonment of poll on death of candidate

STV59. Countermand or abandonment of poll on death of candidate

PART 10: ELECTION EXPENSES AND PUBLICITY

Expenses

- 60. Election expenses
- 61. Expenses and payments by candidates
- 62. Expenses incurred by other persons

Publicity

- 63. Publicity about election by the corporation
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- 65. Meaning of "for the purposes of an election"

PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES

- 66. Application to question an election

PART 12: MISCELLANEOUS

- 67. Secrecy
- 68. Prohibition of disclosure of vote
- 69. Disqualification
- 70. Delay in postal service through industrial action or unforeseen event

1. Interpretation

1.1 In these rules, unless the context

otherwise requires: “2006 Act” means the National Health

Service Act 2006;

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

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

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

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

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

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

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

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

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

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

website” has the meaning set out in rule 26.1;

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

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

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

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

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

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

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

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

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

5. Staff

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

6. Expenditure

6.1 The corporation is to pay the returning officer:

(a) any expenses incurred by that officer in the exercise of his or her functions under these rules,

(b) such remuneration and other expenses as the corporation may determine.

7. Duty of co-operation

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

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.

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.

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”,

¹

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

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

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

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

40. Sealing of packets

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

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

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

PART 6: COUNTING THE VOTES

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

transferable vote” means a ballot document:

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

or

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

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

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

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

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

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

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

“*stage of the count*” means:

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

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

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

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

42. Arrangements for counting of the votes

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

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

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

43. The count

43.1 The returning officer is to:

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

43.2 The returning officer, while counting and recording the number of

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

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

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

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

STV44.3 Any text voting record:

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

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

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

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

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

STV45. First stage

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

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

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

STV46. The quota

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

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

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

STV47. Transfer of votes

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

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

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

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

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

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

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

(a) according to the next available preference given on those ballot documents for any continuing candidate, or

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

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

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

(a) a transfer value calculated as set out in rule STV47.4(b), or

(b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

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

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

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

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

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

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

STV48. Supplementary provisions on transfer

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

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

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

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

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

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

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

STV49. Exclusion of candidates

STV49.1 If:

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

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

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.

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 Monitor has declared that the vote was invalid.

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

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

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

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

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

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

FPP59.5 The returning officer is to:

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

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

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

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

relates. FPP59.7 Once the documents relating to the poll have been sealed

up and endorsed

pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1 No person may:

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

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

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

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

as it considers necessary.

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

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

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

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

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

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

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

66. Application to question an election

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

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

66.3 An application may only be made to Monitor by:

- (a) a person who voted at the election or who claimed to have had the right to vote, or
- (b) a candidate, or a person claiming to have had a right to be elected at the election.

66.4 The application must:

- (a) describe the alleged breach of the rules or electoral irregularity,
and
- (b) be in such a form as Monitor may require.

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

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

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

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

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

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 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

- 1 Termination of tenure
 - 1.1 An appointed governor shall cease to hold office if the organisation which appointed him withdraws its appointment of him, or he leaves the employ of the organisation which appointed him.
 - 1.2 A governor may resign from office at any time during the term of that office by giving notice in writing to the Secretary. A governor shall give reasons for the resignation and detail any outstanding issues of which the Council of Governors should be aware.
 - 1.3 If a governor fails to attend three successive meetings of the Council of Governors or more than three meetings within the last six meetings of the Council of Governors without reasonable cause, then they would be immediately removed without the need for recommendation to the full Council. The Chair, Trust Secretary and Deputy Chair will implement this removal when necessary.
 - 1.4 The Council of Governors may by a resolution approved by three quarters of the remaining governors present and voting terminate a governor's tenure of office if for reasonable cause it considers that:
 - 1.4.1 in the case of an elected governor he ceases to be a governor of the constituency, or of the class within a constituency, by which he was elected;
 - 1.4.2 he is disqualified from becoming or continuing as a governor under this constitution;
 - 1.4.3 he has knowingly or recklessly made a false declaration for any purpose provided for under this constitution or in the 2006 Act;
 - 1.4.4 he has knowingly or recklessly failed to declare a conflict of interest as required by paragraph 15 of this constitution;
 - 1.4.4 his continuing to be a governor would or would be likely to:
 - 1.4.4.1 prejudice the ability of the Trust to fulfill its principal purpose or other of its purposes under this constitution or otherwise to discharge its duties or functions;
 - 1.4.4.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be

engaged in the provisions of goods or services;

1.4.4.3 adversely affect public confidence in the goods and services provided by the Trust; or

1.4.4.4 otherwise bring the Trust into disrepute.

1.4.5 he has failed or refused to comply with the regulatory framework, the Standing Orders, or any Code of Conduct which the Trust shall have published from time to time;

1.4.6 he has refused without reasonable cause to undertake any training which the Trust requires all governors to undertake;

1.4.7 he purports to represent the views of any professional body, political party or trade union of which he is a governor;

1.4.8 he has failed to act in the best interests of the Trust, or it is not in the interests of the Trust for the governor to continue to hold office.

1.5 The following list provides examples of matters which may indicate to the Council of Governors that it is no longer in the interests of the Trust that a governor continues in office. The list is not intended to be exhaustive or definitive; the Council of Governors will consider each case on its merits, taking account of all relevant factors.

- a) If the governor loses the confidence of the Council of Governors;
- b) If the governor loses the confidence of the public or local community in a substantial way;
- c) If there is a terminal breakdown in essential relationships, e.g. between the governor and the rest of the Council of Governors.

1.6 A governor shall cease to hold office on death.

2 A person may not become or continue as a governor if:

2.1 he is an executive or non-executive director of the Trust;

2.2 he is the spouse, partner, parent or child of a governor of the Board of Directors of the Trust;

2.3 he is a member of a local authority's Scrutiny Committee covering health matters;

- 2.4 in the case of an elected governor, he is a governor or director of another NHS Foundation Trust or NHS Trust;
- 2.5 in the case of an elected governor he ceases to be a member of the constituency by which he was elected;
- 2.6 in the case of an appointed governor the organisation which appointed him withdraws its appointment of him, or he leaves the employ of the organisation which appointed him;
- 2.7 Monitor has exercised its powers to remove that person as a governor of the Council of Governors of the Trust or has suspended him from office or has disqualified him from holding office as a governor of the Trust for a specified period or Monitor has exercised any of those powers in relation to the person concerned at any time whether in relation to the Trust or some other NHS foundation Trust;
- 2.8 he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 2.9 he is a person whose tenure of office as the chair or as a governor or director of a health service body has been terminated on the grounds that his appointment was not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 2.10 he has had his name removed from any list prepared under sections 91, 106, 123, 146 of the 2006 Act, and has not subsequently had his name included in such a list;
- 2.11 he has previously been or is currently subject to a sex offender order and/or required to register under the Sex offenders Act 1997 or committed a sexual offence prior to the requirement to register under the current legislation;
- 2.12 he has failed or refused to confirm in writing that he will abide by any Code of Conduct which the Trust shall have published from time to time; or
- 2.13 he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs.

3 Vacancies

- 3.1 Where an elected governor ceases to be a governor of the Council of Governors for any of the reasons set out in paragraph 12 or this Annex 6, he shall be replaced in accordance with paragraphs 3.2 to

- 3.4 of this Annex 6 below.
- 3.2 Where an elected governor of the Council of Governors ceases to hold office during his term of office the Trust shall offer the candidate who secured the second highest number of first preference votes in the last election for the constituency (or class of constituency, as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office for the unexpired balance of the retiring governor's tenure of office. If that candidate does not accept to fill the vacancy it will then be offered to that candidate who secured the next highest number of first preference votes until the vacancy is filled.
- 3.3 If no reserve candidate is available or willing to fill the vacancy, an election will then be held in accordance with the Election Scheme save that if an election is due to be held within nine months of the vacancy having arisen the office will stand vacant until the next scheduled election unless by so doing this causes the aggregate number of governors who are Public governors be less than half the total governorship of the Council of Governors. In that event an election will be held in accordance with the Election Scheme as soon as reasonably practicable.
- 3.4 The Returning officer under the Election Scheme shall maintain a record of votes cast at each election under the Election Scheme for the above purposes and the Returning officer shall conduct or shall oversee the conducting of the process set out in paragraphs 3.2 and 3.3 of this Annex 6 above.
- 3.5 Where an appointed governor ceases to be a governor of the Council of Governors for any of the reasons set out in paragraph 12 or this Annex 6, he shall be replaced by the organisation that appointed him as soon as reasonably practicable, in accordance with a process agreed with the Secretary.
- 3.6 No proceedings or decisions of the Council of Governors shall be invalidated by any vacancy in its membership or any defect in the appointment or election of any governor.
- 4 A post on the Council of Governors may not be shared by more than one person.
- 5 An elected governor shall represent the governors of their constituency, and not any professional body, political party or trade union of which he is a member.
- 6 The Council of Governors shall meet not less than three times each financial year.
- 7 At a general meeting to take place in, or prior to, September of each year (the annual general meeting) the Council of Governors shall

receive from the Board of Directors in accordance with paragraph 37 of this constitution and shall then consider the Trust's annual accounts, any report of the auditor on them and the Trust's annual report.

8 A governor may not vote at a meeting of the Council of Governors unless he has made a declaration on a form provided by the Secretary stating the constituency of which he is a governor and that he is not prevented from being a governor of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or otherwise under this constitution and that he will at all times abide by any Code of Conduct that may be adopted by the Trust from time to time,

9 Terms of office of Council of Governors

9.1 An elected governor may hold office for a total of two three year terms.

9.2 An appointed governor shall be subject to re-appointment by the appointing organisation within three years, and may hold office for a total of two three year terms

10 Terms of office of Initial Council of Governors

Notwithstanding the prior provisions of this constitution, those governors who are elected to the initial Council of Governors shall hold office initially for those periods set out in Table 1 of this Annex 6 below. Those elected governors who secure the greatest number of votes in their constituency shall serve for three years and those securing fewer votes in their constituency shall serve for two years. In the event that an election is not required because a constituency is uncontested, the terms of the governors will be determined by drawing lots. In the event that there is a vacancy or vacancies after the initial elections are held, the number of governors who shall serve two years will be reduced accordingly.

| Constituency: | Number of governors who shall serve two years: | Number of governors who shall serve three years: |
|--|---|---|
| Public residing in the City of London | 0 | 1 |
| Public residing in the London Borough of Hackney | 3 | 4 |
| Public residing in the London Borough of Newham | 3 | 4 |
| Public residing in the London Borough of Tower Hamlets | 3 | 4 |
| Public residing in the remaining London Boroughs | 0 | 1 |
| Staff | 3 | 4 |

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

FOREWORD

The Council of Governors has a responsibility to agree Standing Orders for the practice and procedure of the Council of Governors .

The Standing Orders provide a regulatory framework for the business conduct of the Council of Governors. They fulfil the dual role of protecting the Trust's interests by ensuring for example, all transactions maximise the benefit to the Trust and protecting governors from possible accusations that they have acted less than properly. This is provided of course, governors have followed the correct procedures outlined in this document.

Other documents that are relevant to the operation of the Council of Governors and the conduct of governors are:

- Constitution
- Terms of Authorisation
- Code of Conduct
- Standards of Business Conduct Policy

All governors should be aware of the existence of these documents and, where necessary, be familiar with their detailed provisions to the extent required for the proper conduct of their duties.

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1. INTRODUCTION

1.1 Regulatory Framework

- 1.1.1 The East London NHS Foundation Trust (the Trust) became a Public Benefit Corporation on 1 November 2007 following authorisation by the Independent Regulator of NHS Foundation Trusts (Independent Regulator and the office now known as Monitor) pursuant to the National Health Service Act 2006.
- 1.1.2 The principal place of business of the Trust is EastOne, 22 Commercial Street, London E1 6LP.
- 1.1.3 The Trust is governed by the 2006 Act, its Constitution and its Terms of Authorisation granted by the Independent Regulator (the Regulatory Framework). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Governors of the Trust to adopt Standing Orders for the regulation of its proceedings and business. The Council of Governors are also required to adhere at all times to any Code of Conduct published by the Trust.

1.2 INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

- 1.2.1 Save as otherwise permitted by law, at any meeting the Chair shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Secretary to the Council of Governors).
- 1.2.2 Any expression to which a meaning is given in the National Health Service Act 2006 and other Acts relating to the National Health Service or in the Financial Regulations made under the Acts shall have the same meaning in these Standing Orders and in addition:
- 1.2.3 "**Accountable officer**" means the NHS Foundation Trust 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.
- 1.2.4 "**Trust**" means the East London NHS Foundation Trust.
- 1.2.5 "**Board (or Board of Directors)**" means the Chair, executive and non-executive directors of the Trust collectively as a body as constituted in accordance with the constitution of the National Health Service Act 2006.
- 1.2.6 "**Council of Governors**" means the Council of Governors constituted in accordance with the Constitution.
- 1.2.7 "**Governor of the Council of Governors**" means a council governor of the Trust. ("Governor of the Council of Governors" does not include the Chair).
- 1.2.8 "**Chair of the Board (or Trust)**" is the person appointed by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole, and to lead the Council of Governors. The expression "the Chair of the Trust" shall be deemed to include the person chairing the meeting if the Chair is absent from the meeting or is otherwise unavailable.

- 1.2.9 "**Chief Executive**" means the chief officer of the Trust.
- 1.2.10 "**Committee**" means a committee or sub-committee created and appointed by the Council of Governors.
- 1.2.11 "**Committee members**" means persons formally appointed by the Council of Governors to sit on or to chair specific committees.
- 1.2.12 "**Director of Finance**" means the Chief Financial officer of the Trust.
- 1.2.13 "**Executive Director**" means a Director who is also an officer of the Trust.
- 1.2.14 "**Nominated officer**" means an officer charged with the responsibility for discharging specific tasks within Standing Orders.
- 1.2.15 "**Non-Executive Director**" means a Director who is not an officer of the Trust, except where the Director is a nominee of the university that provides the Trust's medical school.
- 1.2.16 "**Associate Director**" means a person appointed to perform specific statutory and non-statutory duties which have been delegated by the Trust Board for them to perform and these duties have been recorded in an appropriate Trust Board minute or other suitable record.
- 1.2.17 "**officer**" means an employee of the Trust or any other person holding a paid appointment or office with the Trust.
- 1.2.18 "**Secretary**" means a person appointed by the Trust to act independently of the Council of Governors to provide advice on corporate governance issues to the Council of Governors and the Chair and monitor the Trust's compliance with the law, the Regulatory Framework and these Standing Orders.
- 1.2.19 "**SFIs**" means Standing Financial Instructions.
- 1.2.20 "**SOs**" means Standing Orders.
- 1.2.21 "**Vice-Chair**" means the independent non-executive director appointed by the Council of Governors to take on the Chair's duties if the Chair is absent for any reason.
- 1.2.22 "**Deputy Chair**" means a Governor of the Council of Governors appointed by the Council of Governors , either generally or for a specific meeting, to preside at a meeting of the Council of Governors .

2. THE COUNCIL OF GOVERNORS

2.1 Powers and duties of the Council of Governors

2.1.1 The Council of Governors may not delegate its powers and must exercise them in formal session.

2.1.2 The powers and duties conferred on the Council of Governors by the 2006 Act and the Constitution are as follows:

2.1.2.1 To appoint the Chair and other non-executive directors of the NHS Foundation Trust at a general meeting of the Council of Governors (There are exceptions for the initial Chair and non-executive directors). The appointment requires the approval of a majority of the Governors of the Council of Governors.

2.1.2.2 To remove the Chair or non-executive directors of the NHS Foundation Trust. Such removal must occur at a general meeting of the Council of Governors and it requires the approval of three quarters of the Governors of the Council of Governors.

2.1.2.3 To approve the appointment of the Chief Executive by the non-executive directors. The appointment requires the approval of a majority of the Governors of the Council of Governors. (There is an exception for the initial Chief Executive).

2.1.2.4 To appoint or remove the auditor at a general meeting of the Council of Governors. The appointment and removal requires the approval of a majority of the Governors of the Council of Governors

2.1.2.5 To be consulted on forward planning by the Board of Directors, and the Board of Directors must have regard to their views.

2.1.2.6 To be presented with the annual report and accounts, and the report of the auditor on them, at a general meeting of the Council of Governors.

2.1.2.7 To decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors. The decision requires the approval of a majority of the Governors of the Council of Governors.

2.2 Composition of the Council of Governors, Election, Appointment and Terms of office of governors

2.2.1 Provisions related to the Composition of the Council of Governors, Election, Appointment and Terms of office of governors are set out in the Constitution.

2.3 Appointment and Powers of Vice-Chair and Senior Independent Director

2.3.1 For the purposes of allowing the proceedings of the Council of Governors (and the Board of Directors) to be conducted in the absence of the Chair for any reason, the Council of Governors shall appoint one of the independent non-executive directors to be Vice-Chair, for such period, not exceeding the

remainder of his term as director of the Trust, as they may specify on appointing him.

2.3.2 The Board of Directors shall appoint one of their number, who is an independent non-executive director, to be Senior Independent Director, for such period, not exceeding the remainder of his term as a director of the Trust, as they may specify on appointing him. The Board of Directors shall have consulted the Council of Governors before so doing.

2.3.3 The Senior Independent Director may be the Vice-Chair.

2.4 Joint governors

2.4.1 A post on the Council of Governors may not be shared by more than one person.

2.5 Role of the Council of Governors

2.5.1 The Council of Governors should:

2.5.1.1 Represent the interests of the Trust's members and partner organisations in the local health economy in the governance of the Trust.

2.5.1.2 Regularly feedback information about the Trust, its vision and its performance to the constituencies and the stakeholder organisations that either elected or appointed them.

2.5.1.3 Act in the best interests of the Trust and adhere to its values and Code of Conduct.

2.5.1.4 Hold the Board of Directors to account for the performance of the Trust, including ensuring the Board of Directors acts so that the Trust does not breach the terms of its authorisation.

2.5.1.5 Acknowledge the overall responsibility of the Board of Directors for running the Trust and should not try to use the powers of the Council of Governors to veto decisions of the Board of Directors.

2.5.1.6 Establish a policy for engagement with the Board of Directors for those circumstances when they have concerns about the performance of the Board of Directors, compliance with the terms of authorisation or the welfare of the Trust.

2.5.1.7 Inform the Independent Regulator if the Trust is at risk of breaching the terms of its authorisation if these concerns cannot be resolved at a local level.

2.5.1.8 Take the lead on agreeing a process for the evaluation of the Chair and the non-executive directors, with the Chair and the non-executive directors, and agree the outcomes of the evaluations.

2.5.1.9 Take the lead in agreeing with the Audit Committee of the Board of Directors the criteria for appointing, reappointing and removing auditors, and receive any relevant reports from the Audit Committee.

2.5.1.10 Work with the Board of Directors on such other matters for the benefit of the Trust as may be agreed between them.

2.5.1.11 Assess its own collective performance and its impact on the Trust, and communicate this to the members of the Trust.

2.5.2 **Elected governors**

An elected governor shall represent the members of their constituency, and not any professional body, political party or trade union of which he is a member.

2.5.3 **Appointed governors**

An appointed governor shall represent the organisation (or group of organisations) that appointed him, and shall also provide a perspective of the wider health community and be a knowledgeable source for governors to develop better understanding of the environment in which the Trust operates.

2.5.4 **Chair**

The Chair is responsible for leadership of the Board of Directors and the Council of Governors, ensuring their effectiveness on all aspects of the role and setting their agenda. The Chair is responsible for ensuring that the two boards work together effectively.

The Chair should also facilitate the effective contribution of all directors and ensure that constructive relations exist between executive and non-executive directors, and between the Board of Directors and the Council of Governors.

The Chair should ensure that the views of governors and members are communicated to the Board of Directors as a whole, and should discuss the affairs of the Trust with the Council of Governors.

The Chair shall chair the Nominations and Conduct Committee of the Council of Governors and liaise with the Council of Governors over the appointment of Non-Executive Directors and once appointed shall take responsibility either directly or indirectly for their induction, their portfolios of interests and assignments, and their performance.

The Chair shall take responsibility either directly or indirectly for the induction of governors.

The Chair shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board of Directors and Council of Governors in a timely manner with all the necessary information and advice being made available to the Board of Directors and Council of Governors to inform their debate and ultimate resolutions.

The Chair is not a governor and does not have voting rights in respect of the statutory powers conferred on the Council of Governors.

2.5.5 Senior Independent Director

The Senior Independent Director should be available to members and governors if they have concerns which contact through the normal channels of Chair, Chief Executive or Director of Finance has failed to resolve or for which such contact is inappropriate.

The Senior Independent Director should attend sufficient meetings of the Council of Governors to listen to their views in order to help develop a balanced understanding of the issues and concerns of Governors of the Council of Governors.

2.5.6 Advisors

The Council of Governors and its committees may call upon outside advisors to help them in their tasks, provided that financial and other implications of seeking outside advisors have been discussed and agreed by the Board of Directors.

Advisors may be used to bring in missing skills to the meeting, widen the pool of experience, ensure that the Council of Governors reflects the diversity of its constituent groups, or to assist and train other council governors.

Advisors are not designated as governors and do not have voting rights.

3. MEETINGS OF THE COUNCIL OF GOVERNORS

3.1 Calling meetings

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

3.1.2 The Council of Governors shall meet sufficiently regularly to discharge its duties effectively, but in any event, shall meet not less than three times each financial year.

3.1.3 The Council of Governors shall meet at a general meeting in September of each year, and shall receive from the Board of Directors, and consider, the Trust's annual accounts, any report of the auditor in them, and the annual report.

3.1.4 The Chair of the Trust may call a meeting of the Council of Governors at any time.

3.1.5 A meeting can also be requested in writing, if signed by at least one third of the whole number of Governors of the Council of Governors. If the Chair refuses to call a meeting after a requisition for that purpose has been presented to him at the Trust's Headquarters, or if, without so refusing, the Chair does not call a meeting within 7 Clear Days after such requisition has been presented to him, such one third or more Governors of the Council of Governors may forthwith call a meeting.

3.1.6 Governors should make every effort to attend meetings of the Council of Governors where practicable.

3.1.7 A record shall be kept of the number of meetings of the Council of Governors and the attendance of individual Governors, and should be supplied to the Governors of the Trust on request.

3.2 Notice of Meetings and the Business to be transacted

3.2.1 Before each meeting of the Council of Governors a written notice specifying the business proposed to be transacted shall be delivered to every Governor, or sent by post to the usual place of residence of each governor, so as to be available to council governors at least three clear days before the meeting. The notice shall be signed by the Chair or by an officer authorised by the Chair to sign on their behalf.

3.2.2 Want of service of such a notice on any governor shall not affect the validity of a meeting but failure to serve a notice on more than one-third of the Council of Governors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.

3.2.3 In the case of a meeting called by council governors in default of the Chair calling the meeting, the notice shall be signed by those council governors.

3.2.4 No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under Standing Order 3.6.

3.2.5 A governor desiring a matter to be included on an agenda shall make his request in writing to the Chair at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.

3.2.6 Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's principal offices at least three clear days before the meeting.

3.3 Agenda and Supporting Papers

3.3.1 The Agenda will be sent to governors before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three clear days before the meeting, save in emergency.

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

3.4 Petitions

Where a petition has been received by the Trust the Chair shall include the petition as an item for the agenda of the next meeting.

3.5 Notice of Motion

3.5.1 Subject to the provision of Standing Orders 3.7 'Motions: Procedure at and during a meeting' and 3.8 'Motions to rescind a resolution', a governor wishing to move a motion shall send a written notice to the Chair.

3.5.2 The notice shall be delivered at least 10 clear days before the meeting. The Chair shall include in the agenda for the meeting all notices so received that are in order and permissible under governing 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.

3.6 Emergency Motions

Subject to the agreement of the Chair, and subject also to the provision of Standing Order 3.7 'Motions: Procedure at and during a meeting', a governor 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 Council of Governors at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

3.7 Motions: Procedure at and during a meeting

i) Who may propose

A motion may be proposed by the Chair of the meeting or any governor present. It must also be seconded by another governor.

ii) Contents of motions

The Chair may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

- the reception of a report;
- consideration of any item of business before the meeting;
- the accuracy of minutes;
- that the meeting proceed to next business;
- that the meeting adjourn;
- that the question be now put.

iii) Amendments to motions

A motion for amendment shall not be discussed unless it has been proposed and seconded.

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Council of Governors.

If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

iv) **Rights of reply to motions**

a) Amendments

The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak on it.

b) Substantive/original motion

The governor who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

v) **Withdrawing a motion**

A motion, or an amendment to a motion, may be withdrawn.

vi) **Motions once under debate**

When a motion is under debate, no motion may be moved other than:

- an amendment to the motion;
- the adjournment of the discussion, or the meeting;
- that the meeting proceed to the next business;
- that the question should be now put;
- the appointment of an 'ad hoc' committee to deal with a specific item of business;
- that a governor/director be not further heard;
- a motion resolving to exclude the public, including the press.

In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a governor who has not taken part in the debate and who is eligible to vote.

If a motion to proceed to the next business or that the question be now put, is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

3.8 Motion to Rescind a Resolution

3.8.1 Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the governor who gives it and also the signature of one-third of the Governors of the Council of Governors.

3.8.2 When any such motion has been dealt with by the Board of Directors it shall not be competent for any director other than the Chair to propose a motion to the same effect within six months. This Standing Order shall not apply to

motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

3.9 Chair of meeting

- 3.9.1 At any meeting of the Council of Governors, the Chair if present, shall preside.
- 3.9.2 If the Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Vice Chair shall preside.
- 3.9.3 If the Vice Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, a Non-Executive Director as shall be appointed by the Board of Directors shall preside.
- 3.9.4 If both the Chair and Vice Chair and a Non-Executive Director appointed in accordance with Standing Order 3.9.3 are absent from the meeting or are absent temporarily on the grounds of a declared conflict of interest the Deputy Chair shall preside.
- 3.9.5 Where the Council of Governors is exercising functions in accordance with paragraph 20 of the Constitution in relation to the appointment or removal of the Chair and the Non-Executive Directors, the Council of Governors shall be only be chaired by either the Chair or in his absence either temporarily or on the grounds of a declared conflict of interest, the Deputy Chair.

3.10 Chair's ruling

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

3.11 Quorum

- 3.11.1 No business shall be transacted at a meeting unless at least one-third of the whole number of Governors of the Council of Governors (including at least one-third of the number of public governors) is present.
- 3.11.2 If a governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see Standing Order No.7) 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.

3.12 Voting

- 3.12.1 A governor may not vote at a meeting of the Council of Governors unless, within at least 7 Clear Days prior to the commencement of the meeting he has made a declaration in the form specified within Schedule A of these Standing Orders, stating the constituency of which he is a governor and is not prevented from being a governor of the Council of Governors by paragraph 8 of Schedule

7 to the 2006 Act or under the Constitution and that he will at all times abide by any Code of Conduct that may be adopted by the Trust from time to time.

- 3.12.2 Save as provided in the Constitution or these Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of the Chair and the governors present and voting on the question. In the case of an equal vote, the person presiding (ie: the Chair of the meeting) shall have a second, and casting vote.
- 3.12.2 At the discretion of the Chair all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.
- 3.12.3 If at least one third of the governors present so request, the voting on any question may be recorded so as to show how each governor present voted or did not vote (except when conducted by paper ballot).
- 3.12.4 If a governor so requests, their vote shall be recorded by name.
- 3.12.5 In no circumstances may an absent governor vote by proxy. Absence is defined as being absent at the time of the vote.

3.13 Suspension of Standing Orders

- 3.13.1 Except where this would contravene any provision of the Constitution or any direction made by the Independent Regulator or the rules relating to the Quorum (SO 3.11), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the Governors of the Council of Governors are present and that at least two-thirds of those governors present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Council of Governors minutes.
- 3.13.2 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Governors of the Council of Governors.
- 3.13.3 No formal business may be transacted while Standing Orders are suspended.

3.14 Variation and amendment of Standing Orders

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

- upon a notice of motion under Standing Order 3.5;
- upon a recommendation of the Chair included on the agenda for the meeting;
- that two thirds of the council governors are present at the meeting where the variation or amendment is being discussed, and that at least half of the council governors vote in favour of the amendment;
- providing that any variation or amendment does not contravene a statutory provision or direction made by the Independent Regulator.

3.15 Record of Attendance

The names of the Chair and governors present at the meeting shall be recorded, and supplied to the governors of the Trust on request.

3.16 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 Chair considers discussion appropriate.

3.17 Observers at Council of Governors meetings

3.17.1 The Council of Governors 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 Council of Governors meetings and may change, alter or vary these terms and conditions as it deems fit.

3.17.2 The Council of Governors may invite the Chief Executive or any other governor of the Board of Directors, or a representative of the auditor, or other advisors to attend a meeting of the Council of Governors.

3.17.3 Non-Executive Directors should be offered the opportunity to attend meetings of the Council of Governors and should expect to attend them if requested.

3.17.4 The Senior Independent Director should attend sufficient meetings of the Council of Governors to listen to their views in order to help develop a balanced understanding of the issues and concerns of Governors of the Council of Governors.

3.17.5 Governors of the Council of Governors may raise questions of the Chair or any other director present about the affairs of the Trust. A Governor of the Council of Governors desiring to ask such a question should, wherever possible, notify the Chair in writing of any question to be asked at least 10 Clear Days before the meeting.

3.18 Admission of public and the press

3.18.1 The public and representatives of the Press shall be afforded facilities to attend all formal meetings of the Council of Governors except where the Council of Governors resolves:

3.18.1.1 That members of the public and representatives of the Press be excluded from the remainder of a meeting having regard to the confidential nature of the business to be transacted or for special reasons stated in the resolution and arising from the business or nature of the proceedings, publicity on which would be prejudicial to the public; and/or

3.18.1.2 That in the interests of public order the meeting adjourn for a period to be specified in such resolution to enable the Council of Governors to complete business without the presence of the public.

3.18.2 Without prejudice to the power to exclude members of the public and representatives of the press, the Chair shall give directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the business of the Council of Governors shall be conducted without interruption or disruption.

3.18.3 Use of Mechanical or Electrical Equipment for Recording or Transmission of Meetings

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

3.18.4 Business proposed to be transacted when the press and public have been excluded from a meeting

Matters to be dealt with by the Council of Governors following the exclusion of representatives of the press, and other members of the public, as provided above, shall be confidential to the Governors of the Council of Governors.

Governors or any other person in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Trust, without the express permission of the Council of Governors. This prohibition shall apply equally to the content of any discussion during the Council of Governors meeting which may take place on such reports or papers.

3.18.5 Public attendance at Council of Governors meetings shall not be construed as allowing them any right to speak at the meeting. However, at the discretion of the Chair, individuals may be invited to contribute views on specific items, or to ask questions regarding the affairs of the Trust.

3.19 Exclusion from meetings

3.19.1 The Chair may exclude any person present from a meeting of the Council of Governors if they are interfering or preventing the proper conduct of a meeting.

3.19.2 The Chair may exclude any person present from a meeting of the Council of Governors for a breach of Standing Orders relating to the conduct of meetings

3.20 Special Provisions relating to Termination of governors' Tenure

3.20.1 Any complaint or concern made in respect of a governor on any of the grounds set out in the Constitution shall be dealt with in line with the Procedure for Conduct Hearings in the Nominations and Conduct Committee Terms of Reference.

3.20.2 At any time, the Chair is authorised to take such interim measures as may be immediately required, including the exclusion of the governor concerned from a meeting or suspension from duties, on the basis that such measures are necessary to:-

3.20.2.1 enable an effective investigation to be undertaken into any concern or complaint about a governor;

- 3.20.2.2 address or prevent any significant disruption to the effective operation of any part of the Trust;
- 3.20.2.3 manage risk to the health or well-being of any governor, employee, volunteer or patient of the Trust;
- 3.20.2.4 protect the reputation of the Trust;
- 3.20.2.5 give effect to a proposal by the Council to impose a sanction on a governor, until such times as the sanction is agreed by the governor or the determination of an assessor has been received and notified to the governor.

4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 4.1 The Council of Governors may not delegate its powers to a committee, but may, subject to the Regulatory Framework and such guidance as may be given by the Independent Regulator, appoint committees consisting wholly or partly of its governors to assist it in carrying out its functions, in accordance with the Constitution.

5. COMMITTEES

5.1 Appointment of Committees

The Council of Governors shall determine the membership and terms of reference of committees and sub-committees and shall if it requires to, receive and consider reports of such committees subject to contractual arrangements and such restrictions and conditions as the Council of Governors thinks fit to ensure appropriate oversight.

5.2 Joint Committees

- 5.2.1 The Council of Governors may, at the request of the Board of Directors, appoint governors to serve on joint committees with the Board of Directors or committees of the Board of Directors.

5.3 Applicability of Standing Orders to Committees

The Standing Orders of the Council of Governors, as far as they are applicable, shall as appropriate apply to meetings and any committees established by the Council of Governors. In which case the term "Chair" is to be read as a reference to the Chair of other committee as the context permits, and the term "governor" is to be read as a reference to a governor of the committee also as the context permits.

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 Council of Governors), as the Council of Governors shall decide and shall be in accordance with any legislation and regulation or direction issued by the Independent Regulator. Such terms of reference shall have effect as if incorporated into 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 powers to the sub-committee unless expressly authorised by the Council of Governors.

5.6 Approval of Appointments to Committees

The Council of Governors shall approve the appointments to each of the committees which it has formally constituted. Where the Council of Governors determines, and regulations permit, that persons, who are neither governors, nor directors or officers of the Trust, shall be appointed to a committee the terms of such appointment shall be within the powers of the Council of Governors as defined by the Regulatory Framework. The Council of Governors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.

5.7 Appointments for Statutory functions

Where the Council of Governors is required to appoint persons to a committee and/or to undertake statutory functions as required by the Independent Regulator, and where such appointments are to operate independently of the Council of Governors such appointment shall be made in accordance with the regulations and guidance made by the Independent Regulator.

5.8 Committees established by the Council of Governors

The Council of Governors may establish such committees as required to discharge their responsibilities. The Council of Governors may elect to change the committees, sub-committees and joint committees of the Council of Governors, as necessary, without requirement to amend these Standing Orders.

5.9 Confidentiality

5.9.1 A governor of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter.

5.9.2 A governor or a governor of a committee shall not disclose any matter reported to the Council of Governors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee shall resolve that it is confidential.

6. OVERLAP WITH OTHER TRUST POLICY STATEMENTS/PROCEDURES AND REGULATIONS

6.1 Specific Policy statements

These Standing Orders must be read in conjunction with the Standards of Business Conduct Policy, which shall have effect as if incorporated in these Standing Orders.

6.2 Specific guidance

These Standing Orders 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.

7. DUTIES AND OBLIGATIONS OF GOVERNORS UNDER THESE STANDING ORDERS

7.1 Declaration of Interests

7.1.1 Requirements for Declaring Interests and applicability to governors

The Constitution requires council governors to declare interests to the Council of Governors. All existing governors should declare such interests. Any governors appointed subsequently should do so on appointment.

7.1.2 Interests which are relevant and material

- (i) 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) Research funding/grants that may be received by an individual or their department;
 - g) Interests in pooled funds that are under separate management;
 - h) 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;
 - i) Membership of clubs, societies or organisations whose purpose may include furthering the business or personal interests of their members by undeclared or informal means;
 - j) Any other commercial interest in the decision before the meeting.
- (ii) Any governor who comes to know that the Trust has entered into or proposes to enter into a contract in which he or any person connected with him (as defined in Standing Order 7.3 below and elsewhere) has any

actual or potential pecuniary, personal or family interest, direct or indirect, the governor shall declare his interest by giving notice in writing of such fact to the Trust as soon as practicable.

7.1.3 **Advice on Interests**

If governors have any doubt about the relevance of an interest, this should be discussed with the Chair of the Trust or with the Secretary.

Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

There is no requirement for the interests of governors' family or close personal relationships to be declared. However Standing Order 7 requires that the interest of governors' family or close personal relationships, if living together, in contracts should be declared.

7.1.4 **Recording of Interests in Council of Governors minutes**

At the time governors' interests are declared, they should be recorded in the Council of Governors minutes.

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

It is the obligation of the governor to inform the Secretary in writing within 7 days of becoming aware of the existence of a relevant or material interest. The Secretary will amend the Register upon receipt within 5 working days.

7.1.5 **Publication of declared interests in Annual Report**

governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Board of Directors' annual report. The information should be kept up to date for inclusion in succeeding annual reports.

7.1.6 **Conflicts of interest which arise during the course of a meeting**

During the course of a Council of Governors meeting, if a conflict of interest is established, the governor concerned should withdraw from the meeting and play no part in the relevant discussion or decision. (See overlap with Standing Order 7.3)

7.2 **Register of Interests**

7.2.1 The Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Council of Governors or Committee governors. In particular the Register will include details of all directorships and other relevant and material interests (as defined in Standing Order 7.1.2) which have been declared by governors.

7.2.2. These details will be kept up to date by means of a quarterly review of the Register in which any changes to interests declared during the preceding three months will be incorporated.

7.2.3 The Register will be available to the public and the Secretary will take reasonable steps to bring the existence of the Register to the attention of local residents and to publicise arrangements for viewing it.

7.3 Exclusion of governors in proceedings on account of pecuniary interest

7.3.1 Definition of terms used in interpreting 'Pecuniary' interest

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, or a nominee of his, 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 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 or any person connected with him has any beneficial interest in the securities of a company of which he or such person appears as a member, or
- b) any interest that he or any person connected with him may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him in relation to considering or voting on that contract, or
- c) those securities of any company in which he (or any person connected with him) 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 7.1.2 (ii).

7.3.2 Exclusion in proceedings of the Council of Governors

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

- (iii) The Council of Governors may exclude a governor from a meeting of the Council of Governors while any contract, proposed contract or other matter in which he has a pecuniary interest is under consideration.
- (iv) Any remuneration, compensation or allowance payable to a governor shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- (v) This Standing Order applies to a committee or sub-committee and to a joint committee or sub-committee as it applies to the Council of Governors and applies to a governor of any such committee or sub-committee (whether or not he is also a governor) as it applies to a governor.

7.4 Standards of Business Conduct

7.4.1 Trust Policy and National Guidance

All governors shall comply with the Trust's Code of Conduct, Standards of Business Conduct Policy, and the requirements of the Regulatory Framework and any guidance issued by the Independent Regulator.

7.4.2 Interest of governors in Contracts

- i) Any governor who comes to know that the Trust has entered into or proposes to enter into a contract in which he or any person connected with him (as defined in Standing Order 7.3) has any pecuniary interest, direct or indirect, the officer shall declare their interest by giving notice in writing of such fact to the Secretary as soon as practicable. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- ii) A governor must also declare to the Secretary any other employment or business or other relationship of his, or of a governor if his family or of someone with whom he has a close personal relationship, 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 governors.

7.4.3 Canvassing of, and Recommendations by, governors in Relation to Appointments

- i) Canvassing of governors or of any committee of the Council of Governors 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.

A governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

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

7.4.4 Relatives of governors

- i) Candidates for any staff appointment shall, when making an application, disclose in writing to the Trust whether they are related to any Governor of the Council of Governors. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- ii) Every governor shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that a governor is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- iii) Where the relationship to a governor is disclosed, the Standing Order headed 'Disability of Chair and members in proceedings on account of pecuniary interest' (Standing Order 7) shall apply.
- iv) No formal definition of relationship is made. In considering whether a disclosure is required the influence rather than immediacy of the relationship is more important. In case of doubt disclosure should be made.

8. MISCELLANEOUS

8.1 Standing Orders to be given to governors

It is the duty of the Secretary to ensure that existing governors and all new appointees are notified of and put into a position to understand their responsibilities within Standing Orders.

8.2 Review of Standing Orders

Standing Orders shall be reviewed by the Council of Governors at least once in each financial year. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

8.3 Duty to report non-compliance with Standing Orders

If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances

around the non-compliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All governors have a duty to disclose any non-compliance with these Standing Orders to the Chair as soon as possible.

Schedule A

Declaration to the Secretary of East London NHS Foundation Trust

I hereby declare that I am at the date of this declaration a governor of the [Public/Staff] constituency/appointed governor, and I am not prevented from being a governor of the Council of Governors by reason of:

1. My having been adjudged bankrupt or my estate having been sequestrated and in either case not having been discharged;
2. My having made a composition or arrangement with, or granted a Trust deed for my creditors and have not been discharged in respect of it;
3. Within the preceding five years, my being convicted any where in the world of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on me;
4. My being under 16 years of age;
5. My being an executive or non-executive director of the Trust;
6. My being the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
7. My being a member of the local authority's Scrutiny Committee covering health matters;
8. My being an elected governor, and being a governor or director of another NHS Foundation Trust or NHS Trust;
9. My being an appointed governor, and the appointing organisation has withdrawn my appointment, or I have left their employ;
10. My having been removed, suspended or disqualified from office, whether in relation to the Trust or some other Foundation Trust, by Monitor;
11. Within the preceding two years, my being been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
12. My being a person whose tenure of office as the Chair or as a member or director of a Health Service Body has been terminated on the grounds that my appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
13. Having my name removed from any list prepared under sections 91, 106, 123 or 146 of the 2006 Act, , and has not subsequently had his name included in such a list;

14. My having been, or currently being subject to a sex offender order and/or required to register under the Sex offenders Act 1997 or having committed a sexual offence prior to the requirement to register under the current legislation;

15. My having refused or failed to confirm in writing that I will abide by any Code of Conduct which the Trust shall have applied from time to time; or

16. My being incapable by reason of mental disorder, illness or injury of managing and administering my property and affairs.

Dated: _____

Name: _____

Signed: _____

**ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF
THE BOARD OF DIRECTORS**

FOREWARD

NHS Foundation Trust Boards of Directors have a responsibility to agree Standing Orders and a Schedule of Reservation of Powers to the Board of Directors and Scheme of Delegation.

The documents, together with Standing Financial Instructions, provide a regulatory framework for the business conduct of the Trust. They fulfil the dual role of protecting the Trust's interests by ensuring for example, all transactions maximise the benefit to the Trust and protecting staff from possible accusations that they have acted less than properly. This is provided of course, staff have followed the correct procedures outlined in the relevant document.

The Standing Orders, Scheme of Delegation and Standing Financial Instructions provide a comprehensive business framework. Other documents that make up the Trust's Corporate Governance Manual are:

- Constitution
- Terms of Authorisation
- Accountable officer Memorandum
- Code of Conduct
- Standards of Business Conduct Policy
- Counter Fraud Policy

All directors and all staff should be aware of the existence of these documents and, where necessary, be familiar with their detailed provisions to the extent required for the proper conduct of their duties.

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1. INTRODUCTION

1.1 Regulatory Framework

- 1.1.1 The East London NHS Foundation Trust (the Trust) became a Public Benefit Corporation on [] following authorisation by the Independent Regulator of NHS Foundation Trusts (Independent Regulator and the office now known as Monitor) pursuant to the National Health Service Act 2006.
- 1.1.3 The principal place of business of the Trust is EastOne, 22 Commercial Street, London E1 6LP.
- 1.1.3 The Trust is governed by the 2006 Act, its Constitution and its Terms of Authorisation granted by the Independent Regulator (the Regulatory Framework). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Board of Directors of the Trust to adopt Standing Orders for the regulation of its proceedings and business. The Board of Directors are also required to adhere at all times to any Code of Conduct published by the Trust.
- 1.1.4 As a statutory body, the Trust has specified powers to contract in its own name and to act as a corporate Trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable.
- 1.1.5 The Trust will also be bound by such other statutes and legal provisions which govern the conduct of its affairs.
- 1.1.6 The NHS Foundation Trust Code of Governance requires that, inter alia, Boards draw up a schedule of decisions reserved to the Board, and ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives (a Scheme of Delegation). The Regulatory Framework also requires the establishment of audit and remuneration committees with formally agreed terms of reference, and for procedures to be put in place concerning possible conflicts of interest of directors.

1.2 Delegation of Powers

The Board of Directors has resolved that certain powers and decisions may only be exercised by the Board of Directors in formal session. These powers and decisions are set out in the document entitled 'Reservation of powers to the Board of Directors and Scheme of Delegation' 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 that document also.

1.3 INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

- 1.3.1 Save as otherwise permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Secretary to the Board of Directors).
- 1.3.2 Any expression to which a meaning is given in the National Health Service Act 2006 and other Acts relating to the National Health Service or in the Financial Regulations made under the Acts shall have the same meaning in these Standing Orders and in addition:
- 1.3.3 "**Accountable officer**" means the NHS Foundation Trust 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.
- 1.3.4 "**Trust**" means the East London NHS Foundation Trust.
- 1.3.5 "**Board (or Board of Directors)**" means the Chair, executive and non-executive directors of the Trust collectively as a body as constituted in accordance with the constitution of the National Health Service Act 2006.
- 1.3.6 "**Chair of the Board (or Trust)**" is the person appointed by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole, and to lead the Council of Governors. The expression "the Chair of the Trust" shall be deemed to include the Vice-Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable.
- 1.3.7 "**Chief Executive**" means the chief officer of the Trust.
- 1.3.8 "**Committee**" means a committee or sub-committee created and appointed by the Trust.
- 1.3.9 "**Committee members**" means persons formally appointed by the Board to sit on or to chair specific committees.
- 1.3.10 "**Director of Finance**" means the Chief Financial officer of the Trust.
- 1.3.11 "**Executive Director**" means a Director who is also an officer of the Trust.
- 1.3.12 "**Nominated officer**" means an officer charged with the responsibility for discharging specific tasks within Standing Orders.
- 1.3.13 "**Non-Executive Director**" means a Director who is not an officer of the Trust, except where the Director is a nominee of the university that provides the Trust's medical school.
- 1.3.14 "**Associate Director**" means a person appointed to perform specific statutory and non-statutory duties which have been delegated by the Trust Board for them to perform and these duties have been recorded in an appropriate Trust Board minute or other suitable record.

- 1.3.15 "**officer**" means an employee of the Trust or any other person holding a paid appointment or office with the Trust.
- 1.3.16 "**Secretary**" means a person appointed by the Trust to act independently of the Board to provide advice on corporate governance issues to the Board and the Chair and monitor the Trust's compliance with the law, the Regulatory Framework and these Standing Orders.
- 1.3.17 "**SFIs**" means Standing Financial Instructions.
- 1.3.18 "**SOs**" means Standing Orders.
- 1.3.19 "**Vice-Chair**" means the independent non-executive director appointed by the Council of Governors to take on the Chair's duties if the Chair is absent for any reason.

2. THE TRUST BOARD: POWERS, DUTIES, COMPOSITION OF THE BOARD OF DIRECTORS, TENURE AND ROLE OF DIRECTORS

2.1 Powers and duties of the Board of Directors

2.1.1 The powers and duties conferred on the Board of Directors by the 2006 Act and the Constitution are as follows:

2.1.1 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust. Any of these powers may be delegated to a committee of directors or to an executive director.

2.1.2 The Trust may do anything which appears to it to be necessary or desirable for the purposes of or in connection with its functions. The powers of the Trust include, but are not limited to, the ability to borrow and invest money, acquire and dispose of property, enter into contracts, accept gifts of property (including property to be held on Trust for the purposes of the Foundation Trust or for any purposes relating to the health service), and employ staff.

2.1.3 The Board of Directors must submit forward planning information and annual reports and accounts to Monitor.

2.1.4 The Board of Directors must 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

2.1.5 The Board of Directors must establish a committee of non-executive directors to act as an Audit Committee

2.1.6 It is for the non-executive directors to appoint and remove the Chief Executive. The appointment of the Chief Executive requires the approval of the Council of Governors. (There is an exception for the initial Chief Executive)

2.1.7 It is for a committee consisting of the Chair, the chief executive and the other non-executive directors to appoint or remove the executive directors

2.2 Composition of the Board of Directors, Appointment and Terms of office of Directors of the Trust

2.2.1 Provisions related to the Composition of the Board of Directors, Appointment of directors of the Trust, and Terms of office of directors are set out in the Constitution.

2.2.2 A director may resign from office at any time during the term that office by giving notice in writing to the Chair. A director shall give reasons for the resignation and detail any outstanding issues of which the Board of Directors or the Council of Governors should be aware.

2.3 Appointment and Powers of Vice-Chair and Senior Independent Director

- 2.3.1 For the purposes of allowing the proceedings of the Board of Directors (and Council of Governors) to be conducted in the absence of the Chair for any reason and subject to Standing Order 2.2.1 below, the Council of Governors shall appoint an independent non-executive director to be Vice-Chair, for such period, not exceeding the remainder of his term as director of the Trust, as they may specify on appointing him.
- 2.3.2 Any non-executive director so appointed may at any time resign from the office of Vice-Chair by giving notice in writing to the Chair. The Council of Governors may thereupon appoint another member as Vice-Chair in accordance with the provisions of Standing Order 2.2.1.
- 2.3.3 Where the Chair of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chair owing to illness or any other cause, the Vice-Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties, as the case may be; and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform those duties, be taken to include references to the Vice-Chair.
- 2.3.4 The Board of Directors shall appoint one of their number, who is an independent non-executive director, to be Senior Independent Director, for such period, not exceeding the remainder of his term as a member of the Trust, as they may specify on appointing him. The Board of Directors shall have consulted the Council of Governors before so doing.
- 2.3.5 Any non-executive director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Board of Directors may thereupon appoint another member as Senior Independent Director in accordance with the provisions of Standing Order 2.2.4.
- 2.3.6 The Senior Independent Director may be the Vice-Chair.

2.4 Joint Directors

- 2.4.1 Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for executive directorship or in relation to which an executive director is to be appointed, those persons shall count for the purpose of paragraph 18 of the Constitution as one person.
- 2.4.2 Where the office of a director of the Board is shared jointly by more than one person:
- (a) either or both of those persons may attend or take part in meetings of the Board;
 - (b) if both are present at a meeting they should cast one vote if they agree;
 - (c) in the case of disagreements no vote should be cast;

- (d) the presence of either or both of those persons should count as the presence of one person for the purposes of Standing Order 3.11 Quorum.

2.5 Role of the Board of Directors

- 2.5.1 The Board of Directors is collectively responsible for the exercise of powers and the performance of the Trust. The Board should:
 - 2.5.1.1 Provide active leadership of the Trust within a framework of prudent and effective controls which enable risk to be assessed and managed.
 - 2.5.1.2 Set the Trust's strategic aims, taking into consideration the views of the Council of Governors, ensuring that the financial and human resources are in place for the Trust to meet its objectives, and review management performance.
 - 2.5.1.3 Ensure the quality and safety of healthcare services, education, training and research delivered by the Trust and apply the principles and standards of clinical governance set out by the Department of Health, the Healthcare Commission, and other relevant NHS bodies.
 - 2.5.1.4 Ensure compliance by the Trust with its terms of authorisation, its Constitution, mandatory guidance issued by Monitor, relevant statutory requirements and contractual obligations.
 - 2.5.1.5 Ensure that adequate systems and processes are maintained to measure and monitor the Trust's effectiveness, efficiency and economy as well as the quality of its healthcare delivery.
 - 2.5.1.6 Regularly review the performance of the Trust in these areas against regulatory requirements and approved plans and objectives.
 - 2.5.1.7 Establish the values and standards of conduct for the Trust and its staff in accordance with NHS values and accepted standards of behaviour in public life, and Operate a Code of Conduct that builds on the values of the Trust and reflects high standards of probity and responsibility.
 - 2.5.1.8 Ensure that there is a formal, rigorous and transparent procedure for the appointment or election of new members to the Board of Directors, and satisfy itself that plans are in place for orderly succession of appointments to the Board of Directors so as to maintain an appropriate balance of skills and experience within the Trust and on the Board of Directors, and ensure planned and progressive refreshing of the Board of Directors.
 - 2.5.1.9 Present a balanced and understandable assessment of the Trust's position and prospects.

- 2.5.1.10 Maintain a sound system of internal control to safeguard public and private investment, the Trust's assets, patient safety and service quality.
- 2.5.1.11 Establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the Trust's auditors.
- 2.5.1.12 Consult and involve members, patients, clients and the local community, and monitor how representative the Trust's membership is and the level of effectiveness of member engagement.
- 2.5.1.13 Ensure that the Trust co-operates with other NHS bodies, local authorities and other relevant organisations with an interest in the local health economy.
- 2.5.1.14 Work with the Council of Governors on such other matters for the benefit of the Trust as may be agreed between them.
- 2.5.1.15 Follow a policy of openness and transparency in its proceedings and decision making unless this conflicts with a need to protect the wider interests of the public or the Trust (including commercial in confidence matters) and make clear how potential conflicts of interests are dealt with.
- 2.5.1.16 Undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.

The Board of Directors should have complete access to any information about the Trust that it deems necessary to discharge its duties, including access to senior management and other employees.

Directors are able to access independent professional advice where they judge it necessary to discharge their responsibilities as directors, but the first course of action should always be to encourage further and deeper analysis to be carried out within the Trust. Decisions to appoint an independent advisor should normally be the collective decision of the majority of non-executive directors.

Directors are able to access independent legal advice via the Secretary if they have serious concerns regarding a systematic or sustained failure either in Board of Directors' processes or in strategic decisions of the Board of Directors.

Where directors have concerns, which cannot be resolved, about the running of the Trust or a proposed action, they should ensure that their concerns are recorded in the minutes.

2.5.2 **Executive Directors**

Executive Directors shall exercise their authority within the terms of these Standing Orders, the Standing Financial Instructions and the Scheme of Delegation.

2.5.3 **Chief Executive**

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust, and should take the lead on the evaluation of the executive directors. He is the Accountable officer for the Trust and shall be responsible for ensuring the discharge of obligations under Financial Directions and in line with the requirements of the Accountable officer Memorandum for NHS Foundation Trust Chief Executives.

The Chief Executive shall follow the procedure set out in the Accountable officer Memorandum for advising the Board of Directors and Council of Governors, and for recording and submitting objections to decisions considered or taken by the Board of Directors and Council of Governors in matters of propriety or regularity, and on issues relating to the wider responsibilities of the accounting officer for economy, efficiency and effectiveness.

2.5.4 **Director of Finance**

The Director of Finance shall be responsible for the provision of financial advice to the Trust and to its directors and for the supervision of financial control and accounting systems. He shall be responsible along with the Chief Executive for ensuring the discharge of obligations under relevant Financial Directions.

2.5.5 **Non-Executive Directors**

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

Led by the Senior Independent Director, the non-executive directors should meet without the Chair at least annually to evaluate the Chair's performance, as part of a process which shall be agreed with the Council of Governors, and for appraising the Chair and on such occasions as are deemed appropriate.

Non-Executive Directors should be offered the opportunity to attend meetings of the Council of Governors and should expect to attend them if requested.

2.5.6 **Senior Independent Director**

The Senior Independent Director should be available to members and governors if they have concerns which contact through the normal channels of Chair, Chief Executive or Director of Finance has failed to resolve or for which such contact is inappropriate. The Senior Independent Director is accountable to the Board of Directors.

The Senior Independent Director should attend sufficient meetings of the Council of Governors to listen to their views in order to help develop a balanced understanding of the issues and concerns of the Governors of the Council of Governors.

2.5.7 **Chair**

The Chair is responsible for leadership of the Board of Directors and the Council of Governors, ensuring their effectiveness on all aspects of the role and setting their agenda. The Chair is responsible for ensuring that the two boards work together effectively.

The Chair should also facilitate the effective contribution of all directors and ensure that constructive relations exist between executive and non-executive directors, and between the Board of Directors and the Council of Governors.

The Chair should ensure that the views of governors and members are communicated to the Board of Directors as a whole, and should discuss the affairs of the Trust with the Council of Governors.

The Chair shall chair the Nominations and Conduct Committee of the Board of Directors and the Appointments and Remuneration Committee of the Board of Directors.

The Chair shall chair the Nominations and Conduct Committee of the Council of Governors and liaise with the Council of Governors over the appointment of Non-Executive Directors and once appointed shall take responsibility either directly or indirectly for their induction, their portfolios of interests and assignments, and their performance.

The Chair, with the assistance of the Secretary, should use the performance evaluations of directors as the basis for determining individual and collective professional development programmes for directors relevant to their duties as member of the Board of Directors.

The Chair should hold meetings with the non-executive directors without the executive directors being present.

The Chair shall take responsibility either directly or indirectly for the induction of governors.

The Chair shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board of Directors and Council of Governors in a timely manner with all the necessary information and advice being made available to the Board of Directors and Council of Governors to inform their debate and ultimate resolutions.

3. MEETINGS OF THE BOARD OF DIRECTORS

3.1 Calling meetings

3.1.1 Ordinary meetings of the Board of Directors shall be held at regular intervals at such times and places as the Board of Directors may determine.

3.1.2 The Board of Directors shall meet sufficiently regularly to discharge its duties effectively.

3.1.3 The Chair of the Trust may call a meeting of the Board of Directors at any time.

3.1.4 A meeting can also be requested in writing, if signed by at least one third of the whole number of directors. If the Chair refuses to call a meeting after a requisition for that purpose has been presented to him at the Trust's

Headquarters, or if, without so refusing, the Chair does not call a meeting within 7 Clear Days after such requisition has been presented to him, such one third or more Directors may forthwith call a meeting.

- 3.1.5 A record shall be kept of the number of meetings of the Board of Directors and the attendance of individual directors, and should be supplied to the Council of Governors on request.

3.2 Notice of Meetings and the Business to be transacted

- 3.2.1 Before each meeting of the Board a written notice specifying the business proposed to be transacted shall be delivered to every director, or sent by post to the usual place of residence of each director, so as to be available to directors at least three clear days before the meeting. The notice shall be signed by the Chair or by an officer authorised by the Chair to sign on their behalf.

- 3.2.3 Want of service of such a notice on any director shall not affect the validity of a meeting but failure to serve a notice on more than one-third of the Board of Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.

- 3.2.3 In the case of a meeting called by directors in default of the Chair calling the meeting, the notice shall be signed by those directors.

- 3.2.4 No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under Standing Order 3.6.

- 3.2.5 A director desiring a matter to be included on an agenda shall make his request in writing to the Chair at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.

- 3.2.6 Before each meeting of the Board of Directors a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's principal offices at least three clear days before the meeting.

3.3 Agenda and Supporting Papers

- 3.3.1 The Agenda will be sent to directors 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.

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

3.4 Petitions

Where a petition has been received by the Trust the Chair shall include the petition as an item for the agenda of the next meeting.

3.5 Notice of Motion

3.5.1 Subject to the provision of Standing Orders 3.7 'Motions: Procedure at and during a meeting' and 3.8 'Motions to rescind a resolution', a director wishing to move a motion shall send a written notice to the Chair.

3.5.2 The notice shall be delivered at least 10 clear days before the meeting. The Chair shall include in the agenda for the meeting all notices so received that are in order and permissible under governing 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.

3.6 Emergency Motions

Subject to the agreement of the Chair, and subject also to the provision of Standing Order 3.7 'Motions: Procedure at and during a meeting', a director 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 of Directors at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

3.7 Motions: Procedure at and during a meeting

i) Who may propose

A motion may be proposed by the Chair of the meeting or any director present. It must also be seconded by another director.

ii) Contents of motions

The Chair may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

- the reception of a report;
- consideration of any item of business before the Trust Board;
- the accuracy of minutes;
- that the Board proceed to next business;
- that the Board adjourn;
- that the question be now put.

iii) Amendments to motions

A motion for amendment shall not be discussed unless it has been proposed and seconded.

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board.

If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the

substantive motion before the meeting, upon which any further amendment may be moved.

iv) **Rights of reply to motions**

a) Amendments

The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak on it.

b) Substantive/original motion

The director who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

v) **Withdrawing a motion**

A motion, or an amendment to a motion, may be withdrawn.

vi) **Motions once under debate**

When a motion is under debate, no motion may be moved other than:

- an amendment to the motion;
- the adjournment of the discussion, or the meeting;
- that the meeting proceed to the next business;
- that the question should be now put;
- the appointment of an 'ad hoc' committee to deal with a specific item of business;
- that a member/director be not further heard;
- a motion resolving to exclude the public, including the press.

In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a director who has not taken part in the debate and who is eligible to vote.

If a motion to proceed to the next business or that the question be now put, is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

3.8 Motion to Rescind a Resolution

3.8.1 Notice of motion to 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 of Directors may refer the matter to any appropriate Committee or the Chief Executive for recommendation.

3.8.2 When any such motion has been dealt with by the Board of Directors it shall not be competent for any director other than the Chair to propose a motion to

the same effect within six months. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

3.9 Chair of meeting

3.9.1 At any meeting of the Board of Directors the Chair, if present, shall preside. If the Chair is absent from the meeting, the Vice-Chair, if present, shall preside.

3.9.2 If the Chair and Vice-Chair are absent, such independent non-executive director as the directors present shall choose shall preside.

3.10 Chair's ruling

The decision of the Chair 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.

3.11 Quorum

3.11.1 No business shall be transacted at a meeting unless at least one-third of the whole number of directors (including at least one executive director and one non-executive director) is present.

3.11.2 An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

3.11.3 If a director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see Standing Order No.7) 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.

3.12 Voting

3.12.1 Save as provided in Standing Orders 3.13 - Suspension of Standing Orders and 3.14 - 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 directors present and voting on the question. In the case of an equal vote, the person presiding (ie: the Chair of the meeting) shall have a second, and casting vote.

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

3.12.3 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).

3.12.4 If a director so requests, their vote shall be recorded by name.

- 3.12.5 In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.12.6 An officer who has been formally appointed by the Board of Directors to act up for an executive director during a period of incapacity or temporarily to fill an executive director vacancy shall be entitled to exercise the voting rights of the executive director.
- 3.12.7 An officer attending the Board of Directors 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.
- 3.12.8 For the voting rules relating to joint members see Standing Order 2.5.

3.13 Suspension of Standing Orders

- 3.13.1 Except where this would contravene any provision of the constitution or any direction made by the Independent Regulator or the rules relating to the Quorum (SO 3.11), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the directors of the Board of Directors are present (including at least one executive director and one non-executive director) and that at least two-thirds of those directors present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Board of Directors' minutes.
- 3.13.2 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and directors of the Trust.
- 3.13.3 No formal business may be transacted while Standing Orders are suspended.
- 3.13.4 The Audit Committee shall review every decision to suspend Standing Orders.

3.14 Variation and amendment of Standing Orders

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

- upon a notice of motion under Standing Order 3.5;
- upon a recommendation of the Chair 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 the Independent Regulator.

3.15 Record of Attendance

The names of the Directors present at the meeting shall be recorded, and supplied to the Council of Governors on request.

3.16 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 Chair considers discussion appropriate.

3.17 Observers at Board of Directors meetings

- 3.17.1 The Board of Directors 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 of Directors' meetings and may change, alter or vary these terms and conditions as it deems fit.

3.18 Admission of public and the press

- 3.18.1 The public and representatives of the Press shall be afforded facilities to attend all formal meetings of the Board of Directors except where the Board of Directors resolves:

3.18.1.1 That members of the public and representatives of the Press be excluded from the remainder of a meeting having regard to the confidential nature of the business to be transacted or for special reasons stated in the resolution and arising from the business or nature of the proceedings, publicity on which would be prejudicial to the public; and/or

3.18.1.3 That in the interests of public order the meeting adjourn for a period to be specified in such resolution to enable the Board of Directors to complete business without the presence of the public.

- 3.18.2 Without prejudice to the power to exclude members of the public and representatives of the press, the Chair shall give directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the business of the Board of Directors shall be conducted without interruption or disruption.

3.18.3 Use of Mechanical or Electrical Equipment for Recording or Transmission of Meetings

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

3.18.4 Business proposed to be transacted when the press and public have been excluded from a meeting

Matters to be dealt with by the Board of Directors following the exclusion of representatives of the press, and other members of the public, as provided above, shall be confidential to the members of the Board.

Directors and officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Trust, without the express permission of the Board of Directors. This prohibition shall apply equally to the content of any discussion during the Board of Directors meeting which may take place on such reports or papers.

3.18.5 Public attendance at Board of Directors meetings shall not be construed as allowing them any right to speak at the meeting. However, at the discretion of the Chair, individuals may be invited to contribute views on specific items, or to ask questions regarding the affairs of the Trust.

3.19 Exclusion from meetings

3.19.1 The Chair may exclude any person present from a meeting of the Board of Directors if they are interfering or preventing the proper conduct of a meeting.

3.19.2 The Chair may exclude any person present from a meeting of the Board of Directors for a breach of Standing Orders relating to the conduct of meetings.

4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

4.1 Subject to the Regulatory Framework and such guidance as may be issued by the Independent Regulator, the Board of Directors may make arrangements for the exercise, on behalf of the Board of Directors, of any of its functions subject to such restrictions and conditions as the Board of Directors thinks fit by:

- a) a committee or sub-committee appointed by virtue of Standing Order 5 or by a director or officer of the Trust; or
- b) another third party body. Where a function is delegated to another Trust, then that Trust or health service body exercises the function in its own right; the receiving Trust has responsibility to ensure that the proper delegation of the function is in place;

in each case subject to contractual arrangements and such restrictions and conditions as the Board of Directors thinks fit to ensure appropriate oversight.

4.2 Emergency Powers

The powers which the Board of Directors has retained to itself within the Reservation of Powers to the Board of Directors may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two non-executive directors. The exercise of such powers by the Chief Executive and the Chairperson shall be reported to the next formal meeting of the Board of Directors for ratification.

4.3 Delegation to Committees

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

When the directors are not meeting as the Board of Directors in public session it shall operate as a committee and may only exercise such powers as may have been delegated to it by the Board of Directors in public session.

4.4 Delegation to officers

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

4.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals, which shall be considered and approved by the Board of Directors. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors.

4.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Director of Finance or other executive director to provide information and advise the Board of Directors in accordance with the Regulatory Framework, any statutory requirements or provisions required by the Independent Regulator. Outside these statutory requirements the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.

4.5 Schedule of Matters Reserved to the Board of Directors and Scheme of Delegation of Powers

4.5.1 The arrangements made by the Board of Directors as set out in the "Schedule of Reservation of Powers to the Board of Directors and Scheme of Delegation" shall have effect as if incorporated in these Standing Orders.

5. COMMITTEES

5.1 Appointment of Committees

Subject to the Regulatory Framework and such guidance as may be issued by the Independent Regulator, the Board of Directors may appoint committees of the Board of Directors.

The Board of Directors shall determine the membership and terms of reference of committees and sub-committees and shall if it requires to, receive and consider reports of such committees subject to contractual arrangements and such restrictions and conditions as the Board of Directors thinks fit to ensure appropriate oversight.

5.2 Joint Committees

5.2.1 Joint committees may be appointed by the Board of Directors by joining together with one or more bodies (including the Council of Governors) consisting of, wholly or partly of the directors of the Trust or other bodies, or wholly of persons who are not directors of the Trust or other bodies in question.

5.2.2 Any committee or joint committee appointed under this Standing Order may, subject to such guidance as may be issued by the Independent Regulator or the Board of Directors or other bodies in question, appoint sub-committees consisting wholly or partly of members of the committee or joint committee (whether or not they are directors of the Trust or bodies in question) or wholly of persons who are not directors of the Trust or bodies in question or the committee of the Trust or bodies in question.

5.3 Applicability of Standing Orders and Standing Financial Instructions to Committees

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 Board of Directors. In which case the term “Chair” is to be read as a reference to the Chair of other committee as the context permits, and the term “director” is to be read as a reference to a member of the committee also as the context permits.

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 of Directors), as the Board of Directors shall decide and shall be in accordance with any legislation and regulation or direction issued by the Independent Regulator. Such terms of reference shall have effect as if incorporated into 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 of Directors.

5.6 Approval of Appointments to Committees

The Board of Directors shall approve the appointments to each of the committees which it has formally constituted. Where the Board of Directors determines, and regulations permit, that persons, who are neither directors nor officers, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board of Directors as defined by the Regulatory Framework. The Board of Directors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.

5.7 Appointments for Statutory functions

Where the Board of Directors is required to appoint persons to a committee and/or to undertake statutory functions as required by the Independent Regulator, and where such appointments are to operate independently of the Board of Directors such appointment shall be made in accordance with the regulations and guidance made by the Independent Regulator.

5.8 Committees established by the Board of Directors

The committees, sub-committees, and joint-committees established by the Board of Directors shall include an Audit Committee, Remuneration and Terms of Service Committee and a Nominations and Conduct Committee.

5.9 Other Committees

The Board of Directors may also establish such other committees as required to discharge the Trust's responsibilities. The Board of Directors may elect to change the committees, sub-committees and joint committees of the Board of Directors, as necessary, without requirement to amend these Standing Orders.

5.10 Confidentiality

5.10.1 A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.

5.10.2 A director of the Trust or a member of a committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

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

6.1 Policy statements: general principles

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

6.2 Specific Policy statements

Notwithstanding the application of Standing Order 6.1 above, these Standing Orders and the Standing Financial Instructions must be read in conjunction with the following Policy statements:

- the Standards of Business Conduct Policy;
- the staff Disciplinary and Appeals Procedures

Both of which shall have effect as if incorporated in these Standing Orders.

6.3 Standing Financial Instructions

Standing Financial Instructions adopted by the Board of Directors in accordance with the Financial Regulations shall have effect as if incorporated in these Standing Orders.

6.4 Specific guidance

Notwithstanding the application of Standing Order 6.1 above, these Standing Orders and the 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.

7. DUTIES AND OBLIGATIONS OF DIRECTORS AND SENIOR MANAGERS UNDER THESE STANDING ORDERS

7.1 Declaration of Interests

7.1.1 Requirements for Declaring Interests and applicability to Directors

The Constitution requires directors to declare interests to the Board of Directors. All existing directors should declare such interests. Any directors appointed subsequently should do so on appointment.

7.1.2 Interests which are relevant and material

- (i) 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;
 - k) Any connection with a voluntary or other organisation contracting for NHS services;
 - l) Research funding/grants that may be received by an individual or their department;
 - m) Interests in pooled funds that are under separate management;
 - n) 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;
 - o) Membership of clubs, societies or organisations whose purpose may include furthering the business or personal interests of their members by undeclared or informal means;

- p) Any other commercial interest in the decision before the meeting.
- (ii) Any director who comes to know that the Trust has entered into or proposes to enter into a contract in which he or any person connected with him (as defined in Standing Order 7.3 below and elsewhere) has any actual or potential pecuniary, personal or family interest, direct or indirect, the director shall declare his interest by giving notice in writing of such fact to the Trust as soon as practicable.

7.1.3 **Advice on Interests**

If directors have any doubt about the relevance of an interest, this should be discussed with the Chair of the Trust or with the Secretary.

Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

There is no requirement for the interests of Directors' family or close personal relationships to be declared. However Standing Order 7 requires that the interest of directors' family or close personal relationships, if living together, in contracts should be declared.

7.1.4 **Recording of Interests in Board of Directors' minutes**

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

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

It is the obligation of the director to inform the Secretary in writing within 7 days of becoming aware of the existence of a relevant or material interest. The Secretary will amend the Register upon receipt within 5 working days.

7.1.5 **Publication of declared interests in Annual Report**

Directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Board of Directors' annual report. The information should be kept up to date for inclusion in succeeding annual reports.

7.1.6 **Conflicts of interest which arise during the course of a meeting**

During the course of a Board of Directors meeting, if a conflict of interest is established, the director concerned should withdraw from the meeting and play no part in the relevant discussion or decision. (See overlap with Standing Order 7.3)

7.2 **Register of Interests**

- 7.2.1 The Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Board of Directors or Committee members. In particular the Register will include details of all directorships and other relevant and material interests (as defined in Standing Order 7.1.2) which have been declared by both executive and non-executive directors.
- 7.2.2. These details will be kept up to date by means of a quarterly review of the Register in which any changes to interests declared during the preceding three months will be incorporated.
- 7.2.3 The Register will be available to the public and the Secretary will take reasonable steps to bring the existence of the Register to the attention of local residents and to publicise arrangements for viewing it.

7.3 Exclusion of Directors in proceedings on account of pecuniary interest

7.3.1 Definition of terms used in interpreting 'Pecuniary' interest

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, or a nominee of his, 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 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 or any person connected with him has any beneficial interest in the securities of a company of which he or such person appears as a member, or
- b) any interest that he or any person connected with him may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him in relation to considering or voting on that contract, or

- c) those securities of any company in which he (or any person connected with him) 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 7.1.2 (ii).

7.3.2 Exclusion in proceedings of the Board of Directors

- (i) Subject to the following provisions of this Standing Order, if a director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- (iii) The Board of Directors may exclude a director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which he has a pecuniary interest is under consideration.
- (iv) Any remuneration, compensation or allowance payable to a director shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- (v) This Standing Order applies to a committee or sub-committee and to a joint committee or sub-committee as it applies to the Board of Directors and applies to a member of any such committee or sub-committee (whether or not he is also a director) as it applies to a director of the Trust.

7.4 Standards of Business Conduct

7.4.1 Trust Policy and National Guidance

All Trust staff and directors shall comply with the Trust's Code of Conduct, Standards of Business Conduct Policy, and the requirements of the Regulatory Framework and any guidance issued by the Independent Regulator.

7.4.2 Interest of officers in Contracts

- i) Any director, officer or employee of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which he or any person connected with him (as defined in Standing Order 7.3) 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 as soon as practicable. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- ii) An officer must also declare to the Chief Executive any other employment or business or other relationship of his, or of a member of his family or of

someone with whom he has a close personal relationship, 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.

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

- i) Canvassing of directors 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.
- iv) A director shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a member from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- v) Informal discussions outside appointments panel or committees, whether solicited or unsolicited, should be declared to the panel or committee.

7.4.4 Relatives of Directors or officers

- i) Candidates for any staff appointment shall, when making an application, disclose in writing to the Trust whether they are related to any director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- ii) Every director and officer of the Trust shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that director or officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- iii) Prior to acceptance of an appointment, directors should disclose to the Trust whether they are related to any other director or holder of any office under the Trust.
- iv) Where the relationship to a director of the Trust is disclosed, the Standing Order headed 'Disability of Chair and members in proceedings on account of pecuniary interest' (Standing Order 7) shall apply.
- v) No formal definition of relationship is made. In considering whether a disclosure is required the influence rather than immediacy of the relationship is more important. In case of doubt disclosure should be made.

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

8.1 Custody of Seal

The common seal of the Trust shall be kept by the Chief Executive or his nominated officer in a secure place.

8.2 Sealing of Documents

Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two executive directors duly authorised by the Chief Executive, and not also from the originating department, and shall be attested by them.

8.3 Register of Sealing

The Chief Executive shall keep a register in which he, or his nominated officer, shall enter a record of the sealing of every document.

8.4 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 or nominated officer.

In land transactions, the signing of certain supporting documents will be delegated to officers 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).

9. MISCELLANEOUS

9.1 Standing Orders to be given to Directors and officers

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

9.2 Documents having the standing of Standing Orders

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

9.3 Review of Standing Orders

Standing Orders shall be reviewed by the Board of Directors at least once in each financial year. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

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

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

ANNEX 9 – FURTHER PROVISIONS

- 1 An individual shall not become or continue as a member of the Trust if:
 - 1.1 he is less than twelve years of age at the time of his application to become a member;
 - 1.2 he was formerly employed by the Trust or Applicant NHS Trust and was dismissed for gross misconduct;
 - 1.3 he is ineligible under paragraphs 6, 7 or 8 of the constitution;
 - 1.4 three quarters of the governors present and voting at a meeting of the Council of Governors resolve for reasonable cause that his so doing would or would be likely to:
 - 1.4.1 prejudice the ability of the Trust to fulfill its principal purpose or other of its purposes under this constitution or otherwise to discharge its duties or functions;
 - 1.4.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provisions of goods or services;
 - 1.4.3 adversely affect public confidence in the goods and services provided by the Trust; or
 - 1.4.4 otherwise bring the Trust into disrepute.
- 2 A member shall cease to be a member if he:
 - 2.1 resigns by giving notice in writing to the Secretary;
 - 2.2 is deceased.
- 3 It is the responsibility of each member to ensure his eligibility at all times and not the responsibility of the Trust to do so on his behalf. A member who becomes aware of his ineligibility shall inform the Trust as soon as practicable and that person shall thereupon be removed forthwith from the Register of Members and shall cease to be a member.
- 4 Where the Trust has reason to believe that a member is ineligible for membership or may be disqualified for membership under this constitution, the Secretary shall carry out reasonable enquiries to establish if this is the case.
- 5 Where the Secretary considers that there may be reasons for concluding that a member or an applicant for membership may be ineligible or be disqualified for membership he shall advise that individual of those reasons

in summary form and invite representations for the member or applicant for membership within 28 days or such other reasonable period as the Secretary may determine. Any representations received shall be considered by the Secretary and he shall make a decision on the member's or applicant's eligibility or disqualification as soon as reasonably practicable and shall give notice in writing of that decision to the member or applicant within 14 days of the decision being made.

- 6 If no representations are received within the said period permitted under the preceding paragraph, the Secretary shall be entitled nonetheless to proceed and make a decision on the member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from him.
- 7 Upon a decision being made under paragraphs 5 or 6 of this Annex 9 above that the member is ineligible or disqualified for membership the member's name shall be removed from the Register of Members forthwith and he shall thereupon cease to be a member.
- 8 Any decision made under this Annex 9 to disqualify a member or an applicant for membership may be referred by the member or applicant concerned to the Dispute Resolution Procedure under paragraph 10 of this Annex 9.

9 Indemnity

- 9.1 Governors of the Council of Governors and 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 Council of Governors or Board of Directors or Secretary functions, save where they have acted recklessly. Any reasonable costs arising in this way will be met by the Trust.
- 9.2 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, governors, directors or the secretary to meet all or any liabilities which are properly the liabilities of the Trust under paragraph 9.1 above.

10 Dispute Resolution Procedures

The Trust shall establish appropriate Dispute Resolution Procedures in regard to disputes:

- 10.1 with members and applicants for membership in relation to matters of eligibility and disqualification;
- 10.2 with governors in relation to matters of eligibility, disqualification and termination of tenure;

10.3 between the Council of Governors and the Board of Directors in relation to the interpretations and application of their respective powers and obligations under this constitution; or

10.4 any other dispute arising out of the constitution;

11 Joint Staff Committee

The Trust shall establish a committee as a Joint Staff Committee to perform such functions as set out in the Trust's Recognition and Procedural Agreement Policy for the purposes for negotiation, consultation and information sharing with Trade Union and Professional Organisation representatives. No variation of this arrangement shall take place except under the terms of the Recognition and Procedural Agreement Policy.

12 Amendment of the constitution

12.1 The Trust may make amendments to this constitution with the approval of Monitor.

12.2 No proposal for the amendment of this constitution shall be put to Monitor unless it has been approved by the Board of Directors who shall have consulted with the Council of Governors before so doing.

13 Dissolution of the Trust

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