

**Royal Free London NHS
Foundation Trust**

(A Public Benefit Corporation)

Constitution

Version Control Document¹

Document history

Version Number	Purpose / changes	Author	Date	Signed off
1.0	Royal Free London NHS Foundation Trust Constitution	J Aps	02-04-12	02-04-12
1.1	Page 82, 1.1, inserted text "1 April 2012".	V Jackson	23-05-12	23-05-12
1.2	To take account of the second enactment of the Health & Social Care Act 2012, including Principle purpose, the Regulator to Monitor, and changes to section	J Aps	26-09-12	27-09-12
1.3	To update as per feedback from Monitor 21-11-12. Also corrections to Contents and numbering of sections and pages	J Aps	04-12-12	04-12-12
1.4	Final amendments as per feedback from Monitor 10/12/12	J Aps	14/12/12	14/12/12
1.5	Amendment to Annex 4 (Part 3) to amend appointment of chairman and Non-Executive Directors	Jan Aps	20/01/13	24/01/13
1.6	Amendment to Annex 4 (Part 3) to amend appointment of chairman and Non-Executive Directors. Paragraphs 1.2.4.1 & 1.2.4.3	N Bell	12/02/13	12/02/13
1.7	Remaining amendments to ensure compliance with all H&SC Act changes brought into force in April 2013 Greater detail on conflict of interests of Directors	Jan Aps	21/02/13	Please see note below
2.0	Minor amendments to: remove references to initial period / appointments /applicant NHS trust; terms of authorisation; PCTs; and to amendments to comply with house style	Jan Aps	09/09/13	18/09/13 (CoG) and 26/09/13 (Trust board)
2.1	Amendments to constituencies in relation to the acquisition of Barnet & Chase Farm Hospitals NHS Trust	Jan Aps	01/07/14	21/5/14 (CoG)
3.0	Inclusion of national revision of model rules for elections – as per constitution not considered to be a change, and therefore not requiring sign-off	Jan Aps	01/11/14	Not required
3.1	Removal of disqualification of Healthwatch members from eligibility to stand as governor	Julie Dawes	16/3/16	06/04/16

1.7 was originally approved by the board and council and submitted to Monitor for approval. Following identification of minor errors by Monitor, changes in 1.7 were subsumed in the changes for 2.0 and all signed off by board and council as shown.

NB Full details of changes are recorded in Z: Corporate Affairs / Constitution

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1 Name

The name of the Trust is the "Royal Free London NHS Foundation Trust".

2 Principal purpose

- 2.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the National Health Service in England ("the principal purpose").
- 2.2 The Trust does not fulfil its principal purpose unless, in each Financial Year, its total income from the provision of goods and services for the purposes of the National Health Service in England is greater than its total income from non-principal purpose activities.
- 2.3 The Trust may provide goods and services for any purposes related to
 - 2.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - 2.3.2 the promotion and protection of public health.
- 2.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

3 Other purposes

- 3.1 Without prejudice to the Trust's principal purpose, the further purposes of the Trust are to provide goods and services for purposes related to the provision of health care in accordance with its statutory duties and its provider licence issued by Monitor.
- 3.2 The Trust may carry out research, development and education 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.
- 3.3 The Trust may fulfil the social care functions of any local authority as specified by an agreement made under Section 75 of the 2006 Act.
- 3.4 The Trust may also form, acquire an interest in, invest in, participate in, and dispose of any interest in, joint ventures and partnerships, whether incorporated or not, carrying out any activity the Trust is authorised to carry out.
- 3.5 The Trust may also carry on activities other than those mentioned in paragraphs 3.1 to 3.4 above, subject to any restrictions contained in its provider licence issued by Monitor, and provided they are not in conflict with the Trust's principal purpose and other purposes. These activities must be for the purpose of making additional income available in order to better carry out the Trust's principal purpose.

4 Powers and functions

- 4.1 The Trust is to have all the powers of an NHS foundation trust as set out in the 2006 Act, subject to any restrictions in its provider licence issued by Monitor.

- 4.2 All the powers of the Trust shall be exercised by the Trust Board on behalf of the Trust.
- 4.3 Subject to any restrictions contained in this Constitution or in the 2006 or 2012 Acts, and to paragraph 4.4 below, any of these powers may be delegated to a Committee of Directors or to an Executive Director.
- 4.4 Where the Trust is exercising the functions of the managers pursuant to Section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three (3) or more persons authorised by the Trust Board, each of whom must be neither an Executive Director nor an employee of the Trust.

5 Framework

- 5.1 The affairs of the Trust are to be conducted by the Members, the Council of Governors and the Trust Board in accordance with this Constitution.

5.2 Members

Members must be at least 16 years of age. Members are entitled to:

- 5.2.1 attend public meetings of the Council of Governors;
- 5.2.2 vote in elections to the Council of Governors;
- 5.2.3 stand for election to the Council of Governors; and
- 5.2.4 take such other part in the affairs of the Trust, as provided for in this Constitution.

5.3 Council of Governors

- 5.3.1 The general responsibilities of the Council of Governors are to:
- 5.3.1.1 hold to account the Non-Executive Directors individually and collectively to account for the performance of the Trust Board; and
- 5.3.1.2 represent the interests of the Members of the Trust as a whole and the interests of the public.
- 5.3.2 The specific rights and duties of the Council of Governors are,
- 5.3.2.1 in a general meeting, to:
- a. appoint or remove the Chairman and other the other Non-Executive Directors of the Trust. The removal of any Non-Executive Director shall require the approval of three-quarters of the total number of Governors;
 - b. approve the appointment of the Chief Executive of the Trust by the Non-Executive Directors;
 - c. decide the remuneration and other terms and conditions of office of the Non-Executive Directors;
 - d. appoint the Trust's Auditor; and
 - e. receive and consider the Trust's Annual Accounts, Auditor's reports on those Annual Accounts and the Annual Report from the Trust Board;

- 5.3.2.2 to be consulted by the Trust Board regarding the Board's preparation of the forward planning information for each Financial Year;
 - 5.3.2.3 to determine whether it is satisfied that the carrying on of any proposed non-principal purpose activity will not to any significant extent interfere with the fulfilment by the Trust of the principle purpose or the performance of its other functions;
 - 5.3.2.4 to approve any proposal to increase by five per cent or more the proportion of the Trust's total income in any Financial Year attributable to non principal purpose activities;
 - 5.3.2.5 to approve any significant transaction;
 - 5.3.2.6 to respond as appropriate when consulted by the Trust Board;
 - 5.3.2.7 to require one or more Directors to attend a meeting of the Council of Governors for the purpose 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);
 - 5.3.2.8 to approve any, merger acquisition separation or dissolution application in respect of the Trust before the application is made to Monitor; and
 - 5.3.2.9 to exercise such other powers and to discharge such other duties as may be conferred on the Council of Governors under this Constitution.
- 5.3.3 A Governor may refer a question to the panel appointed by Monitor. The role of the panel is to answer questions raised by NHS foundation trust governors as to whether a trust has failed or is failing to act in accordance with its constitution, or to act in accordance with Chapter 5 of the 2006 Act. A Governor may only refer a question under this paragraph if more than half of the members of the Council of Governors voting approve the referral.

5.4 **Trust Board**

- 5.4.1 The general duty of the Trust Board 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.
- 5.4.2 The business of the Trust is to be managed by the Trust Board, which shall exercise all the powers of the Trust subject to the provisions of the 2006 and 2012 Acts.
- 5.4.3 The Trust Board will ask the Council of Governors to attend a joint meeting annually.

6 Membership and constituencies

The Trust shall have Members, each of whom shall be a Member of one of the following constituencies:

- 6.1 the Public Constituency;
- 6.2 the Patient Constituency; or
- 6.3 the Staff Constituency.

7 Application for membership

- 7.1 Subject to paragraphs 7.6 and 12 below and the provisions of Part 2 of Annex 4, an individual who is eligible to become a Member of the Trust may do so on application to the Trust Secretary, as set out in paragraphs 8 and 9 below.
- 7.2 Subject to paragraph 7.6 below, applicants for membership of the Trust must complete an application in the form prescribed by the Chief Executive or his designated Officer.
- 7.3 Where an individual applies to become a Member of the Public Constituency or Patient Constituency of the Trust, the Trust Secretary shall consider his application for membership as soon as reasonably practicable and in any event within 21 calendar days of its receipt. The Trust Secretary shall be entitled when considering an application for membership to request reasonable evidence of eligibility from the applicant.
- 7.4 Unless the applicant is ineligible or is disqualified from membership, the Trust Secretary shall cause his name to be entered onto the register of Members within 21 calendar days of receipt of his application, and the applicant shall thereupon become a Member.
- 7.5 An individual shall become a Member on the date upon which his name is entered on the register of Members and shall cease to be a Member on the date upon which his name is removed from the register of Members as provided for in this Constitution.
- 7.6 A member of staff who is eligible to become a Member of the Staff Constituency pursuant to paragraph 10 below and who is invited by the Trust to become a Member of the Staff Constituency, shall become a Member of the Staff Constituency without an application being made, unless the individual has informed the Trust Secretary in writing that he does not wish to become a Member.

8 Public Constituency

- 8.1 Subject to paragraph 12 below and to paragraphs 1 to 3 of Part 2 of Annex 4, an individual:
 - 8.1.1 who up to and including 30 September 2014 lives in the area specified in Part 1A of Annex 1 as the area for the Public Constituency, may become or continue as a Member of the Trust; and

- 8.1.2 who from 1 October 2014 lives in an area specified in Part 1B of Annex 1 as an area for a Public Constituency, may become or continue as a Member of the Trust.
- 8.2 Those individuals who live in an area specified for a public constituency are referred to collectively as the "Public Constituency".
- 8.3 The minimum number of Members in each Public Constituency is specified in:
 - 8.3.1 Part 1A of Annex 1 for the period up to and including 30 September 2014; and
 - 8.3.2 Part 1B of Annex 1 for the period from 1 October 2014.

9 Patient Constituency

- 9.1 Subject to paragraphs 11 and 12 below, and to paragraphs 1 to 3 of Part 2 of Annex 4, an individual who has, within the period specified below, attended any of the Trust's hospitals as either a Patient or as a Carer of a minor (as defined in paragraph 9.5 below) may become or continue as a Member of the Trust.
- 9.2 The period referred to above shall be the period of six (6) years immediately preceding the date of an application by the Patient or Carer of a minor to become a Member of the Trust.
- 9.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the "Patient Constituency".
- 9.4 An individual providing care in pursuance of a contract (including a contract of employment) with a Voluntary Organisation, or as a Volunteer does not come within the category of those who qualify for membership of the Patient Constituency.
- 9.5 A Carer of a minor is an individual who is not less than 16 years of age at the date they apply to become a Member and who:
 - 9.5.1 provides care on a regular basis for a Patient who has not attained the age of 16 years; and
 - 9.5.2 does not provide that care by virtue of a contract of employment or other contract with any person; and
 - 9.5.3 has attended a Trust hospital or a site from which the Trust delivers its services in the capacity of Carer of a minor within six (6) years of the date of their application to become a Member.
- 9.6 An individual shall not be eligible to become or continue as a Member of the Patient Constituency as a Carer of a minor if the Patient on whose behalf his is a Carer of a minor:
 - 9.6.1 is a Member; or
 - 9.6.2 is ineligible or disqualified from membership; or
 - 9.6.3 attains the age of 16 years; or

9.6.4 has died.

9.7 Not more than one Carer of a minor may be registered as a Member in relation to each Patient.

9.8 The minimum number of Members of the Patient Constituency is specified in Part 3 of Annex 1.

10 Staff Constituency

10.1 An individual who is employed by the Trust under either a substantive or honorary contract of employment with the Trust may become or continue as a Member of the Trust provided:

10.1.1 he is employed by the Trust under a substantive or honorary contract of employment which has no fixed term, or has a fixed term of at least twelve (12) months; or

10.1.2 he has been continuously employed by the Trust under a substantive or honorary contract of employment for at least twelve (12) months.

10.2 An individual who is eligible to become a Member of the Staff Constituency shall become a Member of the Trust as a Member of the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.

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

10.4 The minimum number of Members of the Staff Constituency is specified in Part 2 of Annex 1.

10.5 For the purposes of paragraph 10.1 above, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Trust, as it applies for the purposes of that Act.

11 Allocation between constituencies

11.1 Where a Member is eligible to be a Member of both the Public Constituency and the Patient Constituency, he will be allocated to the Public Constituency unless he notifies the Trust Secretary in writing that he wishes to be allocated to the Patient Constituency.

11.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a Member of any other constituency than the Staff Constituency.

12 Restriction on membership

12.1 An individual who is a Member of a constituency may not, while membership of that constituency continues, be a Member of any other constituency.

12.2 A Member may resign at any time and will be removed from the relevant register(s) within 30 days of receipt of written notice sent to the Trust Secretary.

12.3 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 Part 2 of Annex 4.

13 Council of Governors – composition

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

13.2 The members of the Council of Governors shall elect a Lead Governor in accordance with the provisions of the Standing Orders for the Council of Governors.

13.3 The composition of the Council of Governors is specified in Annex 2.

13.4 The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency.

13.5 The number of Governors to be elected by each constituency is specified in Annex 2.

14 Council of Governors – election of Governors

14.1 Elections for Elected Governors shall be conducted in accordance with the Model Rules for Elections using the single transferable voting system.

14.2 The Model Rules for Elections, as published from time to time by NHS Providers, form part of this Constitution. The current Model Rules for Elections are attached at Annex 3.

14.3 A subsequent variation of the Model Rules for Elections by NHS Providers shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 46 (amendments to this Constitution). For the avoidance of doubt, the trust cannot amend the Model Rules for Elections.

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

14.5 A person may not vote at an election for or stand for election as an Elected Governor unless within the specified period stated in the Model Rules for Elections he has made a declaration in the form specified in paragraphs 14.6 and/or 14.7 below (as appropriate) setting out the particulars of his qualification to vote or stand as a Member of the constituency for which the election is being held. It is an offence (other than in relation to the Staff Constituency) to knowingly or recklessly make such a declaration which is false in a material particular.

14.6 The specified form of declaration referred to at paragraph 14.5 above regarding the declaration to stand for election as an Elected Governor shall be as set out on the nomination paper referred to in the Model Rules for Elections and shall state as follows:

"I declare that I am resident at the address detailed in Section 1 of this form. I declare that to the best of my knowledge I am eligible to stand for election to the Council of Governors for the seat named in Section 2 of this form. I declare that to the best of my knowledge I am not prevented from standing for election by any of the provisions detailed at Section 3 of this form. I declare that I have stated details of any of my political memberships and any financial interests I have in the Trust at Section 4 of this form. I understand that if any of these declarations are later found

to be false I will if elected lose my seat on the Council of Governors and may also have my membership withdrawn."

- 14.7 The specified form of declaration referred to at paragraph 14.5 above regarding the declaration to vote in elections for Public Governors will be as set out in Rule 21 of the Model Rules for Elections.

15 Council of Governors – Appointed Governors

- 15.1 Each body that appoints individuals to the Council of Governors shall notify to the Trust the process they have individually decided to adopt for their appointment of a Governor to the Council of Governors.

- 15.2 In the case of a number of bodies who together are appointing a single Governor to the Council of Governors, those bodies will notify the trust collectively as to who they wish to appoint to their seat. In the event that these bodies or their successor bodies fail to notify the Trust of who they wish to appoint, the Trust shall invite any one of them to nominate and appoint a single individual to the seat that has been allocated to the said number of bodies.

16 Council of Governors - tenure

16.1 Elected Governors

- 16.1.1 An Elected Governor may hold office for a period of up to three (3) years.
- 16.1.2 An Elected Governor shall cease to hold office if he ceases to be a Member of the constituency by which he was elected.
- 16.1.3 Subject to paragraph 16.1.4 below, an Elected Governor shall be eligible for re-election at the end of his term.
- 16.1.4 An Elected Governor may not hold office for more than nine (9) consecutive years and shall not be eligible for re-election if their re-election would result in their holding office for more than nine (9) consecutive years.

16.2 Appointed Governors

- 16.2.1 An Appointed Governor may hold office for a period of up to three (3) years.
- 16.2.2 An Appointed Governor shall cease to hold office if the relevant sponsoring organisation withdraws its sponsorship of him by notice in writing to the Trust Secretary.
- 16.2.3 An Appointed Governor shall cease to hold office if he ceases to be employed by or associated with the relevant appointing organisation.
- 16.2.4 Subject to the paragraph 16.2.5 below, an Appointed Governor shall be eligible for re-appointment at the end of his term.
- 16.2.5 An Appointed Governor may not hold office for more than nine (9) consecutive years and shall not be eligible for re-appointment if their re-

appointment would result in their holding office for more than nine (9) consecutive years.

16.3 For the purposes of the tenure provisions set out in paragraphs 16.1 and 16.2 above, a "year" means a period of twelve (12) consecutive months.

17 Council of Governors – disqualification and removal

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

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

17.1.2 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; or

17.1.3 a person who within the preceding five (5) years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three (3) months (without the option of a fine) was imposed on him;

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

17.3 Further provisions as to the circumstances in which an individual may not become or continue as a Governor are set out in paragraph 18 below and paragraph 1 of Part 1 of Annex 4.

18 Termination of office of a Governor

18.1 A person holding office as a Governor shall immediately cease to do so if:

18.1.1 they resign by notice in writing to the Trust Secretary; or

18.1.2 they die.

18.2 If a Governor fails to attend three (3) consecutive meetings of the Council of Governors his tenure of office may be terminated immediately unless the Council of Governors is satisfied by a two-thirds majority of those Governors present and voting at a meeting of the Council of Governors that:

18.2.1 the absences were due to reasonable causes; and

18.2.2 the Governor will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable.

18.3 A Governor may be removed from the Council of Governors by a resolution approved by no less than two-thirds of the Governors present and voting at a meeting of the Council of Governors on the grounds that:

18.3.1 they have committed a serious breach of the Code of Conduct, or

18.3.2 they have acted in a manner detrimental to the interests of the Trust; or

18.3.3 the Council of Governors resolves that it is not in the best interests of the Trust for them to continue as a Governor.

18.4 Where there is any disagreement as to whether the proposal for removal or the removal itself is justified, the dispute resolution procedure in paragraph 45 below will apply.

19 Vacancies amongst Governors

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

19.2 Where a vacancy arises amongst the Appointed Governors, the Trust Secretary shall request that the appointing organisation appoints a replacement governor.

19.3 Where a vacancy arises amongst the Elected Governors, the Council of Governors shall decide to:

19.3.1 invite the next highest polling candidate for that seat at the most recent election or (where relevant) by-election, who is willing to take office, and who still qualifies to fill the seat until the next scheduled elections for that seat, at which time the seat will fall vacant and be subject to election; or

19.3.2 leave the seat vacant until the next scheduled elections are held.

19.4 The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

20 Council of Governors – meetings and Standing Orders

20.1 The Chairman of the Trust (i.e. the Chairman of the Trust Board, appointed in accordance with the provisions of paragraph 27.1 below), or in his absence the Vice Chairman (appointed in accordance with the provisions of paragraph 28.1 below) shall preside at meetings of the Council of Governors. If the Chairman and the Vice Chairman are absent temporarily from a meeting of the Council of Governors owing to a declared conflict of interest or otherwise, another Non-Executive Director shall preside over that part of the meeting and the person chairing the meeting shall have a casting vote.

20.2 Ordinary meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons as set out within the Standing Orders for the Council of Governors.

20.3 The Standing Orders for the Council of Governors are attached at Annex 5.

21 Council of Governors - conflicts of interest of Governors

21.1 If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it.

21.2 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.

22 Declaration

- 22.1 An Elected Governor may not vote at a meeting of the Council of Governors until, before attending their first meeting, they have made a declaration in the form specified by the Trust Secretary of the particulars of their qualification to vote as a member of the Council of Governors and that they are not prevented from being a member of the Council of Governors. An Elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors and every agenda for meetings of the Council of Governors will draw this to the attention of the Elected Governors.
- 22.2 Appointed Governors may not vote at a meeting of the Council of Governors until the Trust Secretary has sent a letter confirming their appointment.

23 Council of Governors – travel and other expenses

- 23.1 The Trust may pay reasonable travelling expenses to Governors at rates determined by the Trust. The Council of Governors will have an expenses policy which it will publish.
- 23.2 Governors will not receive remuneration from the Trust, provided that this shall not prevent the remuneration of Governors by their employer.

24 Council of Governors – further provisions

Further provisions with respect to the Council of Governors are set out in Part 1 of Annex 4. These include:

- 24.1 terms of office for Elected Governors;
- 24.2 eligibility to be on the Council of Governors; and
- 24.3 working groups and joint committees.

25 Trust Board – composition

- 25.1 The Trust is to have a Trust Board, which shall comprise both Executive Directors and Non-Executive Directors.
- 25.2 The Trust board is to comprise:
- 25.2.1 a Non-Executive Director Chairman;
- 25.2.2 between five (5) and seven (7) other Non-Executive Directors; and
- 25.2.3 between five (5) and seven (7) Executive Directors.
- 25.3 Subject to the provisions of paragraphs 25.4 to 25.11 below, the Trust Board after consultation with the Council of Governors shall determine its own composition provided that the number of Directors is within the range set out in paragraph 25.2 above and there shall always be a majority of Non-Executive Directors (including the Chairman).

- 25.4 The Trust Board may choose to invite Officers of the Trust or others to attend its meetings either generally or for specific meetings, in accordance with the provisions of the Standing Orders for the Trust Board.
- 25.5 One of the Executive Directors shall be the Chief Executive.
- 25.6 The Chief Executive shall be the Accounting Officer.
- 25.7 One of the Executive Directors shall be the Finance Director.
- 25.8 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 25.9 One of the Executive Directors is to be a registered nurse or a registered midwife.
- 25.10 One of the Non-Executive Directors is to exercise functions for the purposes of University College London.
- 25.11 The post of Executive Director may be held by more than one individual on a job share basis (although the Executive Director position of registered medical practitioner or registered dentist and the Executive Director position of registered nurse or midwife cannot be shared between the two professions) but where such an arrangement is in force the individuals shall only count as one Executive Director and may only exercise one vote between them at any meeting of the Trust Board.

26 Trust Board – qualification for appointment as a Non-Executive Director

Subject to paragraph 28.3 below a person may be appointed as a Non-Executive Director only if:

- 26.1 he is a Member of the Public Constituency; or
- 26.2 he is a Member of the Patient Constituency; or
- 26.3 he exercises functions for the purposes of University College London; and
- 26.4 he is not disqualified by virtue of paragraph 30 below.

27 Trust Board – appointment and removal of the Chairman and other Non-Executive Directors

- 27.1 Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other Non-Executive Directors on the recommendation of the Nominations Committee.
- 27.2 Subject to paragraph 27.4 below, removal of the Chairman or another Non-Executive Director shall require the approval of three-quarters of the entire membership of the Council of Governors.
- 27.3 During any general meeting of the Council of Governors at which the Chairman may be removed, the Vice Chairman shall preside or, if the Vice Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director shall preside.

- 27.4 Removal of the Chairman or another Non-Executive Director shall require a resolution to be submitted by a Governor which must be seconded by not less than five (5) Governors including at least two (2) Elected Governors and two (2) Appointed Governors, and requires the resolution in question to be approved by three-quarters of the members of the Council of Governors.
- 27.5 The Governor sponsoring the resolution mentioned in paragraph 27.4 above shall provide written reasons in support of the resolution to the Chairman or other Non-Executive Director in question, who shall be given the opportunity to respond to such reasons at the meeting of the Council of Governors which the resolution is to be considered and voted upon. If the individual in question fails to attend the meeting without due cause, the meeting may proceed in their absence. The decision to proceed in these circumstances will be at the sole discretion of the person chairing the meeting in question.
- 27.6 In making any decision to remove either the Chairman or a Non-Executive Director under paragraph 27.5 above, the Council of Governors shall take into account the results (if any) of the annual appraisal concerning the Chairman (or, as the case may be) the Non-Executive Director in question.
- 27.7 If any resolution to remove either the Chairman or a Non-Executive Director is not approved at a meeting of the Council of Governors in accordance with paragraph 27.4 above, no further resolution can be put forward to remove such Non-Executive Director, or the Chairman which is based on the same reasons within twelve (12) calendar months of the meeting of the Council of Governors at which the resolution mentioned in paragraph 27.4 above was considered.
- 27.8 The Chairman and Non-Executive Directors will be appointed by the Council of Governors at a general meeting of the Council of Governors in accordance with the procedure set out in Part 3 of Annex 4 after taking account of best practice and the existing range and experience of the members of the Trust Board.

28 Trust Board – appointment of Vice Chairman

- 28.1 Following consultation with the Chairman, the Council of Governors shall appoint one of the Non-Executive Directors as Vice Chairman for such period, not exceeding his term of office as a Non-Executive Director, as the Council of Governors may specify on appointing him.
- 28.2 Any Non-Executive Director so appointed under the provisions of paragraph 28.1 above may at any time resign from the office of Vice Chairman by giving notice in writing to the Trust Secretary. The Council of Governors may thereupon appoint another Non-Executive Director as Vice Chairman in accordance with paragraph 28.1 above.
- 28.3 If the Chairman is unable to discharge his duties as Chairman of the Trust, the Vice Chairman will be the 'acting chairman' of the Trust until such time as the Chairman is able to discharge his duties as Chairman or until a new Chairman is appointed by the Council of Governors in accordance with paragraph 27 above.

29 Trust Board - appointment and removal of the Chief Executive and other Executive Directors

- 29.1 The Non-Executive Directors shall appoint or remove the Chief Executive.

- 29.2 The appointment of the Chief Executive shall require the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors.
- 29.3 A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors. Any such committee may engage external advisors to assist the committee but, for the avoidance of doubt any such external advisors will not be entitled to exercise any voting rights.

30 Trust Board – disqualification

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

- 30.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 30.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 30.3 a person who within the preceding five (5) years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three (3) months (without the option of a fine) was imposed on him;
- 30.4 a person who has not resigned from their membership of the Council of Governors or as a governor or Director of a Health Service Body at least seven (7) days before taking up their post on the Trust Board;
- 30.5 a person who has not resigned from their membership of a local authority's Overview and Scrutiny Committee covering health matters at least seven (7) days before taking up their post on the trust board;
- 30.6 a person who is subject to a disqualification order made under the Company Directors Disqualification Act 1986;
- 30.7 a person whose tenure of office as a chairman or member, governor or director of a Health Service Body was terminated on the grounds that their appointment was not in the interests of the health service in the five (5) years before they seek to join the Trust Board;
- 30.8 a person who has, within the preceding five (5) years, been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
- 30.9 a person who has refused to sign and deliver to the Trust Secretary a statement in the form required by the Trust Board confirming acceptance of the Code of Conduct.

31 Trust Board – meetings, committees and delegation

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

holding a meeting, the Trust Board must send a copy of the minutes to members of the Council of Governors.

31.3 The Trust Board may delegate any of its powers to a Committee of Directors or to an Executive Director, in accordance with the Standing Orders for the Trust Board, the Standing Financial Instructions or Scheme of Delegation.

31.4 The Trust Board shall establish a committee of Non-Executive Directors as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

32 Trust Secretary

32.1 The Trust shall have a Trust Secretary who may be an Officer of the Trust. The Trust Secretary may not be a Governor, the Chief Executive or the Finance Director.

32.2 The Trust Secretary's functions shall include:

32.2.1 acting as Trust Secretary to the Council of Governors and the Trust Board, and any working groups or committees of the Council of Governors and/or the Trust Board, as may be required;

32.2.2 arranging for the calling of all meetings of the Council of Governors and the Trust Board, and keeping the signed minutes of those meetings;

32.2.3 keeping and maintaining the register of members and other registers and books required by this Constitution to be kept and maintained;

32.2.4 having charge of the common seal of the Trust;

32.2.5 publishing to members in appropriate form information which they should have about the Trust's affairs;

32.2.6 preparing and sending to Monitor and any other statutory body all returns which are required to be made; and

32.2.7 preparing and storing minutes of every meeting of the Council of Governors and the Trust Board.

33 Trust Board – Standing Orders

The Standing Orders of the Trust Board are attached at Annex 6.

34 Trust Board - conflicts of interest of Directors

34.1 The duties that a Director of the Trust has by virtue of being a Director include in particular –

34.1.1 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.

34.1.2 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.

- 34.2 The duty referred to in sub-paragraph 34.1.1 is not infringed if –
- 34.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 34.2.2 The matter has been authorised in accordance with the constitution.
- 34.3 The duty referred to in sub-paragraph 34.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 34.4 In sub-paragraph 34.1.2, “third party” means a person other than –
- 34.4.1 the Trust, or
 - 34.4.2 a person acting on its behalf.
- 34.5 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.
- 34.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 34.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 34.8 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.
- 34.9 A Director need not declare an interest –
- 34.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 34.9.2 If, or to the extent that, the Directors are already aware of it;
 - 34.9.3 If, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered –
 - 34.9.3.1 by a meeting of the Trust Board, or
 - 34.9.3.2 by a committee of the Directors appointed for the purpose under the Constitution.
- 34.10 The Standing Orders of the Trust Board shall make provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.
- 34.11 In the event of such an interest being disclosed, the Director may be asked to withdraw from the meeting and in any event shall play no part in the relevant discussion or decision and shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

34.12 Details of any such interest shall be recorded in the register of the interests of members of the Trust Board held by the Trust Secretary.

35 Trust Board – remuneration and terms of office

35.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other Non-Executive Directors on the recommendation of the Nominations Committee.

35.2 The Trust shall establish a committee of not less than three Non-Executive Directors which shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

35.3 The remuneration and allowances to be provided shall take into consideration such relevant guidance as may be issued from time to time by Monitor, the Department of Health and/or the Foundation Trust Network.

36 Registers

36.1 The Trust shall have and maintain:

36.1.1 a register of Members showing, in respect of each Member, the constituency to which he belongs;

36.1.2 a register of the members of the Council of Governors;

36.1.3 a register of interests of the members of the Council of Governors;

36.1.4 a register of the members of the Trust Board; and

36.1.5 a register of interests of the members of the Trust Board.

36.2 The Trust Secretary shall be responsible for compiling and maintaining the registers in paragraph 36.1 above and the registers may be kept in either paper or electronic form. Admission to and removal from any register shall be in accordance with the provisions of this Constitution.

37 Registers – inspection and copies

37.1 The Trust shall make the registers specified in paragraph 36 above available for inspection by members of the public, except in the circumstances set out in paragraph 37.2 below or as otherwise prescribed by regulations including, for the avoidance of doubt, the Public Benefit Corporation (Register of Members) Regulations 2004 (SI2004/539).

37.2 The Trust shall not make any part of the register of members available for inspection by members of the public which shows details of:

37.2.1 any Member of the Patient Constituency; or

37.2.2 any other Member of the Trust, if the Member so requests.

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

- 37.3.1 subject to paragraphs 37.4 and 37.5 below, they are to be available for inspection free of charge at all reasonable times; and
- 37.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 37.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.
- 37.5 If the person requests a copy of their own entry on the register of Members, this shall be provided free of charge; if a person is requesting a full copy of the public register of Members, the Trust may impose a reasonable charge for doing so.

38 Documents available for public inspection

- 38.1 The Trust shall make the following documents available for inspection by Members of the public free of charge at all reasonable times:
 - 38.1.1 a copy of the current Constitution;
 - 38.1.2 a copy of the latest Annual Accounts and of any report of the Auditor on them;
 - 38.1.3 a copy of the latest Annual Report;
 - 38.1.4 a copy of the latest Forward Plan; and
 - 38.1.5 a copy of the membership recruitment and stakeholder engagement strategy.
- 38.2 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:
 - 38.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
 - 38.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 38.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 38.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 38.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
 - 38.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time) 65KA (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;

- 38.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 38.2.8 a copy of any final report published under section 65I (administrator's final report);
 - 38.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
 - 38.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 38.3 Any person who requests a copy of or extract from any of the documents listed in paragraphs 38.1 or 38.2 above is to be provided with a copy or extract.
- 38.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

39 Auditor

- 39.1 The Trust shall have an Auditor.
- 39.2 A person may only be appointed Auditor if he satisfies the requirements of paragraphs 23 (3) or 23 (4) of Schedule 7 of the 2006 Act.
- 39.3 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.
- 39.4 The Accounting Officer shall ensure that the Auditor carries out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any guidance or best practice advice issued by Monitor on standards, procedures and techniques to be adopted.

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 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 Accounting Officer shall cause the Trust to:

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

40.6.2 once the Trust has done so, send copies of those documents to Monitor.

41 Annual Report, Forward Plans and non-NHS work

41.1 The Trust shall prepare an Annual Report and send it to Monitor each Financial Year.

41.2 The Trust shall give information as to its forward planning in respect of each Financial Year to Monitor.

41.3 The Forward Plan shall be prepared by the Directors.

41.4 In preparing the Forward Plan, 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 paragraph 41.5.1 above 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 fulfilment 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 If the Trust 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, it may implement the proposal only if more than half of the members of the Council of Governors of the Trust present and voting at a meeting of the Council of Governors approve its implementation.

42 Presentation of the Annual Accounts and reports to the Governors and Members

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; and

42.1.3 the Annual Report.

42.2 The documents shall also be presented to the Members of the Trust at the annual member's meeting by at least one member of the Trust Board in attendance.

42.3 The trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 42.1 with the annual members' meeting.

43 Instruments

43.1 The Trust shall have a seal.

43.2 The seal shall not be affixed except under the authority of the Trust Board.

44 Indemnity

Members of the Council of Governors and the Trust Board and the Trust Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly or negligently. Any costs arising in this way will be met by the Trust. The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the members of the Council of Governors, the Trust Board and the Trust Secretary.

45 Dispute resolution procedures

Membership disputes

45.1 In the event of any dispute about the entitlement to membership, the dispute shall be referred to the Trust Secretary who shall make a determination on the point in issue. If the Member or applicant (as the case may be) is aggrieved at the decision of the Trust Secretary he may appeal in writing within 14 (fourteen) days of the Trust Secretary's decision to the Chairman and Chief Executive, whose decision shall be final.

Other disputes

45.2 In the event of any dispute in relation to this Constitution that concerns anything other than membership, the dispute shall be referred to the Chairman and Chief Executive who shall make a determination on the point in issue and whose decision shall be final.

45.3 In the event of a dispute being referred to the Chairman and Chief Executive under SO 4.12 of Annex 5 of this Constitution and a determination being made in accordance with the procedure set out in paragraph 45.2 above, if the Governor in question is aggrieved at the decision of the Chairman and Chief Executive he may apply in writing within seven (7) days to the Trust Board for the decision to be referred to an independent assessor. The independent assessor will then consider the evidence and conclude whether the proposed removal is reasonable or otherwise.

45.4 On receipt of an application under paragraph 45.3 above the Trust Board and the applicant Governor will co-operate in good faith to agree on the appointment of the independent assessor. If the parties fail to agree on an independent assessor within 21 days of the date upon which the application is received by the Trust Board the independent assessor will be nominated by the Trust's lead commissioning organisation. The independent assessor's decision will be binding and conclusive on the parties.

Disputes between the Council of Governors and the Trust Board

- 45.5 In the event of dispute between the Council of Governors and the Trust Board:
- 45.5.1 in the first instance the Chairman on the advice of the Trust Secretary, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute;
 - 45.5.2 if the Chairman is unable to resolve the dispute he shall appoint a committee comprising equal numbers of Directors and Governors to consider the circumstances and to make recommendations to the Council of Governors and the Trust Board with a view to resolving the dispute (the "special committee");
 - 45.5.3 if the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute back to the Trust Board who shall make the final decision.

46 Amendments to this Constitution

- 46.1 The Trust may make amendments of its Constitution only if –
- 46.1.1 More than half of the members of the Council of Governors voting approve the amendments, and
 - 46.1.2 More than half of the members of the Trust Board voting approve the amendments.
- 46.2 Amendments made under paragraph 46.1 above 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.
- 46.3 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) –
- 46.3.1 At least one member of the Council of Governors must attend the next annual members' meeting and present the amendment, and
 - 46.3.2 The Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 46.4 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.
- 46.5 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.

47 Mergers etc. and significant transactions

- 47.1 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.
- 47.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.
- 47.3 The Constitution does not contain any descriptions of the term 'significant transaction' for the purposes of section 51A of the 2006 Act (Significant Transactions).

48 Interpretation and definitions

- 48.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act.
- 48.2 References in this Constitution to legislation include all amendments, replacements or re-enactments made and include all subordinate legislation made thereunder.
- 48.3 Headings are for ease of reference only and are not to affect interpretation.
- 48.4 References to paragraphs are to paragraphs in this Constitution. Where there is reference to a paragraph or part in an Annex to this Constitution it shall be a reference to a paragraph or part in that Annex unless the contrary is expressly stated or the context otherwise so requires.
- 48.5 All Annexes referred to in this Constitution form part of it.
- 48.6 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice versa.
- 48.7 In this Constitution:

“2006 Act”

means the National Health Service Act 2006 as amended by the 2012 Act;

“2012 Act”

means the Health and Social Care Act 2012;

"Accounting Officer"

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

"Annual Accounts"

means those accounts prepared by the Trust pursuant to paragraph 25 of Schedule 7 to the 2006 Act;

"Annual Report"

means a report prepared by the Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act;

"Appointed Governor"

means a Commissioner Governor, a Local Authority Governor, a Partnership Governor, or a University Governor;

"Audit Committee"

means a committee of the Trust Board established pursuant to paragraph 31.4 of this Constitution;

"Auditor"

means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph 39 of this Constitution;

"Board"

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

"Carer of a minor"

shall have the meaning ascribed to it in paragraph 9.5 of this Constitution;

"Chairman"

means the Chairman of the Trust. The expression "the chairman" shall be deemed to include the Vice Chairman or any other Non-Executive Director appointed if the Chairman and/or Vice Chairman is absent from a meeting or is otherwise unavailable;

"Chief Executive"

means the chief officer of the Trust;

"Clear Day"

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

"Code of Conduct"

means any code of conduct which the Trust may publish from time to time to govern or guide the conduct of its Council of Governors, Directors or Officers of the Trust;

"Commissioner Governor"

means a member of the Council of Governors appointed by one or more clinical commissioning groups and/or the National Health Service Commissioning Board (trading as NHS England) for which the Trust provides goods and/or services;

"Committee of Directors"

means a committee of individuals who are members of the Trust Board;

"Council of Governors"

means the Council of Governors as constituted in accordance with this Constitution;

"Director"

means a member of the Trust Board and for the avoidance of doubt includes the Chairman, Executive Directors, and Non-Executive Directors only;

"Elected Governor"

means a Public Governor, a Patient Governor or a Staff Governor;

"Executive Director"

means an executive member of the Trust Board;

"Finance Director"

means the chief finance officer of the Trust;

"Financial Year"

Means any twelve month period beginning on 1 April;

"Forward Plan"

means the document prepared by the Trust pursuant to paragraph 27 of Schedule 7 of the 2006 Act;

"Health Service Body"

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

"Lead Governor"

means the Governor selected by the Council of Governors in accordance with the provisions of SO 5 of Annex 5 of this Constitution;

"Local Authority Governor"

means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of the area set out in Part 1A or, as the case maybe, Part 1B of Annex 1 to this Constitution;

"Member"

means a member of the Trust and the term "membership" shall be construed accordingly;

"member of the Council of Governors" and "Governor"

means a person who has been elected or appointed to the Council of Governors;

"Model Rules for Elections"

means the election rules set out in Annex 3 of this Constitution;

"Monitor"

Monitor is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;

"Nominations Committee"

means a committee appointed pursuant to paragraph 1.2.2 of Part 3 of Annex 4 of this Constitution;

"Non-Executive Director"

means a non-executive member of the Trust Board;

"Officer"

means an employee of the Trust in any position holding a paid appointment or office with the Trust, save for Non – Executive Directors;

"Overview and Scrutiny Committee"

means a local authority overview and scrutiny committee established pursuant to Section 21 of the Local Government Act 2000;

"Patient"

means any person whose name is recorded as a patient on the Trust's patient administration system or other record maintained by the Trust for the purpose of identifying patients of the Trust;

“Patient Constituency“

has the meaning ascribed to it in paragraph 9 of this Constitution;

"Patient Governor"

means a member of the Council of Governors elected by Members of the Patient Constituency;

”Public Constituency”

has the meaning ascribed to it in paragraph 8 of this Constitution;

"Public Governor"

means a member of the Council of Governors elected by Members of the Public Constituency;

"Scheme of Delegation"

means the Trust's reservation of powers to the Trust Board and delegation of powers;

"Sex Offenders Order"

means either:

- (a) a Sexual Offences Prevention Order made pursuant to Section 104 or Section 105 of the Sexual Offences Act 2003; or
- (b) an Interim Sexual Offences Prevention Order made pursuant to Section 109 of the Sexual Offences Act 2003; or
- (c) a Risk of Sexual Harm Order made pursuant to Section 123 of the Sexual Offences Act 2003; or
- (d) an Interim Risk of Sexual Harm Order made pursuant to Section 126 of the Sexual Offences Act 2003;

"Sex Offenders Register"

means the notification requirements set out in Part 2 of the Sexual Offences Act 2003, commonly known as the Sex Offenders Register;

“Staff Constituency”

has the meaning ascribed to it in paragraph 10 of this Constitution;

"Staff Governor"

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

"Standing Financial Instructions"

means the Trust's Standing Financial Instructions which regulate the conduct of Directors and Officers in relation to all financial matters with which they are concerned and the term "SFI" shall be construed accordingly;

"Standing Orders for the Trust Board"

means the Standing Orders set out in Annex 6 of this Constitution and the term "SO" shall be construed accordingly;

"Standing Orders for the Council of Governors"

means the Standing Orders set out in Annex 5 and the term "SO" shall be construed accordingly;

"Trust"

means the Royal Free London NHS Foundation Trust;

"Trust Board"

Means the board of Directors of the Trust as constituted pursuant to this Constitution and the 2006 and 2012 Acts;

"Trust head office"

means the principal place of business of the Trust: Pond Street, London NW3 2QG or such place as the Trust Board decides;

"Trust hospital"

means all or any hospital or other Patient care facilities where the Trust provides services from time to time and designated by the Trust as falling within this definition;

"Trust Secretary"

means the secretary of the trust appointed in accordance with paragraph 32 of this Constitution;

"University Governor"

means a member of the Council of Governors appointed by University College London pursuant to paragraph 3.3 of Annex 2 of this Constitution;

"Vice Chairman"

means the Non-Executive Director appointed pursuant to paragraph 28 of this Constitution. The Vice Chairman shall fulfil the role of the senior independent director;

"Voluntary Organisation"

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

"Volunteer"

means a person who provides goods or services to the Trust, who is engaged by a Voluntary Organisation or other organisation including the Trust to provide such goods or services but who is not employed to do so.

ANNEX 1 – THE CONSTITUENCIES

Part 1A – THE PUBLIC CONSTITUENCY (for the period up to and including 30 September 2014)

- 1 The Trust shall have a single Public Constituency made up of all the electoral ward areas comprising the areas covered by the London Borough of Barnet and the London Borough of Camden and, for the avoidance of doubt, comprising any successor authority of either the London Borough of Barnet or the London Borough of Camden.
- 2 The minimum number of Members of the Public Constituency of the Trust shall be 200.

Part 1B – THE PUBLIC CONSTITUENCIES (for the period from 1 October 2014)

NAME OF CONSTITUENCY	AREA	MINIMUM NUMBER OF MEMBERS
Camden, Barnet, Enfield and Hertfordshire	The electoral ward areas comprising the areas covered by the London Borough of Camden, the London Borough of Barnet, the London Borough of Enfield, and Hertfordshire County Council and, for the avoidance of doubt, comprising any successor authority of either the London Borough of Camden, the London Borough of Barnet, the London Borough of Enfield, or Hertfordshire County Council.	180
Rest of England	All other electoral ward areas in England save those included in the Camden, Barnet, Enfield and Hertfordshire public constituency.	20

- 2 The minimum number of Members of the Public Constituency of the Trust shall 200.

PART 2 – THE STAFF CONSTITUENCY

- 1 The minimum number of Members of the Staff Constituency of the Trust shall be 1,000.

PART 3 – THE PATIENT CONSTITUENCY

- 1 The minimum number of Members of the Patient Constituency of the Trust shall be 200.

ANNEX 2 – COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors of the Trust is to comprise:

1 Elected Governors:

- 1.1 Eight (8) Public Governors, of which:
 - 1.1.1 Seven (7) Governors shall be elected from the Camden, Barnet, Enfield and Hertfordshire Public Constituency; and
 - 1.1.2 One (1) Governor shall be elected from the Rest of England Public Constituency.
- 1.2 Eight (8) Patient Governors elected from the Patient Constituency; and
- 1.3 Six (6) Staff Governors elected from the Staff Constituency, of which:
 - 1.3.1 one (1) Governor will be an individual employed by the Trust and working in a role based at the Royal Free Hospital;
 - 1.3.2 one (1) Governor will be an individual employed by the Trust and working in a role based at Barnet Hospital;
 - 1.3.3 one (1) Governor will be an individual employed by the Trust and working in a role based at Chase Farm Hospital;
 - 1.3.4 one (1) Governor will be a nurse or midwife – who is an individual employed by the Trust and working in a role that requires the individual to be registered by the Nursing and Midwifery Council;
 - 1.3.5 one (1) Governor will be an allied health professional – who is an individual employed by the Trust and who is subject to professional registration with the Professional Standards Authority for Health and Social Care, except those who are doctors, nurses or midwives; and
 - 1.3.6 One (1) Governor will be a doctor – who is an individual employed by the Trust and working in a role that requires the individual to be registered with the General Medical Council.
- 1.4 The aggregate number of Public Governors and Patient Governors is to be more than half of the total membership of the Council of Governors.

2 Election constraint

- 2.1 Notwithstanding the provisions of paragraph 1.3.1 to 1.3.6 above, no more than four (4) individuals may be elected from those individuals who are employed by the Trust and who are working in a role based at:
 - 2.1.1 Royal Free Hospital; or
 - 2.1.2 Barnet Hospital and Chase Farm Hospital.

- 2.2 The electoral constraints set out in paragraph 2.1 above will apply to all Staff Governor seats on the Council of Governors, regardless of the number of Staff Governors being elected at any particular time.

3 Appointed Governors

Nine (9) seats on the Council of governors shall be allocated by appointment, as follows:

- 3.1 Four (4) Commissioner Governors, of which:

3.1.1 Three (3) shall be appointed to represent: Barnet, Camden, Enfield, Haringey and Islington, Herts Valleys, East and North Herts clinical commissioning groups or their successor organisations; and

3.1.2 one (1) Governor shall be appointed by the National Health Service Commissioning Board (trading as NHS England) or its successor organisation.

- 3.2 Four (4) Local Authority Governors, of which:

3.2.1 one (1) Governor shall be appointed by London Borough of Barnet or its successor organisation;

3.2.2 one (1) Governor shall be appointed by London Borough of Camden or its successor organisation;

3.2.3 one (1) Governor shall be appointed by London Borough of Enfield or its successor organisation; and

3.2.4 one (1) Governor shall be appointed by Hertfordshire County Council or its successor organisation on behalf of itself and all District/ Borough Councils in Hertfordshire.

- 3.3 One (1) University Governor who shall be appointed by University College London or its successor organisation.

ANNEX 3 –THE MODEL RULES FOR ELECTIONS (2014)

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1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

“*lead governor*” means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (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.

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

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

12. Declaration of eligibility

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

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

13. Signature of candidate

- 13.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:
- (a) they wish to stand as a candidate,
 - (b) their declaration of interests as required under rule 11, is true and correct, and
 - (c) their declaration of eligibility, as required under rule 12, is true and correct.
- 13.2 Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will need to be complied with by the candidate.

14. Decisions as to the validity of nomination

- 14.1 Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
- (a) decides that the candidate is not eligible to stand,
 - (b) decides that the nomination form is invalid,
 - (c) receives satisfactory proof that the candidate has died, or
 - (d) receives a written request by the candidate of their withdrawal from candidacy.
- 14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:
- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
 - (e) that the paper is not signed and dated by the candidate, if required by rule 13.
- 14.3 The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- 14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

PART 5: CONTESTED ELECTIONS

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

20. The ballot paper

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

20.2 Every ballot paper must specify:

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

("declaration of identity")

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

- 21.2 The voter must be required to return his or her declaration of identity with his or her ballot.
- 21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

- 22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2 The list is to include, for each member:
- (a) a postal address; and,
 - (b) the member’s e-mail address, if this has been provided
- to which his or her voting information may, subject to rule 22.3, be sent.
- 22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

23. Notice of poll

- 23.1 The returning officer is to publish a notice of the poll stating:
- (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
 - (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
 - (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
 - (g) the address for return of the ballot papers,

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

24. Issue of voting information by returning officer

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

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

("postal voting information").

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

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

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

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

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

26. E-voting systems

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

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

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

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

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

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

26.5

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

- (a) require a voter to
 - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) instructions on how to vote and how to make a declaration of identity,

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

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

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

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

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

29. Spoilt ballot papers and spoilt text message votes

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

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

29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:

- (a) is satisfied as to the voter’s identity; and
- (b) has ensured that the completed ID declaration form, if required, has not been returned.

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

- (a) the name of the voter, and
- (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
- (c) the details of the unique identifier of the replacement ballot paper.

29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.

29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.

29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.

29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):

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

30. Lost voting information

- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter's identity,
 - (b) has no reason to doubt that the voter did not receive the original voting information,
 - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):
- (a) the name of the voter
 - (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
 - (c) the voter ID number of the voter.

31. Issue of replacement voting information

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
- (a) the name of the voter,
 - (b) the unique identifier of any replacement ballot paper issued under this rule;
 - (c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

information.

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

34. Voting procedure for remote voting by telephone

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

35. Voting procedure for remote voting by text message

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

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

36. Receipt of voting documents

- 36.1 Where the returning officer receives:
 - (a) a covering envelope, or

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

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

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

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

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

37. Validity of votes

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

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

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

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

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

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

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

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

- (a) mark the internet voting record, telephone voting record or text voting record

(as applicable) “disqualified”,

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

38. Declaration of identity but no ballot paper (public and patient constituency)²

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

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

39. De-duplication of votes

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

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

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

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

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

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

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting

² It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

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 subparagraphs (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.

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

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

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

- FPP52.2 The returning officer is to make:

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

available on request.

STV52. Declaration of result for contested elections

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

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

2006 Act, to the chairman of the NHS Trust, or

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

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

STV52.2 The returning officer is to make:

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

available on request.

53. Declaration of result for uncontested elections

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

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

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

- 54.2 The returning officer must not open the sealed packets of:
- (a) the disqualified documents, with the list of disqualified documents inside it,
 - (b) the list of spoilt ballot papers and the list of spoilt text message votes,
 - (c) the list of lost ballot documents, and
 - (d) the list of eligible voters,

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

- 54.3 The returning officer must endorse on each packet a description of:
- (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency, or class within a constituency, to which the election relates.

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

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

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

57. Retention and public inspection of documents

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

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

- 57.3 A person may request a copy or extract from the documents relating to an election

that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

58.1 The corporation may not allow:

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

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

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

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

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

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

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

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

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

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

- (ii) that Monitor has declared that the vote was invalid.

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

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- 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.

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel (IEAP).
- 66.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 66.3 An application may only be made to 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 the independent panel may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

PART 12: MISCELLANEOUS

67. Secrecy

67.1 The following persons:

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

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

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

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

ANNEX 4 – ADDITIONAL PROVISIONS

Part 1

1. Eligibility to be on the Council of Governors

- 1.1 An individual shall not become or continue to be a Governor of the trust if:
- 1.1.1 in the case of an Elected Governor, he is not or ceases to be a member of the constituency by which he was elected;
 - 1.1.2 in the case of an Appointed Governor, the sponsoring organisation withdraws their sponsorship of him;
 - 1.1.3 he has within the preceding five (5) years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body or other public service body;
 - 1.1.4 Monitor has exercised its powers to remove that person as a member of the Council of Governors of the Trust or has suspended him from office or has disqualified him from holding office as a Governor of the Trust for a specified period or has exercised any of those powers in relation to the person concerned at any other time whether in relation to the trust or some other NHS foundation trust;
 - 1.1.5 he is a person whose tenure of office as the chairman, or a member, governor or director of a Health Service Body or other public service body has been terminated on the grounds that his appointment is not in the interests of the service;
 - 1.1.6 in the case of an elected governor, he is an executive director, non-executive director, or trust secretary of the trust, or a governor, non-executive director, chairman, or chief officer of another NHS foundation trust, or a body corporate whose business involves the provisions of healthcare services;
 - 1.1.7 he has failed or refused to sign and deliver to the Trust Secretary a statement in the form required by the Trust confirming acceptance of the Code of Conduct;
 - 1.1.8 he has had his name removed, other than by reason of withdrawal from any list prepared under Sections 91, 106, 123 or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006 and has not subsequently had his name included in such a list;
 - 1.1.9 he is incapable by reason of mental disorder, illness or injury of managing and/or administering his property and/or affairs;
 - 1.1.10 he has refused without reasonable cause to undertake peer review and/or any training which the Trust and/or the Council of Governors requires all Governors to undertake;
 - 1.1.11 he is a member of a local authority Overview and Scrutiny Committee;

- 1.1.12 he is the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register;
 - 1.1.13 he is the spouse, partner, parent or child of a member of the Board of Directors of the Trust; or
 - 1.1.14 he is under the age of 18 years at the closing date he is nominated for election or appointment.
- 1.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under paragraph 17 of the Constitution or paragraph 1 above, he shall notify the Trust Secretary in writing of such disqualification and/or removal as soon as practicable and in any event within 14 days of first becoming aware of those matters which render him disqualified or removed.
- 1.3 If it comes to the notice of the Trust Secretary that the Governor is disqualified otherwise than pursuant to paragraph 1.2 above, the Trust Secretary shall immediately declare that the individual in question is disqualified and give notice to him in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration. In the event that a Governor shall dispute that he is disqualified the Governor may refer the matter to the dispute resolution procedure, set out in paragraph 48 of the Constitution, within 28 days of the date upon which notice in writing is given to the Governor.

2 Working groups and joint committees

- 2.1 The Council of Governors may appoint working groups consisting wholly or partly of its members to assist it in carrying out its functions.
- 2.2 The Council of Governors may appoint Members to serve on joint committees with the Trust Boards or committees thereof at the invitation of the Trust Board.
- 2.3 These working groups or joint committees may call upon outside advisers to help them in their tasks, provided that the financial and other implications of seeking outside advisers have been discussed and agreed by the Trust Board. Any conflict arising between the Council of Governors and the Trust Board under this paragraph shall be determined in accordance with paragraph 45 of the Constitution (dispute resolution procedure).

Part 2

1 Disqualification from membership of the Trust

- 1.1 A person may not be a Member of the Trust if they are under 16 years of age at the time of his application to become a Member.
- 1.2 A person may not become or remain a Member of the trust if during the five (5) years prior to his application, he has demonstrated aggressive or violent behaviour at any Trust hospital or towards any person working for a Health Service Body and following such behaviour he has been asked to leave, has been removed or excluded from any Trust hospital or other Health Service Body establishment under either the Trust's or other Health Service Body's policy for withholding treatment from violent/aggressive Patients (zero tolerance), or equivalent.

- 1.3 A person may not become or remain a Member of the Trust if he is ineligible under paragraphs 8, 9, 10 or 12 of this Constitution to be a Member.
- 1.4 A person may not become or remain a Member of the Trust if they have been confirmed as a 'vexatious complainant' in accordance with the Trust's complaints handling policy as amended from time to time.
- 1.5 A person may not remain a Member of the Trust if the Council of Governors resolves (in accordance with the procedure for expulsion from membership of the Trust set out at paragraph 2 below) that for reasonable cause his so doing would, or would be likely to:
 - 1.5.1 prejudice the ability of the Trust to fulfil its principal purpose as defined by this Constitution or otherwise to discharge its duties and/or functions; or
 - 1.5.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods or services; or
 - 1.5.3 adversely affect public confidence in the goods or services provided by the Trust; or
 - 1.5.4 otherwise bring the Trust into disrepute.
- 1.6 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 Secretary as soon as practicable and that person shall thereupon be removed forthwith from the register of members and shall cease to be a Member.
- 1.7 Where the Trust has reason to believe that a Member is ineligible for membership under the provisions of this Constitution or may be disqualified for membership under the provisions of this Constitution, the Trust Secretary shall carry out reasonable enquiries to establish if this is the case.
- 1.8 Where the Trust Secretary considers that there may be reasons for concluding that a Member or an applicant for membership may be ineligible or be disqualified for membership, he shall advise that individual of those reasons in summary form and invite representations from the Member or applicant for membership within 28 days or such other reasonable period as the Trust Secretary may in his absolute discretion determine. Any representations received shall be considered by the Trust Secretary and he shall make a decision on the Member's or applicant's eligibility or disqualification as soon as reasonable practicable and shall give notice in writing of that decision to the Member or applicant within 14 days of the decision being taken.
- 1.9 If no such representations are received within the said period of 28 days or longer period (if any) permitted under the preceding paragraph, the Trust Secretary shall be entitled nonetheless to proceed and make a decision on the Member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from him.
- 1.10 Upon a decision being made under the paragraphs 1.8 or 1.9 above that the Member is ineligible or disqualified for membership, the Member shall be removed from the register of members immediately and he shall thereupon cease to be a Member.

- 1.11 Any decision made under the foregoing provisions to disqualify a Member or an applicant for membership may be referred by the member or applicant concerned to the Trust's dispute resolution procedure as set out in this Constitution at paragraph 45.
- 1.12 Notwithstanding the foregoing paragraphs, if it appears to the Trust Secretary that an individual no longer wishes to be a Member of the Trust and, after reasonable enquiries made in accordance with a process approved by the Council of Governors the individual fails to demonstrate that they wish to continue to be a Member of the Trust, the individual shall cease to be a Member of the Trust and their name shall be removed from the register of members of the Trust.

2 Expulsion from membership of the Trust

- 2.1 A Member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:
- 2.1.1 any Member or Director may complain to the Trust Secretary that another Member has acted in a way detrimental to the interests of the Trust, or is otherwise disqualified as set out in paragraph 1 above.
- 2.1.2 if a complaint is made, the Council of Governors shall itself consider the complaint, having taken such steps as it considers appropriate, to ensure that the Member's and complainant's points of view are heard and may either:
- 2.1.2.1 dismiss the complaint and take no further action; or
- 2.1.2.2 arrange for a resolution of the Council of Governors to expel the Member complained of to be considered at the next meeting of the Council of Governors.

3 Termination of membership

A Member shall cease to be a Member on:

- 3.1 death;
- 3.2 resignation by notice in writing to the Trust Secretary;
- 3.3 ceasing to fulfil the requirements of paragraphs 8, 9 or 10 of the Constitution, as the case may be;
- 3.4 being disqualified pursuant to paragraph 12 of the Constitution or paragraph 1 above; or
- 3.5 being expelled pursuant to paragraph 2 above.

Part 3

1 Appointment of Chairman and Non-Executive Directors

- 1.1 The process for appointing new Non-Executive Directors and the Chairman will be as follows:

- 1.2.1 Subject to the provisions of paragraph 1.6 below, the Chairman and other Non-Executive Directors are to be appointed by the Council of Governors at a general meeting of the Council of Governors and the current Chairman or a Non-Executive Director may stand for reappointment.
- 1.2.2 Not less than six (6) months before the end of the term of office of the Chairman or a Non-Executive Director (as the case may be), the Council of Governors will appoint a Nominations Committee to seek a suitable replacement. The Nominations Committee will be chaired by the Chairman. The Nominations Committee shall make recommendations to the Council of Governors including recommendations about pay and allowances. In the case of the nomination, appointment and remuneration of the Chairman, the Nominations Committee will be chaired by the Vice-Chairman. The Nominations Committee shall be comprised of the Chairman (or Vice-Chairman as the case may be), two (2) Elected Governors and two (2) Appointed Governors. The Nominations Committee may engage external advisors to assist it with its functions but, for the avoidance of doubt, such advisors will not be entitled to exercise any voting rights. Each member of the Nominations Committee shall have one (1) vote and in the event of an equality in votes the person chairing the Nominations Committee shall have a casting vote.
- 1.2.3 Where the Nominations Committee considers that either the Chairman or the Non-Executive Director coming to the end of his term of office should be reappointed for a further term, the Nominations Committee shall make a recommendation to the Council of Governors to that effect, save that the Nominations Committee may not make any such recommendation other than for a first re-appointment of the Chairman or the Non-Executive Director in question.
- 1.2.4 Where:
- 1.2.4.1 the Nominations Committee does not make a recommendation that the Chairman or a Non-Executive Director should be reappointed in accordance with paragraph 1.2.3 above; or
- 1.2.4.2 the Chairman or (as the case may be) the Non-Executive Director in question does not want to be reappointed; or
- 1.2.4.3 the Council of Governors rejects a recommendation that the Chairman or (as the case may be) a Non-Executive Director should be reappointed in accordance with paragraph 1.2.3 above,
- the Nominations Committee shall initiate a process of open competition for the appointment of the Chairman and/or Non-Executive Director, and the post will be advertised. Further, the Nominations Committee shall identify the balance of individual skills, knowledge and experience that is required at the time a vacancy arises and, accordingly, draft a job description and person profile for each new appointment.

1.3 The Nominations Committee will:

- 1.3.1 make recommendations to the Council of Governors, including recommendations about pay and allowances;

- 1.3.2 seek the view of Directors as to the recommended criteria and process for selection of candidates and, having regard to their views, see, shortlist and interview those candidates they deem appropriate after open competition and in accordance with good practice, and take up references as to suitability;
 - 1.3.3 receive reports on behalf of the Council of Governors on the process and outcome of appraisal of Non-Executive Directors.
- 1.4 A member of the Nominations Committee shall not disclose any matters reported to or otherwise discussed by the Nominations Committee, notwithstanding that the matter has been reported or the action has been concluded if the Nominations Committee resolves it is confidential.
- 1.5 The Council of Governors will not consider nominations for membership of the Trust Board other than those made by the Nominations Committee.
- 1.6 Notwithstanding the provisions of paragraphs 1.2.1 to 1.2.4 above, Non-Executive Directors, including the Chairman, shall be appointed by the Council of Governors for terms of office not exceeding three (3) years in accordance with the relevant provisions of the 2006 Act and the Constitution relating to the qualification and removal of a Director. The Chairman should confirm to the Council of Governors that following formal performance evaluation, the performance of the individual proposed for re-appointment continues to be effective and demonstrates commitment to the role. Any term beyond six (6) years (whether consecutive or not) for a Non-Executive Director, including the Chairman, should be subject to particularly rigorous review.

ANNEX 5 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

1 INTRODUCTION

- 1.1 The Royal Free London NHS Foundation Trust became a Public Benefit Corporation on 1 April 2012 following Authorisation by Monitor.
- 1.2 The principal place of business of the trust is the Trust head office.
- 1.3 The Trust is governed by the 2006 Act, its Constitution and its terms of Licence granted by Monitor (the “Regulatory Framework”). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Governors of the Trust to adopt Standing Orders for the regulation of its proceedings and business and to adhere at all times to the Code of Conduct.

2 INTERPRETATION

- 2.1 Save as otherwise permitted by law, at any meeting of the Council of Governors the Chairman of the Trust shall be the final authority on the interpretation of the SOs (on which he should be advised by the Trust Secretary).
- 2.2 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these SOs shall bear the same meaning as in the Constitution.
- 2.3 The provisions of paragraphs 48.1 to 48.7 of the Constitution apply to these SOs, save that any reference to "Constitution" shall be read as a reference to these SOs.

3 THE COUNCIL OF GOVERNORS

The roles and responsibilities of the Governors are set out in paragraph 5.3 of the Constitution and also have effect as if incorporated into these SOs. Certain powers and decisions may only be exercised by the Council of Governors in formal session. These powers and decisions are set out in paragraph 5.3.2 of the Constitution.

4 MEETINGS OF THE COUNCIL OF GOVERNORS

4.1 Admission of the public

- 4.1.1 The public and representatives of the media shall be afforded facilities to attend all formal meetings of the Council of Governors except where it resolves by special resolution that members of the public and representatives of the media be excluded from all or part of a meeting on the grounds that:

- 4.1.1.1 any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or

- 4.1.1.2 for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Council of Governors

believe are special reasons for excluding the public from the meeting in accordance with the Constitution.

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

4.2 **Calling meetings**

- 4.2.1 Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine and there shall be at least four (4) meetings in any one Financial Year including:

- 4.2.1.1 an annual meeting no later than the 30 September in each Financial Year when the Council of Governors are to receive and consider the Annual Accounts, any report by the Auditor on them and the Annual Report; and

- 4.2.1.2 any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.

- 4.2.2 Meetings of the Council of Governors may be called by the Trust Secretary by order of the Chairman or by at least eight (8) Governors (which must include at least two (2) Elected Governors and at least two (2) Appointed Governors) by giving notice in writing to the Trust Secretary specifying the business to be carried out. The Trust Secretary may then call a meeting of the Council of Governors at any time. If the Trust Secretary refuses to call a meeting after a requisition for that purpose, signed by at least eight (8) governors and specifying the business to be transacted at the meeting has been presented to the Trust Secretary, or if, without so refusing, the Trust Secretary does not call a meeting within five (5) Clear Days after such requisition has been presented to him, the Chairman or the eight (8) Governors may forthwith call a meeting for the purpose of conducting that business.

- 4.2.3 The Council of Governors may invite the Chief Executive, any other member of the Trust Board or a representative of the Auditor or other advisors to attend a meeting of the Council of Governors.

- 4.2.4 The Council of Governors may agree that its Governors can participate in its meetings by telephone, video or web conferencing link. Participation in a meeting in this manner shall be deemed to be exceptional but shall constitute presence in person at the meeting for the purposes of SO 4.16 (Quorum).

4.3 **Notice of meetings and agenda**

- 4.3.1 Before each meeting of the Council of Governors, the Trust Secretary shall issue a notice of the meeting, specifying the place and date of the meeting, the business proposed to be transacted at it, and signed by the Chairman or by an officer authorised by the Chairman to sign on his behalf. The Trust Secretary shall deliver it to, or send it by post to the usual place of residence of every governor so as to be available to him at least seven (7) Clear Days before the meeting, save in the case of emergencies.

- 4.3.2 Before each meeting of the Council of Governors, a public notice of the date, time and place of the meeting and the agenda shall be displayed at the Trust's head office and shall be advertised on the Trust's website and other media as considered appropriate at least seven (7) Clear Days before the meeting, save in the case of emergencies.
- 4.3.3 Want of service of the notice on any one Governor shall not affect the validity of a meeting but failure to serve such a notice on more than three (3) Governors will invalidate the meeting. A notice of meeting shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of posting or by sending of an email.
- 4.3.4 In the case of a meeting called by Governors in default of the Trust Secretary in accordance with SO 4.2.2, the notice shall be signed by those governors and no business shall be transacted at the meeting other than that specified in the requisition.
- 4.3.5 Agendas will be sent to Governors before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched by email and by post no later than three (3) Clear Days before the meeting, save in the case of emergencies. It is the responsibility of the Chairman to ensure that sufficient information is provided to Governors to ensure that rational discussion can take place.
- 4.3.6 In the event of an emergency giving rise to the need for an immediate meeting failure to comply with the notice periods referred to in SO 4.3 shall not prevent the calling of or invalidate such meeting provided that every effort is made to contact Governors who are not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.

4.4 **Annual members' meeting**

- 4.4.1 In accordance with SO 4.2.1.1, the Council of Governors shall hold an annual members' meeting of the Council of Governors in every calendar year so that there is no more than 15 (fifteen) calendar months between one meeting and the next and shall present to that meeting:
- 4.4.1.1 a report on the proceedings of its meetings held since the last annual meeting;
- 4.4.1.2 a report on the progress since the last annual members' meeting in developing the membership strategy including the steps taken to ensure that, taken as a whole, the actual membership of its Public Constituency and Patient Constituency is representative of the persons who are eligible to be members of those constituencies under the constitution, together with an update on the membership recruitment and engagement strategy;
- 4.4.1.3 a report on any appointments or the outcome of any elections to the Council of Governors;
- 4.4.1.4 a report on any appointments of Non-Executive Directors;

- 4.4.1.5 a report on any changes or proposed changes to the governors which has taken or will take place since the last annual meeting; and
- 4.4.1.6 a report containing such comments as it wishes to make regarding the performance of the Trust and the accounts of the Trust for the preceding Financial Year and any Auditor report on them and the future service development plans of the trust.

4.5 Setting the agenda

- 4.5.1 The Council of Governors and the Chairman may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted ("standing items").
- 4.5.2 Any member of the Council of Governors desiring a matter other than a standing item to be included on an agenda shall make his request in writing to the Chairman at least ten (10) Clear Days before the meeting. The request should state whether the matter is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than ten (10) Clear Days before a meeting may be included on the agenda at the discretion of the Chairman.

4.6 Petitions

Where a petition has been received by the Trust for the attention of the Council of Governors, the Chairman shall include the petition as an item for the agenda at the next meeting of the Council of Governors.

4.7 Written motions

- 4.7.1 In urgent situations and with the consent of the Chairman, business may be affected by a Governor's written motion to deal with business otherwise required to be conducted at a meeting of the Council of Governors.
- 4.7.2 If all members of the Council of Governors have been notified of the proposal and a majority of Governors entitled to attend and vote at a meeting of the Council of Governors confirms acceptance of the written motion either in writing or electronically to the Trust Secretary within five (5) Clear Days of dispatch then the motion will be deemed to have been resolved, notwithstanding that the governors have not gathered in one place.
- 4.7.3 The effective date of the resolution shall be the date that the last confirmation is received by the Trust Secretary and, until that date, a Governor who has previously indicated acceptance can withdraw and the motion will fail.
- 4.7.4 Once the resolution is passed, a copy certified by the Trust Secretary shall be recorded in the minutes if the next ensuing meeting where it shall be signed by the persons presiding at it.

4.8 **Chairman of meeting**

- 4.8.1 At any meeting of the Council of Governors, the Chairman, if present, shall preside.
- 4.8.2 If the Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Vice Chairman shall preside.
- 4.8.3 If the Chairman and the Vice Chairman are absent from the meeting or are absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director, as shall be appointed by the Council of Governors, shall preside.

4.9 **Motions**

- 4.9.1 Where a Governor has requested inclusion of a motion on the agenda in accordance with SO 4.5.2 as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this SO 4.9 shall apply in respect of the motion.
- 4.9.2 The mover of the motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto, or to raise a point of order.
- 4.9.3 When a motion is under discussion or immediately prior to discussion it shall be open to any Governor to move:
 - 4.9.3.1 that the motion be withdrawn; or
 - 4.9.3.2 an amendment to the motion; or
 - 4.9.3.3 the adjournment of the discussion or the meeting; or
 - 4.9.3.4 that the meeting proceed to the next item of business on the agenda; or
 - 4.9.3.5 the appointment of an ad hoc working group to deal with a specific item of business; or
 - 4.9.3.6 that the motion be now put; or
 - 4.9.3.7 that the public be excluded from the meeting in relation to the discussion concerning the motion under SO 4.1.1.
- 4.9.4 No amendment to the motion shall be admitted if, in the opinion of the Chairman or the person presiding over the meeting, the amendment negates the substance of the motion.
- 4.9.5 The mover of a motion shall have a maximum of five (5) minutes to move and three (3) minutes to reply.

4.10 **Chairman's ruling**

Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and, subject to SO 2.1

above, the decision of the person presiding over the meeting on questions of order, relevancy, regularity and any other matters shall be final.

4.11 Voting

- 4.11.1 An Elected Governor may not vote at a meeting of the Council of Governors until he has made a declaration in accordance with paragraph 22.1 of the Constitution (see Schedule A of these SOs).
- 4.11.2 In the case of an Appointed Governor, the individual may not vote at a meeting of the Council of Governors until the Trust Secretary has sent a letter confirming the appointment of that individual and that individual has made a declaration in the form specified at Schedule A of these SOs.
- 4.11.3 Subject to SO 4.11.6 below, every question at a meeting shall be determined by a majority of the votes of the Chairman of the meeting and the Governors present and voting on the question.
- 4.11.4 Whoever is Chairman of the meeting of the Council of Governors shall, in the case of an equality of votes on any question or proposal, have a casting vote.
- 4.11.5 A resolution for the removal of the Chairman or a Non-Executive Director shall be passed only if three-quarters of the total number of Governors vote in favour of it and the provisions of paragraphs 27.2 to 27.7 of the Constitution have been complied with.
- 4.11.6 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 4.11.7 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.11.8 If a Governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.11.9 Subject to SO 4.2.4, a Governor may only vote if present at the time of the vote on which the question is to be decided. No Governor may vote by proxy but any Governor considered to have been present at the meeting in accordance with SO 4.2.4 shall be entitled to vote.
- 4.11.10 In certain circumstances which must be approved in advance by the Council of Governors and which may be included in a schedule to these SO, the Chairman may specify in a notice of a meeting any matter which requires approval by a written resolution and such a matter may be approved in writing provided that at least three-quarters of the Governors and a majority of Governors who are Elected Governors approve the resolution in writing within the timescale imposed in such a notice.

4.12 Special provisions relating to termination of Governor's tenure:

- 4.12.1 Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under paragraph 17 of the Constitution or

paragraph 1 of Part 1 of Annex 4 of the Constitution, he shall notify the Trust Secretary in writing of such disqualification as soon as practicable and in any event within fourteen (14) Clear Days of the first becoming aware of those matters which render him disqualified. The Trust Secretary shall forthwith remove him from the register of members of the Council of Governors.

4.12.2 If it comes to the notice of the Trust Secretary that the governor is disqualified pursuant to SO 4.12.1, whether at the time of the governor's appointment or later, the Trust Secretary shall immediately declare that the individual in question is disqualified and give him notice in writing to that effect as soon as practicable and in any event within 14 Clear Days of the date of the said declaration. In the event that the Governor shall dispute that he is disqualified the Governor may refer the matter to the dispute resolution procedure set out in paragraph 45 of the Constitution within 28 Clear Days of the date upon which the notice was given to the Governor.

4.12.3 The Chairman shall be authorised to take such action as may be immediately required, including but not limited to exclusion of the Governor concerned from the meeting so that any allegation made against a Governor on the following grounds can be investigated:

4.12.3.1 non-compliance with the Regulatory Framework, Code of Conduct, Standing Orders for the Council of Governors and/or Standing Financial Instructions; or

4.12.3.2 committal of a serious breach of the Code of Conduct; or

4.12.3.3 action in a manner which is detrimental to the Trust; or

4.12.3.4 failure to attend three (3) consecutive meetings of the Council of Governors unless the Council of Governors is satisfied by a two-thirds majority of the Governors present and voting at the meeting and they approve a resolution to the effect that:

4.12.3.4.1 the absences were due to reasonable cause; and

4.12.3.4.2 the Governor concerned will be able to start attending meetings of the Council of Governors again within such period as they consider reasonable; or

4.12.3.5 that it is not in the best interests of the Trust for the Governor in question to continue as a Governor.

4.12.4 Where any grounds within SO 4.12.3 are alleged, it shall be open to the Council of Governors to decide, by two-thirds majority of those present and voting at the meeting, to lay a formal charge of non-compliance or misconduct.

4.12.5 The Governor in question will be notified in writing of the allegations and grounds upon which the charges referred to in SO 4.12.4 are made and invited and considering his response within a defined appropriate and reasonable timescale.

4.12.6 The Governor may be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.

- 4.12.7 The Governors, by a two-thirds majority of those present and voting at the meeting, half of which must be Elected Governors, can decide whether to uphold the charge.
- 4.12.8 Should the Governors uphold the charge in accordance with SO 4.12.7, the Governors can impose such sanctions as shall be deemed appropriate. Such sanctions may range from the issuing of a written warning as to the Governor's future conduct and consequences, to non-payment of expenses or removal of the Governor from office.
- 4.12.9 Upon disqualification, removal or termination of a Governor's office under this SO, the Trust Secretary shall cause his name to be removed immediately from the register of members of the Council of Governors.
- 4.12.10 Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by the Governor concerned to the dispute resolution procedure under paragraph 45 of the Constitution within 28 Clear Days of the date upon which notice in writing of the Council of Governors' decision made in accordance with SO 4.12.7 is communicated to the Governor concerned.
- 4.12.11 A Governor may resign from that office at any time during the term of that office by giving notice to the Trust Secretary in writing, upon which he shall cease to hold office.
- 4.12.12 A Governor who resigns under SO 4.12.11 or whose office is terminated under this SO or Part 1 of Annex 4 of the Constitution shall not be eligible to stand for re-election to the Council of Governors for a period of three (3) years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of, whichever is later.
- 4.12.13 In the event that a Governor's seat falls vacant before the end of the term of office, the provisions as set out at paragraph 19 of the Constitution shall apply.

4.13 **Minutes**

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

4.14 **Suspension of Standing Orders**

- 4.14.1 Except where this would contravene any provision of the Regulatory Framework or any guidance or best practice advice issued by Monitor, any one or more of the SOs may be suspended at any meeting, provided that at least two-thirds majority of the Governors present and voting at the meeting

and half of this number are Elected Governors, vote in favour of the suspension.

4.14.2 A decision to suspend an SO or the SOs shall be recorded in the minutes of the meeting.

4.14.3 A separate record of matters discussed during the suspension of the SOs shall be made and shall be made available to the Chairman and Governors.

4.14.4 No formal business may be transacted while the SOs are suspended.

4.15 **Record of attendance**

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

4.16 **Quorum**

4.16.1 No business shall be transacted at a meeting unless at least one-third of the Governors are present.

4.16.2 If at any meeting there is no quorum present within 30 (thirty) minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day of the next week at the same place and time or to such later place and time as the Council of Governors determines. If a quorum is not present within 30 minutes of the time fixed for the start of the adjourned meeting the number of Governors present during the meeting shall constitute a quorum.

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

5 **LEAD GOVERNOR**

5.1 The Governors shall appoint a Lead Governor.

5.2 The role and responsibilities of the Lead Governor will be produced by the Trust Board following consultation with the Council of Governors and consideration of their views and should include the relevant provisions of Appendix B of the NHS Foundation Trust Code of Governance.

5.3 The appointment of the Lead Governor shall be made by those Governors who have been elected as Governors from either the Public Constituency or the Patient Constituency.

5.4 The Lead Governor so appointed shall hold office for such period not exceeding his term of office as a Governor, as the Council of Governors may specify on appointing him.

- 5.5 Nomination forms for appointment as Lead Governor shall be sent out to Governors with the papers for the relevant Council of Governors' meeting. Each nomination shall be made in writing by the Governor seeking appointment and must be returned to the Trust Secretary to arrive three (3) Clear Days before the meeting.
- 5.6 In the event of there being two (2) or more nominations for the appointment, a secret ballot shall be held of all the Governors present at the meeting with each Governor present having one vote.
- 5.7 The meeting shall adjourn while the ballots are counted by the person chairing the meeting in the presence of the Trust Secretary and the Governor whose nomination receives the largest number of votes shall be appointed.
- 5.8 As outlined in paragraph 4.11.10 above, such ballot can be conducted in writing, and outside the council meeting.
- 5.9 In the event of an equality of votes the person chairing the meeting shall have a casting vote.
- 5.10 The result of the ballot shall be announced at the meeting referred to in SO 5.7 above.
- 5.11 Any individual appointed under the preceding provisions may at any time resign from the office of Lead Governor by giving notice in writing to the Trust Secretary. The Council of Governors shall thereupon appoint another Lead Governor at either the next meeting of the Council of Governors or the next annual meeting (whichever is the earlier) in accordance with the provisions of SOs 5.5 to 5.9 above.

6 COMMITTEES AND SUB-GROUPS

- 6.1 The Council of Governors may not delegate any of its powers to a committee or sub-committee, other than the Nominations Committee, but may appoint working groups of its governors, the Directors of the Trust and other persons (subject to such guidance or best practice advice issued by Monitor) to assist the Council of Governors in carrying out and properly performing its functions under the Constitution and the Regulatory Framework.
- 6.2 All decisions taken in good faith at the meeting of the Council of Governors or at any meeting of a working group shall be valid even if it is subsequently discovered that there was a defect in the calling of the meeting or the appointment of the governors attending the meeting.
- 6.3 These SOs, as far as they are applicable, shall apply with appropriate alteration to meetings of the Nominations Committee and any working group established by the Council of Governors with the term "chairman" to be read as a reference to the chairman of the Nominations Committee or working group, and the term "member" to be read as a reference to a member of the Nominations Committee or working group as the context permits.
- 6.4 The Nominations Committee and any such working group shall have such terms of reference and powers and be subject to such conditions as the Council of Governors should decide in accordance with the Regulatory Framework and the Constitution and any guidance or best practice advice issued by Monitor, but the Council of Governors shall not delegate to the Nominations Committee or any working group any of the powers or responsibilities which are to be exercised by the

Council of Governors at a formal meeting. Such terms of reference shall have effect as if incorporated into the SOs but, for the avoidance of doubt, do not form part of the SOs or the Constitution.

- 6.5 The Council of Governors shall approve the appointments of members to the Nominations Committee and any working group which it has formally constituted.
- 6.6 Where the Council of Governors determines that persons who are neither Governors, nor Directors or Officers of the Trust, shall be appointed to the Nominations Committee or a working group, the terms of such appointment shall be determined by the Council of Governors subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Trust Board or Monitor. For the avoidance of doubt such persons shall not be entitled to exercise voting rights.
- 6.7 If requested by the Trust Board and agreed by the Council of Governors, the Council of Governors may appoint Governors to attend and advise at joint committees with the Trust Board or committees of the Trust Board.

7 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

7.1 Declaration of interests

- 7.1.1 The Regulatory Framework and the Constitution require each governor to declare to the Trust Secretary:
- 7.1.1.1 any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in SO 7.2.1; and
 - 7.1.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, as described in SOs 7.2.2 and 7.2.3; and
 - 7.1.1.3 any actual or potential family interest, direct or indirect, of which the Governor is aware, as described in SO 7.2.5.
- 7.1.2 Such a declaration shall be made either at the time of the Governor's election or appointment or as soon thereafter as the interest arises, but within five (5) Clear Days of the Governor becoming aware of the existence of that interest, and in a form prescribed by the Trust Secretary as included in Schedule B to these SOs.
- 7.1.3 In addition, if a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement, disclose the fact and shall not vote on any question with respect to the matter.
- 7.1.4 Subject to SO 7.2.4, if a Governor has declared a pecuniary interest (as described in SOs 7.2.2 and 7.2.3) he shall be excluded from the meeting and shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the Council of Governors meeting minutes. Any changes in interests should be

officially declared at the next relevant meeting following the change occurring.

7.1.5 This SO 7 applies to the Nominations Committee, and any working group established by the Council of Governors and applies to any member of the Nominations Committee, or working group (whether or not he is also a governor).

7.1.6 The interests of governors in companies likely to do business with the NHS or the Trust should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

7.2 Nature of interests

7.2.1 **Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance or best practice advice issued by Monitor:**

7.2.1.1 directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies); or

7.2.1.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely to do business with the NHS or the Trust; or

7.2.1.3 majority or controlling share holdings in organisations likely to do business with the NHS or the Trust; or

7.2.1.4 a position of authority in a charity or Voluntary Organisation in the field of health and social care; or

7.2.1.5 any connection with a Voluntary Organisation or other organisation contracting for NHS or trust services or commissioning NHS or Trust services; or

7.2.1.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the trust, including but not limited to, lenders or banks.

7.2.2 **A Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:**

7.2.2.1 he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

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

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

7.2.3.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; or

7.2.3.2 of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or

7.2.3.3 of any travelling or other expenses or allowances payable to a governor in accordance with the Constitution.

7.2.4 Where a Governor:

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

7.2.4.2 the total nominal value of those securities does not exceed £10,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; and

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

the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.

7.2.5 A family interest is an interest of the spouse or partner or any parent, child, brother or sister of a governor which if it were the interest of that governor would be a personal interest or a pecuniary interest of his.

7.2.6 If governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

7.3 Register of members of the Council of Governors

The Trust Secretary shall keep a register of members of the Council of Governors which shall list the names of Governors, their category of membership of the Council of Governors and an address through which they may be contacted which may be the Trust Secretary.

7.4 Register of interests of members of the Council of Governors

The Trust Secretary shall keep a register of interests of members of the Council of Governors which shall contain the name of each Governor, whether they have

declared any interest, and if so, the interest declared (see Schedule B of this Annex 5).

8 STANDARDS OF BUSINESS CONDUCT

Members of the Council of Governors shall comply with the Code of Conduct and any guidance or best practice advice issued by Monitor.

9 APPOINTMENTS AND RECOMMENDATIONS

- 9.1 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this SO 9.1 shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.
- 9.2 Informal discussions, outside nominations panels, appointments panels, committees or working groups, whether solicited or unsolicited, should be declared to the panel, committee or group in question.
- 9.3 Candidates for any staff appointment under the Trust shall, when making such an application, disclose in writing to the Trust whether they are related to any Governor or the holder of any office within the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 9.4 The Chairman and every Governor shall disclose to the Chief Executive or his delegated officer any relationship between himself and a candidate of whose candidature that individual is aware. It shall be the duty of the Chief Executive or his delegated officer to report to the Council of Governors any such disclosure made.
- 9.5 On appointment, members of the Council of Governors should disclose to the Council of Governors whether they are related to any other Governor or holder of any office in the Trust.
- 9.6 Where the relationship to a member of the Council of Governors of the Trust is disclosed, SO 7 shall apply.

10 MISCELLANEOUS

- 10.1 The Trust Secretary shall provide a copy of these SOs to each Governor and endeavour to ensure that each Governor understands his responsibilities within these SOs.
- 10.2 These SOs including all documents having effect as if incorporated in them shall be reviewed annually by the Trust Board and the Council of Governors.
- 10.3 If for any reason these SOs 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 SOs to the Chairman as soon as possible.

Schedule A

Declaration to the Secretary of Royal Free London NHS Foundation Trust

I hereby declare that I am at the date of this declaration [an Appointed Governor] [an Elected Governor] [a member of the [public/staff/or Patient] Constituency] and I am not prevented from being a member of the Council of Governors by reason of any provision of paragraph 8 of Schedule 7 to the NHS Act 2006 or the Constitution of the Royal Free London NHS Foundation Trust.

Schedule B

Prescribed Form of Declaration of Interests

Name

Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies)	
Ownership or part-ownership of private companies, business or consultancies likely or possibly seeking to do business with the NHS or the Trust	
Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS or the Trust	
A position of authority in a charity or voluntary organisation in the field of health and social care	
Any connection with a voluntary or other organisation contracting for NHS or Trust services;	
Research funding/grants that may be received by an individual or their department	
Interests in pooled funds that are under separate management (any relevant company included in this fund that has a potential relationship with the Trust must be declared)	

Signature Date

ANNEX 6 – STANDING ORDERS (SO) FOR THE PRACTICE AND PROCEDURE OF THE TRUST BOARD

1 INTRODUCTION

- 1.1 The Trust became a Public Benefit Corporation on 1 April 2012 following Authorisation by Monitor pursuant to the 2006 Act.
- 1.2 The Trust is governed by the 2006 Act, its Constitution and the Licence granted by Monitor (the “Regulatory Framework”). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework and in particular paragraph 33 of the Constitution requires the Trust Board to adopt SOs for the regulation of its proceedings and business.
- 1.3 The SOs, Scheme of Delegation and Standing Financial Instructions provide a comprehensive business framework for the administration of the Trust's affairs and these need to be read in conjunction with the Regulatory Framework. All Executive Directors and Non-Executive Directors, and all officers should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions contained within them. For the avoidance of doubt the Scheme of Delegation and Standing Financial Instructions do not form part of the Constitution.
- 1.4 The Trust shall deal with Monitor in an open and co-operative manner and shall promptly notify Monitor of anything relating to the Trust of which Monitor would reasonably expect prompt notice, including, without prejudice to the foregoing generality, any anticipated failure or anticipated prospect of failure on the part of the Trust to meet its obligations under its Licence or any financial or performance thresholds which Monitor may specify from time to time.
- 1.5 The Chairman, Chief Executive or any other person giving information to the public on behalf of the trust shall ensure that they follow the principles set out by the Committee on Standards in Public Life (the Nolan Committee, now the Wicks Committee) and that they will adhere to the principles set out within the Independent Commission's Good Governance Standard for Public Service. They will also ensure that they follow The NHS Foundation Trust Code of Governance published by Monitor.

2 INTERPRETATION AND DEFINITIONS

- 2.1 Save as otherwise permitted by law, at any meeting of the Trust Board, the Chairman of the Trust shall be the final authority on the interpretation of the SOs (on which they should be advised by the Chief Executive or the Trust Secretary).
- 2.2 Unless a contrary intention is evidence or the context requires otherwise, words or expressions contained in these SOs shall bear the same meaning as in the Constitution.
- 2.3 The provisions of paragraph 48 applies to these SOs, save that any reference to "Constitution" shall be read as a reference to these "SOs", and in addition:

"Budget"

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

"Budget Holder"

means the Director, officer or employee with delegated authority to manage finances (income and expenditure) for a specific area of the organisation;

"Funds held on trust"

means those funds which the Trust holds on its date of Authorisation, receives on distribution by statutory instrument or chooses subsequently to accept under powers derived under Section 47 (2) (c) of the 2006 Act. Such funds may or may not be charitable;

"Motion"

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

"Nominated officer"

means an Officer charged with the responsibility for discharging specific tasks within the SOs, Scheme of Delegation, or Standing Financial Instructions.

3 DELEGATION OF POWERS

The Trust has powers to delegate and make arrangements for delegation. The SOs set out the principle of these arrangements. Under SO 6 the Trust Board is given powers to make arrangements for the exercise of any of its functions by a Committee of Directors or an Executive Director, in each case subject to such restrictions and conditions as the Trust thinks fit or as Monitor may direct. Delegated powers are covered in the Scheme of Delegation.

4 THE TRUST BOARD

4.1 Composition of the Trust Board

4.1.1 In the event that the number of Non-Executive Directors (including the Chairman) in attendance at a meeting of the board of Directors is equal to the number of Executive Directors, the Chairman (and in his absence the Vice Chairman) shall have a casting vote.

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

4.2 Register members of the Trust Board of Directors

In accordance with paragraph 36 of the Constitution the Trust shall keep and maintain a register of members of the Trust Board which shall list the names of the Directors, their capacity on the Board of Directors and an address through which they can be contacted, which may be the Trust Secretary.

4.3 Jointly held Executive Director posts

4.3.1 Pursuant to paragraph 25.11 of the Constitution, the post of Executive Director may be held by more than one individual on a job share basis (although the Executive Director position of registered medical practitioner or registered dentist and the Executive Director position of registered nurse or midwife cannot be shared between the two professions) but where such

an arrangement is in force the individuals may only exercise one vote between them at any meeting of the trust board.

4.3.2 Where more than one person is appointed jointly to an Executive Director post in accordance with SO 4.3.1 those persons shall count as one person.

4.3.3 Where an Executive Director post is shared jointly by more than one person:

4.3.3.1 any or all of those persons may attend or take part in meetings of the Trust Board;

4.3.3.2 if more than one of those persons are present at a meeting they should cast one vote if they agree;

4.3.3.3 if more than one of those persons are present at a meeting and in the case of disagreements where no majority exists no vote should be cast; where a majority view is held this should be the vote cast.

4.3.3.4 The presence of any or all of those persons should count as the presence of one person for the purposes of SO 5.12 (Quorum).

4.4 **Role of the Trust Board**

4.4.1 The Trust Board of Directors will function as a corporate decision-making body. Executive Directors and Non-Executive Directors will be full and equal Directors. Their role as Directors will be to consider the key strategic and managerial issues facing the trust in carrying out its statutory and other functions.

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

4.4.3 All funds received in Trust shall be in the name of the Trust as corporate trustee. Directors acting on behalf of the Trust as corporate trustees are acting as quasi-trustees.

4.4.4 In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as the Trust. Accountability for charitable funds held on trust is to the Charity Commission.

4.5 **Executive Directors**

Executive Directors shall exercise their authority within the terms of these SOs and the SFIs and the Scheme of Delegation.

4.6 **Chief Executive**

The Chief Executive shall be responsible for the overall performance of the functions of the Trust. The Chief Executive is the Accounting Officer for the trust and shall be responsible for ensuring the discharge of obligations under the Regulatory Framework, SFIs and in line with the requirements of the Foundation Trust Accounting Officer Memorandum.

4.7 Finance Director

The Finance Director 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 SFIs.

4.8 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 Non-Executive Directors of or when chairing a committee of the Trust which has delegated powers.

4.9 Chairman

4.9.1 The Chairman shall be responsible for the operation of the Trust Board of Directors and the Council of Governors and will chair all meetings of the Trust Board and the Council of Governors when present. The Chairman must comply with the terms of appointment and with these SOs.

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

4.10 Lead roles for members of the Trust Board

The Chairman will ensure that the designation of lead roles or appointments of members of the Trust Board of Directors as required by Monitor, the Department of Health or as set out in any statutory or other guidance will be made in accordance with that guidance or statutory requirement.

5 MEETINGS OF THE TRUST BOARD

5.1 Calling meetings

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

5.1.2 The Chairman of the Trust may call a meeting of the Trust Board.

5.1.3 One-third or more members of the Trust Board may requisition a meeting in writing. If the Chairman refuses, or fails, to call a meeting within seven (7) Clear Days of a requisition being presented to him at the Trust's head office, the members of the Trust Board of Directors signing the requisition may forthwith call a meeting.

5.2 Notice of meetings and the business to be transacted

5.2.1 Before each meeting of the Trust 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 five (5) Clear Days before the meeting. The notice shall be signed by the Trust Secretary or by an officer authorised by the Chairman to sign on the behalf of the Trust Secretary.

5.2.2 In the case of a meeting called by the Directors in default of the Chairman calling the meeting following a requisition as set out in SO 5.1.3 above, the notice shall be signed by those Directors requisitioning the meeting. No business shall be transacted at the meeting other than that specified on the agenda.

5.2.3 Failure to serve such a notice on more than three (3) Directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

5.3 **Agenda and supporting papers**

5.3.1 The agenda will be sent to the Directors five (5) Clear Days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three (3) Clear Days before the meeting, save in the case of emergency.

5.3.2 Before each meeting of the Trust Board held in public, 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 head office at least three (3) Clear Days before the meeting.

5.4 **Setting the agenda**

5.4.1 The Trust Board may determine that certain matters shall appear on every agenda for a meeting of the Trust Board and shall be addressed prior to any other business being conducted ("standing items").

5.4.2 A Director desiring a matter other than a standing item to be included on an agenda shall make his request in writing to the Chairman at least ten (10) Clear Days before the meeting, subject to SO 5.7. Requests made less than ten (10) Clear Days before a meeting may be included on the agenda at the discretion of the Chairman.

5.4.3 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.

5.5 **Petitions**

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

5.6 **Notice of motion**

5.6.1 Subject to SOs 5.8 and 5.9, a member of the Trust Board wishing to move or amend a motion shall send a written notice to the Chairman.

5.6.2 The notice shall be delivered at least ten (10) Clear Days before the meeting. The Chairman shall include in the agenda for the meeting all

notices so received that are in order and permissible under these SOs and appropriate governing regulations. This SO shall not prevent any motion being moved without notice, on any business mentioned on the agenda for the meeting.

5.7 Emergencies

5.7.1 In the event of an emergency giving rise to the need for an immediate meeting, failure to comply with the notice periods referred to in SO 5.2 shall not prevent the calling of or invalidate such meeting provided that every effort is made to contact Directors who are not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.

5.7.2 Subject to the agreement of the Chairman, and subject also to the provision of SO 5.8, a member of the Trust Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one (1) 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 Trust Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chairman's decision to include the item shall be final.

5.8 Motions: procedure at and during a meeting

5.8.1 Proposing motions

A Motion may be proposed by the Chairman of the meeting or any Director present. It must also be seconded by another Director.

5.8.2 Contents of motions

The Chairman may exclude from the debate at his discretion any such motion of which notice was not given on the notice summoning the meetings other than a motion:

5.8.2.1 relating to the reception of a report;

5.8.2.2 relating to consideration of any item of business before the Trust Board;

5.8.2.3 relating to the accuracy of minutes;

5.8.2.4 that the meeting of the Trust Board proceed to the next item of business;

5.8.2.5 that the meeting of the Trust Board of Directors is adjourned; and/or

5.8.2.6 that the question be now put.

5.8.3 Amendments to motions

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

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

5.8.3.3 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.

5.8.4 **Rights of reply to motions**

5.8.4.1 **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.

5.8.4.2 **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.

5.8.5 **Withdrawing a motion**

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

5.8.6 **Motions once under debate**

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

5.8.6.1 an amendment to the motion;

5.8.6.2 the adjournment of the discussion, or the meeting;

5.8.6.3 that the meeting proceed to the next item of business;

5.8.6.4 that the question should be now put;

5.8.6.5 the appointment of an 'ad hoc' committee to deal with a specific item of business;

5.8.6.6 that a Director be not further heard; and/or

5.8.6.7 a motion resolving to exclude the public, including the press (see SO 5.19).

5.8.7 The mover of the motion shall have a maximum of five (5) minutes to move and five (5) minutes to reply.

5.9 **Motion to rescind a resolution**

- 5.9.1 Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six (6) months shall bear the signature of the Director who gives it and also the signature of three (3) other Directors. Before considering any such motion of which notice shall have been given, the Trust Board may refer the matter to any appropriate Board committee of Directors or the Chief Executive for recommendation.
- 5.9.2 When any such motion has been dealt with by the Trust Board no Director shall be competent other than the Chairman to propose a motion to the same effect within six (6) months, however the Chairman may do if he considers it appropriate. This SO shall not apply to motions moved in pursuance of a report or recommendations of a Board committee of or the Chief Executive.

5.10 **Chairman of meeting**

- 5.10.1 At any meeting of the Trust Board the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Vice Chairman, if there is one and he is present, shall preside. If the Chairman and Vice Chairman are absent, the Directors present will elect from amongst the Non-Executive Directors a Chairman for that meeting alone.
- 5.10.2 If the Chairman is absent temporarily on the grounds of a declared conflict of interest the Vice Chairman, if present, shall preside. If the Chairman and Vice Chairman are absent, or are disqualified from participating, such Non-Executive Director as the Directors present at the meeting shall choose shall preside.

5.11 **Chairman's ruling**

Statements of Directors made at meetings of the Trust Board shall be relevant to the matter under discussion at the material time and the decision of the person chairing the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the SOs shall be final.

5.12 **Quorum**

- 5.12.1 Subject to SO 5.13, no business shall be transacted at a meeting of the Trust Board unless at least one-third of the whole number of the Directors is present including at least one (1) Executive Director and one (1) Non-Executive Director and the Chairman.
- 5.12.2 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 5.12.3 If the Chairman or any 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 SOs 10 and 11) 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 item of business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example where the trust board considers the recommendations of the remuneration committee or Nominations Committee).

5.13 Meetings: electronic communication

- 5.13.1 In this SO “communication” and “electronic communication” shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 5.13.2 A Director in electronic communication with the Chairman and all other parties to a meeting of the Trust Board or of a committee or sub-committee of the Directors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication. This shall include a Director attending by telephone, video or web conferencing link.
- 5.13.3 A meeting at which one or more of the Directors attends by way of electronic communication is deemed to be held at such a place as the Directors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Directors attending the meeting are physically present, or in default of such a majority, the place at which the chairman of the meeting is physically present.
- 5.13.4 Meetings held in accordance with this SO 5.13 are subject to SO 5.12 (Quorum). For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.
- 5.13.5 The minutes of a meeting held in this way must state that it was held by electronic communication and that the Directors were all able to hear each other and were present throughout the meeting.

5.14 Voting

- 5.14.1 Save as provided in SOs 5.15, 5.16 and 5.17, every question put to a vote at a meeting of the Trust Board shall be determined by a majority of the votes of Directors present and voting on the question. In the case of an equal vote for and against a motion, the person presiding (i.e. the chairman of the meeting) shall have a casting vote.
- 5.14.2 At the discretion of the Chairman all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chairman directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.
- 5.14.3 If at least one-third of the members of the trust board present so request, the voting on any question may be recorded so as to show how each member of the Trust Board present voted or abstained (except when conducted by paper ballot).

- 5.14.4 If a member of the Trust Board so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 5.14.5 In no circumstances may an absent member of the Trust Board vote by proxy. Absence is defined as being absent at the time of the vote.
- 5.14.6 An Officer who has been formally appointed by the Trust Board 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.
- 5.14.7 An Officer attending a meeting of the Trust Board 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.
- 5.14.8 For the voting rules relating to joint Directorship posts see SO 4.3.

5.15 **Suspension of Standing Orders**

- 5.15.1 Except where this would contravene any provision of the Regulatory Framework or any guidance or best practice advice issued by Monitor or the rules relating to the Quorum (SO 5.12), any one or more of the SOs may be suspended at any meeting, provided that at least two-thirds of the whole number of the Directors are present (including at least one Executive Director and one Non-Executive Director) and that at least two-thirds of those present signify their agreement to such suspension. The reason for the suspension of the SOs shall be recorded in the minutes for the meeting of the Trust Board and reported to the Audit Committee.
- 5.15.2 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Chairman and Directors of the Trust.
- 5.15.3 No formal business may be transacted while the SOs are suspended.
- 5.15.4 The Audit Committee shall review every decision to suspend the SOs.

5.16 **Variation and amendment of SOs**

These SOs shall not be varied except in the following circumstances:

- 5.16.1 relevant notice of a meeting has been served in accordance with SO 5.2;
- 5.16.2 a notice of motion under SO 5.6 has been given;
- 5.16.3 a recommendation of the Chairman or Chief Executive has been included on the agenda for the meeting;
- 5.16.4 two-thirds of the Trust Board 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;

5.16.5 any variation or amendment does not contravene the Regulatory Framework, any statutory provision or guidance or best practice advice issued by Monitor; and

5.16.6 any variation or amendment has been approved by Monitor.

5.17 **Attendees at meetings of the Trust Board and record of attendance**

5.17.1 In addition to members of the Trust Board who are permitted to attend meetings of the Trust Board, Officers of the Trust and external advisors invited by the Trust Board (the names of which should be specified and notified in writing to the Trust Secretary and Chairman) shall be entitled to attend the meetings of the Trust Board. These officers of the Trust and external advisors will not count towards the quorum in accordance with SO 5.12 and shall not be eligible to vote in accordance with SO 5.14.

5.17.2 The names of the Chairman and all Directors present at the meeting shall be recorded in the minutes. Those officers of the Trust or external advisors present in accordance with 5.17.1 above will be recorded as being 'in attendance' at the meeting.

5.18 **Minutes**

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

5.18.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting. Minutes shall be retained by the Trust Secretary.

5.19 **Admission of the public and press**

5.19.1 Admission and exclusion on grounds of confidentiality of business to be transacted:

5.19.1.1 The public and representatives of the press shall be afforded facilities to attend all meetings of the Trust Board but shall be required to withdraw upon the Trust Board resolving as follows:

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

5.19.2 The correct procedure on matters to be excluded should be followed in compliance with the trust's freedom of information policy.

5.19.3 **General disturbances**

The Chairman or the person presiding over the meeting shall give such directions as he thinks fit with regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Trust's business shall be conducted without interruption and

disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public and representatives of the press will be required to withdraw upon the Trust Board resolving as follows:

“that in the interests of public order, the meeting adjourn for [the period to be specified] to enable the trust board to complete its business without the presence of the public”.

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

5.19.4.1 Matters to be dealt with by the Trust Board following the exclusion of representatives of the press, and other members of the public as provided for under SOs 5.19.1 and 5.19.3, shall be confidential to the members of the Trust Board.

5.19.4.2 Members of the Trust Board present and officers of the Trust and external advisers/observers in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'part II' outside of the Trust, without the express permission of the Trust Board. This prohibition shall apply equally to the content of any discussion during the meeting of the Trust Board which may take place on such reports or papers.

5.19.5 Use of mechanical or electrical equipment for recording or transmission of meetings

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

5.19.6 Observers at Trust Board meetings

The Trust Board 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 Trust Board meetings and may change, alter or vary these terms and conditions as it deems fit.

5.19.7 Questions at Trust meetings

Subject to the provisions set out in this SO 5, up to fifteen minutes may be set aside at a public meeting of the Trust Board to enable members of the public or other interested parties to ask questions of the Trust Board, on matters related to the business of the Trust, provided such questions are received in writing by the Chairman at least seven (7) Clear Days prior to the meeting.

6 APPOINTMENT OF COMMITTEES

6.1 Appointment of Committees

- 6.1.1 Subject to the Scheme of Delegation, the Regulatory Framework and such guidance and best practice advice issued by Monitor, the Trust Board may, and if directed by Monitor shall, appoint committees of the Trust Board.
- 6.1.2 A committee appointed under SO 6.1.1, may subject to the Regulatory Framework and such guidance and best practice advice as may be issued by Monitor or the Trust Board appoint working groups and joint committees consisting wholly or partly of Directors or wholly or partly of persons who are not Directors of the Trust.
- 6.1.3 The Trust shall determine the membership and terms of reference of committees and working groups, and joint committees and shall if it so requires, receive and consider reports of such committees.

6.2 Applicability of Standing Orders and Standing Financial Instructions to committees

The SOs of the Trust Board and SFIs of the Trust, shall apply with appropriate alteration to meetings of any committees established by the Trust Board. In this case the term “chairman” is to be read as a reference to the chairman of the committee as the context permits, and the term “member” is to be read as a reference to a member of the committee also as the context permits. There is no requirement to hold meetings of committees established by the trust board in public.

6.3 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 Trust Board), as the Trust Board shall decide in accordance with any legislation, regulation or guidance/best practice advice issued by Monitor. Such terms of reference shall have effect as if incorporated into the SOs.

6.4 Delegation of powers by committees to working groups

Where committees are authorised to establish working groups they may not delegate powers to the working group unless expressly authorised by the Trust Board.

6.5 Approval of appointments to committees

The Trust Board shall approve the appointments to each of the committees which it has formally constituted. Where the Trust Board determines, and regulations permit, those 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 Trust Board as defined by Monitor. The Trust Board 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.

6.6 Appointments for statutory functions

Where the Trust Board is required to appoint persons to a committee and/or to undertake statutory functions as required by the Secretary of State and/or Monitor, and where such appointments are to operate independently of the Trust, such appointment shall be made in accordance with the regulations and any directions, guidance or best practice advice issued by made by the Secretary of State and/or Monitor.

6.7 Committees established by the Trust Board

6.7.1 The committees established by the Trust Board are the:

- 6.7.1.1 audit committee;
- 6.7.1.2 remuneration and appointments committee;
- 6.7.1.3 patient safety committee;
- 6.7.1.4 patient and staff experience committee;
- 6.7.1.5 finance and performance committee;
- 6.7.1.6 integration committee;
- 6.7.1.7 trust executive committee; and
- 6.7.1.8 strategy and investment committee.

6.7.2 The terms of reference of these committees shall be agreed by the Trust Board in accordance with SO 6.3 above.

6.7.3 The Trust Board may operate as a committee in accordance with SO 7.3. (whole board committee). Any decisions taken by the Trust Board in committee (i.e. seminar meeting of the trust board) must be brought to the next public meeting of the Trust Board.

6.7.4 Notwithstanding the provisions of SO 6.7.1 above, the Trust Board may establish other committees, sub-committees and joint committees, including ad hoc committees, sub-committees or joint committees from time to time at its discretion.

6.8 Confidentiality

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

6.8.2 A Director or a member of a committee shall not disclose any matter reported to the Trust Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Trust Board or committee resolves that the matter is confidential.

7 ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION

7.1 Delegation of functions to committees

Subject to the Scheme of Delegation, the Regulatory Framework and such guidance or best practice advice as may be issued by Monitor, the Trust Board may make arrangements for the exercise, of any of its functions by a committee or sub-committee of Directors appointed by virtue of SO 6 or by an Executive Director, in each case subject to such restrictions and conditions as the trust thinks fit.

7.2 Emergency powers and urgent decisions

The powers which the Trust Board has retained to itself within these SO's may in emergency or for an urgent decision be exercised by the Chief Executive and the Chairman after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and chairman shall be reported to the next formal meeting of the Trust Board in public session for formal ratification.

7.3 Whole Board committee

When the Trust Board is not meeting as the trust in public session it shall operate as a committee ("whole board committee") and may only exercise such powers as may have been delegated to the whole board committee by the Trust in public session.

7.4 Delegation to Officers

7.4.1 Those functions of the Trust which have not been retained as reserved by the Trust Board 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 Trust Board.

7.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals which shall be considered and approved by the Trust Board. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Trust Board as indicated above.

7.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Trust Board of the Director of finance to provide information and advise the Trust Board in accordance with statutory requirements.

7.5 Scheme of Delegation

The arrangements made by the Trust Board as set out in the Scheme of Delegation shall have effect as if incorporated in these SOs but, for the avoidance of doubt, the Scheme of Delegation does not form part of the SOs or the Constitution.

8 INTERFACE BETWEEN THE TRUST BOARD AND THE COUNCIL OF GOVERNORS

8.1 The Trust Board will co-operate with the Council of Governors as far as possible in order to comply with the Regulatory Framework in all respects and in particular in relation to the following matters which are set out specifically within the Constitution:

8.1.1 the Directors, having regard to the views of the Council of Governors, are to prepare the Trust's Forward Plan each Financial Year and to give the Forward Plan to Monitor; and

8.1.2 the Directors are to present to the Council of Governors at a general meeting of the Council of Governors the Annual Accounts, any report of the Auditor on them, and the Annual Report.

8.2 The Annual Report is to give:

8.2.1 information on the steps taken by the Trust to secure that (taken as a whole) the actual membership of its Public Constituency and its Patient Constituency are representative of those eligible for such membership; and

8.2.2 any other information required by Monitor.

8.3 In order to comply with the Regulatory Framework in all respects and in particular in relation to the matters which are set out above, the Council of Governors may request that a matter which relates to paragraphs 44 and/or 45 of the Constitution is included on the agenda for a meeting of the Trust Board.

8.4 If the Council of Governors so desires such a matter as described within SO 8.3 to be included on an agenda item, they shall make their request in writing to the Chairman at least ten (10) Clear Days before the meeting of the Trust Board. The Chairman shall decide whether the matter is appropriate to be included on the agenda. Requests made less than ten (10) Clear Days before a meeting may be included on the agenda at the discretion of the Chairman.

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

9.1 Policy statements - general principles

The Trust Board will from time to time agree and approve policy statements/procedures which will apply to all or specific officers of the Trust. The decisions to approve such policies and procedures will be recorded in an appropriate Trust Board meeting minute and will be deemed where appropriate to be an integral part of the Trust's SOs (but, for the avoidance of doubt, such policy statements/procedures do not form part of the SOs or Constitution). They will be made in accordance with the Regulatory Framework and any relevant guidance or best practice advice issued from time to time by Monitor and/or the Secretary of State.

9.2 Specific policy statements

Notwithstanding the application of SO 9.1 above, the SOs and SFIs must be read in conjunction with the following policy statements:

- 9.2.1 the policy on gifts, gratuities, interests, benefits, hospitality, & sponsorship;
- 9.2.2 Code of Conduct for NHS Managers 2002;
- 9.2.3 ABPI Code of Practice for the pharmaceutical industry; and
- 9.2.4 the staff disciplinary policy and procedure adopted by the Trust, both of which shall have effect as if incorporated in these SOs but, for the avoidance of doubt, do not form part of the SOs or Constitution.

9.3 **Specific guidance**

Notwithstanding the application of SOs 9.1 and 9.2 above, these SOs must be read in conjunction with the following legislation, guidance and any other relevant guidance or best practice advice issued by Monitor and/or the Secretary of State:

- 9.3.1 a manual for Caldicott Guardians;
- 9.3.2 the Human Rights Act 1998; and
- 9.3.3 the Freedom of Information Act 2000.

10 **DUTIES AND OBLIGATIONS OF THE TRUST BOARD**

10.1 **Declaration of interests**

10.1.1 The Regulatory Framework requires Directors to declare to the Trust Secretary:

10.1.1.1 any interests which are relevant and material to the business of the Trust Board, including but not limited to any personal or family interests as defined in SO 10.1.2; and

10.1.1.2 any pecuniary interest as defined in SO 11 in any contract, proposed contract or other matter which is under consideration concerning the Trust or is to be considered by the Trust Board,

irrespective of whether those interests are direct or indirect, actual or potential.

10.1.2 All existing members of the Trust Board including members serving on any committee or sub-committee, irrespective of whether that member is also a Director should declare such interests as soon as they become aware of it. Any Director appointed subsequently should do so on appointment. All such interests should be entered on the register of interests of the members of the Trust Board in accordance with SO 10.5.

10.2 **Interests which are relevant and material**

Interests which are to be regarded as "relevant and material" are as follows and are to be interpreted in accordance with the guidance or best practice advice issued by Monitor:

10.2.1 directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);

- 10.2.2 ownership or part-ownership or directorships of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS or the Trust;
- 10.2.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS or the Trust;
- 10.2.4 a position of authority in a charity or Voluntary Organisation in the field of health and social care;
- 10.2.5 any connection with a Voluntary Organisation or other organisation contracting or commissioning for NHS or Trust services;
- 10.2.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks;
- 10.2.7 research funding/grants that may be received by an individual or their department; and
- 10.2.8 interests in pooled funds that are under separate management, (any relevant company included in this fund that has a potential relationship with the Trust must be declared).

10.3 **Advice on interests**

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

10.4 **Form of declaration**

The declaration referred to at SO 10.1 shall be made by completing and signing a form, as prescribed by the Trust Secretary from time to time, setting out any interests required to be declared outside a meeting in accordance with the Constitution or the SOs and delivering it to the Trust Secretary on appointment or as soon thereafter as the interest arises, but within seven (7) Clear Days of becoming aware of the existence of an interest.

10.5 **Recording of interests in minutes of meetings of the Trust Board**

- 10.5.1 At the time members of the Trust Board interests are declared, they should be recorded in the minutes of the meeting of the Trust Board.
- 10.5.2 Any changes in interests should be declared at the next meeting of the Trust Board following the change occurring and recorded in the minutes of that meeting.

10.6 **Publication of declared interests in the Annual Report**

Members of the Trust Board who hold memberships and/or directorships of companies likely to do business with the NHS or the Trust should be published in

the Trust's Annual Report or details provided therein as to where they can be viewed. The information should be kept up to date for inclusion in succeeding Annual Reports.

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

10.7.1 If a Director is present at a meeting of the Trust Board and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter.

10.7.2 If a Director has declared a pecuniary interest in accordance with SO 11 he shall not take part in the consideration or discussion of the matter in respect of which an interest has been disclosed and shall be excluded from the meeting whilst that proposed contract is under consideration. At the time the interests are declared, they should be recorded in the Trust Board meeting minutes.

10.8 Register of interests of members of the Trust Board

10.8.1 The Chief Executive shall ensure that a register of interests of members of the Trust Board is established to record the names of each Director, whether he has formally declared any interests and, if so, the interests declared in accordance with these SOs.

10.8.2 It is the obligation of a Director to inform the Trust Secretary in writing within seven (7) Clear Days of becoming aware of the existence of a relevant or material interest. The Trust Secretary must amend the appropriate register of interests of members of the Trust Board upon receipt within three (3) Clear Days.

10.8.3 The register of interests of members of the Trust Board will be available to the public and the Chairman will take reasonable steps to bring the existence of it to the attention of the local population and to publicise arrangements for viewing it.

10.8.4 In establishing, maintaining, updating and publicising the register of interests of members of the Trust Board the trust shall comply with all guidance or best practice advice issued from time to time by Monitor. The details of Directors' interests recorded in the register of interests will be kept up to date by means of a regular review as necessary of it by the Trust Secretary, during which any changes of interests recently declared will be incorporated.

11 EXCLUSION OF CHAIRMAN AND DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

11.1 Interpretation of 'pecuniary interest'

For the sake of clarity, the following definition of terms is to be used in interpreting this SO 11:

11.1.1 "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); and

- 11.1.2 "contract" shall include any proposed contract or other course of dealing.
- 11.2 Subject to the exceptions set out in this SO, a person shall be treated as having an indirect pecuniary interest in a contract, proposed contract or any other matter if:
- 11.2.1 he, or a nominee of his, is a director of a company or other body (not being a public body), with which the contract is made, or is to be made or which has a direct pecuniary interest in the same; or
- 11.2.2 he is a spouse, partner, associate or employee of any person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the same.
- 11.3 **Exception to pecuniary interests**
- A person shall not be regarded as having a pecuniary interest in any contract, proposed contract or other matter if:
- 11.3.1 neither he or any person connected with him/her has any beneficial interest in the securities of a company or other body of which he or such person appears as a director; or
- 11.3.2 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, discussing or voting on any question with respect to that contract or that matter; or
- 11.3.3 he is in receipt of any travelling expenses or remuneration, compensation or allowances payable by virtue of paragraph 18 of Schedule 7 to the 2006 Act, or other allowances payable to a Director in accordance with the Constitution.
- 11.4 Where a Director:
- 11.4.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body;
- 11.4.2 the total nominal value of those securities does not exceed £10,000 (ten thousand pounds) or one hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; or
- 11.4.3 if the share capital is more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,
- the Director shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.

12 STANDARDS OF BUSINESS CONDUCT

12.1 Trust policies and national guidance

All Directors and Officers must observe:

- 12.1.1 the NHS Foundation Trust Code of Governance;
- 12.1.2 the Trust's policy on gifts, gratuities, interests, benefits, hospitality a& sponsorship; and
- 12.1.3 the Code of Conduct for NHS Managers 2002 and the ABPI Code of Practice for the pharmaceutical industry.

This section of the SOs should be read in conjunction with these documents.

12.2 Interest of Directors and Officers in contracts

- 12.2.1 If it comes to the knowledge of any Director or officer that the Trust has entered into or proposes to enter into a contract in which he or any person connected with him has any pecuniary interest, direct or indirect, he shall, at once declare their interest by giving notice in writing of such fact to the Trust Secretary of the fact that he is interested therein as soon as practicable. In the case of spouses and persons living together the interests of one partner shall, if known to the other, be deemed to be also the interest of the other.
- 12.2.2 A Director or Officer should also declare to the Trust Secretary any other employment or business or other relationship of his, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 12.2.3 The Trust will require interests, employment or relationships so declared to be entered in the register of interests of members of the Trust Board.

12.3 Canvassing of and recommendations by Directors in relation to appointments

- 12.3.1 Canvassing of Directors of the Trust or of any committee of the Trust Board directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the SO shall be included in application forms or otherwise brought to the attention of candidates.
- 12.3.2 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 SO shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.
- 12.3.3 Informal discussions outside appointments or nominations panels or committees, whether solicited or unsolicited, should be declared to the panel or committee in question.

12.4 Relatives of Directors or Officers

- 12.4.1 Candidates for any staff appointment under the Trust shall, when making an application, disclose in writing to the Trust whether they are related to any 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.
- 12.4.2 The Directors, Chairman and every 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 Trust Board any such disclosure made.
- 12.4.3 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other member or holder of any office under the Trust.
- 12.4.4 Where the relationship to an officer or another Director of the Trust is disclosed, SO 10 shall apply.

12.5 External consultants

SO 12 will apply equally to all external consultants or other agents acting on behalf of the Trust.

13 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

13.1 Custody of the common seal of the Trust

The common seal of the Trust shall be kept by the Trust Secretary or a nominated Officer in a secure place.

13.2 Sealing of documents

13.2.1 The common seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Trust Board or of a committee thereof, or where the Trust Board has delegated its powers.

13.2.2 The fixing of the common seal of the Trust shall be authenticated by the signature of at least two (2) Board Directors.

13.3 Register of sealing

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

13.4 Use of the common seal – general guide

The common seal of the Trust must be used in the following circumstances:

- 13.4.1 all contracts for the purchase/lease of land and/or building;
- 13.4.2 all contracts for capital works exceeding £1,000,000 (one million pounds);
- 13.4.3 all lease agreements where the annual lease charge exceeds £90,000 per annum and the period of the lease exceeds five (5) years;
- 13.4.4 any other lease agreement where the total payable under the lease exceeds £90,000; and
- 13.4.5 any contract or agreement with organisations other than NHS or other government bodies including local authorities where the annual costs exceed or are expected to exceed £90,000.

14 SIGNATURE OF DOCUMENTS

- 14.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall, unless any enactment otherwise requires or authorises or the Trust Board have given the necessary authority to some other person for the purposes of such proceedings, be signed by the Chief Executive or any Executive Director.
- 14.2 The Chief Executive or nominated Officers shall be authorised, by resolution of the Trust Board, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Trust Board or committee or sub-committee to which the Trust Board has delegated appropriate authority.
- 14.3 In land transactions, the signing of certain supporting documents will be delegated to managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

15 MISCELLANEOUS

15.1 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 understand their responsibilities within these SOs. Updated copies shall be issued to Directors and officers by the Chief Executive. New Directors and Officers shall be informed in writing and shall receive copies where appropriate of SOs.

15.2 Documents having the standing of Standing Orders

The SFIs and the Scheme of Delegation shall be approved by the Trust Board and have effect as if incorporated into these SOs. For the avoidance of doubt neither the SFIs nor the Scheme of Delegation form part of the Constitution.

15.3 Review of Standing Orders

SOs shall be reviewed annually by the Trust.

15.4 Corporate documents

Documents specific to the setting up of the Trust shall be held in a secure place by the Chief Executive.

15.5 Duty to report non-compliance with SOs

If for any reason these SOs 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 Trust Board for action or ratification. All members of the Trust Board and Officers have a duty to disclose any non-compliance with these SOs to the Chief Executive as soon as possible.