



**The Queen Elizabeth
Hospital King's Lynn**
NHS Foundation Trust

Constitution





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APPROVED	Board of Directors	December 2023
APPROVED	Council of Governors	December 2023

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1 Name

- 1.1 The name of the foundation trust is The Queen Elizabeth Hospital, King's Lynn, NHS Foundation Trust (the Trust).

2 Interpretation and definitions

- 2.1 Unless otherwise stated, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006.
- 2.2 References in this Constitution to legislation include all amendments, replacements and re-enactments made and include all subordinate legislation made thereunder.
- 2.3 Headings are for ease of reference only and are not to affect interpretation.
- 2.4 References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an annex or appendix to this Constitution. It shall be a reference to a paragraph in that annex or appendix unless the contrary is expressly stated, or the context otherwise so requires.
- 2.5 In this Constitution:

the "2006 Act"

means the national Health Service Act 2006

the "2012 Act"

means the Health and Social Care Act 2012

the "2022 Act"

means the Health and Care Act 2022

Accounting Officer means the Chief Executive who is 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 Members' Meeting has the meaning ascribed to it in paragraph 9.1 of this Constitution.

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

Appointed Governors means governors who are appointed by the Local Authority Governor, or other partner organisations specified in Annex 3 of this Constitution.

Area of the Trust means the area specified in Annex 1 as an area for a public constituency.

Audit Committee means a committee established pursuant to paragraph 40 of this Constitution.

Auditor means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph 40 of this Constitution.

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

Chair means the chair of the Board of Directors and the Council of Governors. The expression "the Chair" shall be deemed to include the Deputy Chair of any other non-executive director appointed if the Chair and/or Deputy Chair is absent from the meeting or otherwise unavailable.

Chief Executive means the Chief Executive of the Trust.

Conflict has the meaning ascribed to it in paragraph 32.1.1 of this Constitution.

Constitution means this Constitution together and all annexes to it.

Council of Governors means the Council of Governors of the Trust as constituted in this Constitution.

Deputy Chair means the Deputy Chair of the Trust appointed pursuant to paragraph 27 of this Constitution.

Director means a member of the Board of Directors and includes both executive directors and non-executive directors.

Directors' Code of Conduct means the Code of Conduct for Directors of the Trust, as adopted by the Trust and as amended from time to time by the Board of Directors, which all directors must ascribe to.

Executive Director means a member of the Board of Directors of the Trust appointed in accordance with paragraph 28.1 of this Constitution.

Elected Governors means governors who are elected by the Public Constituencies or the Staff Constituency.

Financial Year means a successive period of twelve months beginning with 1 April.

Forward Plan means the document prepared by the Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act.

Governor means a member of the Council of Governors.

Governors' Code of Conduct means the Code of Conduct for Governors of the Trust as adopted by the Trust and as amended from time to time by the Council of Governors which all governors must subscribe to.

Health Overview and Scrutiny Committee means a local authority overview and scrutiny committee established pursuant to section 21 of the Local Government Act 2000.

Health Service Body shall have the meaning ascribed to it in Section 9(4) of the 2006 Act and shall additionally include NHS Foundation Trusts.

Integrated Care Board means an integrated care board established under Chapter A3 of Part 2 of the 2006 Act.

Integrated Care System means an integrated care system in England. An integrated care system (ICS) is a statutory partnership of organisations who plan, buy and provide health and care services in their geographical area. The organisations involved include NHS, local authorities, voluntary and charity groups, and independent care providers.

Interested Director has the meaning ascribed to it in paragraph 33.11 of this Constitution.

Local Authority Governor means a member of the Council of Governors appointed by one or more local authorities whose areas include the whole or part of the Area of the Trust.

Licence means the licence issued to the Trust under section 88 of the 2012 Act.

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

Model Rules for Elections means the election rules set out in Annex 7 of this Constitution.

Motion means a formal proposition to be discussed and voted on during the course of a meeting of the Council of Governors or the Board of Directors (as relevant).

NHS Provider Trust Code of Conduct means NHS England's Code of Governance for NHS Provider Trusts (April 2023) as amended or replaced from time to time.

NHS England: The Health and Social Care Act 2022 has merged "Monitor" and the Trust Development Authority (TDA) into NHS England and removed legal barriers to collaboration and integrated care, making it easier for providers to take on greater responsibility for service planning and putting Integrated Care Systems (ICSs) on a statutory footing.

Non-Executive Director means a member of the Board of Directors appointed in accordance with paragraph 26 of this Constitution.

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

Public Constituency has the meaning ascribed to it in paragraph 7.2 of this Constitution.

Scheme of Delegation means the reservation of powers to the Board of Directors and the scheme of delegation by the Board of Directors of such powers, as set out in the Trust's document titles 'Reservation of Powers to the Board and Delegation of Powers'.

Secretary means the person appointed pursuant to paragraph 34 of this Constitution.

Senior Independent Director means a non-executive director of the Trust as selected by the Board of Directors in consultation with the Council of Governors.

Staff Constituency has the meaning ascribed to it in paragraph 8.3 of this Constitution.

Standing Financial Instructions of SFI(s) means the Trust's standing financial instructions which regulate the conduct of directors and nominated officers in relation to all financial matters with which they are concerned.

Standing Orders or SO(s) means the standing orders for the Council of Governors and/or the standing orders of the Board of Directors (as relevant).

Statutory Transaction means a merger under Section 56 of the 2006 Act, an acquisition under section 56B of the 2006 Act, and a dissolution under section 57A of the 2006 Act.

Trust means The Queen Elizabeth Hospital, King's Lynn, NHS Foundation Trust.

Trust Headquarters means the Trust Head Office at Gayton Road, King's Lynn, Norfolk, PE30 4ET.

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

3 Principle purpose

- 3.1 The principal purpose of the Trust is the provision of goods and services for the purposed of the health service in England.

- 3.2 The Trust does not fulfil its principle purpose unless, in each financial year, its total income from the provision of goods and services for the purpose of the health service in England is greater than its total income from the provision of goods and services for any other purpose.
- 3.3 The Trust may provide goods and services for any purposes related to:
- 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness and,
 - 3.3.2 the promotion and protection of public health.
- 3.4 The Trust may also carry-on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order to better carry on its principal purpose.

4 Powers

- 4.1 The powers of the Trust are set out in the 2006 Act.
- 4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Subject to any restriction contained in this Constitution or in the 2006 Act, any of these powers may be delegated to a committee of directors or an executive director.
- 4.4 The Trust shall exercise its functions effectively, efficiently, and economically.
- 4.5 Subject to paragraph 4.6 below, and having regard to any guidance published by NHS England, in making a decision about the exercise of its functions the Trust shall have regard to all likely effects of the decision in relation to:
- 4.5.1 the health and wellbeing of the people of England;
 - 4.5.2 the quality of services provided to individuals by relevant bodies, or in pursuance of arrangements made by the relevant bodies, for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service of England; and,
 - 4.5.3 efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- 4.6 The requirement to have regard to the wider effect of its decisions set out at paragraph 4.5 shall not apply to decisions about services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness.
- 4.7 In paragraph 4.5 'relevant bodies' has the meaning set out in paragraph 63A(4) of the 2006 Act.
- 4.8 In exercising its functions, the Trust shall have regard to the need to contribute towards compliance with the UK net zero emission target set out in section 1 of the Climate Change Act 2008 and the environmental targets set out at section 5 of the Environment Act 2021, and to adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2028. In doing so, the Trust shall also have regard to guidance published by NHS England.
- 4.9 The Trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions.

4a Joint working and delegation arrangements

- 4a.1 Subject to paragraph 4a.2 the Trust may arrange in accordance with s65Z5 of the 2006 Act for the joint exercise of functions with any one or more of the following bodies:
- 4a.1.1 a relevant body;
 - 4a.1.2 a local authority;
 - 4a.1.3 a combined authority
- 4a.2 Where the Trust has entered into arrangements for the joint exercise of functions with one or more bodies in accordance with paragraph 4a.1, it may make arrangements for:

4a.2.1 the function to be exercised by a joint committee, or

4a.2.2 for one or more of them, or a joint committee of them, to establish and maintain a pooled fund.

4a.3 The Trust must have regard to any guidance published by NHS England under s65z7.

4a.4 In this paragraph 4A, the following terms have the following meanings:

4a.4.1 'Relevant body' has the meaning set out in section 65z5(2) of the 2006 Act.

4a.4.2 'Local authority' means a local authority within the meaning of section 2B of the 2006 Act.

4a.4.3 'Combined authority' has the meaning set out in s275 of the 2006 Act.

4a.4.4 'Pooled fund' has the meaning set out in s65Z6(3) of the 2006 Act.

4b Duties relating to integrated care system financial controls

4b.1 The Trust must seek to achieve financial objectives that apply to it under section 223L of the 2006 Act.

4b.2 The Trust must exercise its functions with a view to ensuring that it complies with its duties:

4b.2.1 under s223LA of the 2006 Act to limit expenditure.

4b.2.2 under s223M and s223N of the 2006 Act to limit local capital resource use and local revenue resource use.

5 Membership and constituencies

5.1 The Trust shall have members, each of whom shall be a member of one of the following:

5.1.1 a public constituency (Annex 1); and,

5.1.2 a staff constituency (Annex 2).

6 Application for membership

6.1 An individual who is eligible to become a member of the Trust may do so on application to the Trust and in accordance with paragraphs 7 and 8, below.

7 Public constituency

7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.

7.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as a public constituency.

7.3 The minimum number of members in each area for a public constituency is specified in Annex 1.

7.4 An eligible individual may apply to the Trust to become a member. On receipt of an application for membership and subject to being satisfied that the applicant is eligible the Secretary shall enter the applicant's name in the Trust's register of members.

8 Staff constituency

8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust, provided:

8.1.1 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12-months; or,

8.1.2 they have been continuously employed by the Trust under a contract of employment for at least 12-months.

8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12-months and will include:

8.2.1 academic staff employed by a university and working in the Trust for 12-months or more,

8.2.2 volunteers who have worked within the Trust for 12-months or more, and

8.2.3 staff employed by independent contractors who exercise functions for the purposes of the Trust and who have worked within the Trust for 12-months or more.

8.3 Those individuals who are eligible for membership of the Trust by reason of paragraphs 8.1 and 8.2 above, are referred to collectively as the staff constituency.

8.4 The staff constituency shall be divided into two descriptions of individuals who are eligible for membership of the staff constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the staff constituency.

8.5 The minimum number of members in each class of the staff constituency is specified in Annex 2.

Automatic membership by default – staff

8.6 An individual who is:

8.6.1 eligible to become a member of the staff constituency, and

8.6.2 invited by the Trust to become a member of the staff constituency and a member of the appropriate class within the staff constituency.

shall become a member of the Trust as a member of the staff constituency and appropriate class within the staff constituency without an application being made, unless they inform the Trust that they do not wish to do so.

9 Membership – restriction, disqualification, and removal

9.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency class continues, be a member of any other constituency or class.

9.2 An individual who satisfies the criteria for membership of the staff constituency may not become or continue as a member of any constituency other than the staff constituency.

9.3 An individual shall not become or continue as a member if:

9.3.1 the individual is less than 16 years of age and does not have the agreement of a parent or guardian;

9.3.2 they are or wish to become a member of the public constituency and they do not or no longer reside within the relevant catchment area as set out in Annex 1;

9.3.3 in the last five years prior to the individual's application for membership, the individual has been involved, as perpetrator, in a serious incident or assault or violence, or in one or more incidents of harassment against any persons working for the Trust of any other Health Service body or any service users or carers or visitors to the Trust or any other NHS body.

9.3.4 in the last five years the individual has been excluded from any of the Trust's premises from which services are provided;

9.3.5 the individual is a vexatious complainant as determined by the Secretary; or,

9.3.6 the Council of Governors resolves that there are reasonable grounds to believe that the individual is likely to:

9.3.6.1 prejudice the ability of the Trust to fulfil its Principal Purpose or other of its purposes under the Constitution or otherwise to discharge its duties and functions; or,

9.3.6.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or,

9.3.6.3 adversely affect public confidence in the goods or services provided by the Trust; or,

9.3.6.4 otherwise bring the Trust into disrepute.

9.3.7 the individual is a former employee of the Trust, and their contract has been terminated due to poor performance or misconduct.

9.4 The process for dealing with a resolution of the Council of Governors under paragraph 9.3.7 is set out in the Standing Orders of the Council of Governors. No person who has been expelled from the membership of the Trust is to be re-admitted as a member except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a general meeting of the Council of Governors.

9.5 A member shall otherwise cease to be a member of the Trust in the following circumstances:

9.5.1 they resign by notice to the Trust;

9.5.2 they die; or,

9.5.3 if the Trust reasonably believes that the Member no longer lives at their registered address and the Trust does not know where that Member lives.

10 Annual Members' Meeting

10.1 The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Member's Meeting shall be open to members of the public.

10.2 Further provisions about the Annual Members' Meeting are set out in Annex 6 – Annual Members' Meeting.

11 Council of Governors – composition

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

11.2 The aggregate number of public governors is to be more than half the numbers of members of the Council of Governors.

11.3 The members of the Council of Governors, other than the appointed governors, shall be chosen by election by their constituency or, where there are classes within that constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of constituency, is specified in Annex 3.

11.4 The appointed governors shall be appointed by the relevant appointing organisation. The number of appointed governors appointed by each appointing organisation is specified in Annex 3.

12 Council of Governors – election of governors

- 12.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 12.2 The Model Election Rules as published from time to time by the Department of Health form part of this Constitution. The Model Election Rules current at the date of this Constitution are attached at Annex 4.
- 12.4 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 43 of this Constitution (amendment of the Constitution).
- 12.5 An election, if contested, shall be by secret ballot on the basis of a single transferrable vote (SVT) polling and the Model Election Rules shall be construed accordingly.
- 12.6 A person may not vote at an election for or stand for an election as an elected governor unless within the specified period stated in the Model Election Rules, they have made a declaration in the specified form setting out the particulars of their qualification to vote or stand as a member of the constituency for which the election is being held.
- 12.7 The Model Election Rules are published from time to time by NHS Providers form part of this Constitution. The Model Election Rules current at the date of this Constitution are attached at Annex 4.
- 12.1 A subsequent variation of the Model Election Rules by NHS Providers or the Department of Health and Social Care shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 42 of this Constitution.

13 Council of Governors – tenure

- 13.1 Elected Governors:
 - 13.1.1 may hold office for a period of up to “3 years”. The period for which they are elected shall be known as the “Term”.
 - 13.1.2 subject to paragraph 13.1.3, shall be eligible for re-election or re-appointment as appropriate at the end of their term.
 - 13.1.3 may hold office for a maximum of nine consecutive years. A governor may, after no less than a period of three years following the end of the nine consecutive years, be eligible to put their name forward for election for a further term of office. For the purposes of this paragraph, years of office are consecutive unless there is a break of at least 12-months between them.
 - 13.1.4 shall cease to hold office if they cease to be a member of the constituency or class by which they were elected. For the avoidance of doubt, this includes a governor moving their principal residence from one public constituency to another.
- 13.2 Appointed Governors:
 - 13.2.1 may hold office for a period of up to three years;
 - 13.2.2 subject to paragraph 13.2.3 shall be eligible for re-appointment at the end of their term;
 - 13.2.3 may hold office for a maximum of three consecutive terms;

13.2.4 shall cease to hold office if the Appointing Organisation of that governor withdraws its appointment of them by notice in writing to the Secretary or if they cease to be employed by or associated with the Appointing Organisation.

14 Council of Governors – disqualification and removal

14.1 A governor may resign from that office at any time during their Term by giving notice in writing to the Secretary or the Chair, such notice is to specify the date of resignation.

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

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

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

14.2.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than 3-months (without the option of a fine) was imposed on them.

14.2.4 a person who is a director or non-executive director of the Trust.

14.2.5 a person who is a director or governor of the Trust or of another NHS Foundation Trust;

14.2.6 a person who has been removed as a governor of another Foundation Trust;

14.2.7 a person who has had their name removed from a list maintained under the regulations pursuant of Sections 91, 106 or 146 of the 2006 Act, or the equivalent lists maintained by local health boards in Wales under the National Health Services (Wales) Act 2006, and they have not subsequently had their name included in such a list;

14.2.8 a person who is subject to a Sex Offenders Order (under the Sex Offenders Act 1997 as amended by the Sexual Offences Act 2003) and/or whose name is included in the Sex Offender Register (established under the Sexual Offences Act 2003);

14.2.9 a person who is incapable by reason of mental disorder, injury, or illness of managing and administering their property and affairs;

14.2.10 a person who has failed to give written consent to the Secretary to establish them to request a third party to provide data that will verify the person's status in relation to 14.1 to 14.6.

14.2.11 a person who has refused to take any training required by the Council of Governors for all governors.

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

14.4 If a governor fails to attend more than three consecutive meetings the Council of Governors in any financial year, their tenure of office is to be terminated immediately unless the other governors are satisfied that:

14.4.1 the absence was due to a reasonable cause; and,

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

14.5 If a governor is considered to have acted in a manner inconsistent with:

14.5.1 the vision and values of the Trust and the core principles of the NHS; or,

14.5.2 the terms of the Trust's licence; or,

14.5.3 the Standing Orders of the Council of Governors; or,

14.5.4 the Governors Code of Conduct; or,

14.5.5 except as a result of a genuine mistake or where reasonable cause can be shown or where they can demonstrate that they have gained no personal benefit, they have failed to declare an interest as required by the Constitution or the Standing Orders of the Council of Governors, or they have spoken or voted at a meeting on a matter in which they have an interest contrary to this Constitution or the Standing Orders of the Council of Governors, and this paragraph "interest" includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect; and,

14.5.6 they are as judged to have so acted by a majority of not less than 75% of the Council of Governors present and voting then the governor shall vacate their office immediately.

14.6 The Standing Orders of the Council of Governors shall provide for the process to be adopted in cases relating to the termination of a governor's termination.

15 Council of Governors – vacancy

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

15.2 Where the vacancy arises amongst the Appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.

15.3 When a vacancy arises for one or more Elected Governors, the Council of Governors shall have the option to take from the list of Members who stood for election at the most recent election of governors from the class or constituency in question the next highest polling candidate. This procedure, which shall be an uncontested election for the purposes of the Model Rules for Election as they apply to the Trust and shall be available to the governors on two occasions within 12 months of the previous election. Governors appointed in this way shall hold office for a minimum of six months from their appointment, but subject thereto, shall hold office until the earlier of the conclusion of the next election of governors and (except where the vacancy arose through expiry of a term of office) the date on which would have expired the term of office of the governor whose cessation of office gave rise to the vacancy.

16 Council of Governors – duties of governors

16.1 The general duties of the Council of Governors are:

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

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

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

17 Council of Governors – meetings of governors

17.1 The Chair of the Trust (i.e., the Chair of the Board of Directors), appointed in accordance with the provisions of paragraph 24 or, in their absence the Deputy Chair, shall preside at meetings of the

Council of Governors. In the absence of the Deputy Chair or where there is no Deputy Chair in office, a non-executive director shall preside at the meetings.

17.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons by resolution of the Council of Governors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or proceedings. The Chair may exclude any person from a meeting of the Council of Governors if that person is interfering with or preventing the proper conduct of the meeting.

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

18 Council of Governors – standing orders

18.1 The standing orders for the practice and procedure of the Council of Governors shall be read alongside this Constitution.

19 Council of Governors – referral to the panel

19.1 In this paragraph, the Panel means a panel of persons appointed by NHS England to which a governor of an NHS Foundation Trust may refer a question as to whether the Trust has failed or is failing:

19.1.1 to act in accordance with its constitution, or

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

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

20 Council of Governors – conflicts of interest of governors

20.1 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 they become aware of it.

20.2 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.

21 Council of Governors – travel expenses

21.1 The Trust may pay travelling and other expenses of members of the Council of Governors at rates determined by the Trust.

22 Council of Governors – roles and responsibilities

22.1 In addition to the general duties of the Council of Governors as set out at paragraph 16 of this Constitution, the general responsibilities of the Council of Governors shall be consulted by the Board of Directors regarding the information to be given to NHS England as to the Trust's forward

planning in respect of each Financial Year and to give their views to the Board of Directors for the purposes of the preparation by the Board of Directors of any document containing such information which is to be given to the Monitor.

23 Board of Directors – composition

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

23.2 The Board of Directors is to comprise:

23.2.1 a non-executive Chair, and

23.2.2 a minimum of four and up to seven other non-executive directors; and

23.2.3 a minimum of four and up to seven executive directors provided that the number of non-executive directors plus the Chair shall exceed the number of executive directors.

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

23.4 The Chief Executive shall be the Accounting Officer.

23.5 One of the executive directors shall be the Finance Director.

23.6 One of the executive directors is to be a registered medical practitioner (within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984).

23.7 One of the executive directors is to be a registered nurse or a registered midwife (within the meaning of the Nurse and Midwifery Order 2001 (SI 2002/253)).

23.8 To be eligible to be the Finance Director of the Trust, the individual must have an appropriate accountancy qualification and the expertise and experience to lead the financial management of the Trust.

24 Board of Directors – general duty

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

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

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

25.1.1 they are a member of a public constituency, or

25.1.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, and they exercise functions for the purposes of that university.

25.1.3 they are not disqualified by virtue of paragraph 29 below.

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

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

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

27 Board of Directors – appointment of Deputy Chair and Senior Independent Director

27.1 The Council of Governors at a general meeting of the Council of Governors may appoint one of the non-executive directors as Deputy Chair.

27.2 The Chair, in consultation with the non-executive directors and the Council of Governors may appoint a non-executive director to be the Senior Independent Director, in accordance with paragraph 2.6 of the Board of Directors Standing Orders.

28 Board of Directors – appointment and removal of the Chief Executive and other executive directors

28.1 A Committee comprising the Chair and other non-executive directors shall appoint or remove the Chief Executive.

28.2 The appointment of the Chief Executive shall require approval of the Council of Governors.

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

29 Board of Directors – disqualification

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

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

29.1.2 a person who has made a composition or arrangement with or granted a trust deed for that person's creditors and has not been discharged in respect of it.

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

29.1.4 a person whose tenure of office as a chair, or member, or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service.

29.1.5 a person who has had their name removed from a list maintained under regulations pursuant to sections 91, 106 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 their name included in such a list.

29.1.6 a person who has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment in a Health Service Body.

29.1.7 a person who is a director of (or equivalent) of:

29.1.7.1 any local Healthwatch organisation that holds a contract with a local authority for an area that includes the whole or part of any area specified in Annex 1 as an area for a public constituency, or

29.1.7.2 any contractor that is authorised to assist in any such local Healthwatch organisation or to carry out activities on its behalf under arrangements made by it pursuant to Section 222(2B) of the Local Government and Public Involvement in Health Act 2007.

29.1.8 a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;

- 29.1.9 in the case of a non-executive director, a person who has refused without reasonable cause to fulfil any training requirement established by the Chair;
- 29.1.10 a person who has refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Directors' Code of Conduct; or
- 29.1.11 a person in relation to whom a moratorium period under a debt relief order applied (under Part 7A of the Insolvency Act 1986);
- 29.1.12 a member of the Council of Governors;
- 29.1.13 a spouse, partner, parent or child of a member of the Board of Directors;
- 29.1.14 a member of a local authority's Health Overview and Scrutiny Committee;
- 29.1.15 a person who is the subject of a Sex Offenders Order (under the Sex Offenders Act 1997 as amended by the Sexual Offences Act 2003) and/or whose name is included in the Sex Offenders Register (established under the Sexual Offences Act 2003);
- 29.1.16 a person who is not a fit and proper person for the purposes of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulation 2014;
- 29.1.17 in the case of a non-executive director, a person who is no longer a member of a public constituency.

30 Board of Directors – meetings

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

31 Board of Directors – standing orders

- 31.1 The standing orders for the practice and procedure of the Board of Directors shall be read alongside this Constitution.

32 Board of Directors – conflicts of interest of directors

- 32.1 The duties that a director of the Trust has by virtue of being a director include in particular:
 - 32.1.1 a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust (a "conflict").
 - 32.1.2 a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 32.2 The duty referred to in clause 32.1.1 is not infringed if:
 - 32.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 32.2.2 the matter has been authorised in accordance with the Constitution.
- 32.3 The duty referred to in clause 30.1.2 above is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4 In sub-paragraph 32.1.2 above, "third party" means a person other than:

32.4.1 the Trust, or

32.4.2 a person acting on its behalf.

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

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

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

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

32.9 A director need not declare an interest:

32.9.1 if the interest cannot reasonably be regarded as likely to give rise to a conflict of interest;

32.9.2 if, or to the extent that, the directors are already aware of the interest;

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

a) by a meeting of the Board of Directors, or

b) by a committee of the directors appointed for the purpose under the Constitution.

32.10 A matter shall have been authorised for the purposes of paragraph 32.2.2 above, if:

32.10.1 the directors, in accordance with the requirements set out in paragraph 32.11 authorise any matter or situation proposed to them by any director which would, if not authorised, involve a director (an "Interested Director") breaching their duty under paragraph 32.1.1 above to avoid Conflicts.

32.10.2 any authorisation under paragraph 32.10.1 will be effective only if:

32.10.2.1 the matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the directors under the provision of this Constitution or in such other manner as the directors may determine.

32.10.2.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other Interested Director; and

32.10.2.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other Interested Director's vote had not been counted.

32.11 Any authorisation of a Conflict under paragraph 32.10 may (whether at the time of giving the authorisation or subsequently):

32.11.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised;

32.11.2 provide that the Interest Director be excluded from the receipt of documents and information and the participation in discussions (whether at meeting of the directors or otherwise) related to the Conflict;

32.11.3 provide that the Interested Director shall or shall not be an eligible director in respect of any future decision of the Directors in relation to any resolution related to the Conflict;

32.11.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit;

32.11.5 provide that, where the Interested Director obtains, or has obtained (through their involvement in the Conflict and otherwise than through their position as a director of the Trust) information that is confidential to a third party, they will not be obliged to disclose that information to the Board of Directors, or to use it in relation to the Trust's affairs where to do so would amount to a breach of that confidence; and

32.11.6 permit the Interested Director to absent themselves from the discussion of matters relating to the Conflict of any meeting of the directors and be excused from reviewing papers prepared by, or for, the director to the extent they relate to such matters.

32.12 Where the Directors authorise a conflict, the Interested Director will be obliged to conduct themselves in accordance with any terms imposed by the Directors in relation to the Conflict.

32.13 The Directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation in accordance with the terms of such authorisation.

32.14 A director is not required, by reason of being a director, to account to the Trust for any remuneration, profit, or other benefit which they derive from or in connection with a relationship involving a Conflict which has been authorised by the Directors (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

32.15 Subject to paragraph 32.16 below, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any director other than the Chair is to be final and conclusive.

32.16 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Directors (other than the Chair) at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or part of the meeting) for voting or quorum purposes.

33 Board of Directors – remuneration and terms of office

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

34.2 The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and condition of office, of the Chief Executive and other executive directors.

34 Secretary

34.1 The Board shall appoint a Secretary to carry out the roles assigned to the Secretary under this Constitution and such other responsibilities as the Board of Directors may determine.

35 Registers

35.1 The Trust shall have:

35.1.1 a register of members showing, in respect of each member, the constituency to which they belong and, where there are classes within it, the class to which they belong;

- 35.1.2 a register of members of the Council of Governors;
- 35.1.3 a register of interests of governors;
- 35.1.4 a register of members of the Board of Directors; and
- 35.1.5 a register of interests of the directors

35.2 The Secretary shall be responsible for compiling and maintaining the registers and the registers may be kept in either paper or electronic form. Removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with any new or amended information as soon as is practicable and in any event within twenty-eight days of receipt.

36 Admission to and removal from the registers

36.1 The Secretary shall remove from the register of members the name of any member who ceases to be a member under the provisions of this Constitution. Registers will be managed by the Secretary and updated and received by the Board of Directors at least annually.

37 Registers – inspection and copies

37.1 The Trust shall make the registers specified in paragraph 32 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

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

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

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

37.3.2 a person who requests a copy 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.

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 information as to its forward planning.

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 (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 (NHS England), 65KB (Secretary of State's response to NHS England'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;
 - 38.2.10 a copy of any information published under section 65M (replacement of Trust special administrator), of the 2006 Act;
- 38.3 Subject to paragraph 38.4 any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 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 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.
- 39.3 A person may only be appointed Auditor if they (or in the case of a firm each of its members) are a member of one or more of the bodies referred to in Paragraph 23(4) of Schedule 7 of the 2006 Act.
- 39.4 The Auditor shall carry out its duties in accordance with Schedule 10 of the 2006 Act and in accordance with any directions given by NHS England on standards, procedures, and techniques to be adopted.

40 Audit Committee

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

41 Accounts

- 41.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 41.2 NHS England may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 41.3 The accounts are to be audited by the Trust's auditor.

- 41.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS England may with the approval of the Secretary of State direct.
- 41.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 41.6 The Trust shall lay a copy of the annual accounts, and any report of the auditor on them, before Parliament and once it has done so, send copies of those documents to NHS England.

42 Annual report, forward plans, and non-NHS work

- 42.1 The Trust shall prepare an Annual Report and send it to NHS England.
- 42.1A Each Annual Report must, in particular, review the extent to which the Trust has exercised its functions:
- 42.1A.1 in accordance with the plans published under:
- 42.1A.1.1 section 14Z52 of the 2006 Act;
- 42.1A.1.2 section 14Z56 of the 2006 Act.
- 42.1A.2 consistently with NHS England's views set out in the latest statement published under section 13SA(1):
- 42.1B Each Annual Report shall provide:
- 42.1B.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its public constituencies and the classes of the staff constituency is representative of those eligible for such membership;
- 42.1B.2 information on any occasions in the period to which the report relates on which the Council of Governors exercised its powers under paragraph 17.3
- 42.1B.3 information on the Foundation Trust's policy on pay and on work of the committee established under paragraph 33.2 and such other procedures as the Trust has on pay;
- 42.1B.4 information on the remuneration of the directors and on the expenses of the governors and the directors; and
- 42.1B.5 any other information NHS England requires.
- 42.1C The Trust is to comply with any decision NHS makes as to:
- 42.1C.1 the form of the report;
- 42.1C.2 when the reports are to be sent to it;
- 42.1C.3 the periods to which the report relates.
- 42.2 The Trust shall give information as to its forwarding planning in respect of each financial year to NHS England (the "Forward Plan").
- 42.3 The Forward Plan shall be prepared by the Board of Directors.
- 42.4 In preparing the document, the directors shall have regard to the reviews of the Council of Governors.
- 42.5 Each forward plan must include information about:
- 42.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on; and
- 42.5.2 the income it expects to receive from doing so.

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

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

42.6.2 notify the Board of Directors of its determination.

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

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

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

43.1.1 the annual accounts;

43.1.2 any report of the auditor on them;

43.1.3 the annual report

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

43.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of Clause 43.1 with the Annual Members' Meeting.

44 Instruments

44.1 The Trust shall have a seal. Its custody and use are set out in Standing Orders.

44.2 Attestation by any two directors shall be deemed to constitute affixing the seal under the authority of the Board of Directors.

45 Dispute Resolution

Membership disputes

45.1 In the event of any dispute about the entitlement to membership the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the member or applicant (as the case may be) is aggrieved at the decision of the Secretary they may appeal in writing within fourteen days of the Secretary's decision to the Council of Governors whose decision shall be final.

Directorship disputes

45.2 In the event of any dispute about the eligibility and disqualification of a Governor the dispute shall be referred to the Council of Governors whose decision shall be final.

Disputes between the Council of Governors and the Board of Directors

45.3 In the event of dispute between the Council of Governors and the Board of Directors:

45.3.1 in the first instance the Chair on the advice of the Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;

45.3.2 if the Chair is unable to resolve the dispute, they shall refer the dispute to the Secretary who shall appoint a joint special committee constituted as a committee of the Board of Directors and a committee of the Council of Governors, both comprising equal numbers, to consider the circumstances and to make recommendation to the Council of Governors and the Board of Directors with a view to resolving the dispute;

45.3.3 if the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

46 Amendment of the Constitution

46.1 The Trust may make amendments to its Constitution only if:

46.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments; and

46.1.2 more than half of the members of the Board of Directors of the Trust voting approve the amendments.

46.2 Amendments made under paragraph 41.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect insofar 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 to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):

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.

46.3.3 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.

46.4 Amendments by the Trust of its Constitution are to be notified to NHS England. 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 amendments accords with schedule 7 of the 2006 Act.

47 Mergers etc., and significant transactions

47.1 The Trust may only apply for a Statutory Transaction 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 of the Trust voting approve entering into the transaction.

47.3 'Significant Transaction' is defined as:

47.3.1 the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 25% of the value of the Trust's gross assets before the acquisition; or

47.3.2 the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 25% of the value of the Trust's gross assets before the disposition; or

47.3.3 a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 25% of the value of the Trust's gross assets before the transaction.

47.4 For the purposes of this paragraph 47:

47.4.1 'Gross assets' means the total of fixed assets and current assets;

47.4.2 In assessing the value of any contingent liability for the purposes of sub-paragraph 47.3.3, the directors:

47.4.2.1 must have regard to all circumstances that the directors know, or ought to know, affect, or may affect, the value of the contingent liability; and

47.4.2.2 may rely on estimates of the contingent liability that are reasonable in the circumstances; and

47.4.2.3 may take account of the likelihood of the contingency occurring.

47.5 A Statutory Transaction is not a Significant Transaction.

47.6 No defect or deficiency in the appointment or composition of the members of the Council of Governors or the Board of Directors shall affect the validity of any decision or action taken by them.

Annex 1 – The Public Constituency

AREAS	Number of Members (Minimum)
West Norfolk	50
North Norfolk, Breckland & Rest of England	20
Cambridgeshire / Fenland	20
South-East Lincolnshire	10
Total	90

West Norfolk comprising the district of King's Lynn and West Norfolk – Wards by Local Authority Districts: Airfield, Bircham with Rudhams, Brancaster, Burnham Market & Docking, Clenchwarton, Denver, Dersingham, Downham Old Town, East Downham, Emneth & Outwell, Fairstead, Feltwell, Gayton & Grimston, Gaywood Chase, Gaywood Clock, Gaywood North Bank, Heacham, Hunstanton, Massingham with Castle Acre, Methwold, North Downham, North Lynn, Snettisham, South & West Lynn, South Downham, Springwood, St. Margaret's with St. Nicholas, Terrington, The Woottons, Tilney, Mershe Lande & Wiggshall, Upwell & Delph, Walsoken, West Walton & Walpole, Walsoken, West Walton & Walpole, Watlington, West Winch, Wissey

North Norfolk, Breckland and Rest of England comprising the following Wards by Local Authority Districts:

- **North Norfolk:** Lancaster North, Lancaster South, Priory, Stibbard, The Raynhams, Walsingham, Wells with Holkham
- **Breckland:** Ashill, Bedingfeld, Dereham Neatherd, Dereham Toftwood, Dereham Withburga, Hermitage, Launditch, Lincoln, Mattishall, Nar Valley, Necton, Saham Toney, Shipdham-with-Scarning, Swaffham, Upper Wensum, Watton
- **Rest of England** comprising all other electoral wards in England, save those electoral wards that fall within any of the Public Constituencies set out in this Annex 1.

Cambridgeshire / Fenland comprising the following Wards by Local Authority Districts: Elm & Christchurch, Leverington & Wisbech Rural, March East, March North, March South, March West & Benwick, Parson Drove & Wisbech St Mary, Wisbech North, Wisbech Riverside, Wisbech South, Wisbech Walsoken & Waterlees

South-East Lincolnshire comprising the following Wards by Local Authority Districts: Crowland and Deeping St Nicholas, Fleet, Gedney, Holbeach Hurn, Holbeach Town, Long Sutton, Moulton, Weston and Cowbit, Pinchbeck and Surfleet, Spalding Castle, Spalding Monks House, Spalding St John's, Spalding St Mary's, Spalding St Paul's, Spalding Wygate, Sutton Bridge, The Saints, Whaplode and Holbeach St John's.

Annex 2 – The Staff Constituency

Classes	Number of Members (Minimum)
Clinical	50
Non-clinical	50

Annex 3 – Composition of the Council of Governors

Elected governors

Classes	Number of Members (Minimum)
West Norfolk	9
North Norfolk, Breckland, Rest of England	2
Cambridgeshire	3
South-East Lincolnshire	2
Total elected governors	16

Appointed governors

Classes	Number of Members (Minimum)
Norfolk County Council	1
Borough Council of King's Lynn and West Norfolk	1
Breckland District Council	1
University of East Anglia	1
College of West Anglia	1
West Norfolk Carers	1
Freebridge Community Housing	1
Total appointed governors	7

Staff constituency

Classes	Number of Members (Minimum)
Clinical staff	3
Non-clinical staff	3
Total	6

Annex 4 – Additional Provisions – Council of Governors

1. Appointments

- 1.1 Local authorities and other partnership organisations entitled by this Constitution to provide representative to sit on the Council of Governors, as set out in Annex 3, will be consulted and asked to nominate individuals to become members of this body.

2. Terms of office

- 2.1 Thereafter an elected governor shall hold office for three years.
- 2.2 An appointed governor may hold office for three years.
- 2.3 An appointed governor shall be eligible for reappointment at the end of their three-year term.

3. Termination and removal of governors

- 3.1 In accordance with the Trust's Code of Conduct for Governors (which governors are required to sign as confirmation that they agree to abide by the code) and the Trust's procedure for dealing with alleged non-compliance with the Council of Governors Code of Conduct, a governor may be removed from the Council of Governors by resolution approved by not less than three-quarters of the remaining governors present and voting, on the grounds that in their opinion:
- 3.1.1 they have committed a serious breach of the Code of Conduct for Governors;
 - 3.1.2 they have acted in a manner detrimental to the interests of the Trust;
 - 3.1.3 the Council of Governors considers that it is not in the best interests of the Trust for them to continue as a governor.

4. Use of Power

- 4.1 The Council of Governors may not delegate its powers and must exercise them in formal sessions.

5. Role of the Council of Governors

- 5.1 The Council of Governors should:
- 5.1.1 represent the interests of the members of the Trust as a whole and of the public.
 - 5.1.2 regularly feedback information about the Trust, its vision and its performance to the constituencies and the stakeholder organisations that either elected or appointed them.
 - 5.1.3 act in the best interest of the Trust and adhere to its values and Code of Conduct.
 - 5.1.4 hold the non-executive directors individually and collectively to account for the performance of the Board of Directors.
 - 5.1.5 acknowledge the overall responsibility of the Board of Directors for the running of the Trust.
 - 5.1.6 establish a policy for engagement with the Board of Directors for those circumstances when they have concerns about the performance of the Board of Directors, or compliance with the conditions of the Trust's NHS Provider Licence.
 - 5.1.7 in extreme circumstances inform NHS England if the Trust is at risk of breaching the conditions of its NHS Provider Licence if these concerns cannot be resolved at a local level.
 - 5.1.8 take the lead in agreeing with the Audit Committee the criteria for appointing, reappointing and removing auditors.
 - 5.1.9 work with the Board of Directors on such other matters for the benefit of the Trust as may be agreed between them.
 - 5.1.10 assess its own collective performance and its impact on the Trust and communicate this to the members of the Trust.

6. Lead Governor

- 6.1 The Council of Governors shall elect one of their number to be the Trust's Lead Governor, having the role described in NHS England's Code of Governance for NHS Provider Trusts.
- 6.2 The Council of Governors shall elect one of their number to be the Trust's Deputy Lead Governor.

Annex 5 – Further Provisions

1. Indemnity

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

Annex 6 – Annual Members’ Meeting

1. Members’ Meetings

- 1.1 The Trust shall hold a members’ meeting for all members (called the ‘Annual Members’ Meeting) within six months of the end of each financial year of the Trust.
- 1.2 Both Annual Members’ Meetings and any Special Members’ Meetings shall be open to all members of the Trust, members of the Council of Governors and members of the Board of Directors, together with representative of the Trust’s auditors, and to members of the public. The Trust may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend any such meeting.
- 1.3 The Board of Directors may convene an Annual Members’ Meeting or a Special Members’ Meeting when it thinks fits, subject to paragraph 1.1. The Council of Governors may request the Board of Directors to convene a members’ meeting.
- 1.4 The Board of Directors (or at least one member thereof) shall present to the members at the Annual Members’ Meeting:
 - 1.4.1 the annual accounts;
 - 1.4.2 any report of the auditor on them;
 - 1.4.3 the annual report;
 - 1.4.4 a report on steps taken to secure that (taken as a whole) the actual membership of the Trust is representative of those eligible for such membership.
 - 1.4.5 the progress of the membership plan; and
 - 1.4.6 the results of any election and appointments to the Council of Governors, and any other reports or documentation it considers necessary or otherwise required by the Monitor or the 2006 Act.
- 1.5 The Trust shall give notice of all members’ meetings:
 - 1.5.1 by notice in writing to all members;
 - 1.5.2 by notice prominently displayed at the Trust’s headquarters and at all of the Trust’s hospitals;
 - 1.5.3 by notice on the Trust’s website; and
 - 1.5.4 to the Council of Governors, the Board of Directors, and to the Trust’s auditors, stating whether the meeting is an Annual Members’ Meeting or a Special Members’ Meeting including the time, date, place of the meeting, and the business to be dealt with at the meeting at least 14 working days before the date of the relevant members’ meeting (or, in the case of an Annual Members’ Meeting, at least 21 working days before the date of the relevant meeting).
- 1.6 Any accidental omission to give notice of a members’ meeting or to send, supply or make available any document or information relating to the meeting, or the non-receipt of any such notice, document or information by a person entitled to receive any such notice, document or information shall not invalidate the proceedings at that meeting.

- 1.7 The Chair, or in their absence the Deputy Chair, shall preside at all members' meetings of the Trust. If neither the Chair nor the Deputy Chair is present, a non-executive director present shall act as Chair.
- 1.8 The quorum for a members' meeting shall be eight members present and entitled to vote. If a quorum is not present within thirty minutes from the time appointed for the meeting, the meeting shall stand adjourned for a minimum of seven days until such time as the Board of Directors determine.
- 1.9 The Chair may, with the consent of a members' meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn a members' meeting from time to time and from place to place or for an indefinite period.
- 1.10 A resolution put to the vote of a member's meeting shall be decided on a show of hands.
- 1.11 No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.
- 1.12 If the Board of Directors, in its absolute discretion, considers that it is impractical or unreasonable for any reason to hold a members' meeting at the time, date or place specified in the notice calling that meeting, it may move and/or postpone the general meeting to another time, date and/or place.
- 1.13 In the case that a members' meeting is adjourned or postponed for 14 days or more, at least seven working days' notice shall be given specifying the name and place of the adjourned members' meeting and the general nature of the business to be transacted.
- 1.14 The Board of Directors may make any arrangement and impose any restriction it considers appropriate to ensure the security of a member's meeting.
- 1.15 Any approval to speak at a members' meeting must be given to the Chair. Speeches must be directed to the matter, motion or question under discussion or to a point of order. Unless in the opinion of the Chair it would not be appropriate or desirable to time limit speeches on any topic to be discussed having regard to its nature, complexity or importance, no proposal, speech or any reply may exceed three minutes. In the interests of time, the Chair may, in their absolute discretion, and where that discretion is exercised reasonably, limit the number of replies, questions or speeches which are heard at any one members' meeting.
- 1.16 A person who has already spoken on a matter at a members' meeting may not speak again at that meeting in respect of the same matter except (i) in exercise of a right to reply, or (ii) on a point of order.
- 1.17 The Board of Directors shall cause minutes to be made and kept, in writing, of all proceedings at members' meetings.

ANNEX 7 –THE MODEL RULES FOR ELECTIONS

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PART 1: INTERPRETATION

1. Interpretation

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

"2006 Act" means the National Health Service Act 2006;

"corporation" means the public benefit corporation subject to this constitution;

"council of governors" means the council of governors of the corporation;

"declaration of identity" has the meaning set out in rule 21.1;

"election" means an election by a constituency, or by a class within a constituency, to fill a vacancy

among one or more posts on the council of governors;

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

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

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

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

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

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

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

“*Monitor*” means the corporate body 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
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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 they 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 they are 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 they has received it, and decide whether the candidate has been validly nominated.

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

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

address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

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

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

20. The ballot paper

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

(g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

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

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

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

- (a) that the voter is the person:
 - (i) to whom the ballot paper was addressed, and/or
 - (ii) to whom the voter ID number contained within the e-voting information was allocated,
- (b) that they 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 they are 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 they are 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 they are 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 they 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 they can obtain it.

29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless they 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 they 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 they are 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 they 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, they are 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)

- 33.1 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 they 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 they 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 they 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, they are 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, they are 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, they are 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, they are to:

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

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

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

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

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

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 they shall:
- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
 - (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number
- 39.3 Where a ballot paper is disqualified under this rule the returning officer shall:
- (a) mark the ballot paper “disqualified”,
 - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
 - (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
 - (d) place the document or documents in a separate packet; and
 - (e) disregard the ballot paper when counting the votes in accordance with these rules.
- 39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
 - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
 - (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
 - (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

- 40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:
- (a) the disqualified documents, together with the list of disqualified documents inside it,
 - (b) the ID declaration forms, if required,
 - (c) the list of spoiled ballot papers and the list of spoiled text message votes,
 - (d) the list of lost ballot documents,
 - (e) the list of eligible voters, and
 - (f) the list of tendered voting information

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

PART 6: COUNTING THE VOTES

41. Interpretation of Part 6

41.1 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 49,

“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 46,

“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 47.4 or 47.7.

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.

44. Rejected ballot papers and rejected text voting records

- 44.1 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.

- 44.2 The returning officer is to endorse the word "rejected" on any ballot paper which under this rule is not to be counted.
- 44.3 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.

- 44.4 The returning officer is to endorse the word "rejected" on any text voting record which under this rule is not to be counted.
- 44.5 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 44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule 44.3.

45. First stage

- 45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.
- 45.2 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.
- 45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

46. The quota

- 46.1 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.
- 46.2 The result, increased by one, of the division under rule 46.1 (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").
- 46.3 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 47.1 to 47.3 has been complied with.

47. Transfer of votes

- 47.1 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.
- 47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule 47.1.
- 47.3 The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.4 The vote on each ballot document transferred under rule 47.3 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).

47.5 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.

47.6 The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

47.7 The vote on each ballot document transferred under rule 47.6 shall be at:

- (a) a transfer value calculated as set out in rule 47.4(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.

47.8 Each transfer of a surplus constitutes a stage in the count.

47.9 Subject to rule 47.10, 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.

47.10 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.

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

48. Supplementary provisions on transfer

48.1 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.

48.2 The returning officer shall, on each transfer of transferable ballot documents under rule 47:

- (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.

48.3 All ballot documents transferred under rule 47 or 49 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.

48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule 47 or 49 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.

49. Exclusion of candidates

49.1 If:

- (a) all transferable ballot documents which under the provisions of rule 47 (including that rule as applied by rule 49.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule 50, 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 49.12 applies, the candidates with the then lowest votes).

49.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule 49.1 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).

49.3 The returning officer shall, in accordance with this rule and rule 48, transfer each sub-parcel of ballot documents referred to in rule 49.2 to the candidate for whom the next available preference is given on those ballot documents.

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

49.5 If, subject to rule 50, 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 49.1 into sub-parcels according to their transfer value.

49.6 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).

49.7 The vote on each transferable ballot document transferred under rule 49.6 shall be at the value at which that vote was received by the candidate excluded under rule 49.1.

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

49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value they shall proceed to transfer in the same way

the sub-parcel of ballot documents with the next highest value and so on until they have dealt with each sub-parcel of a candidate excluded under rule 49.1.

- 49.10 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.
- 49.11 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 47.5 to 47.10 and rule 48.
- 49.12 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.
- 49.13 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.

50. Filling of last vacancies

- 50.1 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.
- 50.2 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.
- 50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

51. Order of election of candidates

- 51.1 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 47.10.
- 51.2 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 they obtained the quota.
- 51.3 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.

- 51.4 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.

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

52. Declaration of result for contested elections

52.1 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 they 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 they has declared elected.

52.2 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 44.1,
- (f) the number of rejected text voting records under each of the headings in rule 44.3,

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 they has declared elected to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who they 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

59. Countermand or abandonment of poll on death of candidate

59.1 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.

59.2 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 they 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 they 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 they considers appropriate.