

The ROYAL MARSDEN

**THE ROYAL MARSDEN NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)**

CONSTITUTION

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September 2024

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1 Interpretation and Definitions

Unless otherwise stated words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 or Health and Social Care Act 2012 Act or the Health and Care Act 2022.

References in this constitution to legislation include all amendments, replacements, or re-enactments made to that legislation.

References to legislation include all regulations, statutory guidance or directions made in respect of that legislation.

Headings are for ease of reference only and are not to affect interpretation.

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

1.1 In this constitution:

“Accounting Officer”	means that person who from time to time discharges the functions of Accounting Officer of the Trust for the purposes of Government accounting
"Area of the Trust"	means the area consisting of all the areas specified in Part 1 of Annex 1 as an area for a Public Constituency;
“Auditor”	means the auditor of the Trust as duly appointed from time to time under this Constitution;
"Board of Directors" or “Board”	means the Board of Directors of the Trust as constituted in accordance with this constitution;
“Carer”	means an individual who has attended any of the Trust’s hospitals as the Carer of a Patient within the five year period immediately preceding the date of his application for membership (other than an individual providing care in pursuance of a contract including a contract of employment, or as a volunteer for a voluntary organisation);
“Carer Governor”	means a Governor elected by the Members of the Carers’ class of the Patients’ Constituency;
“Chairman”	means the Chairman of the Trust (as duly appointed from time to time in accordance with the terms of this constitution);
“Chief Executive”	means the Chief Executive of the Trust (as duly appointed from time to time in accordance with the terms of this constitution) who shall also act as Accounting Officer;
"Company Secretary"	means the secretary of the Trust or any other person appointed to perform the duties of the company secretary of the Trust, including a joint, assistant or deputy secretary;
“Constitution”	means this constitution and all annexes to it;
"Council of Governors"	means the Council of Governors as constituted from time to time in accordance with this constitution;
"Director"	means a Director on the Board of Directors;

“Governor”	means a member of the Council of Governors (as duly appointed or elected from time to time under this constitution or the Model Rules for Election);
“Executive Directors”	means those of the Directors who are the Executive Directors, as are duly appointed from time to time under this constitution;
"Financial Year"	means: <ul style="list-style-type: none"> (a) the period beginning with the date on which the Trust is authorised and ending with the next 31 March; and (b) each successive period of twelve months beginning with 1 April in each year;
“Lead Governor”	means a Governor appointed by the Council of Governors to fulfil the duties and activities set out in the role description of the Lead Governor;
"Local Authority Governor"	means a Governor appointed by a Local Authority whose area includes the area specified in Part 4 of Annex 1;
"Member"	means a member of the Trust;
“NHS England (NHSE)”	NHS England leads the National Health Service (NHS) in England. NHSE has responsibility for overseeing the budget, planning, delivery and day to day operation of the commissioning side of the NHS in England as set out in the Health and Care Act 2022;
“Nominated Governor”	means those Governors appointed by the appointing organisation as specified in Part 4 of Annex 1;
“Non-Executive Directors”	means those of the Directors who are the Non-Executive Directors, duly appointed from time to time under this constitution;
"Patient Member"	means any person (whether resident within the Area of the Trust or not) who has at any time in the five year period immediately preceding the date of his application for membership attended any of the Trust’s services as a patient and received treatment, or follow up treatment, from the Trust;
"Patient Governor"	means a Governor elected by Members of a Patients’ class of the Patients’ Constituency;
"Public Governor"	means a Governor elected by the Members of a Public Constituency;
"Staff Governor"	means a Governor elected by the Members of a class of the Staff Constituency;
“Senior Independent Director (SID)”	the SID is a NED who is appointed by the Board of Directors and who is considered to fulfil the criteria of ‘independent’ as set out in the NHS Foundation Trust Code of Governance
"the 1977 Act"	means the National Health Service Act 1977;
"the 2003 Act"	means the Health and Social Care (Community Health and Standards) Act 2003;

“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;
"the Trust"	means The Royal Marsden NHS Foundation Trust;
“Habitual/Vexatious Complainant”	means any person who, in the opinion of the Board persistently and without reasonable grounds makes a Vexatious Complaint(s);
“Habitual/Vexatious Complaint”	means any unjustified complaint, the effect of which in the opinion of the Board is to subject the Trust (or any of its staff, agents, Patients or Carers) to inconvenience, harassment or expense.

2 Name

- 2.1 The name of the Foundation Trust is The Royal Marsden NHS Foundation Trust (the Trust).

3 Principal purpose

- 3.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Trust does not fulfill its principal purpose unless, in each Financial Year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 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 better to 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 Any of these powers may be delegated to a committee of Directors or to an Executive Director.

5 Membership and Constituencies

- 5.1 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
- 5.2 a Patient and Carer constituency (the Patients' Constituency)
 - 5.3 a Public Constituency
 - 5.4 a Staff Constituency

6 Role and function of Members

- 6.1 All members may attend and participate at Members' meetings, vote in elections for the Council, stand for election to the Council, and take part in the affairs of the Trust as provided in the Constitution and set out in the Trust's Membership and Engagement Strategy.

7 Application for membership

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

8 Patients' Constituency

- 8.1 An individual who has, within the period specified below, attended any of the Trust's hospitals as either a patient or as the carer of a patient may become a member of the Trust.
- 8.2 The period referred to above shall be the period of five years immediately preceding the date of an application by the patient or carer to become a member of the Trust.
- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Patients' Constituency.
- 8.4 The Patients' Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Patients' Constituency, each description of individuals being specified within Annex 1 (Part 2) and being referred to as a class within the Patients' Constituency.
- 8.5 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Patients' Constituency.
- 8.6 The minimum number of members in each class of the Patients' Constituency is specified in Annex 1 (Part 2).

9 Public Constituency

- 9.1 An individual who lives in an area specified in Annex 1 (Part 1) as an area for a public constituency may become or continue as a member of the Trust.
- 9.2 Those individuals who live in an area specified for a public constituency are referred to collectively as a Public Constituency.
- 9.3 The minimum number of members in each Public Constituency is specified in Annex 1 (Part 1).

10 Staff Constituency

- 10.1 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:
- 10.1.1 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
 - 10.1.2 they have been continuously employed by the Trust under a contract of employment for at least 12 months.
- 10.2 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.
- 10.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 10.4 The Staff Constituency shall be divided into four descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 1 (Part 3) and being referred to as a class within the Staff Constituency.
- 10.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 1 (Part 3).

10.6 Automatic membership by default – staff

An individual who is:

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

10.6.2 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 the individual informs the Trust that they do not wish to do so.

11 Restriction on membership

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

11.2 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.

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

11.4 An individual who becomes aware of their ineligibility shall inform the Trust as soon as practicable and that individual's name shall be removed from the Register/List within 28 days.

11.5 Where the Trust has grounds to believe that an individual or applicant may not be eligible under paragraphs 7, 8 and 9 for membership or that grounds may exist for them to be disqualified from membership under paragraph 12 the Company Secretary may carry out reasonable enquiries to establish the substance or otherwise of those grounds.

11.6 Where the Company Secretary considers that there may be grounds for concluding that an individual or applicant is ineligible or that grounds may exist for them to be disqualified for membership, they shall advise that individual or applicant of those reasons in summary form and invite representations from the individual or applicant within 21 days or such other longer period as the Company Secretary may in their absolute discretion determine. Any representations received shall be considered by the Secretary and they shall make a decision on the individual's or applicant's eligibility or disqualification as soon as reasonably practicable and notice of that decision shall be given to the individual or applicant within 14 days of the decision being made.

11.7 If no representations are received within the said period of 21 days, the Company Secretary shall be nonetheless entitled to proceed and make a decision on the individual's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from them.

11.8 If the Company Secretary decides that an individual is ineligible or disqualified from membership and has given notice to that individual in accordance with paragraph 11.6 that individual's name shall be removed from the Register/List and they shall thereupon cease to be a Member.

12 Disqualification for membership**12.1** A person may not be a Member:

- (a) if they are employed by the Trust (or is not employed but nevertheless exercises functions for the purposes of the Trust) and their employment or engagement is terminated by the Trust with cause;
- (b) if they are or have at any time been listed on the Sex Offenders' Register as created by the Sex Offenders Act 1997;
- (c) if they have within the preceding five years been convicted in the British Islands of any offence resulting in a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) being imposed on them;
- (d) if they are or have at any time been a Habitual and/or vexatious Complainant in accordance with the Trust's policy for handling complaints;
- (e) if they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
- (f) if they have made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
- (g) if they have, in the opinion of the Trust, behaved in a violent manner towards Trust staff (or other individuals providing services for the Trust, for example agency staff);
- (h) if they are under 16 years of age;
- (i) if they cease to be a Member of the constituency or the Class of a constituency by which they were elected;
- (j) if they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a Health Service Body;
- (k) if they are a person whose tenure of office as the Chairman or as a Member or Director of a Health Service Body has been terminated at any time within the previous five years on the grounds that their appointment was not in the interests of the health service or for non-attendance at meetings or for non-disclosure of a pecuniary interest or other conflict of interest;
- (l) if they have had their name removed pursuant to Regulation 10 of the National Health Service (Performers List) Regulations 2004 or section 151 of the 2006 Act (or similar provision elsewhere) and has not subsequently had their name included in such a list;
- (m) if they lack capacity within the meaning of the Mental Capacity Act 2005;
- (n) if they have failed or refused to make a declaration by the 1st April annually or as otherwise required by the Trust, or has made a false declaration within the meaning of Section 60(6) of the 2006 Act;

12.2 It is the responsibility of each Member to ensure their eligibility and not the Trust's, but where the Board is on notice that a Member may be disqualified from membership, it may carry out all reasonable enquiries to establish if this is the case in accordance with paragraph 11.5 to 11.8.

- 12.3 Termination of membership
- 12.3.1 A Member shall cease to be a Member if they:
- (a) resign by notice in writing to the Company Secretary specifying the date of resignation;
 - (b) die;
 - (c) ceases to fulfil the requirements as set out in paragraph 11;
 - (d) falls within any of the circumstances set out in paragraph 12.1

13 Annual General Meeting

- 13.1 The Trust shall hold an annual meeting of its Members (the “**Annual General Meeting**”). The Annual General meeting shall be open to the public.
- 13.2 At least one member of the Board of Directors must attend the meeting and present the Annual Report and Accounts.

14 Council of Governors – composition

- 14.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 14.2 The members of the Council of Governors, other than the nominated members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 1.

15 Council of Governors – election of governors

- 15.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections.
- 15.2 The Model Rules for Elections as published from time to time by the Department of Health form part of this constitution and are attached at Annex 2.
- 15.3 A subsequent variation of the Model Rules for Elections by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 42 of the constitution (amendment of the constitution).
- 15.4 An election, if contested, shall be by secret ballot.

16 Council of Governors – tenure

- 16.1 An elected governor may hold office for a period of up to 3 years.
- 16.2 An elected governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.
- 16.3 An elected governor shall be eligible for re-election at the end of their term but may not hold office for more than nine consecutive years.
- 16.4 An appointed governor may hold office for a period of up to 3 years.
- 16.5 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship.
- 16.6 An appointed governor shall be eligible for re-appointment at the end of their term but may not hold office for more than nine consecutive years.

17 Council of Governors – disqualification and removal

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

- 17.1.1 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
- 17.1.2 they have made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
- 17.1.3 they have within the preceding five years been convicted in the British Islands of any offence resulting in a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) being imposed on them;
- 17.1.4 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 17.1.5 they are a person whose tenure of office as the chairman or as a 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, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 17.1.6 they are an Executive or Non-Executive Director of the Trust, or a governor, non-executive director, chairman or chief executive officer of another NHS foundation trust;
- 17.1.7 they have had their name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act, and has not subsequently had their name included on such a list;
- 17.1.8 they are or may be suffering from mental disorder, and either:
 - (a) they are admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983; or
 - (b) an order is made by a court having jurisdiction in matters concerning mental disorder for their detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to their property or affairs;
- 17.1.9 in the case of a Staff Governor, such person is the subject of ongoing formal disciplinary action in respect of their employment or engagement by the Trust and will be suspended from Governor status pending the outcome of the disciplinary action;
- 17.1.10 they have made a claim against the Trust (or The Royal Marsden NHS Trust where such claim relates to the period prior to creation of the Trust) and has issued legal proceedings in respect of such claim;

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

17.3 Termination of tenure

- 17.3.1 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Chairman.

17.3.2 If a Governor fails to attend any meetings of the Council of Governors for a period of one year, their tenure of office is to be immediately terminated unless the Council of Governors resolves that it is satisfied that:

- (a) the failure to attend was due to a reasonable cause; and
- (b) such Governor will be able to begin attending meetings of the Council of Governors again within such a period as the Council of Governors considers reasonable.

17.4 Where a person has been elected or appointed to be a Governor and they become disqualified for appointment under paragraph 17.1, they shall notify the Chairman in writing of such disqualification.

17.5 If it comes to the notice of the Chairman at the time of their appointment or later that the Governor is so disqualified, the Chairman shall immediately declare that the person in question is disqualified and notify them in writing to that effect.

18 Council of Governors - vacancies

18.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of terms of office, the following terms shall apply.

18.1.1 Public Governors, Patient Governors, Carer Governors and Staff Governors shall be replaced in accordance with the Model Rules for Election

18.1.2 Where a Public Governor, Patient Governor, Carer Governor or Staff Governor ceases to hold office, the Council of Governors shall be at liberty either to:

- (a) Invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next election, at which time the seat will fall vacant and subject to election for any unexpired term of office; or
- (b) if the unexpired period of the term of office is less than twelve months, to leave the seat vacant until the next elections are held provided that during the period that the seat is left vacant, the composition of the Council of Governors will continue to meet the requirements of this Constitution and the Council of Governors can still be quorate in accordance with the provisions of this Constitution.

18.1.3 Where the vacancy arises amongst the appointed Governors, the Trust shall request the appointing organisation to appoint a replacement to hold office for the remainder of the term of office.

19 Council of Governors – duties of governors

19.1 The roles and responsibilities of the Council of Governors are:

- 19.1.1 to appoint and, if appropriate, remove the Chair;
- 19.1.2 to appoint and, if appropriate, remove the other non-executive directors;
- 19.1.3 to decide the remuneration and allowances and other terms and conditions of office of the Chair and the other non-executive directors;
- 19.1.4 to approve (or not) any new appointment of a chief executive;
- 19.1.5 to appoint and, if appropriate, remove the Trust’s Auditor; and

- 19.1.6 to receive the Trust’s Annual Accounts, any report of the Auditor on them and the Annual Report at a members’ meeting;
- 19.1.7 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors;
- 19.1.8 to represent the interests of the Members of the Trust as a whole and the interests of the public;
- 19.1.9 to approve “significant transactions” as per section 50
- 19.1.10 to approve an application by the Trust to enter into a merger, acquisition, separation or dissolution as per section 50
- 19.1.11 to decide whether the Trust’s non-NHS work would significantly interfere with its principal purpose as per section 3; and
- 19.1.12 to approve amendments to the Trust’s constitution.

20 Council of Governors – meetings of governors

- 20.1 The Council of Governors is to meet at least four times per year.
- 20.2 The Chairman of the Trust (i.e., the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 26.1 below) shall preside at meetings of the Council of Governors, or, in their absence, a designated link Executive-Director, shall preside at meetings of the Council of Governors.
- 20.3 At the Chairman’s discretion, a Governor may be present in person, or by virtual means whereby every Governor concerned can put forward their views and also understand the views of every other Governor. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 20.4 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from all or part of any meeting following appropriate resolution by the Council Governors made in accordance with its Standing Orders.

21 Council of Governors – standing orders

- 21.1 The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time.

22 Council of Governors – referral to the Panel

- 22.1 In this paragraph, the Panel means a panel of persons appointed by NHSE to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing;
 - 22.1.1 to act in accordance with its constitution, or
 - 22.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 22.2 A Lead 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.

23 Council of Governors – conflicts of interest of governors

23.1 If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential, financial or non-financial and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it as well as to the Company Secretary at their earliest convenience and in any case within 28 days of the interest arising. 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.

24 Council of Governors – travel expenses

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

25 Board of Directors – composition and terms of office

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

25.2 The Board of Directors is to comprise:

25.2.1 a non-executive Chairman;

25.2.2 up to seven other Non-Executive Directors;

25.2.3 the Chief Executive of the Institute of Cancer Research (ICR) as an ex-officio member;

25.2.4 the following Executive Directors:

(a) a Chief Executive (who shall be the Accounting Officer);

(b) a Deputy Chief Executive (if one has been appointed);

(c) a Chief Nurse (who shall be a registered nurse or registered midwife);

(d) a Chief Financial Officer;

(e) a Chief Operating Officer;

(f) a Medical Director (who shall be a registered medical practitioner); and

(g) such other Executive Directors as shall be determined from time to time by the committee established pursuant to paragraph 27.

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

25.3 The Chair and the Non-Executive Directors shall serve terms of office of no longer than 3 years and shall be eligible for re-appointment at the end of the three years.

25.4 The Chair or Non-Executive Directors should not remain in post beyond nine years from the date of their first appointment to the board of directors and any decision to extend a term beyond six years should be subject to rigorous review. To facilitate effective succession planning and the development of a diverse board, this period of nine years can be extended for a limited time, particularly where on appointment a chair was an existing non-executive director. The need for all extensions should be clearly explained and should be agreed with NHS England.

25.5 A Non-Executive Director becoming chair after a three-year term as a Non-Executive Director would not trigger a review after three years in post as chair.

25.6 The Chief Executive and Executive Directors will normally hold non time limited contracts of employment.

26 Board of Directors – general duty

26.1 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.

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

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

27.1.2 they are a member of the Public or Patients’ Constituency, and

27.1.3 they are not disqualified by virtue of paragraph 28 below.

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

28.1 The Council of Governors shall establish a Nominations Committee and such other committees or working groups as required to assist the Council of Governors in discharging its responsibilities.

28.2 The Council of Governors at an extraordinary meeting of the Council of Governors shall appoint or remove the chairman of the trust and the other non-executive directors.

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

29 Board of Directors – appointment of Senior Independent Director

29.1 The Board of Directors shall appoint one of the Non-Executive Directors to be the Senior Independent Director in consultation with the Council of Governors.

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

30.1 The non-executive directors shall appoint or remove the Chief Executive.

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

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

31 Board of Directors – disqualification

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

31.1.1 A person who has been adjudged bankrupt or whose estate has been sequestered and (in either case) has not been discharged.

31.1.2 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.

- 31.1.3 A person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.
- 31.1.4 They are the subject of a disqualification order made under the Company Directors Disqualification Act 1986.
- 31.1.5 They are a person whose tenure of office as a chair or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
- 31.1.6 They have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirement to register under current legislation.
- 31.1.7 They have within the preceding two years been lawfully dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with an NHS body.
- 31.1.8 In the case of a non-executive director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors.

31.2 Directors must declare to the Chairman of the Trust, with immediate effect where they are involved in, either directly or indirectly, any conduct which could prejudice whether they remain fit and proper in accordance with Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) ‘fit and proper persons test’.

31.3 All Directors are required to make annual declarations confirming that they remain fit and proper.

32 Board of Directors – meetings

32.1 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.

32.2 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.

33 Board of Directors – standing orders

33.1 The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time.

34 Board of Directors - conflicts of interest of directors

34.1 The duties that a director of the trust has by virtue of being a director include in particular

- 34.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect, financial or non-financial interest that conflicts (or possibly may conflict) with the interests of the trust

- 34.1.2 A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 34.2 The duty referred to in sub-paragraph 34.1.1 is not infringed if –
- 34.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 34.2.2 The matter has been authorised in accordance with the constitution.
- 34.3 The duty referred to in sub-paragraph 34.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 34.4 In sub-paragraph 34.1.2, “third party” means a person other than –
- 34.4.1 The trust, or
- 34.4.2 A person acting on its behalf.
- 34.5 If a director of the Trust has in any way a direct or indirect, financial or non-financial interest in a proposed transaction or arrangement with the Trust, the director must, in addition to declaring this to the Company Secretary at their earliest convenience and in any case within 28 days of the interest arising as well as annually, declare the nature and extent of that interest to the other directors.
- 34.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 34.7 Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 34.8 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 34.9 A director need not declare an interest –
- 34.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 34.9.2 If, or to the extent that, the directors are already aware of it;
- 34.9.3 If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered –
- 34.9.3.1 By a meeting of the Board of Directors, or
- 34.9.3.2 By a committee of the directors appointed for the purpose under the constitution.
- 34.10 A director will also declare, as part of their annual declaration of interests, and in accordance with the provider license and Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, NHS Foundation Trusts that they meet the ‘fit and proper’ person requirements.

35 Board of Directors – remuneration

- 35.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.
- 35.2 The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

36 Board of Directors – committees and delegation

- 36.1 The Trust Board may delegate any of its powers to a Committee of Directors or to an Executive Director in accordance with the Standing Financial Instructions and Scheme of Delegation.

37 Registers

- 37.1 The trust shall have:
- 37.1.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
 - 37.1.2 a register of members of the Council of Governors;
 - 37.1.3 a register of interests of Governors;
 - 37.1.4 a register of Directors; and
 - 37.1.5 a register of interests of the Directors

38 Registers – inspection and copies

- 38.1 The Trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 38.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of –
- 38.2.1 any member of the Patients' Constituency; or
 - 38.2.2 any other member of the Trust, if he so requests.
- 38.3 So far as the registers are required to be made available:
- 38.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 38.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 38.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

39 Admission & Removal from the Registers

- 39.1 The Company Secretary shall add to the Register of Members the name of any individual who is accepted as a member of the Trust under the provisions of this Constitution as soon as it is reasonably practicable, and in any event within 14 working days of the Company Secretary being notified of the requirement for such amendment.
- 39.2 The Company Secretary shall remove from the Register of Members the name of any Member who ceases to be entitled to be a Member of the Trust under the provisions of this Constitution as soon as it is reasonably practicable, and in any event within 14 working days of the Company Secretary being notified of the requirement for such amendment.

40 Documents available for public inspection

- 40.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 40.1.1 a copy of the current constitution;

- 40.1.2 a copy of the latest annual accounts and of any report of the auditor on them;
 - 40.1.3 a copy of the latest annual report;
 - 40.2 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:
 - 40.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State’s rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
 - 40.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 40.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 40.2.4 a copy of any draft report published under section 65F (administrator’s draft report) of the 2006 Act.
 - 40.2.5 a copy of any statement provided under section 65F (administrator’s draft report) of the 2006 Act.
 - 40.2.6 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 (NHSI’s decision), 65KB (Secretary of State’s response to NHSI’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.
 - 40.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 40.2.8 a copy of any final report published under section 65I (administrator’s final report)
 - 40.2.9 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.
 - 40.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
 - 40.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
 - 40.4 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.
- 41 Audit Committee**
- 41.1 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.
- 42 Auditor**
- 42.1 The Trust shall have an Auditor. The Auditor shall provide external audit services to the Trust.

- 42.2 A panel comprising members of the Audit Committee and members of the Council of Governors shall be convened to consider the appointment of the Auditor and shall make recommendations to the Council of Governors.
- 42.3 In appointing the Auditor, the Council of Governors shall have regard to the recommendations of the panel set out above.
- 42.4 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.
- 42.5 The Accounting Officer shall ensure that the Auditor carries out the Auditor's duties in accordance with Schedule 10 of the 2006 Act.

43 External Advisers

- 43.1 The Trust may make arrangements from time to time, to engage the assistance of external experts to advise the Board of Directors and the Council of Governors in the performance of their respective roles. Such advisers do not have any executive authority to govern the Trust in any way and such advisers do not need to be members of the Trust.

44 Accounts

- 44.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 44.2 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
- 44.3 The accounts are to be audited by the Trust's auditor.
- 44.4 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.
- 44.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

45 Annual report, forward plans and non-NHS work

- 45.1 The Trust shall prepare an Annual Report and send it to NHS England.
- 45.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS England.
- 45.3 Each forward plan must include information about –
- 45.3.1 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
 - 45.3.2 the income it expects to receive from doing so
- 45.4 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 45.5.1 the Council of Governors must –
- 45.4.1 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
 - 45.4.2 notify the directors of the Trust and its determination

45.5 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 health service in England may implement the proposal only if more than half of the members of Council of Governors of the Trust voting approve its implementation.

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

46.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:

46.1.1 the annual accounts

46.1.2 any report of the auditor on them

46.1.3 the annual report.

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

46.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 40.1 with the Annual General Meeting.

47 Instruments

47.1 The Trust shall have a seal.

47.2 The seal shall be fixed in accordance with the with the relevant provision in the Board of Directors Standing Orders.

48 Company Secretary

48.1 The Trust shall have a Company Secretary who may be an officer of the Trust. The Company Secretary may not be a Governor, the Chief Executive, or the Chief Financial Officer.

49 Amendment of the constitution

49.1 The Trust may make amendments of its constitution only if –

49.1.1 More than half of the members of the Council of Governors of the trust present and voting approve the amendments, and

49.1.2 More than half of the members of the Board of Directors of the trust present and voting approve the amendments.

49.2 Amendments made under paragraph 49.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

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

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

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

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

49.5 Amendments by the Trust of its constitution are to be notified to NHS England. For the avoidance of doubt, NHS's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

50 Mergers, Acquisition, Separation or Dissolution and Significant Transactions

50.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of all members of the Council of Governors in post, not only half of those attending the decision-making meeting.

50.2 The Trust may enter into a significant transaction only if more than half of the members of all members of the Council of Governors in post approve entering into the transaction.

50.3 A "Significant Transaction" means a transaction which meets any of the tests below:

50.3.1 the fixed asset test; or

50.3.2 the turnover test; or

50.3.3 the gross capital test (relating to acquisitions or divestments).

50.4 The fixed asset test is met if the assets which are the subject of the transaction exceed 25% of the fixed assets of the Trust before the transaction.

50.5 The turnover test is met if, following the completion of the relevant transaction, the gross income of the Trust will increase or decrease by more than 25%.

50.6 The gross capital test is met if the gross capital of the company or business being acquired or divested represents more than 25% of the capital of the Trust following completion (where "gross capital" is the market value of the relevant company or business's shares and debt securities, plus the excess of current liabilities over current assets, and the Trust's capital is determined by reference to its balance sheet).

50.7 For the purposes of calculating the tests in paragraphs 50.4 to 50.6 figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.

50.8 A transaction:

50.8.1 includes all agreements (including amendments to agreements) entered into by the Trust; 50.8.2 excludes a transaction in the ordinary course of business (including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Trust);

50.8.3 excludes any agreement or changes to healthcare services carried out by the Trust following a reconfiguration of services led by the commissioners of such services; and

50.8.4 excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the Trust.

51 Indemnity

51.1 Members of the Council of Governors, the Board of Directors, the Company Secretary and other Officers of the Trust who act honestly and in good faith shall not have to meet out of their own 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 shall be met by the Trust.

51.2 The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors, Board of Directors, Secretary and other Officers.

51.3 The Trust may take out insurance either through the NHS Resolution or otherwise in respect of Directors' and Officers' liability, including liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

52 Disputes between the Council of Governors and the Board of Directors

52.1 Subject to paragraph 22 above, in the event of a dispute between the Council of Governors and the Board of Directors:

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

52.1.2 if the Chairman is unable to resolve the dispute, he shall convene and chair a special committee, comprising equal numbers of Directors and Governors, for the express purpose of considering the circumstances and to making recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute; in the case of the special committee passing a motion, the Chairman shall have the casting vote in the event that the number of votes for and against the motion are equal;

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

52.2 The dispute resolution procedures set out in this paragraph do not preclude the Governors from referring the matter to the panel of persons appointed by NHSE as set out in paragraph 22. In these circumstances, the dispute must relate to a question about the Trust failing or its failure to act in accordance with provision made by or under Chapter 5 of the 2006 Act and must otherwise satisfy the conditions set out in paragraph 22.

**ANNEX 1
CONSTITUENCIES**

Part 1 – PUBLIC CONSTITUENCIES OF THE TRUST

Name	Area	Governor seats	Minimum Membership
Kensington and Chelsea	Royal Borough of Kensington & Chelsea	1	20
Sutton and Merton	London Borough of Sutton London Borough of Merton	1	20
Rest of England	All local authority electoral areas wholly or partly within England, excluding the Royal Borough of Kensington and Chelsea, the London Borough of Sutton and the London Borough of Merton.	2	20

Part 2 – CLASSES OF THE PATIENTS' CONSTITUENCY OF THE TRUST

Name	Area	Governor seats	Minimum Membership
Kensington & Chelsea and Sutton & Merton	Royal Borough of Kensington & Chelsea London Borough of Sutton London Borough of Merton	3	20
Elsewhere in London	All local authority electoral areas wholly or partly within London, excluding the Royal Borough of Kensington and Chelsea, the London Borough of Sutton and the London Borough of Merton.	2	20
Elsewhere in England	All local authority electoral areas wholly or partly within England, excluding London and, the London Boroughs of Sutton and Merton.	2	25
Carer	Individuals who are Members of the patients' constituency and who are Carers.	2	10

Part 3 – CLASSES OF THE STAFF CONSTITUENCY OF THE TRUST

Name	Class	Governor seats	Minimum Membership
Doctor	Individuals who are Members of the staff constituency who are fully registered persons within the meaning of the Medicines Act 1956 and, in the case of medical practitioners, who hold a licence to practise.	1	10
Nurse	Individuals who are Members of the staff constituency who are nursing staff registered with the Nursing and Midwifery Council or who provide nursing functions for the Trust.	1	50
Clinical Professionals (AHP and Healthcare Sciences)	Individuals who are Members of the staff constituency and who are regulated by a body which falls within the remit of the Council for Regulation of Health Care Professions, established by section 25 of the NHS Reform and Health Care Professionals Act 2002, but who are not nursing staff of, nor provide nursing functions for, the Trust.	1	25
Corporate and Support Services	Individuals who are Members of the staff constituency and who do not come within the descriptions above.	1	15

Part 4 - NOMINATED GOVERNORS

One representative will be appointed from each of the following:

- Institute of Cancer Research
- Cancer Research UK (Charity)
- Local Authority: Borough of Kensington & Chelsea
- Local Authority: Boroughs of Sutton & Merton

ANNEX 2
Model Election Rules

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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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS**2. Timetable**

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

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

3. Computation of time

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

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

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

5. Staff

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

6. Expenditure

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

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

8.1 The returning officer is to publish a notice of the election stating:

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

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

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

12. Declaration of eligibility

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

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

13. Signature of candidate

13.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:

- (a) they wish to stand as a candidate,
- (b) their declaration of interests as required under rule 11, is true and correct, and
- (c) their declaration of eligibility, as required under rule 12, is true and correct.

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

14. Decisions as to the validity of nomination

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

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

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

- (a) that the paper is not received on or before the final time and date for return

of nomination forms, as specified in the notice of the election,

- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

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

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

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

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

20. The ballot paper

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

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

("declaration of identity")

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

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

21.3 The voting information shall caution the voter that if the declaration of identity is

not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

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

22.2 The list is to include, for each member:

(a) a postal address; and,

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

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

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

23. Notice of poll

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

(a) the name of the corporation,

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

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

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

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

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

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

(h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;

(i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,

(j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,

(k) the date and time of the close of the poll,

(l) the address and final dates for applications for replacement voting information, and

(m) the contact details of the returning officer.

24. Issue of voting information by returning officer

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

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

("postal voting information").

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

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

- 25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2 The covering envelope is to have:
- (a) the address for return of the ballot paper printed on it, and
 - (b) pre-paid postage for return to that address.
- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –
- (a) the completed ID declaration form if required, and
 - (b) the ballot paper envelope, with the ballot paper sealed inside it.
- 26. E-voting systems**
- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
 - (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,

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

26.5

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

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

- (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

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

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

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

29. Spoilt ballot papers and spoilt text message votes

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

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

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

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

31. Issue of replacement voting information

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

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

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

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

33.2 When prompted to do so, the voter will need to enter his or her voter ID number.33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.

33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.

33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

34. Voting procedure for remote voting by telephone

34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.

34.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.

34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.

34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.

34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

35. Voting procedure for remote voting by text message

35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.

35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.

35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

36. Receipt of voting documents

36.1 Where the returning officer receives:

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

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

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

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

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

37. Validity of votes

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

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

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

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

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

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

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

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

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

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

38.1 Where the returning officer receives an ID declaration form if required but no

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

ballot paper, the returning officer is to:

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

39. De-duplication of votes

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

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

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

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

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

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

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

40. Sealing of packets

40.1 As soon as is possible after the close of the poll and after the completion of the

procedure under rules 37 and 38, the returning officer is to seal the packets containing:

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

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

PART 6: COUNTING THE VOTES

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

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

or

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

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

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

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

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

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

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

“*stage of the count*” means:

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

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

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

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

42. Arrangements for counting of the votes

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

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

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

43. The count

43.1 The returning officer is to:

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

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

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

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

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

STV44.3 Any text voting record:

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

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

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

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

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

STV45. First stage

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

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

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

STV46. The quota

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

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

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

STV47. Transfer of votes

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

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

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

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

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

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

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

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

STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer

each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

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

STV48. Supplementary provisions on transfer

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

- (d) compare:
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

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

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

STV49. Exclusion of candidates

STV49.1 If:

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

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

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

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

STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.

STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub-parcels according to their transfer value.

STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of

transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).

- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
 - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
 - (d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.
- STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
 - (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

STV50. Filling of last vacancies

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

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

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

STV51. Order of election of candidates

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

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

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

STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP51. Equality of votes

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

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

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

FPP52.2 The returning officer is to make:

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

available on request.

STV52. Declaration of result for contested elections

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

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2 The returning officer is to make:

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

available on request.

53. Declaration of result for uncontested elections

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

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

- (a) any voting documents are received by the returning officer after the close of the poll, or

- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued,

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

57. Retention and public inspection of documents

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

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

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

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

58.1 The corporation may not allow:

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

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

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

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

- (a) persons,

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

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

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

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

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

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

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

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

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

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

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

FPP59.5 The returning officer is to:

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

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

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

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

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

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

PART 10: ELECTION EXPENSES AND PUBLICITY

*Election expenses***60. Election expenses**

60.1 Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application made to NHSI 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 NHSI 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 NHSI 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. NHSI will refer the application to the independent election arbitration panel appointed by NHSI.
- 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 NHSI shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

PART 12: MISCELLANEOUS

67. Secrecy

67.1 The following persons:

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

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

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

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