



**Doncaster and Bassetlaw  
Teaching Hospitals**  
NHS Foundation Trust

**DONCASTER AND BASSETLAW TEACHING HOSPITALS  
NHS FOUNDATION TRUST**

**CONSTITUTION**

|                                       |                                  |
|---------------------------------------|----------------------------------|
| Name and title of author/reviewer:    | Fiona Dunn,<br>Company Secretary |
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## Table of Contents

| Paragraph   | Page No. |
|---|----------|
| 1. Interpretation and Definitions .....   | 4        |
| 2. Name .....   | 6        |
| 3. Principal Purpose.....   | 7        |
| 4. Powers.....  | 7        |
| 5. Membership and Constituencies .....  | 8        |
| 6. Public Constituency .....  | 9        |
| 7. Staff Constituency .....   | 9        |
| 8. Automatic Membership by Default and by Application – Staff .....   | 10       |
| 9. Restriction on Membership.....   | 10       |
| 10. Annual Members’ Meeting .....   | 10       |
| 11. Council of Governors - Composition .....  | 10       |
| 12. Council of Governors - Election of Governors.....   | 11       |
| 13. Council of Governors - Tenure .....   | 11       |
| 14. Council of Governors – Disqualification and Removal .....   | 11       |
| 15. Council of Governors – Duties of Governors.....   | 12       |
| 16. Council of Governors – Meetings of Governors.....   | 13       |
| 17. Council of Governors – Standing Orders.....   | 13       |
| 18. Council of Governors - Conflicts Of Interest of Governors .....   | 14       |
| 19. Council of Governors – Travel Expenses .....  | 14       |
| 20. Council of Governors – Further Provisions .....   | 14       |
| 21. Board of Directors – Composition.....   | 14       |
| 22. Board of Directors – General Duty .....   | 15       |
| 23. Board of Directors – Qualification for Appointment as a Non-Executive Director .....                      | 15       |
| 24. Board of Directors – Appointment and Removal of Chair and Other Non-Executive<br>Directors .....          | 15       |
| 25. Board of Directors – Appointment of Deputy Chair.....   | 16       |
| 26. Board of Directors - Appointment and Removal of the Chief Executive and Other<br>Executive Directors..... | 16       |
| 27. Board of Directors – Disqualification .....   | 16       |
| 28. Board of Directors – Meetings .....   | 16       |
| 29. Board of Directors – Standing Orders .....  | 17       |
| 30. Board of Directors - Conflicts of Interest of Directors.....  | 17       |
| 32. Registers .....   | 19       |
| 33. Registers – Inspection and Copies.....  | 19       |
| 34. Documents Available for Public Inspection.....  | 19       |
| 35. Auditor.....  | 21       |
| 36. Audit Committee .....   | 21       |
| 37. Accounts.....   | 21       |
| 38. Annual Report, Forward Plans and Non-NHS Work .....   | 21       |
| 39. Presentation of the Annual Accounts and Reports to the Governors and Members .....                        | 22       |
| 40. Instruments .....   | 22       |
| 41. Amendment of The Constitution .....   | 22       |
| 42. Mergers etc. and Significant Transactions .....   | 23       |

Annex 1 – The Public Constituency .....24  
Annex 2 – The Staff Constituency .....25  
Annex 3 – Composition of Council of Governors .....27  
Annex 4 – The Model Election Rules .....30  
Annex 5 – Additional Provisions – Council of Governors .....65  
Annex 6 – Further Provisions .....72  
Annex 7 – Annual Members’ Meeting.....80

## 1. INTERPRETATION AND DEFINITIONS

In this Constitution:

|                           |  |
|---------------------------|--|
| “the 2006 Act”            | means the National Health Service Act 2006 as amended from time to time;   |
| “the 2012 Act”            | means the Health and Social Care Act 2012 as amended from time to time;  |
| “the 2022 Act”            | means the Health and Care Act 2022 as amended from time to time;   |
| "Accounting Officer"      | is the person who from time to time discharges the functions specified in NHS England’s NHS Foundation Trust Accounting Officer Memorandum;                                  |
| “Annual Members’ Meeting” | means the annual members’ meeting of the Trust as defined in paragraph 10 of this Constitution.  |
| "Appointed Governors"     | means the Partner Governors; those Governors appointed by the Partnership Organisations;   |
| “Area of the Trust”       | means the areas of Bassetlaw District and the City of Doncaster (specified in Annex 1 as areas of the public constituency);  |
| “Board of Directors”      | means the board of directors as constituted in accordance with this Constitution;  |
| “Chair”                   | means the chair of the Trust appointed in accordance with paragraph 25 of this Constitution;   |
| “Chief Executive”         | means the chief executive officer of the Trust appointed in accordance with the terms of this Constitution;  |
| "Constitution"            | means this Constitution and all annexes to it;   |
| “Council of Governors”    | means the Council of Governors as constituted in accordance with this Constitution, which has the same meaning as the council of governors in the 2006 Act and the 2012 Act; |
| "Deputy Chair"            | means the Non-Executive Director appointed as deputy chair of the Trust in accordance with paragraph 25 of this Constitution;  |
| “Director”                | means an Executive Director or a Non-Executive Director on the Board of Directors;   |
| "Elected Governor"        | means the Public Governors and the Staff Governors; those Governors elected by the Public Constituencies and the classes of the Staff Constituency;                          |

|   |   |
|---|---|
| “Election Scheme”                           | means the election scheme set out in Annex 4;   |
| “Executive Director”                        | means an executive director of the Trust;   |
| “Financial Year”                            | means a period of 12 months beginning on 1 <sup>st</sup> April in a calendar year and ending on 31 <sup>st</sup> March in the following calendar year;  |
| “Governor”                                  | means a Governor on the Council of Governors and being either an Elected Governor or an Appointed Governor;   |
| “Health Service Body”                       | means a body which is a health service body for the purpose of section 9(4) of the 2006 Act;  |
| “Independent Regulator” or<br>“NHS England” | is the body corporate known as NHS England, as provided by Section 61 of the 2012 Act;  |
| “Lead Governor”                             | means a Governor elected by the Council of Governors to fulfil the statutory role originally set out by Monitor (now NHS England) and to Chair any meetings of Governors when the Chair or Deputy Chair are absent, for whatever reason |
| "Local Authority"                           | means the local authorities specified in Annex 3, which are local authorities for an area which includes the whole or part of the area of the Trust;  |
| “Local Authority Governor”                  | means a member of the Council of Governors appointed by a Local Authority in accordance with the provisions of this Constitution and as specified in Annex 3;   |
| “Member”                                    | means a member of the Trust;  |
| "Membership"                                | means membership of the Trust as determined in accordance with the provisions of this Constitution and as specified in Annex 3;   |
| "Model Election Rules"                      | means the model form rules for the conduct of elections published from time to time by the Department of Health and as currently set out in Annex 4;  |
| “Non-Executive Director”                    | means a non-executive director of the Trust;  |
| "Partner Governor"                          | means a member of the Council of Governors appointed by a Partnership Organisation specified in Annex 3;  |
| "Partner Organisation"                      | means those organisations designated as Partnership Organisations for the purposes of this Constitution specified in Annex 3;   |
| “Public Constituencies”                     | means a public constituency as defined in Annex 1;  |
| “Public Governor”                           | means a member of the Council of Governors elected by the Members of the Public Constituency;   |
| “Registered Dentist”                        | a registered dentist within the meaning of the Dentists Act 1984;   |

|                                   |  |
|-----------------------------------|--|
| “Registered Medical Practitioner” | a fully registered person within the meaning of the Medicines Act 1983 who holds a licence to practice under that Act;   |
| "Secretary"                       | means the Trust Company Secretary or any other person appointed to perform the duties of the secretary to the Board, including a joint, assistant or deputy secretary; |
| "Senior Independent Director"     | means the Non-Executive Director appointed by the Board as the senior independent director of the Trust;   |
| “Staff Class”                     | means a class of Membership within the Staff Constituency as provided for in Schedule 7 to the 2006 Act and as set out in Annex 2;                                     |
| “Staff Constituency”              | means the part of the Trust’s Membership consisting of the staff of the Trust and which is divided into the classes as specified in Annex 2;                           |
| “Staff Governor”                  | means a member of the Council of Governors elected by a Staff Class in accordance with the provisions of this Constitution;  |
| “the Trust”                       | means Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust;   |

1.1 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the 2006 Act as amended by the Health and Social Care Act 2012.

1.2 References in this Constitution to legislation include all amendments, replacements or re-enactments made and references to paragraph numbers are references to paragraphs of this constitution unless the context provides otherwise

1.3 References to legislation include all regulations, statutory guidance and directions.

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

1.5 If there is a conflict between the provisions of this Constitution and the provisions of any document referred to herein or the law, then the provisions of this Constitution shall prevail unless the law requires otherwise.

1.6 All Annexes referred to in this Constitution form part of it.

1.7 References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an Annex to this Constitution it shall be a reference to a paragraph in that Annex unless the contrary is expressly stated, or the context otherwise so requires

## 2. NAME

2.1 The name of the foundation trust is Doncaster and Bassetlaw Teaching Hospitals NHS Foundation 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 fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

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 and amended by the Health and Social Care Act 2012 and the Health and Care Act 2022.

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.

4.4 Without prejudice to the generality of paragraph 4.1, the Trust may:

4.4.1 provide hospital and other accommodation for the purposes of any of its activities;

4.4.2 provide the services of medical, dental, midwifery and nursing staff, other health care professionals, other staff and volunteers;

4.4.3 provide such other facilities for the care of expectant and nursing mothers and young children as it considers appropriate;

4.4.4 provide such facilities for the prevention of illness, the care of persons suffering from illness and the aftercare of persons who have suffered from illness as it considers appropriate;

4.4.5 provide such other services as it considers are required for the diagnosis and treatment of illness and the care of those suffering from illness;

4.4.6 conduct, or assist by grants or otherwise any person to conduct, research into any matters relating to the causation, prevention, diagnosis or treatment of illness and into any such other matters connected with any service provided by the Trust as it considers appropriate and publish the results of such research;

- 4.4.7 educate and train its own staff and students and those from other organisations or educational establishments in any trade, profession or other occupation relevant or related to any part of the Trust's functions and collaborate with other organisations in the provision of such education and training;
- 4.4.8 in fulfilling its statutory duty to co-operate with another body, provide to that body, and receive from it, goods and services on such terms as the Trust considers appropriate, including terms under which the goods or services are provided for are received free of charge;
- 4.4.9 provide goods and services outside England;
- 4.4.10 provide, or assist in providing, information, training and support to voluntary and community bodies within the area of the Trust or providing services within the area of the Trust;
- 4.4.11 raise charitable funds and, in so doing, appeal for any contributions, donation, grant or gift of money or property;
- 4.4.12 insure the property of the Trust against any foreseeable risk and take out other insurance policies to protect the Trust when required or enter into arrangements which have a similar effect;
- 4.4.13 insure the Governors, Directors, volunteers and any employee of the Trust against the cost of a defence to a criminal prosecution brought against them in their capacity as such or against personal liability incurred in respect of any act or omission which is, or is alleged to be, a breach of trust or a breach of duty, unless the Governor, Director, volunteer or employee concerned knew that, or was reckless whether, the act or omission was a breach of trust or a breach of duty or enter into arrangements which have a similar effect;
- 4.4.14 provide and participate in external quality assurance schemes; and
- 4.4.15 carry out investigations into any aspect of the activities of the Trust.

## 5. MEMBERSHIP AND CONSTITUENCIES

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

- 5.1.1 a Public Constituency; or
- 5.1.2 a Staff Constituency.

5.2 An individual who is eligible to become a Member of the Trust may do so on application to the Trust.



## 6. PUBLIC CONSTITUENCY

6.1 The Public Constituency comprises three areas as set out in Annex 1. Each area of the Public Constituency is to be known by the name listed in Annex 1.

6.2 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a Member of the Trust provided that:

- 6.2.1 they have made an application for Membership to the Trust; and
- 6.2.2 they are not eligible to become a Member of the Staff Constituency; and
- 6.2.3 they are not otherwise disqualified from Membership under paragraph 4 or paragraph 2 of Annex 6.

6.3 Those individuals who live in an area specified for a Public Constituency are referred to collectively as the Public Constituency.

6.4 The minimum number of Members in each area for the Public Constituency is specified in Annex 1.

## 7. STAFF CONSTITUENCY

7.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided that:

- 7.1.1 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least twelve (12) months; or
- 7.1.2 they have been continuously employed by the Trust under a contract of employment for at least twelve (12) months.

7.2 Those individuals who are eligible for Membership of the Trust by reason of paragraph 7.1 are referred to collectively as the Staff Constituency.

7.3 The Staff Constituency shall be divided into four (4) classes of individuals who are eligible for Membership of the Staff Constituency, each class of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

7.4 The minimum number of Members in each class of the Staff Constituency is specified in Annex 2.

7.5 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, or who provides services to the Trust (for no remuneration) does not come within the category of those who qualify for Membership of the Staff Constituency.

## 8. AUTOMATIC MEMBERSHIP BY DEFAULT AND BY APPLICATION – STAFF

8.1 An individual who:

8.1.1 is eligible to become a Member of the Staff Constituency pursuant to paragraph 7.1 above, and

8.1.2 invited by the Trust to become a Member of the Staff Constituency and a Member of the appropriate Staff Class within the Staff Constituency,

shall become a Member of the Trust as a Member of the Staff Constituency and appropriate Staff Class within the Staff Constituency without an application being made, unless s/he informs the Trust that s/he does not wish to do so.

8.2 The process by which an individual shall be invited or shall apply to become a Member of the Staff Constituency shall be in accordance with the provisions of Annex 6.

## 9. RESTRICTION ON MEMBERSHIP

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

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

9.3 An individual must be at least sixteen (16) years old at the date of his/her application or invitation (as the case may be) to become a Member of the Trust.

9.4 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Trust are set out in Annex 6.

## 10. ANNUAL MEMBERS' MEETING

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

10.2 Further provisions about the Annual Members' Meeting are set out in Annex 7 – Annual Members' Meeting.

## 11. COUNCIL OF GOVERNORS - COMPOSITION

11.1 The Trust is to have a Council of Governors, which shall comprise both Elected and Appointed Governors and the Chair of the Trust.

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

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

## 12. COUNCIL OF GOVERNORS - ELECTION OF GOVERNORS

12.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules 2014.

12.2 The Model Election Rules as may be varied from time to time, form part of this Constitution and are attached at Annex 4.

12.3 A subsequent variation of the Model Election Rules by the Department of Health & Social Care 2014 shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 42 of the Constitution (amendment of the Constitution).

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

12.5 In the event that a vacancy is not filled by election, or a vacancy arises, the Council of Governors, by agreement at a meeting, may co-opt to that vacancy for an agreed period of time but the co-optee must be from the same constituency as the vacancy.

## 13. COUNCIL OF GOVERNORS - TENURE

13.1 An Elected Governor may hold office for a period of up to three (3) years.

13.2 An Elected Governor shall cease to hold office if s/he ceases to be a Member of the Constituency or class by which s/he was elected.

13.3 An Elected Governor shall be eligible for re-election at the end of his/her term but no Elected Governor may hold office for more than nine (9) years. An Elected Governor may not stand for election again on completion of the maximum nine years. An Elected Governor who does not complete the maximum nine-year term may stand for re-election but only for the remaining years to achieve nine (9) years in total.

13.4 An Appointed Governor may hold office for a period of three (3) years.

13.5 An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him/her. Or if the appointed governor loses contact or has no opportunity to report into the appointing organisation.

13.6 An Appointed Governor shall be eligible for re-appointment at the end of his/her term but no Appointed Governor may hold office for more than nine (9) years.

## 14. COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL

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

- 14.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 14.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 14.1.3 a person who within the preceding five (5) years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her
- 14.1.4 A governor, who is the subject of a conduct/disciplinary investigation, will be suspended from governor duties pending the outcome of the investigation (*see section 2.5 Annex 5*)
- 14.1.5 A governor, who makes a formal written complaint about another governor, non-executive director, director, member of staff, or volunteer, may be requested to stand down as a governor while the complaint is investigated, pending the outcome of the investigation.

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

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

14.4 Provisions for the removal of governors are set out in Annex 5 and the Standing Orders of the Council of Governors.

## 15. COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS

15.1 The general duties of the Council of Governors are:

- 15.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors; and
- 15.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

as a result of the Health and Care Act 2022 governors are required to factor into their decision making a balance between serving the public interest of their constituents (ie the Trust and local community which elects them) with a wider (regional) public interest across the Integrated Care Systems the Trust is linked with.

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

15.3 Governors must take up the opportunities that the Trust offers to provide them with these skills and knowledge. Refusal to take up a reasonable request for training and development will be a breach of the Governor Code of Conduct.

15.4 As much of the Trust's business e.g. Board meetings and Committees, is carried out electronically, governors must have a working knowledge of commonly used IT platforms, and the equipment to access them.

## 16. COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS

16.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 24 below) or, in his/her absence, the Deputy Chair (appointed in accordance with the provisions of paragraph 25 below), shall preside at meetings of the Council of Governors save that if the Chair and Deputy Chair are unable to preside whether for reasons of absence, conflict of interest or otherwise the Senior Independent Director or Lead Governor shall preside.

16.2 The Lead Governor shall be a Public Governor and shall be elected by a majority of the Council of Governors in a secret ballot for a term of up to 3 years. The provisions of paragraph 8 of Annex 5 shall also apply.

16.3 Meetings of the Council of Governors shall be open to members of the public save that members of the public may be excluded from a meeting on the grounds of the confidential nature of the business to be transacted, or for other special reasons stated in the resolution.

16.4 For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their duties, and to be able to hold the non-executive directors to account for the performance of the Board, the Council of Governors may require one or more of the non-executive directors to attend a meeting.

16.5 *In extremis*, where the circumstances are beyond the Trust's control, meetings of members and the Council of Governors may be suspended until the circumstances that have caused the cessation of governors' meetings and activities have passed. The Chair is responsible for ceasing or re-starting governors' meetings.

16.6 There may be times and reasons why Council of Governors meetings are held "virtually online" and not in person. The Chair will decide these times in consultation with the Lead Governor

16.7 Members of the public or representatives of Council of Governors are not permitted to record proceedings in any manner unless with the express prior agreement of the Chair (or Deputy Chair). Where permission has been granted, the Chair (or Deputy Chair) retains the right to give directions to halt recording of proceedings at any point during the meeting. For the avoidance of doubt, "recording" refers to any audio or visual recording, including still photography, including use of social media.

## 17. COUNCIL OF GOVERNORS – STANDING ORDERS

17.1 The Council of Governors shall adopt its own standing orders, as may be varied from time to time, for its practice and procedure, in particular for its procedure at meetings.

## 18. COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS

18.1 Governors are required to declare any pecuniary, personal or family interest on nomination for election and on appointment as a governor.

18.2 In addition, governors should declare interests, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors. The governor shall disclose that interest to the members of the Council of Governors as soon as s/he becomes aware of it.

18.3 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. The Chair of the meeting decides on exclusion on the facts.

18.4 See also Annex 5, section 7 for declarations of interest.

## 19. COUNCIL OF GOVERNORS – TRAVEL EXPENSES

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

## 20. COUNCIL OF GOVERNORS – FURTHER PROVISIONS

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

## 21. BOARD OF DIRECTORS – COMPOSITION

21.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.

21.2 The Board of Directors should include an appropriate combination of executive and non-executive directors (and in particular, independent non-executive directors) such that no individual or small group of individuals can dominate the board's decision taking.

21.3 All directors should be able to exercise one full vote, with the chairperson having a second or casting vote on occasions where voting is tied.

21.4 The Board of Directors is to comprise:

- 21.4.1 a non-executive Chair (who shall have a casting vote)
- 21.4.2 other Non-Executive Directors (i.e. not including the Chair) One Non-Executive Director will be nominated by the Chair, and noted by the Council of Governors, as the Senior Independent Director); and
- 21.4.3 Executive Directors (but not exceeding the combined number of Non-Executive Directors and the Non-Executive Chair)

- 21.5 One of the Executive Directors shall be the Chief Executive.
- 21.6 The Chief Executive shall be the Accounting Officer.
- 21.7 One of the Executive Directors shall be the Finance Director.
- 21.8 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 21.9 One of the Executive Directors is to be a registered nurse or a registered midwife.
- 21.10 One of the Non-executive Directors is to be, or have been in the past, a registered medical practitioner, registered dentist, registered nurse, registered midwife, registered pharmacist or other healthcare professional registered with the Health and Care Professions Council.
- 21.11 For the avoidance of doubt, the Deputy Chair shall have the casting vote in the event that the Chair is not participating at the meeting where voting takes place.

## 22. BOARD OF DIRECTORS – GENERAL DUTY

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

## 23. BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR

- 23.1 A person may be appointed as a Non-Executive Director only if:
- 23.1.1 s/he is a Member of the Public Constituency; and
  - 23.1.2 s/he is not disqualified by virtue of paragraph 27 below.

## 24. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS

- 24.1 The Chair and Non-Executive Directors are appointed for a term of up to three years. This may be extended by a further term of up to three years if the needs of the organisation so determine. The Chair and Non-Executive Directors may not usually serve for more than six years, unless it considers such an extension is in the best interests of the Trust.
- 24.2 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair and the other Non-Executive Directors.
- 24.3 Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors attending the meeting.
- 24.4 The provisions of paragraph 9 of Annex 5 and paragraph 6 of Annex 6 shall also apply.

## 25. BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIR

25.1 The Board of Directors shall appoint one of the Non-Executive Directors as a Deputy Chair. The Deputy Chair will also be Deputy Chair of the Council of Governors.

25.2 The Deputy Chair shall be appointed for a term of 3 years and shall be eligible for re-appointment at the end of that term but may not serve as Deputy Chair for more than a total of 6 year, unless it considers such an extension is in the best interests of the Trust.

## 26. BOARD OF DIRECTORS - APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS

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

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

26.3 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

## 27. BOARD OF DIRECTORS – DISQUALIFICATION

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

- 27.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 27.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
- 27.1.3 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 him/her;
- 27.1.4 a person who does not satisfy all of the 'fit and proper person' requirements set out in regulation 5(3) of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014; or
- 27.1.5 a person who falls within the further grounds for disqualification set out in Annex 6.

## 28. BOARD OF DIRECTORS – MEETINGS

28.1 Meetings of the Board of Directors are meetings held in public and shall, therefore, be open to members of the public as observers. Members of the public may be excluded from a meeting for special reasons. Members of the public may not participate in Board meetings.



28.2 Before holding a meeting, the Board of Directors must make available the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must make available the approved minutes of the meeting to the Council of Governors.

28.3 The Chair (or Deputy Chair) shall give such directions as s/he thinks fit in regard to the arrangements for meetings and accommodation of the public such as to ensure that business shall be conducted without interruption and disruption.

28.4 There may be times and reasons why the Board of Directors meetings are held “virtually online” and not in person. The Chair will decide these times in consultation with the Chief Executive Officer.

28.5 Members of the public or representatives of the press are not permitted to record proceedings in any manner unless with the express prior agreement of the Chair (or Deputy Chair). Where permission has been granted, the Chair (or Deputy Chair) retains the right to give directions to halt recording of proceedings at any point during the meeting. For the avoidance of doubt, “recording” refers to any audio or visual recording, including still photography, including use of social media.

## 29. BOARD OF DIRECTORS – STANDING ORDERS

29.1 The Board of Directors shall adopt its own standing orders, as may be varied from time to time, for its practice and procedure, in particular for its procedure at meetings.

## 30. BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS

30.1 The duties that a director of the Trust has by virtue of being a director include in particular:

30.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.

30.1.2 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.

30.2 The duty referred to in sub-paragraph 30.1.1 is not infringed if:

30.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

30.2.2 The matter has been authorized in accordance with the constitution.

30.3 The duty referred to in sub-paragraph 30.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

30.4 In sub-paragraph 30.1.2, “third party” means a person other than –

30.4.1 The Trust, or

30.4.2 A person acting on its behalf.

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

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

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

30.8 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.

30.9 A director need not declare an interest –

- 30.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 30.9.2 if, or to the extent that, the directors are already aware of it;
- 30.9.3 if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –
  - (a) By a meeting of the Board of Directors, or
  - (b) By a committee of the directors appointed for the purpose under the constitution.

30.10 The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

30.11 The Standing Orders for the Board of Directors shall make provision for the Board of Directors to determine whether a situation may reasonably be regarded as likely to give rise to a conflict of interest.

30.12 The Standing Orders for the Board of Directors shall make provision for the authorisation of a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.

30.13 Where a Non-executive Director has declared a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust, the Board of Directors will disclose details of this to the Council of Governors following any action it takes in accordance with paragraphs 31.1 and 31.2. The Council of Governors may then take further action in accordance with its powers under this Constitution.

## **31. BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE**

31.1 The Council of Governors shall appoint members to form a Nomination & Remuneration Committee. This Committee shall agree the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors. The Committee will ask a general meeting of the Council of Governors to approve its recommendations. The provisions of paragraph 6 of Annex 6 shall also apply.

31.2 A committee of Non-Executive Directors shall be established to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

## 32. REGISTERS

32.1 The Trust shall have:

- 32.1.1 a register of Members showing, in respect of each Member, the constituency to which s/he belongs and, where there are classes within it, the class to which s/he belongs;
- 32.1.2 a register of members of the Council of Governors;
- 32.1.3 a register of interests of Governors;
- 32.1.4 a register of Directors; and
- 32.1.5 a register of interests of the Directors.

32.2 The process of admission to and removal from the registers shall be as set out in Annex 6.

## 33. REGISTERS – INSPECTION AND COPIES

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

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

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

- 33.3.1 they are to be available for inspection online and free of charge at all reasonable times; and
- 33.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

33.4 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.

## 34. DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

34.1 The Trust shall make the following documents available for inspection by members of the public free of charge on the website:

- 34.1.1 a copy of the current Constitution;

- 34.1.2 a copy of the latest annual accounts and of any report of the External auditor on them;
- 34.1.3 a copy of the latest annual report and quality accounts;
- 34.1.4 a copy of the latest Care Quality Commissioning report.

34.2 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 on the website at all reasonable times:

- 34.2.1 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.
- 34.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
- 34.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
- 34.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
- 34.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
- 34.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHS England), 65KB (Secretary of State's response to NHS England 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.
- 34.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- 34.2.8 a copy of any final report published under section 65I (administrator's final report),
- 34.2.9 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.
- 34.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

34.4 If the person requesting access to a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

## 35. AUDITOR

- 35.1 The Trust shall have an External auditor.
- 35.2 The Council of Governors shall appoint or remove the External auditor at a general meeting of the Council of Governors.
- 35.3 The provisions of paragraph 11 of Annex 6 shall apply.

## 36. AUDIT AND RISK COMMITTEE

- 36.1 The Trust shall establish a committee of Non-Executive Directors as an audit and risk committee to perform such monitoring, reviewing and other functions as are appropriate. The Council of Governors may appoint up to two governors as observers to the committee.

## 37. ACCOUNTS

- 37.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 37.2 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.
- 37.3 The accounts are to be audited by the Trust's external auditor.
- 37.4 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.
- 37.5 The functions of the Trust with respect to the preparation of the annual accounts as set out in paragraph 25 of Schedule 7 of the 2006 Act, shall be delegated to the Accounting Officer.
- 37.6 The provisions of paragraph 11 of Annex 6 shall apply.

## 38. ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK

- 38.1 The Trust shall prepare an Annual Report and send it to NHS England.
- 38.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS England.
- 38.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 38.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 38.5 Each forward plan must include information about:
- 38.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and

38.5.2 the income it expects to receive from doing so.

38.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 38.5.1 the Council of Governors must:

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

38.6.2 notify the directors of the Trust and its determination.

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

## 39. PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS

39.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors.

39.1.1 the annual accounts;

39.1.2 any report of the external auditor on them; and

39.1.3 the annual report.

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

39.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 39.1 with the Annual Members' Meeting.

## 40. INSTRUMENTS

40.1 The Trust shall have a seal.

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

## 41. AMENDMENT OF THE CONSTITUTION

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

41.1.1 more than half of the members of the Council of Governors voting at a meeting approve the amendments; and

41.1.2 more than half of the members of the Board of Directors voting at a meeting approve the amendments.

41.2 The Constitution shall be formally reviewed by the Council of Governors and Board of Directors every 3 years.

41.3 Amendments made under paragraph 41.1 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.

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

41.4.1 At least one member of the Council of Governors most likely the Lead Governor must attend the next Annual Members' Meeting and present the amendment, and

41.4.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.

41.5 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.

## 42. MERGERS ETC. AND SIGNIFICANT TRANSACTIONS

42.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors voting at a general meeting.

42.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction, voting at a general meeting.

42.3 For the purpose of paragraph 42.2, "significant transaction" means a transaction which meets any one of the following criteria:

42.3.1 where the gross assets subject to the transaction are greater than or equal to 25% of the gross assets of the Trust;

42.3.2 where the income attributable to the assets or the contract associated with the transaction is greater than or equal to 25% of the income of the Trust;

42.3.3 where the gross capital of the company or business being acquired or divested, or the effects on the total capital of the Trust resulting from a transaction, is greater than or equal to 25% of the total capital of the Trust following completion of the transaction.

## ANNEX 1 – THE PUBLIC CONSTITUENCY

Table 1

| 1                               | 2   | 3                         | 4                                 |
|---------------------------------|---|---------------------------|-----------------------------------|
| Name of the Public Constituency | Area of the Public Constituency<br>(as defined by Local Authority boundaries) | Minimum Number of Members | Number of Governors to be Elected |
| Bassetlaw                       | Bassetlaw District Council  | 300                       | 5                                 |
| Doncaster                       | City of Doncaster   | 470                       | 13                                |
| Rest of England & Wales         | Any other electoral area in England and Wales with the exception of the above | 50                        | 2                                 |



## ANNEX 2 – THE STAFF CONSTITUENCY

Table 1

| Staff Class                                  | Minimum Number of Members | Number of Governors to be elected |
|--|---------------------------|-----------------------------------|
| Medical and Dental Practitioners Staff Class | 75                        | 1                                 |
| Nurses and Midwives Staff Class              | 450                       | 2                                 |
| Other Healthcare Professionals Staff Class   | 100                       | 1                                 |
| Non-Clinical Staff Class                     | 375                       | 2                                 |
| <b>TOTAL</b>                                 | 1000                      | 6                                 |

### 1. CLASSES OF THE STAFF CONSTITUENCY

1.1 The Staff Constituency shall be divided into four classes as follows:

- 1.1.1 Medical and Dental Practitioners Staff Class;
- 1.1.2 Nurses and Midwives Staff Class;
- 1.1.3 Other Healthcare Professionals Staff Class; and
- 1.1.4 Non-Clinical Staff Class.

1.2 Medical and Dental Practitioners Staff Class

- 1.2.1 The Members of the Medical and Dental Staff Class are individuals who are Members of Staff Constituency who:
  - (a) are fully registered persons within the meaning of the Medicines Act 1956 or the Dentists Act 1984 (as the case may be) and who are otherwise fully authorised and licensed to practise in England and Wales or who are otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class for the purposes of this paragraph having regard to the usual definitions applicable at that time for persons carrying on the professions of medical practitioner or dentist; and
  - (b) who are employed by the Trust in that capacity at the date of their invitation or application under paragraph 7 of the Constitution to become a Member in accordance with the

provisions of Annex 6 and at all times thereafter remain employed by the Trust in that capacity.

**1.3 Nurses and Midwives Staff Class**

1.3.1 The Members of the Nurses and Midwives Staff Class are individuals who:

- (a) are registered under the Nurses, Midwives and Health Visitors Act 1997 and who are otherwise fully authorised and licensed to practise in England and Wales or are otherwise designated by the Trust from time to time as eligible to be Members of the Staff Class for the purposes of this paragraph, having regard to the usual definitions applicable at that time for persons carrying on the profession of registered nurse or registered midwife and individuals who are health care assistants; and
- (b) who are employed by the Trust in that capacity at the date of their invitation or application under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 6 and at all times thereafter remain employed by the Trust in that capacity.

**1.4 Other Healthcare Professionals Staff Class**

Members of the Other Healthcare Professionals Staff Class are clinical staff who do not fall within paragraphs 1.2 or 1.3 of this Annex 2, including clinical therapists, scientists and technical staff, who are employed by the Trust in that capacity at the date of their invitation or application under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 6 and at all times thereafter remain employed by the Trust in that capacity.

**1.5 Non-Clinical Staff Class**

Members of the Non-Clinical Staff Class are Members of the Staff Constituency who do not come within paragraphs 1.2, 1.3 or 1.4 of this Annex 2.

**2. MINIMUM NUMBERS AND NUMBERS OF GOVERNORS**

2.1 The minimum number of Members in each Staff Class and the number of Governors to be elected by each such Staff Class are given in Table 1.

**3. CONTINUOUS EMPLOYMENT**

3.1 For the purposes of paragraph 7.1.2 of the Constitution, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Trust or has continuously exercised functions for the purposes of the Trust.

## ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

### 1. INTRODUCTION

1.1 The Council of Governors shall comprise:

1.1.1 The Chair of the Trust

1.1.2 Governors who are:

(a) elected by the respective Constituencies in accordance with the provisions of this Constitution; or

(b) appointed in accordance with paragraph 2 below.

1.2 The Council of Governors shall at all times be constituted so that more than half the Council of Governors shall consist of Governors who are elected by Members of the Public Constituency.

### 2. BODIES ENTITLED TO APPOINT A MEMBER TO THE COUNCIL OF GOVERNORS

2.1 The following bodies in this paragraph 2 shall be entitled to appoint a Governor or Governors (as the case may be) to the Council of Governors as provided for in this paragraph 2.

2.2 Local Authority Governors

2.2.1 City of Doncaster Council shall be entitled to appoint one Governor in accordance with a process of appointment agreed by it with the Trust.

2.2.2 Bassetlaw District Council and Nottinghamshire County Council shall each be entitled to appoint one Governor in accordance with a process of appointment agreed by each of them with the Trust.

2.2.3 The absence of any agreed process of appointment as referred to in paragraphs 2.2.1 and 2.2.2 above shall not preclude the said local authority from appointing its Governor(s).

2.2.4 If the local authority named in paragraphs 2.2.1 or 2.2.2 above declines or fails to appoint a Governor within three months of being requested to do so by the Trust, the Trust shall consult each local authority whose area includes the whole or part of the area of the Trust and the Trust in its absolute discretion may extend an invitation to any of those local authorities to appoint a Governor in substitution for the local authority which has failed or declined to do so.

2.2.5 A Governor appointed under this paragraph 2.2 shall then serve on the Council of Governors for the period stipulated in Annex 5. At the end of that period the Trust shall in its absolute discretion decide whether to permit the local authority which had failed or declined to appoint a Governor to appoint a Governor for the next period of office (provided it remains eligible to do so) or to invite the local authority which had appointed a Governor in substitution to do so.

## 2.3 Partner Governors

2.3.1 In addition to the organisations listed in 2.1 and 2.2, the following organisations have also been nominated by the Trust as Partnership Organisations for the purposes of this Constitution:

- (a) Bassetlaw Council for Voluntary Service;
- (b) University of Sheffield;
- (c) Sheffield Hallam University;
- (d) Doncaster College;
- (e) Doncaster Deaf Trust;
- (f) Partial Sighted Society -Doncaster;

2.3.2 Each of the above organisations shall be entitled to appoint Governors in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude that Partnership Organisation from appointing its Governor provided the appointment is duly made in accordance with its own internal processes. A further two (2) appointed governors from new partnership organisations, nominated by the Trust may be proposed and added to this constituency. In this instance the Company Secretary will present the proposed nomination to the Council of Governors.

## 3. COMPOSITION OF THE COUNCIL OF GOVERNORS

|           | <b>Electing / Appointing Body</b>                | <b>Number of Governors</b> | <b>Total</b> |
|-----------|--|----------------------------|--------------|
| <b>1.</b> | <b>Public Constituencies</b>                     |                            | <b>20</b>    |
|           | 1.1 Bassetlaw District                           | 5                          |              |
|           | 1.2 Metropolitan Doncaster                       | 13                         |              |
|           | 1.3 Rest of England and Wales                    | 2                          |              |
| <b>2.</b> | <b>Staff Constituency</b>                        |                            | <b>6</b>     |
|           | 2.1 Medical and Dental Practitioners Staff Class | 1                          |              |
|           | 2.2 Nurses and Midwives Staff Class              | 2                          |              |
|           | 2.3 Other Healthcare Professionals Staff Class   | 1                          |              |
|           | 2.4 Non-Clinical Staff Class                     | 2                          |              |
| <b>3.</b> | <b>Appointed Governors</b>                       |                            | <b>9</b>     |
|           | 3.1 City of Doncaster Council                    | 1                          |              |
|           | 3.2 Bassetlaw District Council                   | 1                          |              |
|           | 3.3 Nottinghamshire County Council               | 1                          |              |
|           | 3.4 University of Sheffield                      | 1                          |              |

|  |  |   |           |
|--|--|---|-----------|
|  | 3.5 Sheffield Hallam University  | 1 |           |
|  | 3.6 Doncaster College  | 1 |           |
|  | 3.7 Doncaster Deaf Trust   | 1 |           |
|  | 3.8 Bassetlaw Council for Voluntary Service  | 1 |           |
|  | 3.9 Doncaster Partial Sighted Society  | 1 |           |
|  | 3.10 Provision available for further two (2) appointed governors from new partnership organisations appointed by the Trust when appropriate) | 2 |           |
|  | <b>Total Number of Governors (maximum membership)</b>  |   | <b>37</b> |

#### **4. FURTHER PROVISIONS**

4.1 Further provisions relating to the composition of the Council of Governors are at Annex 6.

## ANNEX 4 – THE MODEL ELECTION RULES 2014

### **PART 1: INTERPRETATION**

1. Interpretation

### **PART 2: TIMETABLE FOR ELECTION**

2. Timetable
3. Computation of time

### **PART 3: RETURNING OFFICER**

4. Returning officer
5. Staff
6. Expenditure
7. Duty of co-operation

### **PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

8. Notice of election
9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination forms
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination forms
17. Withdrawal of candidates
18. Method of election

### **PART 5: CONTESTED ELECTIONS**

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (public constituency)

#### *Action to be taken before the poll*

22. List of eligible voters
23. Notice of poll
24. Issue of voting information by returning officer
25. Ballot paper envelope and covering envelope
26. E-voting systems

#### *The poll*

27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers and spoilt text message votes
30. Lost voting information
31. Issue of replacement voting information
32. ID declaration form for replacement ballot papers (public constituency)
33. Procedure for remote voting by internet
34. Procedure for remote voting by telephone

35. Procedure for remote voting by text message

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

36. Receipt of voting documents  
 37. Validity of votes  
 38. Declaration of identity but no ballot (public constituency)  
 39. De-duplication of votes  
 40. Sealing of packets

**PART 6: COUNTING THE VOTES**

- STV41. Interpretation of Part 6  
 42. Arrangements for counting of the votes  
 43. The count  
 STV44. Rejected ballot papers and rejected text voting records  
 STV45. First stage  
 STV46. The quota  
 STV47. Transfer of votes  
 STV48. Supplementary provisions on transfer  
 STV49. Exclusion of candidates  
 STV50. Filling of last vacancies  
 STV51. Order of election of candidates

**PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS**

- STV52. Declaration of result for contested elections  
 53. Declaration of result for uncontested elections

**PART 8: DISPOSAL OF DOCUMENTS**

54. Sealing up of documents relating to the poll  
 55. Delivery of documents  
 56. Forwarding of documents received after close of the poll  
 57. Retention and public inspection of documents  
 58. Application for inspection of certain documents relating to election

**PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

- STV59. Countermand or abandonment of poll on death of candidate

**PART 10: ELECTION EXPENSES AND PUBLICITY**

*Expenses*

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

*Publicity*

63. Publicity about election by the corporation  
 64. Information about candidates for inclusion with voting information  
 65. Meaning of “for the purposes of an election”

**PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES**

66. Application to question an election

**PART 12: MISCELLANEOUS**

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



**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 elected by the Council of Governors 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;

*“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 ELECTION

### 2. Timetable

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

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

### 3. Computation of time

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

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

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

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

## PART 3: RETURNING OFFICER

### 4. Returning Officer

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

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

**5. Staff**

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

**6. Expenditure**

6.1 The corporation is to pay the returning officer:

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

**7. Duty of co-operation**

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

**PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

**8. Notice of election**

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

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

**9. Nomination of candidates**

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

9.2 The returning officer:

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

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

**10. Candidate's particulars**

10.1 The nomination form must state the candidate's:

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

**11. Declaration of interests**

11.1 The nomination form must state:

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

The Trust has guidance available on the types of interest to be declared at nomination.

**12. Declaration of eligibility**

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

- (a) that s/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 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 may order a new election to fill any vacancy which remains unfilled, on a day appointed by him/her in consultation with the corporation unless the Council of Governors at a meeting agrees to co-option.

**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 (including 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 constituency)**

21.1 The corporation shall require each voter who participates in an election for a public 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 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").

24.2

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").

- 24.3 The corporation may determine that any member of the corporation shall:
- (a) only be sent e-voting information; or
  - (b) only be sent postal voting information; or
  - (c) be sent both postal voting information (only if no e-mail) 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 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 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 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;
- (c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
  - (i) the voter's voter ID number;
  - (ii) the voter's declaration of identity (where required);
  - (ii) the candidate or candidates for whom the voter has voted; and
  - (iii) the date and time of the voter's vote
- (d) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (e) 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 on 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 on 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
  - (d) 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 on 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 on 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 constituency)**

- 32.1 In respect of an election for a public 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 on 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) on 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 constituency)<sup>1</sup>**

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

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



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

**40. Sealing of packets**

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

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

- (f) the list of tendered voting information

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

## PART 6: COUNTING THE VOTES

### STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

*“non-transferable vote”* means a ballot document:

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule STV49,

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

- (a) *“first preference”* means the figure “1” or any mark or word which clearly indicates a first (or only) preference,
- (b) *“next available preference”* means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
- (c) in this context, a *“second preference”* is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

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

*“surplus”* means the number of votes by which the total number of votes for any

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

“*stage of the count*” means:

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

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

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

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

## **42. Arrangements for counting of the votes**

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

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

- (a) the Board of Directors and the Council of Governors of the corporation have approved:
  - (i) the use of such software for the purpose of counting votes in the relevant election, and
  - (ii) a policy governing the use of such software, and
- (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.
- (c) by contracting an independent election service serves as organisation approval of the counting systems used

## **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/her under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by him/her under each of the subparagraphs (a) to (c) of rule STV44.3.

#### **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.

**PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS**

Council of Governors

**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 Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust by section 33(4) of the 2006 Act, to the chair of the NHS Trust, or
- (ii) in any other case, to the chair 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 chair 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 chair of the corporation.

**57. Retention and public inspection of documents**

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

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

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

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

- 58.1 The corporation may not allow:
- (a) the inspection of, or the opening of any sealed packet containing –
    - (i) any rejected ballot papers, including ballot papers rejected in part,
    - (ii) any rejected text voting records, including text voting records rejected in part,
    - (iii) any disqualified documents, or the list of disqualified documents,
    - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
    - (v) the list of eligible voters, or
  - (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in

accordance with rule 26 and held in a device suitable for the purpose of storage,

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

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

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

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

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

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

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

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

- (i) that his or her vote was given, and
- (ii) that Monitor (or successor body i.e. NHS England) has declared that the vote was invalid.

## **PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

### **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 NHS Improvement/England 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, whether online or face-to-face, to enable the candidates to speak and respond to questions, or to themselves gain further information.

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 (face-to-face or online) 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

**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, in his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

**PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES****66. Application to question an election**

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

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

66.3 An application may only be made to Monitor or successor body (NHS England) by:

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

66.4 The application must:

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

66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor or successor body (NHS England).

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

66.7 Monitor or successor body (NHS England) shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.

66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

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

## **PART 12: MISCELLANEOUS**

### **67. Secrecy**

67.1 The following persons:

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

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

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

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

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

### **68. Prohibition of disclosure of vote**

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

### **69. Disqualification**

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

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

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

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

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

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



## ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

1. Council of Governors: Terms of Office (see also Section 13)
  - 1.1 A Governor:
    - 1.1.1 shall cease to hold office if:
      - (a) s/he ceases to be a Member of a Trust constituency or, in the case of an Appointed Governor, if the body which appointed him/her withdraws its appointment at any time;
      - (b) his/her term of office is terminated in accordance with paragraph 3 below and/or s/he is disqualified from or is otherwise ineligible to hold office as a Governor; or
    - 1.1.2 s/he resigns by notice in writing to the Trust.
  - 1.2 Notwithstanding the provisions of paragraph 1.1.1(a) above, a Public Governor elected by a Public Constituency who ceases to be eligible to be a Member of that Public Constituency but who is eligible to be and forthwith becomes a Member of another Public Constituency shall not by virtue of paragraph 1.1.1(a) above cease to hold office but shall continue in office as Public Governor for the Constituency which elected him/her for the remainder of the term for which he was elected.
2. Council of Governors: Removal and Disqualification
  - 2.1 A Governor shall not be eligible to become or continue in office as a Governor if:
    - 2.1.1 s/he ceases to be eligible to be a Member, save in the case of Appointed Governors;
    - 2.1.2 in the case of an Appointed Governor, the appointing organisation withdraws its appointment of him/her;
    - 2.1.3 any of the grounds contained in paragraph 14 of the Constitution apply to him/her;
    - 2.1.4 s/he has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a Health Service Body;
    - 2.1.5 s/he is a person whose term of office as the Chair or as a member or director of a Health Service Body has been terminated on the grounds that his/her continuance in office is no longer in the best interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
    - 2.1.6 s/he has had his/her name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act and has not subsequently had his/her name included on such a list;
    - 2.1.7 s/he has failed to make, or has falsely made, any declaration as required to be made under Section 60 of the 2006 Act or has spoken or voted in a

meeting on a matter in which they have direct or indirect pecuniary or non-pecuniary interest and s/he is judged to have acted so by a majority of not less than 75% of the Council of Governors at a meeting;

- 2.1.8 NHS England has exercised its powers to remove him/her as a Governor of the Trust or has suspended him/her from office or has disqualified him/her from holding office as a Governor of the Trust for a specified period or NHS England has exercised any of those powers in relation to him/her on any other occasion whether in relation to the Trust or some other NHS Foundation Trust;
- 2.1.9 s/he has received a written warning from the Trust for verbal and/or physical abuse towards Trust staff;
- 2.1.10 s/he has at any time been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children and Young Person's Act 1933 to 1969 (as amended);
- 2.1.11 s/he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him/her;
- 2.1.12 his/her term of office is terminated pursuant to paragraph 3 below;
- 2.1.13 s/he is a Member of a Staff Class and any professional registration relevant to his eligibility to be a Member of that Staff Class has been suspended for a continuous period of more than six 6 months;
- 2.1.14 s/he is incapable by reason of mental disorder, illness or injury in managing and administering his property and/or affairs;
- 2.1.15 the relevant organisation which s/he represents ceases to exist;
- 2.1.16 s/he is a member of the UK Parliament;
- 2.1.17 s/he is a Director of the Trust;
- 2.2 Where a person has been elected or appointed to be a Governor and s/he becomes disqualified from that appointment s/he shall notify the Company Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which rendered him/her disqualified.
- 2.3 If it comes to the notice of the Trust that a Governor is disqualified, the Trust shall immediately declare him/her disqualified and shall give him/her notice in writing to that effect as soon as practicable.
- 2.4 Upon the giving of notice under paragraphs 2.2 and 2.3 above, that person's tenure of office as a Governor shall thereupon be terminated and s/he shall cease to be a Governor and his/her name shall be removed from the Register of Governors.
- 2.5 If a complaint is received against a member of the governing body it shall be referred to the Trust Board Chair;
  - 2.5.1 the Chair shall appoint a suitably experienced person to undertake the role of investigating officer on behalf of the Trust

- 2.5.2 the investigating officer (IO) shall conduct a short initial investigation into the matter to establish whether there may be a case to answer
- 2.5.3 if the IO determines the matter does not constitute a viable complaint they shall make such a recommendation, in writing, to the Chair. If the Chair accepts that recommendation the matter ends there
- 2.5.4 if the IO determines there may be a case, then a fuller investigation shall commence. At that point the question as to whether the governor about whom a complaint has been made can continue to operate as a governor in the interim shall be considered. The IO shall examine the facts and circumstances known at that time and make a written recommendation to the Chair.
- 2.5.5 when considering whether suspension is appropriate there shall be a presumption that the governor will remain in office unless there are factors that, on the balance of probability, make that unacceptable. Suspension is a significant step, not to be taken lightly
- 2.5.6 factors that shall be considered –
  - Either -
    - (a) the investigation of the case may be prejudiced unless the governor is suspended, or
    - (b) having regard to the nature of the allegation and any other relevant considerations the public interest requires that the governor should be suspended
  - AND
    - (c) it is not practicable to restrict the role of the governor in any way that may still enable them to continue in their principal role
    - (d) for example asking a governor to step down temporarily from committee or meeting attendance or placing restrictions upon them to prevent routine contact with a complainant.
- 2.5.7 The Chair upon receipt of the IO's report shall determine whether or not suspension shall be made whilst an investigation takes place.

3. Council of Governors: Termination of Tenure

- 3.1 A Governor's term of office shall be terminated:
  - 3.1.1 by the Governor giving notice in writing to the Company Secretary of his/her resignation from office at any time during that term of office;
  - 3.1.2 by the Trust if any grounds exist under paragraph 2 above;
  - 3.1.3 by the Council of Governors if s/he has failed to attend two consecutive meetings of the Council of Governors unless within one month of the second meeting, the Council of Governors is satisfied that:
    - (a) the absence was due to reasonable cause; and

- (b) the Governor will resume attendance at meetings of the Council of Governors within such period as it considers reasonable.

3.1.4 if the Council of Governors resolves to terminate his/her term of office for reasonable cause on the grounds that in the reasonable opinion of not less than 75% of the Governors present and voting at a meeting of the Council of Governors convened for that purpose that his/her continuing as a Governor (with no rights of appeal in case of 3.1.4j), would or would be likely to:

- (a) prejudice the ability of the Trust to fulfil its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or
- (b) prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or
- (c) adversely affect public confidence in the goods and services provided by the Trust; or
- (d) otherwise bring the Trust into disrepute or is detrimental to the interest of the Trust; or
- (e) it would not be in the best interests of the Trust for that person to continue in office as a Governor; or
- (f) the Governor is a vexatious or persistent litigant or complainant with regard to the Trust's affairs and his/her continuance in office would not be in the best interests of the Trust; or
- (g) s/he has failed or refused to undertake and/or satisfactorily complete any training which the Council of Governors has required him/her to undertake in his/her capacity as a Governor by a date six months from the date of his/her election or appointment; or from a date when they have been asked to undertake additional training or development for any reason;
- (h) s/he has in his/her conduct as a Governor failed to comply and support in a material way with the values and principles of the National Health Service or the Trust, and the Constitution; or
- (i) s/he has committed a material breach of any code of conduct applicable to Governors of the Trust and/or the Governors Standing Orders;
- (j) a Governor who has breached a code of conduct and has attended a formal Conduct Committee (see 6.2), the outcome and recommendation of which is referred to the Council of Governors, has no means of appeal.

3.2 Upon a Governor resigning under paragraph 3.1.1 above or upon the Council of Governors resolving to terminate a Governor's tenure of office in accordance with the above provisions, that Governor shall cease to be a Governor and his/her name shall be forthwith removed from the Register of Governors.

- 3.3 The Standing Orders adopted by the Council of Governors (section5) may contain provisions governing its procedure for termination under these provisions and for a Governor to appeal against the decision terminating his tenure of office, except in the case of 3.1.4j above.
- 3.4 A Governor who resigns or whose tenure of office is terminated under this paragraph 3 shall not be eligible to stand for re-election for a period of 3 years from the date of his/her resignation or removal from office or the date upon which any appeal against his/her removal from office is disposed of whichever is the later except by resolution carried by a majority of the Council of Governors present and voting at a general meeting. Any re-election would take into account time served as a Governor so that a maximum term would not exceed nine years.
- 3.5 Where a Governor's membership of the Council of Governors ceases for one of the reasons set out in paragraph 2 or paragraph 3, Elected Governors shall be replaced in accordance with paragraphs 4.1 to 4.4 below and, in the case of Appointed Governors, the Trust shall invite the relevant appointing body to appoint a new Governor to hold office for the remainder of the term of office in accordance with the processes referred to in Annex 3 within 30 days of the vacancy having arisen.
4. Vacancies – Elected Governors
- 4.1 In the case of an Elected Governor, where a vacancy arises within 6 months of the election then the candidate who secured the next highest number of votes for that Constituency will be appointed.
- 4.2 If the vacancy arises during the last 6 months of office, the office will remain vacant until it is filled at the next scheduled election.
- 4.2.1 If a vacancy arises at any other time it will be filled at the next scheduled election, in accordance with the Election Scheme. The Council of Governors may co-opt a member of the appropriate constituency whose term is just finishing, to fill a vacancy until the next scheduled election, but this shall be reserved for where deemed essential for reasons to ensure full functioning of Council of Governors business (see 4.3 below).
- 4.3 No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.
5. Council of Governors: Role
- 5.1 The Council of Governors and each Governor shall act in the best interests of the Trust at all times and with proper regard to the provisions of the NHS Foundation Trust Code of Governance and any code of conduct for the Council of Governors.
- 5.2 Subject to the requirement specified in paragraph 5.1 above, each Governor shall exercise his/her own skill and judgement in his/her conduct of the Trust's affairs and shall in his/her stewardship of the Trust's affairs bring as appropriate the perspective of the constituency or organisation by which s/he was elected or appointed, as the case may be. Public governors are expected to represent all members and the public, and not to promote a single issue or cause.

- 5.3 Subject to the further provisions of this Constitution and without in any way derogating from them, the Council of Governors shall;
- 5.3.1 hold the Non-Executive Directors to account in assisting the Board of Directors in setting the strategic direction of the Trust and targets for the Trust's performance and in monitoring the Trust's performance in terms of achieving those strategic aims and targets which have been set; and
- 5.3.2 observe the activities of the Trust with the view to ensuring that they are being conducted in a manner consistent with this Constitution.
6. Council of Governors: Meetings
- 6.1 The Council of Governors shall hold not less than 3 general meetings each financial year. However, in extremis (*see para 16.5*), the Chair may decide to suspend Council of Governors' meetings.
- 6.2 The Council of Governors may appoint sub-committees, consisting of its members, which are relevant and proportionate, to advise and assist it in the discharge of its functions. The outcomes of such committees will be in the form of recommendations to be presented to the Council of Governors. Recommendations presented to the Council of Governors therefore provide a second layer of oversight on a particular matter of interest by governor peers.
7. Council of Governors: Declarations
- 7.1 A Member of a Public Constituency standing for election as Governor must make a declaration for the purposes of Section 60 of the 2006 Act in the form specified below stating the particulars of his qualification to vote as a Member and that s/he is not prevented from being a member of the Council of Governors by virtue of any provisions of this Constitution.
- 7.2 The specified form of declaration shall be set out on the Nomination Form referred to in the Election Scheme and shall state as follows:
- "I, the above-named candidate, consent to my nomination and agree to stand for election to the Council of Governors in the constituency indicated in Section One of this form. I also declare that I am a member in that constituency. I, the above-named candidate, hereby declare that I am not:
- a. a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged
  - b. a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it
  - c. a person who within the preceding 5 years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months (without the option of a fine) was imposed on him/her
  - d. excluded by any other provision detailed within the Trust's Constitution

- e. agree to support the values of the Trust and abide by the Governor Code of Conduct.

I confirm that, to the best of my knowledge, the information provided on (or in connection with) this form is accurate.”

8. Council of Governors: Lead Governor

- 8.1 No person may serve as the Lead Governor for more than a total of nine years.
- 8.2 A person elected as the Lead Governor shall cease to be eligible to continue serving as the Lead Governor if s/he ceases to be a Governor or Member and the Lead Governor’s term of office may be terminated by a majority of not less than 75% of the Governors present and voting at a meeting of the Council of Governors.

9. Council of Governors: Appointment of Senior Independent Director

- 9.1 A majority of the Governors shall at a general meeting of the Council of Governors agree the appointment of one of the Non-Executive Directors as recommended by the Board of Directors to be the Senior Independent Director for a term of three years. The Senior Independent Director shall be eligible for re-appointment at the end of that term but may not serve as Senior Independent Director for more than a total of six years.
- 9.2 The Senior Independent Director shall be available to Members and Governors if they have concerns which contact through the normal channels of the Chair, Chief Executive or Finance Director has failed to resolve or for which such contact is inappropriate.
- 9.3 A person appointed as the Senior Independent Director shall cease to be eligible to continue serving as the Senior Independent Director if s/he ceases to be a Non-Executive Director and the Senior Independent Director's term of office may be terminated by a majority of not less than 75% of the Governors present and voting at a meeting of the Council of Governors on the recommendation of the Chair.

## ANNEX 6 – FURTHER PROVISIONS

### 1. Eligibility for Membership

It is the responsibility of Members to ensure their eligibility and not the Trust, but if the Trust is on notice that a Member may be disqualified from Membership, the Trust shall carry out all reasonable enquiries to establish if this is the case.

### 2. Public Constituency

2.1 For the purposes of determining whether an individual lives in an area specified as an area for Public Constituency, an individual shall be deemed to do so if:

2.1.1 his/her name appears on the electoral roll at an address within the said area and the Trust has no reasonable cause to conclude that the individual is not living at that address; or

2.1.2 the Trust is otherwise satisfied that the individual lives in the said area.

2.2 An individual who is a Member of the Public Constituency shall cease to be eligible to continue as a Member if s/he ceases to live in the area of the Public Constituency of which s/he is a Member save as may otherwise be provided in this paragraph 2.

2.3 Where a Member of a Public Constituency ceases to live permanently in the area of the Public Constituency of which s/he is a Member s/he shall forthwith advise the Trust that s/he is no longer eligible to continue as a Member and the Trust shall forthwith remove his/her name from the Register of Members unless the Trust is satisfied that the individual concerned lives in some other area of a Public Constituency of the Trust. Where the Trust is satisfied that such an individual continues to live in the area of a Public Constituency of the Trust it shall, if the individual so requests, thereafter, treat that individual as a Member of that other Public Constituency and amend the Register of Members accordingly provided the Trust has given that individual not less than 14 days' notice of its intention to do so.

2.4 Where a Member ceases to live temporarily in the area of the Public Constituency of which s/he is a Member, the Trust may permit that individual nonetheless to remain on the Register of Members for that Public Constituency if it is for good cause satisfied that the absence is of a temporary duration only and that the Member will either return to live in the area of that Public Constituency of which s/he is a Member or will live in some other part of the area of the Trust in which case the provisions of paragraph 2.1 shall apply as appropriate.

### 3. Staff Constituency

3.1 A Member of a Staff Class will cease to be eligible to be a Member of that Staff Class if they no longer meet the eligibility requirements of paragraph 7 of the Constitution and of Annex 2.

3.2 Where an individual is a Member by virtue of their eligibility to be a Member of a Staff Class and they cease to be eligible for Membership of that Staff Class but are eligible for Membership of some other Staff Class then the Trust may give notice to that Member of its intention to transfer him/her to that other Staff Class on the



expiration of a period of time or upon a date specified in the said notice and shall after the expiration of that notice or date amend the Register of Members accordingly.

4. Membership Termination of Tenure

4.1 A Member shall cease to be a Member if:-

- 4.1.1 they cease to be entitled under this Constitution to be a Member of any of the Public Constituencies or one of the classes of the Staff Constituency;
- 4.1.2 they resign by notice in writing to the Secretary;
- 4.1.3 they die;
- 4.1.4 they are expelled under this Constitution;
- 4.1.5 if it appears to the Secretary that they no longer wish to be involved in the affairs of the Trust as a Member, and after enquiries made in accordance with a process approved by the Council of Governors they fail to establish that they have a continuing wish to be involved in the affairs of the Trust as a Member.

5. Board of Directors: Disqualification

5.1 In addition to the grounds of disqualification set out in Sections 26 - 27 of the Constitution, a person may also not be or continue as a Director of the Trust if:

- 5.1.1 in the case of a Non-Executive Director, s/he no longer satisfies the relevant requirements for appointment;
- 5.1.2 s/he is a person whose tenure of office as a chair or as a director of a Health Service Body has been terminated on the grounds that his/her appointment is not in the interests of public service, or for non-disclosure of a pecuniary interest;
- 5.1.3 s/he has within the preceding two years been dismissed, otherwise than by reason of redundancy, by the coming to an end of fixed term contract or through ill health, from any paid employment with a Health Service Body;
- 5.1.4 information revealed by a DBS check is such that it would be inappropriate for him/her to become or continue as a Director on the grounds that this would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
- 5.1.5 in the case of an Executive Director, s/he is no longer employed by the Trust;
- 5.1.6 s/he is a person who has had their name removed by a Direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act, and have not subsequently had their name included on such a list;
- 5.1.7 s/he is the subject of a disqualification order made under the Company Directors' Disqualifications Act 1986;

- 5.1.8 s/he has failed to sign and deliver to the Secretary in the form required by the Board of Directors confirmation that s/he accepts the Trust's Standards of Business Conduct Policy;
- 5.1.9 s/he has failed or refused to undertake any training which the Board of Directors requires all Directors to undertake.
- 5.1.10 s/he is a partner or spouse of an existing Director.

6. **Governors and Directors: Communication and Conflict**

6.1 **Summary**

This paragraph describes the processes intended to ensure a successful and constructive relationship between the Council of Governors and the Board of Directors. It emphasises the importance of informal and formal communication and confirms the formal arrangements for communication within the Trust. It suggests an approach to informal communications and sets out the formal arrangements for resolving conflicts between the Council of Governors and the Board of Directors.

6.2 **Informal Communications**

- 6.2.1 Informal and frequent communication between the Lead Governor, Governors and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides.
- 6.2.2 The Chair shall use his/her reasonable endeavours to encourage effective informal methods of communication including:
  - (a) participation of the Board of Directors in the induction, orientation and training of Governors;
  - (b) development of special interest relationships between Non-Executive Directors and Governors;
  - (c) discussions between Governors and the Chair and/or the Chief Executive and/or Directors through the office of the Chief Executive or his nominated officer; and
  - (d) involvement in Membership recruitment and briefing at public events organised by the Trust.
- 6.2.3 Governors will be given information on to whom they should report operational issues.

6.3 **Formal Communication**

- 6.3.1 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively.
- 6.3.2 Formal communications initiated by the Council of Governors and intended for the Board of Directors will be conducted as follows:

- (a) specific requests by the Council of Governors will be made through the Company Secretary to the Chair to the Board of Directors;
  - (b) any Governor has the right to raise specific issues to be put to the Board of Directors at a duly constituted meeting of the Council of Governors through the Chair. Such issues should be raised with the Chair (or, if it involves the Chair then the Deputy Chair) no less than 10 working days before the meeting in order to be included in the agenda. In the event of disagreement, two thirds of the Governors present must approve the request. The Chair will raise the matter with the Board of Directors and provide the response to the Council of Governors;
  - (c) joint meetings will take place as and when, as, appropriate between the Council of Governors and the Board of Directors.
- 6.3.3 The Board of Directors may request the Chair to seek the views of the Council of Governors on such matters as the Board of Directors may from time to time determine.
- 6.3.4 Communications initiated by the Board of Directors and intended for the Council of Governors will be conducted as follows:
- (a) request the Chair to seek the view of the Council of Governors on the Board of Directors' proposals for the Strategic Direction and the Annual Plan;
  - (b) presentation and approval of annual accounts, annual report and auditor's report;
  - (c) request the Chair to seek the view of the Council of Governors on the Board of Directors' proposals for developments;
  - (d) request the Chair to seek the view of the Council of Governors on Trust Performance;
  - (e) request the Chair to seek the view of the Council of Governors for involvement in service reviews and evaluation;
  - (f) request the Council of Governors to seek views of the Membership on proposed changes, plans and developments.
- 6.3.5 Formal communications will normally be conducted as follows:
- (a) attendance by the Board of Directors at a meeting of the Council of Governors;
  - (b) provision of formal reports or presentations by executive and/or non-executive Directors to a meeting of the Council of Governors;
  - (c) inclusion of minutes for information on the agenda of a meeting of the Council of Governors;
  - (d) reporting the views of the Council of Governors to the Board of Directors through the Chair or Lead Governor;

- (e) Governors attend meetings in public of the Board of Directors as observers.

6.3.6 Wherever possible and practical, written communications will be conducted by e-mail, and meetings by video-conferencing.

#### 6.4 Resolving Conflict

6.4.1 The Council of Governors and the Board of Directors must be committed to developing and maintaining a constructive and positive relationship. The aim at all times is to resolve any potential or actual differences of view quickly, through discussion and negotiation.

6.4.2 If as the first step, the informal efforts of the Chair do not achieve resolution of a disagreement or a conflict, the Chair will follow the process described in paragraph 7.4.3 below. The aim is to resolve the matter at the first available opportunity, and only to escalate to the next step if the step taken fails to achieve resolution.

6.4.3 In the event of a conflict between the Council of Governors and Board of Directors, the following action will be taken, in the sequence shown:

- (a) the Chair will call a Resolution Meeting of the members of the Council of Governors and Board of Directors, to take place as soon as possible, but no later than twenty working days following the date of the request. The meeting must comprise of two thirds of the Membership of the Council of Governors and two thirds of the membership of the Board of Directors. The meeting will be held in private. The agenda and any papers for the meeting will be issued in accordance with the Standing Orders of the Council of Governors. The aim of the meeting will be to achieve resolution of the conflict. The Chair will have the right to appoint an independent facilitator to assist the process. Every effort must be made to reach agreement;
- (b) if a Resolution Meeting of the members of the Council of Governors and Board of Directors fails to resolve a conflict, the Board of Directors will decide the disputed matter;
- (c) if, following the formal Resolution Meeting, and the decision of the Board of Directors, the Council of Governors considers that implementation of the decision will result in the Trust failing to comply with its Constitution, the Council of Governors will refer the specific issue of non-compliance to NHS Improvement/England.

6.4.4 The right to call a Resolution Meeting rests with the following, in the sequence of escalation shown:

- (a) the Chair;
- (b) the Chief Executive;
- (c) two thirds of the members of the Council of Governors;
- (d) two thirds of the members of the Board of Directors.

## 7. Indemnity

Members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Board functions, save where they have acted recklessly. Any reasonable costs arising in this way will be met by the Trust and the Trust shall have the power to purchase suitable insurance or make appropriate arrangements with the National Health Service Litigation Special Health Authority or successor body to cover such costs.

8. Validity of Actions

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

9. Registers

9.1 The Company Secretary shall be responsible for compiling and maintaining the Registers. Removal from any Register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 14 days.

9.2 Register of Members

9.2.1 Members must complete and sign an application in the form prescribed by the Company Secretary; and

9.2.2 the Company Secretary shall maintain the Register of members will be in two parts. Part 1 shall include the name of each Member Registers (see section 32 and 33) and the Constituency or class to which they belong and shall be open to inspection by the public in accordance with paragraph 33 of this Constitution. Part 2 shall contain all the information from the individual's application form and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party. Notwithstanding this provision, the Trust shall extract such information as it needs in aggregate to satisfy itself that the actual Membership of the Trust is representative of those eligible for Membership.

9.3 Register of Members of the Council of Governors

The Register shall list the names of members of the Council of Governors, their category of Membership of the Board (public, staff or organisation represented) and an address through which they may be contacted which may be the Secretary.

9.4 Register of Interests of the Members of the Council of Governors

Each member of the Council of Governors shall complete and sign a form as prescribed by the Secretary setting out interests to be declared in accordance with the Standing Orders and the register shall contain the names of all members of the Council of Governors and any interests declared including no interests.

9.5 Register of Interests of Directors

The Register shall list the names of Members of the Board of Directors, their capacity on the Board and an address through which they may be contacted which may be the Secretary.

Each Member of the Board of Directors shall complete and sign a form as prescribed by the Company Secretary setting out any interests to be declared in accordance with the Standing Orders for the Board of Directors and the Register shall contain the names of all members of the Board of Directors and any interests declared including no interests.

10. Auditor

10.1 A person may only be appointed auditor if s/he (or in the case of a firm each of its members) is a member of one or more of the following bodies:

10.1.1 the bodies mentioned in section 3(7)(a) to (e) of the Audit Commission Act 1998; or

10.1.2 any other body of accountants established in the United Kingdom and approved by NHS Improvement/England.

11. Accounts

11.1 The following documents will be made available to the Comptroller and Auditor General for examination at his/her request:

11.1.1 the accounts;

11.1.2 any records relating to them; and

11.1.3 any report of the auditor on them.

11.2 In preparing its annual accounts, the Trust is to comply with any directions given by NHS England with the approval of the Treasury as to:

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

11.2.2 the information to be given in the accounts.

11.3 The Trust must:

11.3.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and

11.3.2 once it has done so, send copies of those documents to NHS Improvement/England.

11.4 Annual reports and forward plans

11.4.1 The annual report submitted by the Trust to NHS Improvement/England in accordance with paragraph 39.1 is to give:

(a) information on any steps taken by the Trust to secure that (taken as a whole) the actual Membership of its public constituencies is representative of those eligible for such Membership; and

(b) any other information NHS Improvement/England requires.

11.4.2 The Trust is to comply with any decision NHS Improvement/England makes as to:

11.4.3 the form of the reports;

11.4.4 when the reports are to be sent to it; and

11.4.5 the periods to which the reports are to relate.

## ANNEX 7 – ANNUAL MEMBERS’ MEETING

### 1. ANNUAL MEMBERS’ MEETING

1.1 The Trust shall publicise and hold an annual meeting of its members (‘Annual Members’ Meeting’) prior to 30 September each year (unless the circumstances of para 16.5 apply).

1.2 The following documents are to be presented to the members and governors of the Trust at the Annual Members’ Meeting by at least one member of the Board of Directors in attendance.

1.2.1 the annual accounts;

1.2.2 any report of the External auditor on them; and

1.2.3 the annual report.

1.3 There may be times and reasons that the Annual Members’ Meeting may be held “virtually online” and not face to face. The Chair will decide these times in consultation with the Lead Governor and Board of Directors.

### 2. ADMISSION OF THE PUBLIC AND PRESS

2.1 Members, the public and representatives of the press shall be afforded facilities to attend the Annual Members’ Meeting.

2.2 The Chair (or Deputy Chair) shall give such directions as s/he thinks fit in regard to the arrangements for meetings and accommodation of members, the public and representatives of the press such as to ensure that business shall be conducted without interruption and disruption.

2.3 Members, the public or representatives of the press are not permitted to record proceedings in any manner unless with the express prior agreement of the Chair (or Deputy Chair). Where permission has been granted, the Chair (or Deputy Chair) retains the right to give directions to halt recording of proceedings at any point during the meeting. For the avoidance of doubt, “recording” refers to any audio or visual recording, including still photography, or use of social media.

### 3. CHAIR

3.1 The Chair, if present, shall preside at the annual members meeting. If the Chair is absent from the meeting the Deputy Chair shall preside.

3.2 If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy Chair, if present, shall preside.

### 4. NOTICE OF MEETING

4.1 The Company Secretary shall give at least fourteen days’ notice of the date and place of the Annual Members’ Meeting to all Governors. Notice will also be published in communications to Trust members and on the Trust’s website.

4.2 The notice of the meeting will specify the business proposed to be transacted at it

4.3 Lack of service of the notice on any Governor shall not affect the validity of a meeting.



4.4 Before the Annual Members' Meeting, a notice of the meeting, specifying the business proposed to be transacted at it, shall be placed on the Trust's website and shall be delivered to every Governor by e-mail or sent by post to the usual place of residence of such Governor if e-mail facility not available, so as to be available to him/her at least three clear days before the meeting.

4.5 Where the AMM is held virtually, members will have opportunities to ask questions on the business transacted before and after the meeting presentations by submitting directly to the AMM website and/or via the Trust Board Office.

## **5. PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS**

5.1 The following documents are to be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.

- 5.1.1 the annual accounts;
- 5.1.2 any report of the auditor on them; and
- 5.1.3 the annual report.

## **6. AMENDMENT OF THE CONSTITUTION**

6.1 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):

- 6.1.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment(s), and
- 6.1.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.

6.2 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.

## **7. QUORUM**

7.1 There may be times and reasons why the AMM is held "virtually online" and not in person. The Chair will decide these times in consultation with the Lead Governor and quoracy arrangements dependant on the nature of the business transacted.

7.2 In extremis (*see para 16.5*), the Chair may decide to review the terms of the meeting.

7.3 Where the Annual Members' Meeting is combined with a Council of Governors meeting for the purpose of receiving the annual accounts and reports, the quorum of the Council of Governors shall apply.

## **8. VOTING**

8.1 Every question for decision at a meeting will be determined by a majority of the votes of the members present and voting on the question and, in the case of an equality of votes, the person presiding shall have a second or casting vote.

8.2 As members, governors may vote at the Annual Members' Meeting except where the matter under consideration is a Constitution amendment regarding 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).

8.3 With the exception of the Chair, Directors may not vote at the Annual Members' Meeting.

8.4 All questions put to the vote shall, at the discretion of the Chair, be determined by oral expression or by a show of hands.

8.5 If a majority of the members present so request, the voting on any question may be recorded to show how each member present voted or abstained.

8.6 If a member so requests, his/her vote shall be recorded by name upon any vote

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

## **9. MINUTES**

9.1 The names of Governors, Directors and Members present at the meeting shall be recorded. However, if meeting is held virtually then monitoring of "virtual views" will be performed by a member of the Communications team and information given to both Chair and Company Secretary.

9.2 The Minutes of the proceedings of a meeting shall be drawn up and maintained as a public record and submitted for final agreement at the next ensuing meeting where they will be signed by the person presiding at it.

9.3 They may be circulated for information prior to the next year's meeting and interim agreement of accuracy acknowledged by the Council of Governors (CoG) .

9.4 Minutes shall be made available to the public in draft (interim CoG accuracy approved) format and then once finally approved at the next AMM, unless AMM was held virtually where agreement of accuracy will be acknowledged by the Council of Governors.

9.5 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded.

## **10. AGENDA**

10.1 A governor or member desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least ten clear days before the meeting is notified to Governors and members. Requests made less than ten days before a meeting is notified to Governors may be included on the agenda at the discretion of the Chair.

## **11. MOTIONS**

11.1 A Governor or member of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting is notified to Governors to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved without notice during the meeting, on any business mentioned on the agenda.

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

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

11.4 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor or member to move:

- (i) An amendment to the motion.
- (ii) The adjournment of the discussion or the meeting.
- (iii) The appointment of an ad hoc committee to deal with a specific item of business.
- (iv) That the meeting proceed to the next business.\*
- (v) That the motion be now put to a vote.\*

In the case of sub-paragraphs denoted by \* above, to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate.

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

## **12. CHAIR'S RULING**

12.1 Statements of Governors and members shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.