



University Hospitals Sussex NHS Foundation Trust

Constitution

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University Hospitals Sussex NHS Foundation Trust

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1. Interpretation and definitions

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

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

the 2006 Act is the National Health Service Act 2006.

the 2012 Act is the Health and Social Care Act 2012.

Acquisition Date means the date of the acquisition by Western Sussex Hospitals NHS Foundation Trust (**WSHFT**) of Brighton and Sussex University Hospitals NHS Trust (**BSUHT**) being the date on which NHS Improvement grants the application of WSHFT to acquire BSUHT pursuant to Section 56A of the 2006 Act.

Annual Members Meeting is defined in paragraph 10 of the Constitution.

Constitution means this constitution and all annexes to it.

Initial Public Governors means the elected public governors of the Trust who hold office with WSHFT immediately prior to the Acquisition Date, as set out in Part A of Annex 2.

Initial Staff Governors means the elected staff governors of the Trust who hold office with WSHFT immediately prior to the Acquisition Date, as set out in Part A of Annex 2.

Monitor is the body corporate known (together with the NHS Trust Development Authority) as NHS Improvement and created pursuant to Section 61 of the 2012 Act.

the **Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.

2. Name

The name of the Foundation Trust is University Hospitals Sussex NHS Foundation Trust (the **Trust**).

3. Principal purpose

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

3.2 The Trust does not fulfill its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total

income from the provision of goods and services for any other purposes.

3.3 The Trust may provide goods and services for any purposes related to —

3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and

3.3.2 the promotion and protection of public health.

3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

4. Powers

4.1 The powers of the Trust are set out in the 2006 Act.

4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

4.3 Any of these powers may be delegated to a committee of directors or to an executive director.

5. Membership and constituencies

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

5.1.1 a public constituency; or

5.1.2 a staff constituency

6. Application for membership

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

7. Public Constituency

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

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

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

8. Staff Constituency

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
- 8.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 1 and being referred to as a class within the Staff Constituency.
- 8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 1.

Automatic membership by default – staff

- 8.6 An individual who is:
- 8.6.1 eligible to become a member of the Staff Constituency, and
 - 8.6.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

9. Restriction on membership

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

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 16 years old 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 7 – Further Provisions Part B (Membership of the Trust).

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.

11. Council of Governors – composition

- 11.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 11.2 The composition of the Council of Governors is specified in Annex 2 and shall change in accordance with the dates set out in Table 1 and Table 2 of Annex 2.
- 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 areas or classes within a constituency, by their area or class within that constituency.
- 11.4 To reflect the enlarged size of the Trust, the public constituency and the staff constituency and the number of governors to be elected by each constituency, or, where appropriate, by each area or class of each constituency, shall increase and shall be revised on the dates specified in Annex 2.

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 on the basis of first past the post (FPP) polling and the Model Election Rules shall be construed accordingly.
- 12.2 The Model Election Rules as published by NHS Providers (previously the Foundation Trust Network) form part of this Constitution. The Model Election Rules current at the date of the Trust's Authorisation are attached at Annex 3.

12.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 43 of the Constitution (amendment of the Constitution).

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

13. Council of Governors – tenure

13.1 The composition of the Council of Governors as at the Acquisition Date is set out in Table 1 of Annex 2. In determining which Initial Public Governors and Initial Staff Governors transfer at the Acquisition Date, the process set out in paragraphs 13.2 – 13.6 below will apply.

Lead governor

13.2 The lead governor elected to represent the public constituency and holding office immediately prior to the Acquisition Date will transfer automatically to the same public constituency area to sit as lead governor from the Acquisition Date. For the avoidance of doubt, if no lead governor holds office immediately prior to the Acquisition Date than this paragraph 13.2 shall not apply.

Initial Public Governors

13.3 After applying paragraph 13.2, where the total number of Initial Public Governor posts that would qualify to represent a specific public constituency area is:

13.3.1 equal to or fewer than the number of posts available for that public constituency area, the Initial Public Governor(s) shall transfer automatically;

13.3.2 greater than the number of posts available for that public constituency area, then the process set out in paragraph 13.4 below will apply.

13.4 Where on the Acquisition Date there is a greater number of Initial Public Governors for any public constituency area those Initial Public Governors with the greatest aggregate consecutive length of service will automatically vacate office first with the Initial Public Governor with the next greatest aggregate consecutive length of service vacating office second until the remaining number of Initial Public Governors is equal to the relevant constituency area at which point all remaining Initial Public Governors shall transfer automatically.

Initial Staff Governors

13.5 Where the total number of Initial Staff Governors posts that would qualify to represent a specific staff class is:

13.5.1 equal to the number of posts available for that staff class, the Initial Staff Governor(s) shall transfer automatically;

13.5.2 greater than the number of posts available for that staff class then the process set out in paragraph 13.6 below will apply.

13.6 Where on the Acquisition Date there is a greater number of Initial Staff Governors for any staff class than available posts, those Initial Staff Governors with the shortest aggregate consecutive length of service will automatically vacate office first with the Initial Staff Governor with the next shortest aggregate consecutive length of service vacating office second until the remaining number of Initial Staff Governors is equal to the relevant staff class at which point all remaining Initial Staff Governors shall transfer automatically.

13.7 For the avoidance of doubt, as at the Acquisition Date there will be no elected public governors for the Brighton & Hove and Mid Sussex areas of the public constituency and no elected staff governors for the Princess Royal Hospital and Royal Sussex County Hospital staff class.

13.8 The first governor election held after the Acquisition Date to fill the governor vacancies identified in paragraph 13.7 above shall be conducted in such a way as to result in the initial terms of office for those elected governors to end on a phased basis to ensure that those elected governors do not all vacate the office on the same day and in order that future elections also occur on a phased basis. As demonstrated in the below table and summarised as follows: in relation to the first elections for the:

13.8.1 public governors; in respect of the candidates for Brighton & Hove and Mid Sussex, the candidate with the highest number of votes shall hold office for a period of three years and where more than one governor post is available, the candidate with the second highest number of votes shall hold office for a period of two years;

13.8.2 staff governor; in respect of the candidate for the Princess Royal Hospital class, the candidate with the highest number of votes shall hold office for a period of two years;

13.8.3 staff governor; in respect of the candidate for the Royal Sussex County Hospital class, the candidate with the highest number of votes shall hold office for a period of three years.

Constituency	Class	3-year terms	2-year terms	Total
Public	Brighton & Hove	1	1	2
Public	Mid Sussex	1	1	2
Staff	Princess Royal Hospital	0	1	1
Staff	Royal Sussex County Hospital	1	0	1
	Totals	3	3	6

13.9 An elected governor may hold office for a period of up to 3 years from

the date of nomination and at the end of this term they shall be eligible for re-election for up to two further terms of up to 3 years each (i.e. 9 years in total). For the avoidance of doubt, the Initial Public Governors and Initial Staff Governors that shall transfer after the Acquisition Date in accordance with the process set out in paragraphs 13.2 – 13.6 above will cease to hold office in accordance with the term set out in their original letters of appointment.

- 13.10 An elected governor shall cease to hold office if they cease to be a member of a constituency, area or class.
- 13.11 An appointed governor may hold office for a period of up to 3 years and at the end of this term they shall be eligible for re-appointment for up to two further terms of up to 3 years each (i.e. 9 years in total).
- 13.12 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.
- 13.13 A governor whose tenure of office is terminated shall not be eligible for re-appointment or to stand for re-election for a period of at least one year from the date of removal from office or the date upon which any appeal against his removal from office is disposed of whichever is the later except by resolution carried by a two thirds of the voting members of the Council of Governors.

14. Council of Governors – disqualification and removal

- 14.1 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 14.2 The following may not become or continue as a member of the Council of Governors:
 - 14.2.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 14.2.2 a person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it;
 - 14.2.3 a person who within the preceding five years has been convicted in the British 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.
- 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 4.

- 14.4 Provisions as to the removal of Governors are set out Annex 4 of this Constitution and Annex 9 of the Code of Conduct for 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.
- 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 All governors must comply with the Trust's Code of Conduct for Governors set out in Annex 9.

16. Council of Governors – meetings of governors

- 16.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 24.1 or paragraph 25.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 26.1 below), shall preside at meetings of the Council of Governors.
- 16.2 The Council of Governors shall appoint one of the governors, who is a member of the public constituency, to be the Lead Governor for such period, not exceeding the remainder of his term as a governor of the Trust and in accordance with the terms of appointment and role and description set out in Annex 8.
- 16.3 Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to all or part of any particular meeting. Members of the public shall be excluded from meetings of the Council of Governors only where the business under discussion is commercially sensitive or is otherwise considered to be confidential.
- 16.4 For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.

17. Council of Governors – standing orders

- 17.1 The standing orders for the practice and procedure of the Council of Governors as may be amended from time to time are attached at Annex 5.

18. Council of Governors – referral to the Panel

- 18.1 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation Trust may refer a question as to whether the Trust has failed or is failing –

18.1.1 to act in accordance with its Constitution; or

18.1.2 to act in accordance with provisions made by or under Chapter 5 of the 2006 Act

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

19. Council of Governors - conflicts of interest of governors

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

20. Council of Governors – travel expenses

- 20.1 Governors shall not receive remuneration for acting as governors but the Trust may pay travelling and other expenses to members of the Council of Governors at rates, and in accordance with a policy, determined by the Trust.

21. Council of Governors – further provisions

- 21.1 Further provisions with respect to the Council of Governors are set out in Annex 4.

22. Board of Directors – composition

- 22.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors. The composition will be such

that there will always be a majority of non-executive directors (including the Chair).

22.2 The Board of Directors is to comprise:

22.2.1 a non-executive Chairman

22.2.2 at least 8 other non-executive directors, and

22.2.3 up to 8 executive directors.

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

22.4 The Chief Executive shall be the Accounting Officer.

22.5 One of the executive directors shall be the finance director.

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

22.7 One of the executive directors is to be a registered nurse or a registered midwife.

22.8 The directors shall at all times have one vote each save that the Chairman shall be entitled to exercise a second or casting vote where the number of votes for and against a motion is equal.

22.9 The post of an executive director (excluding the Chief Executive) may be held by more than one eligible person on a job share basis. Where such an agreement is in force then the two individuals may only exercise one vote between them at a meeting of the Board of Directors. In the case of disagreements, they must abstain from voting and no vote may be cast. This must be recorded in the minutes for the Board meeting.

23. Board of Directors – general duty

23.1 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.

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

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

24.1.1 he is a member of a public constituency and he is not disqualified by virtue of paragraph 28 below.

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

- 25.1 The Council of Governors at a general meeting of the Council of Governors shall appoint and, where necessary, remove (with the approval of three-quarters of the Council of Governors) the chairman of the Trust and the other non-executive directors. The Council of Governors Nomination Committee may identify suitable candidates to fill non-executive director vacancies as they arise and may make written recommendations to the Council of Governors. The Council of Governors shall be required to appoint one non-executive director who exercises functions for Brighton and Sussex Medical School. This candidate will be nominated by Brighton and Sussex Medical School for the Council of Governors Nomination Committee to review and consider and, where appropriate, recommend to the Council of Governors.
- 25.2 The Council of Governors at a general meeting of the Council of Governors shall appoint and, where necessary, remove the chairman of the Trust and the other non-executive directors.
- 25.3 Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

26. Board of Directors – appointment of deputy chairman and senior independent director

- 26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman.
- 26.2 The Board shall, following consultation with the Council of Governors, appoint one of the independent non-executive directors as a Senior Independent Director to act in accordance with the NHS Foundation Trust Code of Governance published by Monitor in 2013 and updated in July 2014 and the Board's Standing Orders.
- 26.3 The offices of Deputy Chairman and Senior Independent Director may be held by the same Non-Executive Director.

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

- 27.1 The non-executive directors shall appoint or remove the Chief Executive.
- 27.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 27.3 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other

executive directors.

28. Board of Directors – disqualification

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

- 28.1 A person who fails to meet the requirements of the CQC fit and proper person regulations.
- 28.2 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 28.3 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
- 28.4 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.

29. Board of Directors – meetings

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

30. Board of Directors – standing orders

- 30.1 The standing orders for the practice and procedure of the Board of Directors, as may be amended from time to time, are attached at Annex 6
- 30.2 The Board of Directors may adopt such procedures and protocols as it shall deem to be appropriate for the good governance of the Trust from time to time.

31. Board of Directors - conflicts of interest of directors

- 31.1 The duties that a director of the Trust has by virtue of being a director include in particular –
 - 31.1.1 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.

31.1.2 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.

31.2 The duty referred to in sub-paragraph 31.1.1 is not infringed if –

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

31.2.2 The matter has been authorised in accordance with the Constitution.

31.3 The duty referred to in sub-paragraph 31.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

31.4 In sub-paragraph 31.1.2 “third party” means a person other than –

31.4.1 The Trust, or

31.4.2 A person acting on its behalf

31.5 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

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

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

31.8 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.

31.9 A director need not declare an interest –

31.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest:

31.9.2 If, or to the extent that, the directors are already aware of it:

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

34.9.3.1 by a meeting of the Board of Directors, or

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

31.10 A matter shall be authorised for the purposes of paragraph 31.2.2:

31.10.1 the Board of Directors by majority disapplies the provision of the Constitution which would otherwise prevent a director from being counted as participating in the decision-making process;

31.10.2 the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

31.10.3 the director's conflict of interest arises from a permitted cause (as determined by the Board of Directors from time to time).

32. Board of Directors – remuneration and terms of office

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

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

33. Registers

The Trust shall have:

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

33.2 a register of members of the Council of Governors;

33.3 a register of interests of governors;

33.4 a register of directors; and

33.5 a register of interests of the directors.

34. Admission to and removal from the registers

34.1 Further provisions as to the registers are set out within Annex 7.

35. Registers – inspection and copies

35.1 The Trust shall make the registers specified in paragraph 33 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

- 35.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of –
- 35.2.1 any member of the Patients' Constituency; or
 - 35.2.2 any other member of the Trust, if he so requests
- 35.3 So far as the registers are required to be made available:
- 35.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 35.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 35.4 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.

36. Documents available for public inspection

- 36.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 36.1.1 a copy of the current Constitution;
 - 36.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and
 - 36.1.3 a copy of the latest annual report.
- 36.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 36.3 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.
- 36.4 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 36.4.1 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.
 - 36.4.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.
 - 36.4.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act.

36.4.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.

36.4.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.

36.4.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.

36.4.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.

36.4.8 a copy of any final report published under section 65I (administrator's final report).

36.4.9 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.

36.4.10a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.

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

36.6 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

37. External Auditor

37.1 The Trust shall have an external auditor.

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

37.3 The external auditor shall carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHS Improvement (previously Monitor) on standards, procedures and techniques to be adopted.

38. Audit committee

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

reference of the Audit Committee shall be subject to approval by the Board of Directors.

39. Accounts

- 39.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 39.2 NHS Improvement may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 39.3 The accounts are to be audited by the Trust's external auditor.
- 39.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS Improvement may with the approval of the Secretary of State direct.
- 39.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

40. Annual report, forward plans and non-NHS work

- 40.1 The Trust shall prepare an Annual Report and send it to NHS Improvement.
- 40.2 The Trust shall give information as directed with regards its forward planning in respect of each financial year to NHS Improvement.
- 40.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 40.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 40.5 Each forward plan must include information about –
 - 40.5.1 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
 - 40.5.2 the income it expects to receive from doing so.
- 40.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 40.5.1 the Council of Governors must –
 - 40.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and

40.6.2 notify the directors of the Trust of its determination.

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

41. Presentation of the annual accounts and reports to the governors and members

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

41.1.1 the annual accounts

41.1.2 any report of the auditor on them

41.1.3 the annual report.

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

41.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 41.1 with the Annual Members' Meeting.

42. Instruments

42.1 The Trust shall have a seal.

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

42.3 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be executed or signed.

42.4 See further Annex 7 Part C (Custody of Seal and Sealing of Documents).

43. Amendment of the Constitution

43.1 The Trust may make amendments of its Constitution only if –

43.1.1 Over half of the membership of the Council of Governors of the Trust voting approve the amendments, and

43.1.2 Over half of the members of the Board of Directors of the

Trust voting approve the amendments.

- 43.2 Amendments made under paragraph 43.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 43.3 Where an amendment is made to the Constitution in relation to the powers and duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –
- 43.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
- 43.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.
- 43.4 If more than half of the members voting approve the amendment, the amendment continues to have effect, otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 43.5 Amendments by the Trust of its Constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

44. Mergers etc. and significant transactions

- 44.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of over half of the members of the Council of Governors.
- 44.2 The Trust may enter into a significant transaction only if over half of the members of the Council of Governors voting approve entering into the transaction.
- 44.3 In this paragraph, the following words have the following meanings:
- 44.3.1 "Significant transaction" means a transaction which meets any one of the tests below:
- the fixed asset test; or
- the turnover test;
- 44.4 The turnover test is met if, following the completion of the relevant transaction, the gross income of the Trust will increase or decrease by

more than 25%.

44.5 The fixed asset is met if the assets which are the subject of the transaction exceeds 25% of the fixed assets of the Trust.

44.6 A transaction:

44.6.1 includes all agreements (including amendments to agreements) entered into by the Trust

44.6.2 excludes a transaction in the ordinary course of business including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Trust;

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

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

45. Indemnity

45.1 Members of the Board of Directors and Council of Governors 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 of their functions, save where they have acted recklessly.

45.2 The Trust may purchase and maintain for members of the Board of Directors and Council of Governors insurance in respect of directors' and governors' liability to meet all or any liabilities which are properly the liabilities of the Trust under paragraph 45.1, including, without limitation, liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

ANNEX 1 – CONSTITUENCY DETAILS

THE PUBLIC CONSTITUENCY

Members of the public shall be eligible for membership of the public constituency areas as shown in the table below, which also sets out the minimum numbers required in each area.

Public Constituency Area	Minimum Membership Per Area
Adur	90
Arun	220
Brighton & Hove	100
Chichester	160
East Sussex	30
Horsham	130
Mid Sussex	35
Worthing	150
Out of Area	75

THE STAFF CONSTITUENCY

The staff constituency is divided into a number of classes. Trust staff shall be eligible for membership of the class within the staff constituency as shown below.

Staff Class	Minimum Number of Members Per Class
Peripatetic	100
Princess Royal Hospital	100
Royal Sussex County Hospital	100
St Richards Hospital	100
Worthing & Southlands Hospital	100

ANNEX 2 – COMPOSITION OF COUNCIL OF GOVERNORS

Table 1 - Elected Governors

For the period from the Acquisition Date until new governor elections are held and new governors are elected on around August 2021 (**Post Acquisition Elections**) the Elected Governors shall comprise:

Constituency	Area/Class	Number
Public	Adur	1
Public	Arun	1
Public	Brighton & Hove	0
Public	Chichester	2
Public	Horsham	1
Public	Mid Sussex	0
Public	Worthing	1
Public	Out of Area	1
Staff	Peripatetic	1
Staff	Princess Royal Hospital	0
Staff	Royal Sussex County Hospital	0
Staff	St Richards Hospital	1
Staff	Worthing and Southlands Hospitals	1
Total Number of Elected Governors		10

Table 2 – Elected Governors

Following the Post Acquisition Elections the Elected Governors shall comprise:

Constituency	Area/Class	Number
Public	Adur	1
Public	Arun	1
Public	Brighton & Hove	2
Public	Chichester	2
Public	Horsham	1
Public	Mid Sussex	2
Public	Worthing	1
Public	East Sussex and Out of Area	1
Staff	Peripatetic	1
Staff	Princess Royal Hospital	1
Staff	Royal Sussex County Hospital	1
Staff	St Richards Hospital	1
Staff	Worthing and Southlands Hospitals	1
Total Number of Elected Governors		16

Table 3 - Appointed Governors

Type	Governor Appointed By:	Number
Local Authority*	Brighton and Hove City Council	1
	West Sussex County Council	1
Brighton & Sussex Medical School *	A governor would be appointed by agreement between Brighton & Sussex Universities.	1
Voluntary Sector	A governor shall be appointed, by agreement of the Council of Voluntary Services	1
Inclusion	A governor shall be appointed from the three Trust inclusion staff networks covering BAME, LGBT+ and Disability	1
Total Number of Appointed Governors		5
Total Number of Governors		21

**Note: These Governors must be appointed under paragraphs 9(4) and 9(6) of Schedule 7 of the National Health Service Act 2006 (as amended from time to time).*

In summary, the total number of Governors:

On the Acquisition Date there shall be 10 elected governors plus 5 appointed governors (15 in total) (composed as set out above); and

From on or around August 2021 there shall be shall be 21 Governors (composed as set out above).

Annex 3 - Model Election Rules

MODEL ELECTION RULES 2014

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PART 1: INTERPRETATION

1. Interpretation

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

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

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

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

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

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

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

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

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

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

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

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

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

“*Monitor*” means the corporate body known as Monitor as provided by section 61 of the 2012 Act and reference in these Model Election Rules to “*Monitor*” shall be read as reference to its statutory successor, “*NHS Improvement*”;

“*NHS Improvement*” is the operational name for the organisation which consists of (inter alia) Monitor and the NHS Trust Development Authority;

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

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

5. Staff

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

6. Expenditure

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

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

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

9. Nomination of candidates

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

9.2. The returning officer:

- (a) is to supply any member of the corporation with a nomination form, and
 - (b) is to prepare a nomination form for signature at the request of any member of the corporation,
- but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

10.1. The nomination form must state the candidate's:

- (a) full name,
- (b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic

communication), and

- (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

11.1. The nomination form must state:

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party,

and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

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

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

- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

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

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

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

15. Publication of statement of candidates

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

15.2. The statement must show:

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

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

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

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

20. The ballot paper

- 20.1. The ballot of each voter (other than a voter who casts his or her ballot by an

e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

20.2. Every ballot paper must specify:

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

20.3. Each ballot paper must have a unique identifier.

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

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

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

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

("declaration of identity")

and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity

by each voter, whether by the completion of a paper form (“ID declaration form”) or the use of an electronic method.

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

21.3. The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

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

22.2. The list is to include, for each member:

- (a) a postal address; and,
- (b) the member’s e-mail address, if this has been provided

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

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

23. Notice of poll

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

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the methods of polling by which votes may be cast at the election by

voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,

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

24. Issue of voting information by returning officer

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

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

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

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2. The covering envelope is to have:

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

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

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

26. E-voting systems

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

26.2. If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose

of voting by the use of a touch-tone telephone (in these rules referred to as “the telephone voting facility”).

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

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

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

- (f) prevent any voter from voting after the close of poll.

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

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

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

- (a) require a voter to:
 - (i) provide his or her voter ID number; and

- (ii) where the election is for a public or patient constituency, make a declaration of identity;
in order to be able to cast his or her vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (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);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) 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 spoiled ballot paper, the returning officer shall enter in a list ("the list of spoiled ballot papers"):

- (a) the name of the voter, and
- (b) the details of the unique identifier of the spoiled 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 "spoiled 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 spoiled 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 spoiled 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 spoiled text message vote, the returning officer shall enter in a list ("the list of spoiled text message votes"):

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

30. Lost voting information

30.1. Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.

30.2. The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:

- (a) is satisfied as to the voter's identity,
- (b) has no reason to doubt that the voter did not receive the original voting information,

- (c) has ensured that no declaration of identity, if required, has been returned.

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

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

31. Issue of replacement voting information

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

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

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

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

33.2. When prompted to do so, the voter will need to enter his or her voter ID

number.

33.3. If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.

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

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

34. Voting procedure for remote voting by telephone

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

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

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

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

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

35. Voting procedure for remote voting by text message

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

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

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

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

36. Receipt of voting documents

36.1. Where the returning officer receives:

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

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

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

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

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

37. Validity of votes

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

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

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

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

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

37.4. An internet, telephone or text message vote shall not be taken to be duly

returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.

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

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

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

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

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

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

39. De-duplication of votes

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

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

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

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

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

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

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

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

40. Sealing of packets

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

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of 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

41. Interpretation of Part 6

41.1 In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

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

or

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

41. Arrangements for counting of the votes

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

41.2. 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.

42. The count

42.1. The returning officer is to:

- (a) count and record the number of:
 - (i) ballot papers that have been returned; and
 - (ii) 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.

42.2. 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.

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

44. Rejected ballot papers and rejected text voting records

44.1 Any ballot paper:

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

shall, subject to rules 44.2 and 44.3, be rejected and not counted.

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

44.3 A ballot paper on which a vote is marked:

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

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

44.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules 44.2 and 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

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

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

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

44.6 Any text voting record:

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

shall, subject to rules 44.7 and 44.8, be rejected and not counted.

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

44.8 A text voting record on which a vote is marked:

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

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

44.9 The returning officer is to:

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

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

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

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

45. Equality of votes

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

46. Declaration of result for contested elections

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

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

46.2 The returning officer is to make:

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

available on request.

47 Declaration of result for uncontested elections

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

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

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

PART 8: DISPOSAL OF DOCUMENTS

48. Sealing up of documents relating to the poll

48.1. 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.

48.2. 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 spoiled ballot papers and the list of spoiled 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.

48.3. 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.

49. Delivery of documents

49.1. 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.

50. Forwarding of documents received after close of the poll

50.1. Where:

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

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

51. Retention and public inspection of documents

51.1. 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.

51.2. 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.

51.3. 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.

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

52.1. 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.

52.2. 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.

52.3. 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.

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

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

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

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

53. Countermand or abandonment of poll on death of candidate

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

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

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

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

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

53.5 The returning officer is to:

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

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

53.6 The returning officer is to endorse on each packet a description of:

- (a) its contents,

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

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

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

54. Election expenses

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

55. Expenses and payments by candidates

55.1. 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.

56. Election expenses incurred by other persons

56.1. 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.

56.2. 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

57. Publicity about election by the corporation

57.1. The corporation may:

- (a) compile and distribute such information about the candidates, and

- (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

57.2. 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.

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

58. Information about candidates for inclusion with voting information

58.1. 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.

58.2. The information must consist of:

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

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

59.1. 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.

59.2. The provision by any individual of his or her own services voluntarily, on his

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

60. Application to question an election

- 60.1. An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel (IEAP).
- 60.2. An application may only be made once the outcome of the election has been declared by the returning officer.
- 60.3. An application may only be made to Monitor by:
- (a) a person who voted at the election or who claimed to have had the right to vote, or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 60.4. 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.
- 60.5. 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.
- 60.6. If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 60.7. Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 60.8. 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.
- 60.9. The IEAP may prescribe rules of procedure for the determination of an application including costs.

PART 12: MISCELLANEOUS

61. Secrecy

61.1. 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.

61.2. 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.

61.3. 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.

62. Prohibition of disclosure of vote

62.1. 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.

63. Disqualification

63.1. 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.

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

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

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

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

ANNEX 4 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

1. INTERPRETATION

- 1.1 In these Provisions, the clauses relating to Interpretation and definitions in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

2. APPLICATION OF THESE PROVISIONS

- 2.1 These Provisions apply to all meetings of the Council of Governors (“the **Council**”) and all other relevant activities of the Governors. All Governors are required to abide by these Provisions, which also apply to any persons attending meetings of the Council.
- 2.2 Except where required by law or the Constitution, at any meeting of the Council, the Chairman (or in his absence, the Deputy Chairman or a person deputising for him) shall be the final authority on the interpretation of these Provisions (on which he should be advised by the Chief Executive and the Secretary).
- 2.3 Whilst the Secretary shall be responsible for ensuring that Governors are made aware of these Provisions, Governors are expected to familiarise themselves with the Provisions.
- 2.4 In the event of any actual or suspected non-compliance with these Provisions by a Governor, another Governor or member of staff identifying such actual/suspected non-compliance shall report it to the Chairman or Secretary and the Chairman/ Secretary shall be responsible for taking such action as is necessary in accordance with the Code of Conduct for Governors set out in Annex 9 (specifically paragraph 7).

3. APPOINTMENT AND REMOVAL OF GOVERNORS

Election and Appointment to Office

- 3.1 Governors shall be elected or appointed by the means and on terms of office as prescribed by this Constitution.
- 3.2 A Governor shall, within 21 days of election or appointment, sign and deliver to the Secretary a declaration in the form prescribed at Appendix A. No Governor shall be entitled to vote or count in the quorum at a meeting of the Council of Governors until his declaration has been received by the Secretary. Such a declaration shall be valid for the Governor’s term of office.

Removal or Resignation from Office

- 3.3 A person shall not be eligible to become or continue in office as a Governor if:
- 3.3.1 any of the grounds contained in paragraph 14 of the Constitution apply to him; or
 - 3.3.2 in the case of an elected Governor, he ceases to be eligible to be a member of the Trust or constituency. For the avoidance of doubt and in accordance with paragraph 13.3 of the Constitution, a Public Governor who ceases to be eligible to be a member of that Public Constituency by virtue of moving to another

area, shall cease to hold office. Subject to the Provisions set out in this Annex 4 and the Constitutional provisions in respect of eligibility for holding office as a Governor, a person ceasing to hold office by the means described in this clause shall be eligible to stand for election in the area to which he has moved; or

- 3.3.3 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 months; or
- 3.3.4 in the case of an Appointed Governor, the appointing organisation withdraws its appointment of him or the organisation ceases to exist; or
- 3.3.5 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; or
- 3.3.6 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 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; or
- 3.3.7 he has had his 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 name included in such a list; or
- 3.3.8 he has failed to make, or has falsely made, any declaration as required to be made under Section 60 of the 2006 Act; or
- 3.3.9 has spoken or voted in a meeting on a matter in which he has a direct or indirect pecuniary or non-pecuniary interest and he is judged to have acted so by a majority of not less than three quarters of the Council; or
- 3.3.10 NHS Improvement has exercised its powers to remove him as a Governor of the Trust or has suspended him from office or has disqualified him from holding office as a Governor of the Trust for a specified period or NHS Improvement has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust; or
- 3.3.11 he has received a written warning from the Trust for verbal and/or physical abuse towards any person; or
- 3.3.12 he does not agree to (or, having agreed, fails to) abide by the values as published by the Trust; or
- 3.3.13 he has 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) and his conviction is not spent under the Rehabilitation of Offenders Act 1974; or
- 3.3.14 he is incapable by reason of mental disorder, illness or injury in

managing and administering his property and/or affairs; or

- 3.3.15 he is a member of the UK Parliament; or
- 3.3.16 he is a Director of the Trust or a Governor of another NHS Foundation Trust; or
- 3.3.17 he is a member of a relevant local authority Overview and Scrutiny Committee; or
- 3.3.18 he is not 16 years of age, or older, at the closing date for nominations for election or appointment; or
- 3.3.19 he has contravened any other provision of this Constitution; or
- 3.3.20 his term of office is terminated pursuant to paragraph 3.4 below;

Termination of Office

- 3.4 A Governor's term of office shall be terminated:
 - 3.4.1 by the Governor giving notice in writing to the Secretary of his resignation from office at any time during that term of office;
 - 3.4.2 by a majority of the Governors present and voting at a meeting of the Council if any grounds exist under paragraph 3.3 above
 - 3.4.3 if the Council resolves to terminate his term of office on the grounds that in the reasonable opinion of over half of the Council of Governors voting at a meeting of the Council convened for that purpose that his continuing as a Governor would or would be likely to:
 - (a) prejudice the ability of the Trust to fulfill 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;
 - (d) the Governor has declared an interest which through the Council's management of that interest would significantly impact on that Governor's ability to actively deliver the role of a Governor or
 - (e) otherwise bring the Trust into disrepute or be detrimental to the interests of the Trust.
 - 3.4.4 if over half of the Council of Governors of the Council resolve that:
 - (a) it would not be in the best interests of the Trust for that person to continue in office as a Governor; or

- (b) the Governor is a vexatious or persistent litigant or complainant with regard to the Trust's affairs and his continuance in office would not be in the best interests of the Trust; or
 - (c) the Governor has failed to or refused to undertake and/or satisfactorily complete any training which the Council has required him to undertake in his capacity as a Governor by a date six months from the date of his election or appointment; or
 - (d) he has in his conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust, the Constitution, and/or the Trust's Terms of Authorisation; or
 - (e) he has committed a material breach of any Role Description or Code of Conduct applicable to Governors of the Trust and/or these Provisions.
- 3.5 Where a person has been elected or appointed to be a Governor and he becomes disqualified from that appointment he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 calendar days of first becoming aware of those matters which rendered him disqualified, and the Secretary shall report the matter to the Council and the Board.
- 3.6 Upon a Governor resigning or ceasing to be eligible to continue in office that person shall cease to be a Governor and his name shall be removed from the Register of Governors.
- Vacancies
- 3.7 Where a Governor resigns or his office is terminated, elected Governors shall be replaced in accordance with paragraphs 3.8 and 3.9 below and, in the case of appointed Governors, the Trust shall within 30 days of the vacancy having arisen invite the appointing body to appoint a new Governor to hold office for the remainder of the term of office.
- 3.8 Where a Governor is declared ineligible or disqualified from office or his term of office as a Governor has been terminated (otherwise than as a consequence of his own resignation) and that person disputes the decision, he shall as reasonably practicable be entitled to attend a meeting with the Chairman and Chief Executive of the Trust, who shall use their reasonable endeavours to facilitate such a meeting, to discuss the decision with a view to resolving any dispute which may have arisen but the Chairman and Chief Executive shall not be entitled to rescind or vary the decision which has already been taken.
- 3.9 Where an elected Governor ceases to hold office during the first six months of his term of office, the Trust shall offer the unsuccessful candidate who secured the highest number of votes in the last election for the area or class in which the vacancy has arisen, the opportunity to assume the vacant office for the unexpired balance of the retiring Governor's term of office. If that candidate is unwilling, or unable, to fill the vacancy it will then be offered to that unsuccessful candidate who secured the next highest number of votes.
- 3.10 If there is no reserve candidate, or the reserve candidate is unable or unwilling

to fill the vacancy, the Council may seek to co-opt a non-voting associate governor from that constituency or agree to allow that office will stand vacant until the next scheduled election unless by so doing this causes the aggregate number of Governors who are public [to be less than half the total membership of the Council. In that event an election will be held in accordance with the election scheme as soon as reasonably practicable.

- 3.11 No defect in the election or appointment of a Governor or any deficiency in the composition of the Council shall affect the validity of any act or decision of the Council.

4. DECLARATIONS AND REGISTER OF GOVERNORS' INTERESTS

- 4.1 In accordance with the Constitution, Governors are required to declare on election or appointment and in the manner prescribed below any direct or indirect pecuniary interest and any other interest which is relevant and material to the business of the Trust. The responsibility for declaring an interest is solely that of the Governor concerned.
- 4.2 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time setting out any interests required to be declared in accordance with the Constitution or these Provisions and delivering it to the Secretary within 28 days of a Governor's election or appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. The Secretary shall amend the Register of Interests upon receipt of notification within one month.
- 4.3 If a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter.
- 4.4 The term "relevant and material interests" may include (but may not be limited to) the following:
- 4.4.1 directorships, including non-executive directorships held in private or public limited companies (with the exception of those of dormant companies);
 - 4.4.2 ownership or part-ownership or directorships of companies or other types of organisation which are likely to or are seeking to do business with the NHS;
 - 4.4.3 a position of authority in a charity or voluntary organisation operating in the field of health and social care, including any which are contracting for or are commissioning NHS services;
 - 4.4.4 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks;
 - 4.4.5 research funding/grants that may be received by an individual or their department;
- 4.5 Any traveling or other expenses or allowances payable to a Governor in

accordance with this Constitution shall not be treated as a pecuniary interest.

4.6 Subject to any other provision of this Constitution, a Governor shall be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter, if:

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

4.6.2 he is a partner, associate or employee of any person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the same.

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

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

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

4.8 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Provisions to be also an interest of the other.

4.9 If a Governor has any doubt about the relevance of an interest, he must take advice from the Secretary.

5. STANDARDS OF CONDUCT

5.1 Governors shall comply with the terms of the Role Description for Governors which shall be approved by the Council and the Board, and which the Secretary shall issue to Governors upon election or appointment to the Council. The Governors shall also comply with any codes of conduct or other standards referenced in the Role Description.

5.2 In the event that there are concerns about a Governor's performance or conduct, the Chairman, with the support of the Lead Governor and Secretary where necessary, will address these directly with the Governor concerned. Where necessary, the Chairman will make recommendations to the Council, including in respect of any proposal that the Council should remove the Governor from office in which case the Provisions of section 3 of these Provisions shall apply.

5.3 For further information see Annex 9.

6. REMUNERATION AND BUSINESS EXPENSES

6.1 Governors shall not receive remuneration.

- 6.2 The Trust is permitted to reimburse traveling expenses to Governors for attendance at meetings of the Council, or for any other business authorised by the Chairman as being reasonably within the role and duties of a Governor, at a rate and in accordance with a policy to be determined by the Board of Directors.
- 6.3 Expenses will be reimbursed by the Secretary on receipt of a completed and signed expenses form provided by the Secretary.
- 6.4 A summary of expenses paid to Governors will be published in the Annual Report.

7. COMPOSITION AND ROLE OF COUNCIL OF GOVERNORS

- 7.1 The composition of the Council shall be as set out in Annex 2 of the Constitution.
- 7.2 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Council is defined in its Terms of Reference which shall be approved by the Council and the Board.
- 7.3 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Chairman shall be as defined in a Role Description which shall be approved by the Council and the Board.
- 7.4 The role of the Deputy Chairman shall be as defined in a Role Description which shall be approved by the Council and the Board.
- 7.5 The role of the Lead Governor and Deputy Lead Governor shall be as defined in a Role Description which shall be approved by the Council and the Board, this is contained within Annex 8.

8. COMMITTEES OF THE COUNCIL

- 8.1 Subject to the Constitution, the Terms of Authorisation and such binding guidance as may be given by NHS Improvement, the Council may and, if so required by NHS Improvement, shall appoint committees of the Council consisting wholly or partly of members of the Trust (whether or not they include Governors) or wholly of persons who are not members of the Trust (whether or not they include Governors). The Council shall not delegate any of its powers to a committee but committees may act in an advisory capacity to assist the Council in carrying out its functions.
- 8.2 These Provisions of the Council shall apply with appropriate alteration to any committees established by the Council.
- 8.3 Each such committee or sub-committee shall have such terms of reference. Such terms of reference and the membership of committees or sub-committees shall be subject to approval by the Council.
- 8.4 The Council shall approve the appointment of the Chairman and members for each of the committees which it has formally constituted. Where the Council determines that persons who are neither Governors nor staff shall be appointed to a committee, the terms of such appointment shall be determined by the Council. The Council may request that external advisers assist them or any committee they appoint in carrying out its duties.

- 8.5 Elected and Appointed governors may form a sub-committee – the Pre-Council of Governors Committee – to prepare for forthcoming Council meetings.

9. SUSPENSION, AMENDMENT AND REVIEW OF THESE PROVISIONS

Suspension

- 9.1 These Provisions shall not be suspended except:
- 9.1.1 where urgent action is required and the Chairman considers it to be in the interests of the Trust to waive one or more of the Provisions, he may do so subject to such action being reported to the next meeting of the Council
 - 9.1.2 at a meeting of the Council, where at least half of the total number of Governors are present, such number to include not less than one third of the Public Governors, not less than one third of the Staff Governors and not less than one third of the Appointed Governors
- 9.2 Any decision to waive Provisions shall be recorded in the minutes of the next meeting of the Council and shall be reported to the Audit Committee.

Amendment and Review

- 9.3 These Provisions shall be reviewed one year after approval by the Council and then at least every three years thereafter.
- 9.4 These Provisions shall be amended only if:
- 9.4.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and
 - 9.4.3 at least half of the Governors of the Council, including one staff Governor, one public Governor and one appointed Governor are in favour of amendment.
 - 9.4.4 The proposed amendment(s) has/have been discussed the Board.
- 9.5 All amendments to these Provisions shall be subject to approval through any process prescribed by NHS Improvement.

APPENDIX A

DECLARATION BY GOVERNOR

**University Hospitals Sussex NHS FOUNDATION TRUST
(the "Trust")**

I, (insert full name)

of

.....
.....
.....(insert address)

Hereby declare that I am entitled to:-

(a) be elected to the Council of Governors as a Governor elected by one of the public constituencies/ the staff constituencies* because I am a member of one of the public constituencies/ /staff constituencies *; or

(b) be appointed to the Council of Governors as a governor because I have been appointed by a nominating organisation

and that I am not prevented from being a member of the Council of Governors of the Trust by paragraph 8 of Schedule 7 of the National Health Service Act 2006 or under the Constitution of the Trust and that I am entitled to vote at meetings of the Council of Governors as a governor pursuant to such appointment or election.

Signed

Print
Name.....

Date of Declaration

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

1. MEETINGS OF THE COUNCIL OF GOVERNORS

Frequency of Meetings

- 1.1 The Council of Governors (“the Council”) shall decide the frequency of and calendar for its meetings, subject to the Council holding a minimum of four general meetings per year. The Secretary shall ensure that within the meeting cycle of the Council, general meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.
- 1.2 Notwithstanding clause 1.1 above, the Chairman may at any time call a meeting of the Council. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the total number of Governors including at least two elected and two appointed Governors, has been presented to him/her, or if, without so refusing, the Chairman does not call a meeting within 7 days after such requisition has been presented to him/her, at the Trust's Headquarters, such one third or more Governors may forthwith agree to call a meeting of the Council.

Admission of the Public

- 1.3 By effect of these Standing Orders only, the public shall be invited to attend all meetings of the Council unless the Council decides otherwise in relation to all or part of any particular meeting. The public shall be excluded from meetings of the Council only where the business under discussion is commercially sensitive or is otherwise considered to be confidential.
- 1.4 The Chairman may exclude any member of the public from a meeting of the Council if the person is interfering with or preventing the proper conduct of the Council's business. The Chairman's decision in this respect shall be final.
- 1.5 The Chairman shall decide the arrangements through which any questions from members of the public will be asked and answered.

Admission of Directors

- 1.6 Subject to Provisions in relation to interests, any Director or their nominated representatives shall have the right to attend meetings of the Council and, subject to the decision of the Chairman, to speak to any item under consideration.

Chairman for Meetings of the Council

- 1.7 Subject to clause 1.9 below, the Chairman of the Trust, or in his absence, the Deputy Chairman shall preside at meetings of the Council. Neither the Chairman nor any person deputising for him shall be a member of the Council and he shall not have a vote on matters considered by the Council.
- 1.8 The Deputy Chairman may preside at meetings of the Council in the following circumstances:

- 1.8.1 when there is a need for someone to have the authority to chair any meeting of the Council when the Chairman is not present
 - 1.8.2 when the remuneration, allowance and other terms and conditions of the Chairman are being considered.
 - 1.8.3 when the appointment of the Chairman is being considered, should the current Chairman be a candidate for re-appointment.
 - 1.8.4 on occasions when the Chairman declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Council.
- 1.9 If it would not be appropriate for the Chairman or the Deputy Chairman to preside, one of the other Non-Executive Directors shall preside. If in exceptional circumstances it would not be appropriate for any Non-Executive Director to preside, the Council shall appoint one of its members to preside at that meeting. This shall normally be the Lead Governor.
- 1.10 Statements made by Governors at meetings of the Council shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final and shall be observed at the meeting.

Notice, Agenda and Papers for Meetings

Notice of Meeting

- 1.11 Before each meeting of the Council, a notice of the meeting agreed by the Chairman or by an officer of the Trust authorised by the Chairman to approve on his/her behalf shall be published on the Trust website no less than five clear days in advance of the meeting. Clear days shall not include the date on which the notice is sent or the day of the meeting.
- 1.12 Except in the case of emergencies or in case of a need to conduct urgent business, the Secretary shall give to all Governors at least five clear days written notice of the date and place of every meeting of the Council. Written notice shall be deemed to include communication by email. The notice shall be published on the Trust's website and otherwise made available to members of the public as considered appropriate by the Trust.
- 1.13 In the case of a meeting called by the Governors in default of the Chairman, the notice shall be signed by those respective Governors and no business shall be transacted at the meeting other than that specified in the notice. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of post or otherwise on the day following electronic or facsimile transmission. Lack of service of the notice on any Governors shall not affect the validity of a meeting.

Agenda and Notification of Business

- 1.14 At the direction of the Council, the Secretary shall draw up and maintain an agenda plan for the Council's meetings in each calendar year. The agenda plan shall take account of the work-plan for the Council, which it will agree with the Board of Directors ("the Board"). The agenda plan shall be approved by the Council at least once in each calendar year.
- 1.15 The Council may determine that certain matters shall appear on every agenda for a meeting of the Council and shall be addressed prior to any other business being conducted.
- 1.16 A Governor desiring a matter to be included on an agenda shall specify the question or issue to be included by request in writing to the Chairman or the Secretary at least three clear business days before Notice of the meeting is given. Requests made less than three days before the Notice is given may be included on the agenda at the discretion of the Chairman.
- 1.17 Before each meeting of the Council, an agenda setting out the business of the meeting, approved by the Chairman or by an officer of the Trust authorised by the Chairman on his/her behalf agreed by the Lead or Deputy Lead Governor, shall be posted online or delivered electronically to the membership of the Council of Governors, specifying the business proposed to be transacted at it at least five clear days before the meeting. The agenda shall include any items of business identified in the approved agenda plan, any items which the Council has directed to appear on any or all of the agenda for its meetings and any specific items or motions requested by one or more Governors and approved by the Chairman. The agenda shall be published on the Trust's website prior to the meeting and otherwise made available to members of the public as considered appropriate by the Trust.

Papers for Meetings

- 1.18 The Secretary shall be responsible for compiling and distributing to Governors (and, where their attendance is permitted, members of the public) papers for meetings of the Council. Papers shall be issued at least five clear days prior to each meeting of the Council. Papers will only be tabled at the Council's meetings in exceptional circumstances and then only with the prior approval of the Chairman.

Quorum for Meetings

- 1.19 A meeting of the Council shall be quorate and shall not commence until it is quorate. Quoracy is defined as meaning that the following requirements are all satisfied:
- 1.19.1 there shall be present at the meeting at least one third of all Governors
 - 1.19.2 of those present, at least 51% shall be elected Governors

A Governor shall be deemed as present if he joins the meeting by telephone or other means, provided that he can hear and be heard by all other Governors present at the meeting.

If the meeting is not quorate within 15 minutes after the due starting time, it shall be reconvened at time to be agreed by the Chairman.

- 1.20 If a Governor has declared a direct pecuniary interest in any matter, the Governor must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing or a resolution on any matter, that matter may not be discussed further or voted upon at that meeting.
- 1.21 Where a Governor:
- 1.21.1 has declared an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
 - 1.21.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
 - 1.21.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class;
 - 1.21.4 the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty disclose his interest.
- 1.22. A Governor who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Governor will count towards the quorum of the meeting.
- 1.23 The minutes shall record any declarations of interests on the part of Governors and any action taken in respect of them.

Conduct of Business

- 1.24 Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chairman so determines or if a Governor requests, a question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of any equality of votes, the Chairman shall have a casting vote.
- 1.25 All questions put to the vote shall, at the discretion of the person presiding, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 1.26 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.

- 1.27 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 1.28 In no circumstances may an absent Governor vote by proxy.

Minutes of Meetings

- 1.29 The minutes of the meeting, which shall include the names of the Governors present, shall be drawn up and submitted by Secretary for the Council's approval at its next meeting. Subject to the Chairman's approval, the minutes may be circulated in draft form to Governors prior to the Council's next meeting and made available to the public (including through the Trust's website).
- 1.30 No discussion shall take place upon the draft minutes except upon their accuracy or where the Chairman considers discussion appropriate (for example, on matters arising). Any amendment to the draft minutes of the previous meeting shall be recorded in the minutes of the present meeting. Once draft minutes have been approved (including with regard to any amendments made), they shall be deemed ratified and signed by the person who presided at the meeting at which their accuracy was discussed.

Written Resolutions

- 1.31 Where the Council so decides in respect of any matter or, where it is necessary, at the discretion of the Chairman, the Council may take decisions by means of a written resolution.
- 1.32 A resolution in writing sent to all Governors and signed by at least 75% of them shall be as valid and effective as if it had been passed at a meeting of the Council duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Governor.

2. SUSPENSION, AMENDMENT AND REVIEW OF THESE STANDING ORDERS

Suspension

- 2.1 These Standing Orders shall not be suspended except:
- 2.1.1 where urgent action is required and the Chairman considers it to be in the interests of the Trust to waive one or more of the Standing Orders, he may do so subject to such action being reported to the next meeting of the Council
 - 2.1.2 at a meeting of the Council, at least half of the total number of Governors are present, such number to include not less than one third of the Public Governors, not less than one third of the Staff Governors and not less than one third of the Appointed Governors
- 2.2 Any decision to waive Standing Orders shall be recorded in the minutes of the next meeting of the Council and shall be reported to the Audit Committee.

Amendment and Review

- 2.3 These Standing Orders shall be reviewed one year after approval by the Council and then at least annually thereafter.
- 2.4 These Standing Orders shall be amended only if:
 - 2.4.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and
 - 2.4.3 at least three quarters of the Governors present and voting at a meeting of the Council, including one Staff Governor, one Public Governor and one Appointed Governor are in favour of amendment.
 - 2.4.4 The proposed amendment(s) has/have been discussed the Board.
- 2.5 All amendments to these Standing Orders shall be subject to approval through any process prescribed by NHS Improvement.

ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

1. INTERPRETATION

- 1.1 In these Standing Orders, the provisions relating to Interpretation and definitions in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

2. APPLICATION OF STANDING ORDERS

- 2.1 These Standing Orders apply to all meetings of the Board of Directors (“the Board”) and all other relevant activities of the Directors. All Directors are required to abide by these Standing Orders, which also apply to any persons attending meetings of the Board.
- 2.2 Except where required by law or the Constitution, at any meeting of the Board, the Chairman (or in his absence, the Deputy Chairman) shall be the final authority on the interpretation of these Standing Orders (on which he should be advised by the Chief Executive and the Secretary).
- 2.3 Whilst the Secretary shall be responsible for ensuring that Directors are made aware of these Standing Orders, Directors are expected to familiarise themselves with the provisions.
- 2.4 In the event of any actual or suspected non-compliance with these Standing Orders by a Director, the person identifying such actual/ suspected non-compliance shall report it to the Chairman or Secretary and the Chairman/ Secretary shall be responsible for taking such action as is necessary, which shall, where non-compliance is identified, include a report to the next scheduled meeting of the Board. Such a report shall be recorded in the minutes of the Board meeting.

3. MEETINGS OF THE BOARD OF DIRECTORS

Frequency of Meetings

- 3.1 The Board shall decide the frequency of and calendar for its meetings, subject to the Board holding not less than four per year. The Secretary shall ensure that within the meeting cycle of the Board, meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.
- 3.2 Notwithstanding clause 3.1 above, the Chairman may at any time call a meeting of the Board. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the total number of Directors, has been presented to him, or if, without so refusing, the Chairman does not call a meeting within 7 days after such requisition has been presented to him/her, at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting of the Board.

Admission of the Public and Observers

- 3.3 By effect of these Standing Orders only, the public shall be invited to attend all meetings of the Board unless the Board decides otherwise in relation to all or part of any particular meeting. The Board may also invite observers to attend its meetings.
- 3.4 The public shall be excluded from meetings of the Board only where the business under discussion is commercially sensitive or is otherwise considered to be confidential. The Chairman may exclude any member of the public from a meeting of the Board if the person is interfering with or preventing the proper conduct of the Board's business. The Chairman's decision in this respect shall be final.
- 3.5 The Chairman shall decide the arrangements through which any questions from members of the public will be asked and answered.

Chairman for Meetings of the Board

- 3.6 The Chairman of the Trust, or in his absence, the Deputy Chairman shall preside at meetings of the Board.
- 3.7 The Deputy Chairman may preside at meetings of the Board in the following circumstances:
- 3.7.1 when there is a need for someone to have the authority to chair any meeting of the Board when the Chairman is not present;
 - 3.7.2 on occasions when the Chairman declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Board.
- 3.8 If it would not be appropriate for the Chairman or the Deputy Chairman to preside, then the remaining Non-Executive Directors shall choose one of the other Non-Executive Directors to preside.
- 3.9 Statements made by Directors at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final and shall be observed at the meeting.

Notice, Agenda and Papers for Meetings

Notice of Meeting

- 3.10 Before each meeting of the Board, a notice of the meeting signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every member of the Board, or sent by post to the usual place of residence of such Director, no less than five clear working days before the meeting. Clear days shall not include the date on which the notice is sent or the day of the meeting.
- 3.11 Except in the case of emergencies or in case of a need to conduct urgent business, the Secretary shall give to all Directors at least 10 clear working days' written notice of the date and place of every meeting of the Board.

Written notice shall be deemed to include communication by email. Notice will also be published on the Trust's website.

- 3.12 In the case of a meeting called by the Directors in default of the Chairman, the notice shall be signed by those respective Directors and no business shall be transacted at the meeting other than that specified in the notice. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of post or otherwise on the day following electronic or facsimile transmission. Lack of service of the notice on any Directors shall not affect the validity of a meeting.

Agenda and Notification of Business

- 3.13 At the direction of the Board, the Secretary shall draw up and maintain a plan for the agenda of the Board's meetings in each calendar year. The agenda plan shall take account of the work-plan for the Board, which it will agree with the Council. The agenda plan shall be approved by the Board at least once in each calendar year.
- 3.14 The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted.
- 3.15 A Director desiring a matter to be included on an agenda shall specify the question or issue to be included by request in writing to the Chairman or the Secretary at least three clear business days before notice of the meeting is given. Requests made less than three days before the notice is given may be included on the agenda at the discretion of the Chairman.
- 3.16 Before each meeting of the Board, an agenda setting out the business of the meeting, approved by the Chairman or by an officer of the Trust authorised by the Chairman on his behalf shall be delivered electronically to every member of the Board, specifying the business proposed to be transacted at it at least five clear days before the meeting. The agenda shall include any items of business identified in the approved agenda plan, any items which the Board has directed to appear on any or all of the agenda for its meetings and any specific items or motions requested by one or more Directors and approved by the Chairman. The agenda shall be published on the Trust's website prior to the meeting and otherwise made available to members of the public as considered appropriate by the Trust.

Papers for Meetings

- 3.17 The Secretary shall be responsible for compiling and distributing to Directors (and, where their attendance is permitted, members of the public) papers for meetings of the Board. Papers shall be issued at least five clear days prior to each meeting of the Board. Papers will only be tabled at the Board's meetings in exceptional circumstances and then only with the prior approval of the Chairman.

Quorum for Meetings

- 3.18 A meeting of the Board shall be quorate and shall not commence until it is quorate. Quoracy is defined as meaning that at least half of the Board must be present, including two Non-executive Directors and two Executive Directors. A Director shall be deemed as present if he joins the meeting by telephone or other means, provided that he can hear and be heard by all other Directors present at the meeting.
- 3.19 If the meeting is not quorate within 15 minutes after the due starting time, it shall be reconvened at time to be agreed by the Chairman.

Declaring interests

- 3.20 If a Director has declared a direct pecuniary interest in any matter, the Director must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing or a resolution on any matter, that matter may not be discussed further or voted upon at that meeting.
- 3.21 Where a Director:
- 3.21.1 has declared an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
 - 3.21.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
 - 3.21.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class;
 - 3.21.4 the Director shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty disclose his interest.
- 3.22 A Director who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Director will count towards the quorum of the meeting.
- 3.23 The minutes shall record any declarations of interests on the part of Directors and any action taken in respect of them.
- 3.24 See further paragraph 4 (declarations and register of directors' interests) of Annex 7 (further provisions).

Conduct of Business

- 3.25 Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chairman so determines or if a Director requests, a question at a meeting shall

be determined by a majority of the votes of the Director present and voting on the question and, in the case of any equality of votes, the Chairman shall have a casting vote.

- 3.26 All questions put to the vote shall, at the discretion of the person presiding, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 3.27 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 3.28 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

3.29 An officer who has been formally appointed to act for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director, and shall therefore count towards the quorum. An officer attending the Board to represent an Executive Director during a period of incapacity or temporary absence in the absence of a formal acting arrangement (i.e. a proxy) shall not exercise the voting rights of the Executive Director or count towards the quorum. The minutes shall record the status of Directors attending to represent Executive Directors.

- 3.30 For the avoidance of doubt, in no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.

Minutes of Meetings

- 3.31 The minutes of the meeting, which shall include the names of the Directors present, shall be drawn up and submitted by Secretary for the Board's approval at its next meeting. Subject to the Chairman's approval, the minutes may be circulated in draft form to Directors prior to the Board's next meeting and made available to the public (including through the Trust's website)..
- 3.32 No discussion shall take place upon the draft minutes except upon their accuracy or where the Chairman considers discussion appropriate (for example, on matters arising). Any amendment to the draft minutes of the previous meeting shall be recorded in the minutes of the present meeting. Once draft minutes have been approved (including with regard to any amendments made), they shall be deemed ratified and signed by the person who presided at the meeting at which their accuracy was discussed.

Written Resolutions

- 3.33 Where the Board so decides in respect of any matter or, where it is necessary, at the discretion of the Chairman, the Board may take decisions by means of a written resolution.
- 3.34 A resolution in writing sent to all Directors and signed by at least 75% of them shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Directors.

4. SUSPENSION, AMENDMENT AND REVIEW OF THESE STANDING ORDERS

Suspension

- 4.1 These Standing Orders shall not be suspended except:
 - 4.1.1 where urgent action is required and the Chairman considers it to be in the interests of the Trust to waive one or more of the Standing Orders, he may do so subject to such action being reported to the next meeting of the Board
 - 4.1.2 at a meeting of the Board, at least half of the total number of Directors are present, such number to include at least one Non-executive Director
- 4.2 Any decision to waive Standing Orders shall be recorded in the minutes of the next meeting of the Board and shall be reported to the Audit Committee.

Amendment and Review

- 4.3 These Standing Orders shall be reviewed one year after approval by the Board and then at least annually thereafter.
- 4.4 These Standing Orders shall be amended only if:
 - 4.4.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and
 - 4.4.3 at least three quarters of the Board present and voting at a meeting of the Board are in favour of amendment.
 - 4.4.4 The proposed amendment(s) has/have been discussed with the Council.
- 4.5 All amendments to these Standing Orders shall be subject to approval through any process prescribed by NHS Improvement.

ANNEX 7 – FURTHER PROVISIONS RELATING TO THE BOARD OF DIRECTORS

1. INTERPRETATION

- 1.1 In these Provisions, the clauses relating to Interpretation and definitions in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

PART A – PROVISIONS RELATING TO THE BOARD OF DIRECTORS

2. APPLICATION OF PROVISIONS

- 2.1 These Provisions apply to all meetings of the Board of Directors (“the Board”) and all other relevant activities of the Directors. All Directors are required to abide by these Provisions, which also apply to any persons attending meetings of the Board.
- 2.2 Except where required by law or the Constitution, at any meeting of the Board, the Chairman (or in his absence, the Deputy Chairman) shall be the final authority on the interpretation of these Provisions (on which he should be advised by the Chief Executive and the Secretary).
- 2.3 Whilst the Secretary shall be responsible for ensuring that Directors are made aware of these Provisions, Directors are expected to familiarise themselves with the provisions.
- 2.4 In the event of any actual or suspected non-compliance with these Provisions by a Director, the person identifying such actual/ suspected non-compliance shall report it to the Chairman or Secretary and the Chairman or Secretary shall be responsible for taking such action as is necessary, which shall, where non-compliance is identified, include a report to the next scheduled meeting of the Board. Such a report shall be recorded in the minutes of the Board meeting.

3. APPOINTMENT AND REMOVAL OF DIRECTORS

The provisions of this Section 3 shall be subject always to paragraphs 21 to 31 (inclusive) of the Constitution.

Chief Executive

- 3.1 There shall be a Nominations & Remuneration Committee of the Board which shall be responsible for appointing the Chief Executive. When the Committee is considering the appointment of the Chief Executive, it shall comprise of the Chairman and as many of the Non-Executive Directors as the Board decides. The Committee shall make a recommendation to the Chairman and the other Non-Executive Directors, and their decision shall be subject to approval by the Council.

Executive Directors

- 3.2 The Board shall establish a Committee to appoint the Executive Directors. The

Committee shall comprise of the Chairman, the Non-Executive Directors and the Chief Executive. The Committee's decision shall be final.

Terms of Office and Process

- 3.3 There shall be written policies and processes, approved by the Board, to set out the process by which the Chairman, Non-Executive Directors, Chief Executive and Executive Directors shall be appointed, and through which their terms and conditions of appointment shall be decided. In the case of the appointment of the Chairman, Non-Executive Directors and the Chief Executive, these policies and processes shall be subject to the approval of the Council.
- 3.4 Save for the initial Chairman and initial Non-Executive Directors who shall be appointed for a term in accordance with their letters of appointment, the Chairman and the Non-Executive Directors appointed after the Acquisition Date shall be appointed for a term of three years. Subject to other relevant provisions in the Constitution, Non-Executive Directors shall be subject to re-appointment thereafter at intervals of no more than 3 years. Non-executive Directors may serve for a term beyond 6 years subject to annual re-appointment. Non-Executive Directors may not serve for a term of more than nine years in aggregate.

Appointments – Other Matters

- 3.5 No defect in the appointment of a Director nor any deficiency in the composition of the Board shall affect the validity of any act or decision of the Board.
- 3.6 The Trust may confer on a person the title “Director” as an indication of his seniority and/or the corporate nature of his responsibilities within the Trust but such a person shall not be an Executive Director or Non-Executive Director of the Trust for the purposes of the 2006 Act unless he is a member of the Board of Directors as defined by the Constitution and, therefore, subject to Section 3.29 of Annex 6, he will have no right to vote at meetings of the Board.

Removal or Resignation from Office

- 3.7 A person shall not be eligible to become or continue in office as a Director if:
- 3.7.1 in respect of a Non-Executive Director, he does not meet the criteria for eligibility in paragraph 24 of the Constitution;
 - 3.7.2 in respect of any Director, any of the grounds contained in paragraph 28 apply to him;
 - 3.7.3 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;
 - 3.7.4 he has had his 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 name included in such a list;

- 3.7.5 NHS Improvement has exercised its powers to remove him as a Director of the Trust or has suspended him from office or has disqualified him from holding office as a Director of the Trust for a specified period or NHS Improvement has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust;
- 3.7.6 he has 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) and his conviction is not spent under the Rehabilitation of Offenders Act 1974;
- 3.7.7 he is incapable by reason of mental disorder, illness or injury in managing and administering his property and/or affairs;
- 3.7.8 he is a Governor of the Trust or a director of another NHS Foundation Trust;

Termination of Tenure

- 3.8 A Director's term of office shall be terminated:
 - 3.8.1 if he is a Non-Executive Director if he gives notice in writing to the Secretary of his resignation from office at any time during that term of office or under paragraph 25.2 of the Constitution;
 - 3.8.2 if he is an Executive Director if he gives notice in writing to the Chief Executive of his resignation from office at any time or under paragraph 27.3 of the Constitution.
- 3.9 Where a person has been appointed to the Board and he becomes disqualified from that appointment he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 calendar days of first becoming aware of those matters which rendered him disqualified.
- 3.10 A Director whose tenure of office is terminated shall not be eligible for re-appointment for a period of three years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of whichever is the later except by resolution carried by a majority of the Board present and voting at a meeting.
- 3.11 Upon a Director resigning or ceasing to be eligible to continue in office that person shall cease to be a Director and his name shall be removed from the Register of Directors.

Vacancies

- 3.12 Where a Director resigns or his office is terminated, the vacancy shall be filled through the processes agreed as set out in Section 3.4 above.

4. DECLARATIONS AND REGISTER OF DIRECTORS' INTERESTS

- 4.1 In accordance with the Constitution, Directors are required to declare on appointment and in the manner prescribed below any direct or indirect pecuniary interest and any other interest which is relevant and material to the business of the Trust.
- 4.2 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time setting out any interests required to be declared in accordance with the Constitution or these Provisions and delivering it to the Secretary within 28 days of a Director's appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. The Secretary shall amend the Register of Interests upon receipt of notification within one month.
- 4.3 If a Director is present at a meeting of the Board and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter.
- 4.4 The term "relevant and material interests" may include (but may not be limited to) the following:
- 4.4.1 directorships, including non-executive directorships held in private or public limited companies (with the exception of those of dormant companies);
 - 4.4.2 ownership or part-ownership or directorships of companies or other types of organisation which are likely to or are seeking to do business with the NHS;
 - 4.4.3 a position of authority in a charity or voluntary organisation operating in the field of health and social care, including any which are contracting for or are commissioning NHS services;
 - 4.4.4 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks;
 - 4.4.5 research funding/grants that may be received by an individual or their department;
- 4.5 Any traveling or other expenses or allowances payable to a Director in accordance with this Constitution shall not be treated as a pecuniary interest.
- 4.6 Subject to any other provision of this Constitution, a Director shall be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter, if:
- 4.6.1 he, or a nominee of his, is a director of a company or other body not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

- 4.6.2 he is a partner, associate or employee of any person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the same.
- 4.7 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
 - 4.7.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
 - 4.7.2 of an interest in any company, body, or person with which he is connected, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 4.8 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Provisions to be also an interest of the other.
- 4.9 If a Director has any doubt about the relevance of an interest, he must take advice from the Secretary.

5. STANDARDS OF CONDUCT

- 5.1 Subject to the 2006 Act (as amended and/or replaced from time to time), Directors shall comply with the terms of their relevant Role Descriptions which shall be approved by the Board and, as set out in these Provisions, the Council, and which the Secretary shall issue to Directors upon appointment to the Board. The Directors shall comply with any codes of conduct or other standards referenced in their Role Descriptions.
- 5.2 In the event that there are concerns about a Non-Executive Director's performance or conduct, the Chairman, with the support of the Secretary where necessary, will address these directly with the Non-Executive Director concerned. Where necessary, the Chairman will make recommendations to the Board, including in respect of any proposal that the Board should remove the Non-Executive Director from office in which case the provisions of Section 3 of these Provisions shall apply.
- 5.3 In the event that there are concerns about an Executive Director's performance or conduct, the Chief Executive, with the support of the Secretary and others where necessary, will address these directly with the Executive Director concerned. Where necessary, the Chief Executive will make recommendations and/or reports to the Board, including in respect of any proposal that the Board should remove the Executive Director from office in which case the provisions of Section 3 of this Annex 7 shall apply.

6. REMUNERATION AND BUSINESS EXPENSES

- 6.1 The Trust is permitted to reimburse traveling expenses to Non-Executive Directors for attendance at meetings of the Board, or for any other business authorised by the Chairman as being reasonably within the role and duties of a Non-Executive Director, at a rate to be determined by the Council of Governors. The Chief Executive shall be responsible for authorising expenses incurred by Executive Directors, to be paid at a rate to be determined by the Chairman and

Non-Executive Directors.

- 6.2 A summary of expenses paid to Directors will be published in the Annual Report.

7. COMPOSITION AND ROLE OF BOARD OF DIRECTORS

- 7.1 All of the Board's business shall be conducted in the name of the Trust.
- 7.2 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Board is defined in its Terms of Reference which shall be approved by the Board of Governors and the Board of Directors.
- 7.3 Subject to the 2006 Act (as amended and/or replaced from time to time), the composition of the Board shall be as set out in the Constitution.
- 7.4 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Chairman and the role of Non-Executive Director shall be as defined in Role Descriptions which shall be approved by the Council and the Board.
- 7.5 The Council shall appoint one of the Non-Executive Directors to be Deputy Chairman. The role of the Deputy Chairman shall be as defined in a Role Description which shall be approved by the Council and the Board.
- 7.6 The Board shall appoint one of the Non-Executive Directors to be the Senior Independent Director ("SID"). The role of Senior Independent Director shall be as defined in the Role Description which shall be approved by the Board.

8. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 8.1 Subject to the Constitution, Terms of Authorisation or any relevant statutory provision, the Board may make arrangements for the delegation, on behalf of the Board, of any of its powers to a committee of directors or to an executive director.
- 8.2 The Board shall delegate responsibility and authority on any terms which it considers to be appropriate, such terms to be defined in written terms of reference approved by the Board.
- 8.3 The Board's arrangements for the exercise of functions through delegation shall be set out within a Scheme of Delegation to be approved by the Board. This shall include delegation to Committees and to Directors, and shall specify those matters which are reserved to the Board to decide.

9. COMMITTEES OF THE BOARD

- 9.1 Subject to the 2006 Act (as amended and/or replaced from time to time), the Board shall establish an Audit Committee and a Nominations & Remuneration Committee, whose role, responsibilities and authority shall be defined in terms of reference to be approved by the Board in accordance with

- 9.2 paragraphs 32 and 38 of the Constitution. The Board shall appoint the Chairmen and the Members of the Committees.
- 9.3 Subject to the Constitution, the Terms of Authorisation and such binding guidance as may be given by NHS Improvement, the Board may and, if so required by NHS Improvement, shall appoint other committees of the Board consisting wholly or partly of Directors or wholly of persons who are not Directors. The Board shall not delegate any of its powers to such committees but committees may act in an advisory capacity to assist the Board in carrying out its functions.
- 9.4 These Provisions of the Board shall as far as they are applicable apply with appropriate alteration to any committees established by the Board.

10. PROFESSIONAL ADVICE

- 10.1 The Board shall have direct access to any independent advice which it considers necessary for the proper discharge of its functions, such advice normally being obtained by the Secretary. Such advice shall be commissioned through terms of reference to be agreed by the Board and may be presented in written form and/or by advisors attending meetings of the Board. The Trust shall meet the cost of any such advice commissioned by the Board. The Board shall establish a policy to set out the circumstances in which and the arrangements through which advice shall be taken and reported to the Board.

11. DIRECTORS AND GOVERNORS: WORKING ARRANGEMENTS

Engagement, Collaboration and Consultation

- 11.1 The Board and the Council shall agree work-plans for their meetings and activities, which shall be complementary and integrated. The work-plans shall identify the matters on which and, where possible, the timetable over which the Board and the Council shall consult each other about the business which they deal with. The work-plans shall take account of the Trust's strategy and business plans.
- 11.2 As a minimum, the Board shall consult the Council on the following matters:
- 11.2.1 proposals for the Trust's strategy and its annual Business Plan;
 - 11.2.2 proposals for significant service developments;
 - 11.2.3 the Trust's operational performance and delivery against plans generally;
 - 11.2.4 service reviews and evaluations in respect of the Trust's services; and
 - 11.2.5 development of the Trust's membership and plans for engagement with patients and the public generally.
- 11.3 The Board shall present to the Council the Trust's Annual Accounts, Annual Report and Auditors Report in accordance with the terms of this Constitution and of the 2006 Act.

- 11.4 The Board and the Council shall hold at least one joint meeting per year.
- 11.5 Directors and Governors may agree to attend each other's' meetings through a schedule to be agreed by the Board and the Council.

Informal Communication

- 11.6 The Chairman shall use his reasonable endeavours to promote communication between the Board and the Council, including through:
 - 11.6.1 participation of the Board in the induction, orientation and training of Governors;
 - 11.6.2 development of special interest relationships between Non-Executive Directors and Governors;
 - 11.6.3 discussions between Governors and the Chairman and/or the Chief Executive and/or Directors through the office of the Chief Executive or his nominated officer;
 - 11.6.4 involvement in membership recruitment and briefings at events organised by the Trust.

Formal Communication

- 11.7 Where it is otherwise necessary, such as where it is prescribed by the Constitution, these Provisions, Terms of Authorisation or elsewhere, the Board and the Council shall communicate formally by the means set out below:
 - 11.7.1 the Council may and, where required, shall at any time ask for matters to be referred to the Board. Any such referrals shall be made through the Chairman who shall arrange for the matter to be added to the agenda for the next scheduled meeting of the Board;
 - 11.7.2 in the absence of the Council agreeing to refer a matter to the Board, any Governor may through the Chairman refer a matter to the Board of Directors but if the Chairman declines to refer any such issue the said Governor may refer it provided that two thirds of the Governors present approve his request to do so. The Chairman shall then refer the matter to the Board and provide the response to the Council.

12. RESOLUTION OF DISPUTES

- 12.1 In the event of dispute between the Council and the Board then the dispute resolution procedure set out below shall be followed in order to resolve the matters concerned. The Council and the Board shall at all times recognise their roles and responsibilities as defined in the Constitution, these Provisions, Terms of Reference and any other documents approved.
- 12.2 The Chairman or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, shall endeavour through discussion with Governors and Directors or, if it is

considered to be more expedient, appointed representatives of them, to resolve the matter to the reasonable satisfaction of both parties.

- 12.3 In the event that it is not possible to resolve the dispute through the process described in 12.2 above, the Chairman or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, shall appoint a special committee comprising equal numbers of Directors and Governors to consider the circumstances and to clearly and concisely produce a recommendation statement to the Council and to the Board with a view to resolving the dispute (the "Recommendation Statement").
- 12.4 The Chairman or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, shall ensure that the Recommendation Statement, without amendment or abbreviation in any way, shall be considered at the next scheduled meeting of both the Council and the Board. Where it is considered necessary or expedient to convene a meeting of the Council or of the Board earlier than is otherwise scheduled then the Chairman shall do so and in this event the relevant provisions of these Provisions shall apply.
- 12.5 If in the opinion of the Chairman or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, and following the further discussions prescribed in 12.4 there is no further prospect of a full resolution or, if at any stage in the process, in the opinion of the Chairman or the Senior Independent Director (as the case may be) there is no prospect of a resolution (partial or otherwise) then he shall advise the Council and the Board accordingly. In the event that the dispute cannot be resolved, the decisions of the Board shall prevail. In the event that the dispute is resolved to the satisfaction of the Council and the Board, the Board shall implement the decisions taken.
- 12.6 Nothing in this procedure shall prevent the Council, through the Lead Governor, from informing NHS Improvement that in the Council's reasonable opinion its concerns are such that if they remain unresolved, the Trust will be at risk of breaching the terms of its Authorisation.

PART B – MEMBERSHIP OF THE TRUST

13. ELIGIBILITY FOR MEMBERSHIP

General

- 13.1 An individual shall not be eligible for membership of the Trust if he:
- 13.1.1 fails or ceases to fulfill the criteria for membership of any of the constituencies;
 - 13.1.2 was formerly employed by the Trust or any health service body and in the preceding two years was lawfully dismissed other than by reason of redundancy;
 - 13.1.3 has been involved as a perpetrator in a serious incident of violence or abuse in the last five years at any of the Trust's hospitals or against any of the Trust's Governors, Directors, staff members or patients;
 - 13.1.4 has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children & Young Person's Acts 1933 to 1969 (as amended) and his or her conviction is not spent under the Rehabilitation of Offenders Act 1974;
 - 13.1.5 does not agree to abide by the Trust values as published by the Trust;
 - 13.1.6 has been identified as a vexatious complainant or has been excluded from treatment at any of the Trust's hospitals due to unacceptable behaviour;
 - 13.1.7 is deemed, in the reasonable opinion of the Trust, to have acted in a manner contrary to the interests of the Trust; or
 - 13.1.8 is under the age of sixteen years.
- 13.2 It is the responsibility of members to ensure that they are eligible for membership 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 whether or not this is the case.
- 13.3 Where an individual is held by the Trust to be ineligible and/or disqualified from membership of the Trust and disputes the Trust's decision in this respect, the matter shall be referred to the Secretary (or such other officer of the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.

- 13.4 The Secretary (or his nominated representative) shall:
- (a) review the decision having regard to any representations made by the individual concerned and such other material, if any, as the Secretary considers appropriate;
 - (b) either confirm the decision or make some other decision as appropriate based on the evidence which he has considered; and
 - (c) communicate his decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.
- 13.5 If the member is aggrieved of the decision of the Secretary he may appeal in writing to the Council of Governors (“the Council”) within 14 days of the Secretary’s decision. The Council shall consider the matter at its next meeting and its decision shall be final

Public Membership

- 13.6 For the purposes of determining whether an individual lives in a public constituency, an individual shall be deemed to do so if;
- 13.6.1 his 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
 - 13.6.2 the Trust is otherwise satisfied that the individual lives within the said area.

Staff Membership

- 13.7 An individual shall be deemed to be eligible for membership of the staff constituency if he meets the eligibility criteria set out in the Constitution.

14. APPLICATION FOR MEMBERSHIP

- 14.1 Where a person wishes to apply to become a member of the Trust, the following procedure shall apply
- 14.1.1 the Trust shall upon request supply him with a form of application for membership in a form determined by the Trust;
 - 14.1.2 upon receipt of the said form of application duly completed and signed by the applicant (or in the Trust’s discretion signed on behalf of the applicant) the Trust shall as soon as is reasonably practicable and in any event within 28 working days of receipt of the duly completed form consider the same;
 - 14.1.3 unless the applicant is ineligible for membership or is disqualified from membership, the Trust shall cause his name to be entered on the Trust’s Register of Members and shall give notice in writing to the applicant of that fact;
 - 14.1.4 upon the applicant’s name being entered on the Trust’s Register of Members he shall become a member;

14.1.5 the information to be included in the Trust's Register of Members shall include the following details relating to that member:

- (a) his/her full name and title;
- (b) his/her date of birth;
- (c) his/her full postal address;
- (d) his/her home telephone number (if any);
- (e) his/her email address (if any);
- (f) the constituency and, where relevant, the area or class of which he/she is a member;
- (g) the date upon which he/she became a member; and
- (h) his/her gender and ethnicity.

14.2 For the avoidance of doubt and subject to the restrictions on making the Trust's registers available in accordance with paragraph 35.2 of the Constitution, where a member of the public makes a request to inspect the Register of Members, pursuant to paragraph 35 of the Constitution (Registers – inspection of copies), the Trust shall disclose only those parts of the Register that detail the members' names, constituency, and, where relevant, their area or class within that constituency in accordance with paragraph 20 and paragraph 22(3) of Schedule 7 of the 2006 Act and subject always to compliance with data protection requirements.

15. REGISTER OF MEMBERS

15.1 For the avoidance of doubt, an individual shall become a member on the date upon which his/her name is entered on the Trust's Register of Members and shall cease to be a member upon the date on which his/her name is removed from the Register of Members as provided for in this Constitution.

15.2 The Register of Members and all other Registers shall be maintained in accordance with this Constitution and in accordance with the 2006 Act. The Registers shall be reviewed and updated regularly and, in the case of the Register of Members, within 14 days of receipt of any new or amended information about members.

15.3 Where in the reasonable opinion of the Trust a member is no longer eligible or is disqualified from Membership of the Trust, the Trust shall be entitled to remove the name of that individual from the Register of Members and that individual shall thereupon cease to be a Member provided always that this power shall not be exercised until the Trust has given not less than fourteen days written notice to the member addressed to him at the address given in the Register of Members of its intention to remove him from the Register and that member has not within that period notified the Trust of his wish to continue as member and provided proof satisfactorily to the Trust of his continued eligibility.

16. TERMINATION OF MEMBERSHIP

- 16.1 A person shall cease to be a member if:
- 1.16.1 he resigns by notice in writing to the Trust;
 - 1.16.2 he ceases to be entitled under this Constitution to be a member of any area within the Public Constituency or of any of the classes of the Staff Constituency;
 - 1.16.3 he is expelled from membership in accordance with the provisions of this Constitution;
 - 1.16.4 he dies.
- 16.2 An individual who is a member of the Public Constituency shall cease to be eligible to continue as a member if he ceases to live in the area of the Public Constituency of which he is a member save as provided elsewhere in these rules. In the event that a member moves to another Public Constituency area and requests to be a member in that area, if the Trust is satisfied that the individual concerned lives in such other area, that individual shall thereafter be treated as a member of that other area within the Public Constituency.
- 16.3 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 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.

PART C – OTHER PROVISIONS

17. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 17.1 The Common Seal of the Trust shall be kept by the Trust Secretary on behalf of the Chief Executive or designated officer in a secure place.
- 17.2 The seal of the Trust shall not be affixed to any documents unless the sealing has been authorised by a resolution of the Board, a committee, or, where the Board so decides, one or more Directors. The seal shall only be affixed in the presence of two Directors.
- 17.3 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose and shall be signed by those who attested the seal. A report of all sealings shall be made to the Board at least quarterly. (The report shall contain details of the seal number, a description of the document and the date of sealing).

18. SIGNATURE OF DOCUMENTS

- 18.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.
- 18.2 The Chief Executive or nominated Director(s) shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board or any committee, sub-committee or standing committee with delegated authority.

19. SECRETARY

- 19.1 The Trust shall have a Secretary, who may be an employee. The Secretary shall not be a Governor, or the Chief Executive or the Finance Director.
- 19.2 The Secretary shall be appointed and, where necessary, removed only by the Chairman and Chief Executive acting jointly, who shall report their actions to the Board and the Council.
- 19.3 The Secretary's functions shall be set out within a job description which shall be approved by the Chairman and the Chief Executive.

20.0 INDEMNITY FOR GOVERNORS, DIRECTORS AND THE SECRETARY

- 20.1 Members of the Council; and the Board; and the Secretary, who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their duties, save where they have acted recklessly. Any 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 Resolution to cover such costs.

ANNEX 8 Lead & Deputy Lead Governor Role Description

Role Description

Accountability:

The Lead and Deputy Lead Governors are accountable to the Council of Governors collectively as a serving Member of the Council.

The Role:

- To be an external point of contact for NHS Improvement (formerly Monitor) where it may be considered inappropriate for the Chairman or the Deputy Chairman, or for the Secretary to deal with a particular matter.
- To facilitate communications and a good working relationship between the Governors and the Executive Board and Trust Board including acting as the principle independent channel for communications between the Governors and Executive Board and Trust Board through the Chairman, the Chief Executive, the Secretary or the Senior Independent Director.
- To consult routinely with the Governors, the Chairman and the Secretary regarding the planning and preparation of the Council of Governors agenda.
- To be a member of the Nominations and Remuneration Committee.
- To contribute to the appraisal of the Chairman by the Senior Independent Director, supported by the Secretary, in accordance with the process determined by the Council of Governors including the collation of input from other Governors and the Nominations and Remuneration Committee on the performance of the Chairman.
- Contribute to the determination of the appraisal process of the Non-Executive Directors to be undertaken by the Chairman and supported by the Nominations and Remuneration Committee.
- To recommend to the Council of Governors on behalf of the Nominations and Remuneration Committee any appointments/reappointments of Chair; Non-Executive Directors and/or the Chief Executive.
- To take an active role in the activities of the Council of Governors and to meet with the Chairman and the Secretary on a regular basis to discuss relevant issues.
- Support the Chairman and the Secretary in any action to remove a Governor due to unconstitutional behaviour in accordance with the Code of Conduct.
- To be involved in the induction process for any newly appointed Public Governor.
- The Lead Governor may call upon the support of the other Governors, the Chairman, the Secretary and the Senior Independent Director to carry out their role effectively to the benefit of the Council of Governors.

- In liaison with the Chairman and the Secretary, support the development of the skills and strengths of the Council of Governors and raise public awareness of all Governors.
- To chair meetings of Council of Governors where the Chairman, Deputy Chairman or other Non-Executive Director cannot chair the meeting due to a conflict of interest.
- Where approved by the Council and/or the Chairman speak for and represent the Council at the AGM and on other occasions
- Other duties as requested by the Council of Governors or the Chairman.
- Chair the Pre-Council of Governors meeting and any informal meetings.

The Person:

To fulfil this role effectively, the Lead Governor will need to:

- Be a publically elected Governor
- Have the confidence of Governor colleagues and members of the Executive Board and Trust Board
- Be able to forge constructive working relationships with colleagues
- Understand NHSI's role, the available guidance and the basis upon which NHSI may take regulatory action
- Be committed to the success of the Trust and understand the Trust's Constitution
- Have the ability to influence and negotiate
- Be able to present a well-reasoned, unbiased argument
- Demonstrate ability to maintain confidentiality of information.

The Appointment:

The tenure is two financial years with the option for re-election in accordance with due process, for up to the full tenure period of the elected Governor's 'appointment'.

In accordance with a process agreed by the Council of Governors, the Secretary will administer a bi annual nomination and election/re-election procedure that will require: -

- Submission of an expression of interest (for re-election and for new election candidates)
- Submission of a statement for support of no more than 250 words supporting candidature (only for NEW nominations and/or contested elections);
- Election by 'show of hands' or by secret ballot as determined by the relevant Council meeting.

Additional:

The Lead Governor will work closely with and be supported and deputised for by a Deputy Lead Governor whose appointment will follow the same procedure above. It is anticipated, where terms of office accord, that the Deputy Lead Governor will put themselves forward for Lead Governor position when that position becomes vacant, remaining subject to the appointment process above.

ANNEX 9

Code of Conduct for Governors

1.00 INTRODUCTION

1.01 The Council of Governors (the Council) in support of the individual governors has established a Code of Conduct for Governors which codifies the expectations of its individual Governors and the process which will be followed should there be a need to consider if a Governor has deviated from this Code.

2.00 FRAMEWORK FOR COUNCIL OF GOVERNORS

2.01 The Trust operates within a legal, regulatory and governance framework established by the NHS Act 2006, the Health and Social Care Act 2012, the NHS Foundation Trust Code of Governance published by Monitor in 2013 and updated in 2014 (**Code of Governance**) and Monitor's Risk Assessment Framework updated in August 2015 (**Risk Assessment Framework**) and other regulatory requirements and the Trust's Constitution. The Constitution defines the membership of the Council and defines the arrangements for appointing (and where necessary, removing) Governors.

2.02 The Trust's regulatory and governance framework is supplemented by this Code of Conduct for Governors and the Role Description for Governors set out in Annex 8 of the Constitution, both of which reflect the statutory responsibilities for the Council. It should be noted that nothing within this Code of Conduct shall take precedence over or in any way amend the Constitution or any regulatory requirements.

3.00 ROLE OF THE COUNCIL OF GOVERNORS

3.01 The role of the Council is defined in law and in Monitor's reference guide for NHS foundation trust governors dated October 2009 and updated in August 2013, including the Constitution. Although the role is not repeated here it is important as context for this Code of Conduct to recognise that it is essential for the good governance of the Trust for the Council and the Board of Directors (the Board) to engage actively and constructively. Such an approach will ensure that the Council is able to contribute to the development of the Trust's strategy and plans, approve transactions where appropriate, hold the Non-Executive Directors to account (for the performance of the Board), and represent to the Board the views of members and the public. This approach will also ensure that the Board takes into account the views of the Council – for example, in relation to the Trust's strategy - and that it seeks the Council's timely approval for transactions and other proposals as defined in the Constitution.

4.00 BOARD OF DIRECTORS/COUNCIL OF GOVERNORS ENGAGEMENT

4.01 The Terms of Reference for the Board and for the Council (and relevant Role Descriptions) state that the Board and Council will engage actively and constructively, recognising the Board's responsibility for determining the Trust's strategy and for directing and controlling the organisation. The Terms of Reference and the Constitution commit to a jointly-agreed work-plan to set out for each financial year the way in which the Board and the Council will work together. This will ensure that the Board and the Council consider business in a co-ordinated way, ensuring that the Council has the opportunity to comment on or approve (as appropriate by reference to the Constitution) proposals at the correct time.

4.02 This Code of Conduct commits the Council as a whole and Governors individually to engaging proactively and constructively with the Board, acting through the Chairman, the Senior Independent Director and any Lead Governor where appropriate according to their roles. The Council will work with the Board for the

best interests of the Trust as a whole, taking into account all relevant advice and information presented to or requested by the Council. The Council will not unduly delay responses to proposals from the Board, acting proactively to agree with the Board the information which the Council will need in order properly to consider proposals.

5.00 CONDUCT OF GOVERNORS

5.01 This section of the Code sets out the conduct which all Governors agree to abide by. These commitments are in addition to compliance with regulatory requirements, the Code of Governance, the Constitution, the Terms of Reference for the Council and the Role Description for Governors.

Personal Conduct

5.02 Governors agree that they will:

- a) act in the best interests of patients and the Trust as a whole in the delivery of services within relevant financial and operational parameters;
- b) be honest and act with integrity and probity at all times;
- c) respect and treat with dignity and fairness, the public; patients; relatives; carers; NHS staff and partners in other agencies;
- d) not seek to profit from their position as a Governor or in any way use their position to gain advantage for any person;
- e) respect and value their fellow Governors as colleagues;
- f) ensure that no person is discriminated against on grounds of religion or belief; ethnic origin; gender; marital status; age; disability; sexual orientation or socio-economic status;
- g) show their commitment to team working by working constructively with their fellow Governors and the Board as well as with their colleagues in the NHS and the wider community;
- h) accept responsibility for their actions and generally take seriously the responsibilities which are commensurate with the decision-making rights assigned to the Council through the legal and regulatory framework;
- i) seek to ensure that the best interests of the public; patients; carers and staff are upheld in decision making and that those decisions are not influenced by gifts or inducements or any interests outside the Trust;
- j) not make, permit or knowingly allow to be made any untrue, misleading or misrepresentative statement either relating to their own role or to the functions or business of the Trust;
- k) at all times, uphold the values and core principles of the NHS and the Trust as set out in its Constitution;
- l) conduct themselves in a manner which reflects positively on the Trust and not in any manner which could be regarded as bringing it into disrepute, whether they are on Trust property or fulfilling their public function in the wider community;

- m) seek to ensure that the membership of the constituency from which they are elected is both properly informed and represented, or if they are appointed, then the body from which they are appointed is both properly informed and represented;
- n) at all times, uphold the seven principles of public life as set out by the Committee on Standards in Public Life (also known as the Nolan Committee and the Wicks Committee) as below:

Selflessness: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves; their family or friends or other interested parties.

Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity: In carrying out public business, including making public appointments; awarding contracts or recommending individuals for awards or benefits, holders of public office should make choices on merit.

Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness: Holders of public office should be as open as possible about all the decision and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership: Holders of public office shall promote and support these principles by leadership and example.

- o) seek advice from the Chairman or the Secretary on matters relating to the Constitution, governance requirements or conduct, and have regard to the advice given to them.

Confidentiality

- 5.03 Governors will respect the confidentiality of the information to which they are made privy to as a result of their membership of the Council, except where information is made available in the public domain.
- 5.04 Governors will understand, endorse and promote the Trust's Information Governance and Security Policy in every aspect of their work.
- 5.05 Governors will make no public statements on behalf of the Trust or communicate in any way with the media without the prior consent of the Chairman or a designated officer from the Trust's Communications department.

Declaration of Interests

- 5.06 It is essential for good corporate governance and to maintain public confidence in

the Trust that all decision making is robust and transparent. To support this, the Constitution and the Trust's Policy on Declaration of Interests set out requirements for Governors to declare relevant interests (as defined in the Constitution). Governors have a statutory responsibility to avoid interests which may conflict with the interests of the Trust.

- 5.07 Governors will declare interests on request from the Secretary or, as required by the Constitution, whenever they become aware of a potential conflict of interest in respect of a matter being considered by the Council. Governors should seek advice from the Secretary or the Chairman where they are unsure as to whether an interest needs to be declared. Declared interests will be included in a Register of Interests, which will be published.

6.00 PARTICIPATION IN MEETINGS AND IN TRAINING AND DEVELOPMENT

- 6.01 The Council is required by the Constitution to hold meetings as required each year. The schedule for these meetings and for other activities will be proposed by the Secretary and is subject to approval by the Council. Governors will attend meetings of the Council, and of any committees or working groups to which they are appointed, or they will give apologies for absence where they are not able to attend.

- 6.02 The Trust has a statutory duty to support the Council to discharge its responsibilities, including through training and development for Governors. A programme of development and information seminars will be developed each year and it is expected that Governors will participate in such activities.

7.00 UPHOLDING THIS CODE OF CONDUCT

- 7.01 The Constitution provides that where there are concerns as to the conduct or performance of a Governor these are to be addressed in the first instance by the Chairman, with support from the Secretary, to include training and development where is considered relevant and necessary. Where such concerns exist the Chairman will write to the Governor concerned to set out the concerns and the action agreed to rectify or otherwise address them.

- 7.02 The Constitution provides for the circumstances in which a Governor can be removed from office, including where any Governor fails to comply with this Code of Conduct. It is for the Chairman to propose removal from office if this is necessary after all other course of action, including training and development where relevant, have been exhausted. As required by the Constitution, it is for the Council to determine (in accordance with rules set out in the Constitution) whether any Governor should be removed from office following a proposal from the Chairman.

Process for investigating potential non-compliance with this Code

- 7.03 The process outlined below is to provide a framework for reviewing any alleged non-compliance together with key principles to be followed. It should be noted that this process applies to all Governors irrespective of category (Public, Staff or Appointed).
- 7.04 Should a member of the Trust or a member of the Council of Governors be made aware that the behavior of a Governor is such that there may be a breach of the Code of Conduct they should inform the Chairman or the Secretary as soon as possible. Upon receipt of such a notification the Chairman will determine within 7 working days whether there is a prima facie case to address.
- 7.05 If the Chairman in consultation with the Lead Governor (except if the referral is about the Lead Governor and in this case this would be in consultation with the

Deputy Lead Governor) believes there is a case, the Governor concerned will be notified and an initial investigation will be undertaken by a Governors' Compliance Committee which will be convened for the purpose of investigating the complaint. The Governors Compliance Committee will consist of the Chair, 1 Staff Governor, 1 Public and 1 Appointed Governor (a total of 3 Governors). The Governors' Compliance Committee will not include any person who has already been involved in the complaint process.

- 7.06 An initial investigation will be conducted this will be undertaken by the Secretary or an appropriate member of their team. The initial investigation will seek to gather appropriate statements from the 'complainant' and/or witnesses. This should normally be completed within 15 working days.
- 7.07 Once information has been gathered the Governor concerned will be invited to meet with the Governors' Compliance Committee to respond to the issues. For personal support, on a non-professional basis, the Governor may choose at all times to be accompanied. The Committee should meet within 10 working days of the completion of the investigation.
- 7.08 The purpose of Governors' Compliance Committee meeting will be to establish whether there is sufficient information upon which a complaint could be upheld. At the conclusion of the meeting the Committee will decide if the matter should be referred to the Council and the Governors' Compliance Committee will make a recommendation to the Council in respect of the Governor. The recommendation to the Council of Governors will include the sanctions they deem appropriate. Such sanctions may range from the issuing of a written warning as to the Governor's future conduct and consequences, a requirement to undertake training, the suspension and/or removal of the Governor from office.
- 7.09 Following the Governors' Compliance Committee meeting the Governor under investigation will be formally written to within 5 working days setting out the recommendation prior to presentation to the Council.
- 7.10 The Council will in considering the most serious of sanctions (suspension or removal), require the approval of at least two-thirds of the total Council in order to implement. For all other sanctions a simple majority of those Governors in attendance will suffice.
- 7.11 Where there is any disagreement as to whether the proposal for removal of a Governor is justified, the Code of Governance, P34 para B.6.6 will apply. i.e. "an independent assessor agreeable to both parties shall be requested to consider the evidence and determine whether the proposed removal is reasonable or otherwise."
- 7.12 All statements and reports to the Governors' Compliance Committee and the Council will be held by the Secretary's team.