

Leeds and York Partnership NHS Foundation Trust

(A Public Benefit Corporation)

Constitution

28 September 2023

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The Constitution

1. Name

The name of the Foundation Trust is Leeds and York Partnership NHS Foundation Trust (hereinafter to be known as “the Trust”).

2. Principal purpose

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

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

2.3 The Trust may provide goods and services for any purposes related to:

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

2.3.2 The promotion and protection of public health.

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

3. Powers

3.1 The powers of the Trust are set out in the 2006 Act, subject to any restrictions in its Licence.

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

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

4. Membership and Constituencies

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

4.1 A Public Constituency;

4.2 A Staff Constituency;

4.3 A Service User and Carer Constituency.

The Constitution

5. Application for Membership

An individual who is eligible to become a member of the Trust may do so on application to the Trust. An individual who is eligible for membership under paragraph 7.1 of this constitution will automatically become a member upon eligibility and will need to apply to the Trust to opt-out.

6. Public Constituency

6.1 The Public Constituency is divided into three areas. 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.

6.2 Those members who live in an area specified as an area of the public constituency are referred to collectively as the Public Constituency.

6.3 An area of the Public Constituency may not be sub-divided.

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

7. Staff Constituency

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

7.1.1 He/she 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

7.1.2 He/she has been continuously employed by the Trust under a contract or contracts of employment for at least 12 months.

7.2 Individuals (other than the Chair of the Trust, non-executive directors and Mental Health Act Managers) 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.

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

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

7.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

7.6 A class of the Staff Constituency may not be sub-divided.

The Constitution

7.7 An individual who under paragraph 7.1 is:

7.7.1 Eligible to become a member of the Staff Constituency; and

7.7.2 Invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency.

shall upon eligibility 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 he/she informs the Trust that he/she does not wish to do so.

7.8 Individuals, who exercise functions for the purpose of the Trust, other than under a contract of employment with the Trust (as outlined in paragraph 7.2 above) will be given the opportunity to be part of the Staff Constituency. Such individuals will not automatically become members by default, but will become a member of one of the classes of the Staff Constituency by a process of opt-in.

8. Service User and Carer Constituency

8.1 An individual who within the period specified below has attended any premises at which the Trust provides services as either a service user or as the carer of a service user may become or continue as a member of the Trust.

8.2 The period referred to above shall be the period of 10 years immediately preceding the date of an application by the service user or carer to become a member of the Trust.

8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Service User and Carer Constituency.

8.4 The Service User and Carer Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Service User and Carer Constituency, each description of individuals being specified within Annex 3 and being referred to as a class within the Service User and Carer Constituency.

8.5 A class of the Service User and Carer Constituency may not be sub-divided.

8.6 An individual whose only criteria for eligibility is providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Service User and Carer Constituency.

8.7 The minimum number of members in each class of the Service User and Carer Constituency is specified in Annex 3.

The Constitution

9. Restriction on Membership

- 9.1 An individual, who is a member of a constituency, or of a class, or area, within a constituency, may not whilst being a member of that constituency, or class or area continues, be a member of any other constituency, or class or area.
- 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 A member must be an individual. The Trust will not accept organisations or corporate bodies for membership.
- 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 9 – ‘Further Provisions in Relation to Members’.

10. Annual Members' Meeting

- 10.1 The Trust shall hold an annual meeting of its members (Annual Members' Meeting). The Annual Members' Meeting must be open to members of the public.
- 10.2 Further provisions about the Annual Members' Meeting are set out in Annex 10 – Annual Members' Meeting.

11. Council of Governors – Composition

- 11.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 11.2 The composition of the Council of Governors is specified in Annex 4.
- 11.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes or areas within a constituency, by their class or area within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class, or area of each constituency, is specified in Annex 4.
- 11.4 The arrangements for the appointment of the appointed governors are set out at Annex 6.
- 11.5 The Board of Directors reserves the right to advise an appointing body of its concerns regarding any individual it may appoint to the Council of Governors.
- 11.6 The Council of Governors may request advisor(s) to assist them. The advisor(s) may not be designated as governors and may not be given voting rights. The appointment of advisor(s) to assist the Council of Governors must be approved by the Board of Directors.

The Constitution

12. Council of Governors – Election of Governors

- 12.1** Elections for elected members of the Council of Governors shall be conducted on a first past the post basis in accordance with the Model Rules for Elections, as may be published from time to time by NHS Providers.
- 12.2** The Model Rules for Elections, as may be published from time to time by NHS Providers, form part of this constitution and are attached at Annex 5.
- 12.3** A variation of the Model Rules for Elections by NHS Providers shall not constitute a variation of the terms of this constitution. For the avoidance of doubt, the Trust cannot amend the Model Rules.
- 12.4** An election, if contested, shall be by secret ballot.

13. Council of Governors – Tenure

- 13.1** Elected governors may hold office for a period of up to 3 years.
- 13.2** An elected governor shall cease to hold office if he/she ceases to be a member of the constituency, or class, or area by which he/she was elected.
- 13.3** An elected governor shall be eligible for re-election. An elected governor may hold office up to a total number of three times. A term of office will be for up to three years and an elected governor may only serve on the Council of Governors for up to a maximum total of nine years. If an elected governor holds a term of office for less than three years this shall be counted as one term of office. An elected governor's terms of office may run consecutively, or there may be a break between each term of office.
- 13.4** Provisions as to the tenure of appointed governors are set out at Annex 6.

14. Council of Governors – Termination of Office, Disqualification, Removal and Suspension

- 14.1** The following may not become or continue as a member of the Council of Governors:
 - 14.1.1** A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 14.1.2** A person who has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
 - 14.1.3** A person who within the preceding five years has been convicted of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her.
- 14.2** Governors must be at least 16 years of age at the date they are nominated for election or appointment.

The Constitution

- 14.3** Where the Chair of the Council of Governors deems a governor's continued presence at a meeting to be disruptive to the extent where normal business cannot be continued, or it is prejudicial to the good conduct of the business of the meeting, he/she shall have the power to suspend the governor for a discrete period up to the remainder of the meeting.
- 14.4** If a governor is suspended on more than three occasions the Council of Governors shall, at a public meeting, consider the termination of office of that governor in accordance with paragraph 3.9.5 and paragraph 4 of Annex 6 of the Constitution.
- 14.5** 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 6.
- 14.6** The constitution makes further provision for the termination of office, disqualification, removal and suspension of governors. These are set out in Annex 6.
- 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.
- 16. Council of Governors – Meetings of the Governors**
- 16.1** The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 24.1 below) or, in his/her absence the Deputy Chair (appointed in accordance with the provisions of paragraph 25 below), shall chair meetings of the Council of Governors.
- 16.2** Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from all or part of any meeting for special reasons which include but are not limited to situations where publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for special reasons arising from the nature of the business to be transacted and following appropriate resolution by the Council of Governors made in accordance with its Standing Orders. The Chair of the Council of Governors may also exclude any member(s) of the public from a meeting of the Council of Governors if they are interfering with or preventing proper conduct of the meeting.

The Constitution

17. Council of Governors – Standing Orders

The Standing Orders for the practice and procedure of the Council of Governors, as may be amended in accordance with paragraph 44 of the Constitution, are attached at Annex 7.

18. Council of Governors – Conflicts of Interest of Governors

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 governors as soon as he/she 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, unless agreed otherwise by a majority of the governors present and eligible to vote, or vote on the matter in respect of which an interest has been disclosed.

19. Council of Governors – Travel Expenses

The Trust may pay travelling and other expenses to governors at rates determined by the Trust. Governors shall not receive remuneration for their duties as a governor.

20. Council of Governors – Further Provisions

Further provisions with respect to the Council of Governors are set out in Annex 6.

21. Board of Directors – Composition

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

21.2 The Board of Directors is to comprise:

21.2.1 A non-executive chair;

21.2.2 A minimum of four and a maximum of six other non-executive directors; and

21.2.3 A minimum of four and a maximum of six executive directors.

provided that at least half the Board excluding the Chair shall comprise non-executive directors determined by the Board to be independent.

21.3 The Trust shall have a Trust Secretary whose role will be to provide independent advice to the Board of Directors. Additionally the Trust Secretary will provide support and independent advice to the Council of Governors.

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

21.5 The Chief Executive shall be the Accounting Officer.

The Constitution

21.6 One of the executive directors shall be the finance director (for this Trust this post shall be named Chief Financial Officer).

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

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

22. Board of Directors – General Duty

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

23. Board of Directors – Qualification for Appointment as a Non-executive Director

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

23.1 He/she is a member of the Public Constituency, or

23.2 He/she is a member of the Service User and Carer Constituency, or

23.3 Where any of the Trust's sites includes a medical or dental school provided by a university, he/she exercises functions for the purposes of that university, and

23.4 He/she is not disqualified by virtue of paragraph 27 below.

24. Board of Directors – Appointment and Removal of the Chair and Other Non-executive Directors

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

24.2 Removal of the chair or another non-executive director shall require the vote of three-quarters of the total number of governors appointed or elected at the time of the vote, and eligible to vote.

25. Board of Directors – Appointment of Deputy Chair of the Trust

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a Deputy Chair of the Trust for such a period as they may specify, not exceeding the remainder of his/her term of office as a non-executive director.

26. Board of Directors – Appointment and Removal of the Chief Executive and Other Executive Directors

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

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

The Constitution

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

27. Board of Directors – Disqualification

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

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

27.2 A person who has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it.

27.3 A person who within the preceding five years has been convicted of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her.

28. Board of Directors – Standing Orders

The Standing Orders for the practice and procedure of the Board of Directors, as may be amended in accordance with paragraph 44 of the Constitution, are attached at Annex 8.

29. Board of Directors – Conflicts of Interest of Directors

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

29.1.1 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; and

29.1.2 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.

29.2 The duty referred to in sub-paragraph 29.1.1 is not infringed if:

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

29.2.2 The matter has been authorised in accordance with the constitution.

29.3 The duty referred to in sub-paragraph 29.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

29.4 In sub-paragraph 29.1.2, “third party” means a person other than:

29.4.1 The Trust; or

29.4.2 A person acting on its behalf.

The Constitution

- 29.5** 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.
- 29.6** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 29.7** Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 29.8** 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.
- 29.9** A director need not declare an interest:
- 29.9.1** If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 29.9.2** If, or to the extent that, the directors are already aware of it;
- 29.9.3** If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered:
- 29.9.3.1** By a meeting of the Board of Directors; or
- 29.9.3.2** By a committee of the directors appointed for the purpose under the constitution.
- 29.10** A matter shall have been authorised for the purpose of paragraph 29.2.2 if it has been dealt with in accordance with the Trust's Declaration of Interest and Potential Conflict of Interest Procedure and approved by the Trust Secretary.
- 30. Board of Directors – Remuneration and Terms of Office**
- 30.1** 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 chair and the other non-executive directors.
- 30.2** 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.
- 31. Registers**
- The Trust shall have:
- 31.1** A register of members showing, in respect of each member, the constituency to which he/she belongs and, where there are classes or areas within it, the class or area to which he/she belongs;
- 31.2** A register of members of the Council of Governors;

The Constitution

31.3 A register of interests of governors;

31.4 A register of directors;

31.5 A register of interests of the directors;

32. Admission To and Removal From the registers

32.1 The Board of Directors may nominate a registrar who may or may not be an employee. The registrar may not be a member of the Council of Governors or the Chief Executive or Chief Financial Officer.

32.2 The registrar shall be responsible for ensuring the registers are up to date. The registers may be kept in either paper or electronic form.

32.3 Removal of members from the Members Register shall be in accordance with paragraph 9.4 above.

33. Registers – Inspection and Copies

33.1 The Trust shall make the registers specified in paragraph 31 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

33.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of –

33.2.1 Any member of the Service User and Carers Constituency; or

33.2.2 Any other member of the Trust, if he/she so requests.

33.3 So far as the registers are required to be made available subject to paragraph 33.2 above:

33.3.1 They are to be available for inspection free of charge at all reasonable times, subject to paragraph 33.4 below; and

33.3.2 A person who requests a copy of or extract from the registers is to be provided with a copy or extract.

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

34. Documents Available for Public Inspection

34.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times, subject to paragraph 34.3 below:

The Constitution

- 34.1.1** A copy of the current constitution;
- 34.1.2** A copy of the latest annual accounts and of any report of the auditor on them;
- 34.1.3** A copy of the latest annual report;
- 34.2** The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times.
 - 34.2.1** A copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
 - 34.2.2** A copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 34.2.3** A copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 34.2.4** A copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 34.2.5** A copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
 - 34.2.6** A copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (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;
 - 34.2.7** A copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 34.2.8** A copy of any final report published under section 65I (administrator's final report);
 - 34.2.9** A copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
 - 34.2.10** A copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 34.3** Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.

The Constitution

34.4 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.

35. External Auditor

35.1 The Trust shall have an external auditor and will provide the auditor with every facility and all information he/she may reasonably require for the purposes of his/her functions.

35.2 The Council of Governors shall appoint or remove the external auditor at a general meeting of the Council of Governors on the advice of the Board of Directors and the Audit Committee.

35.3 The appointed external auditor (or in the case of a firm of auditors, each of its appropriately qualified members) must be a member of one or more of the bodies referred to in paragraph 23(4) of Schedule 7 of the 2006 Act.

36. Audit Committee

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.

37. Annual Accounts

37.1 The Trust must keep proper accounts and proper records in relation to the accounts.

37.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

37.3 The accounts are to be audited by the Trust's external auditor.

37.4 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may, with the approval of the Secretary of State direct.

37.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

38. Annual Report, Forward Plans and non-NHS work

38.1 The Trust shall prepare an Annual Report and send it to Monitor.

38.2 The Annual Report must give information on:

38.2.1 Any steps taken by the Trust to secure that (taken as a whole) the actual membership of the Public Constituency and the Service User and Carer Constituency is representative of those eligible for such membership;

38.2.2 Any occasions in the period to which the Annual Report relates on which the Council of Governors exercised its power under paragraph 4.1.9 of Annex 7;

The Constitution

- 38.2.3** The Trust's policy on pay and on the work of the relevant committee and such other procedures as the Trust has on pay;
- 38.2.4** The remuneration of the directors and on the expenses of the governors and the directors.
- 38.2.5** The impact of that income received by the Trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the Trust of goods and services for those purposes.
- 38.3** The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 38.4** The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 38.5** In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 38.6** Each forward plan must include information about:
- 38.6.1** The activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on; and
 - 38.6.2** The income it expects to receive from doing so.
- 38.7** Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 38.8.1, the Council of Governors must:
- 38.7.1** 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
 - 38.7.2** Notify the directors of the Trust of its determination.
- 38.8** If the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England it may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.
- 39. Presentation of the Annual Accounts and Reports to the Council of Governors and Members**
- 39.1** The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 39.1.1** The annual accounts

The Constitution

39.1.2 Any report of the external auditor on them

39.1.3 The annual report.

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

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

40. Instruments

40.1 The Trust shall have a seal.

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

40.3 An entry of every sealing will be made and numbered consecutively in the Register of Sealings. A report of each sealing will be made to the Board of Directors at their formal meetings. The report will contain a description of the document sealed and the date the seal was affixed.

41. Indemnity

41.1 Members of the Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Board of Directors' functions, save where they have acted recklessly. Any costs arising where a director has acted honestly and in good faith will be met by the Trust.

41.2 The Trust may make such arrangements, as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, or directors, to meet all or any liabilities, which are properly the liabilities of the Trust under paragraph 41.1 above.

42. Amendments to the Constitution

42.1 The Trust may make amendments to its constitution only if:

42.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments; and

42.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.

42.2 Amendments made under paragraph 42 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.

The Constitution

- 42.3** Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 42.3.1** At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
- 42.3.2** The Trust must give the members an opportunity to vote on whether they approve the amendment.
- 42.4** 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.
- 42.5** Amendments by the Trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

43. Merger, Acquisition, Separation or Dissolution of the Trust

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

44. Significant Transactions

44.1 The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.

44.2 "Significant Transaction" means:

Category	Ratio	Description	Non-healthcare/ international	UK healthcare
Size	Assets	The gross assets* subject to the transaction divided by the gross assets of the NHS FT	> 5%	> 10%
	Profits I	The EBITDA attributable to the assets subject to the transaction divided by the EBITDA of the NHS FT	> 12.5%	> 25%
	Income	The income attributable to the assets subject to the transaction divided by the income of the NHS FT	> 5%	> 10%
	Consideration to total NHS FT capital	The gross capital† of the company or business being acquired divided by the total	> 5%	> 10%

The Constitution

capital of the NHS FT

Profitability	Profits II	The EBITDA margin attributable to the assets subject to the transaction	Dilutive [‡]	Dilutive [‡]
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* Gross assets is the total of fixed assets and current assets

† Gross capital equals the market value of the target's shares and debt securities, plus all other liabilities, plus the excess of current liabilities over current assets

‡ Lower EBITDA margin than the NHS FT has reported in the last audited financial year

Category	Description	
Other (as defined by the REID guidance)	Any investments that may have any one or more of the following characteristics:	<ul style="list-style-type: none"> ▪ An equity component ▪ Significant reputational risk ▪ The potential to de-stabilise the core business ▪ The creation of material contingent liabilities
Novel and contentious (as defined by LYPFT)	Any transactions that may have any one or more of the following characteristics:	<ul style="list-style-type: none"> ▪ Non-core business for the Trust ▪ Locality-based services outside of our adjacent geographical patch ▪ Services which raise serious ethical issues

45. Interpretation and Definitions

The following interpretations and definitions are applicable to the constitution and its Annexes.

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the 2012 Act.

Where the Constitution or any of its Annexes requires the number of governors or votes to be calculated, and where that calculation results in a number where all or part of that result is less than one whole vote or governor, the number that is less than one whole vote or governor shall be disregarded for the purpose of this calculation.

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

2006 Act Is the National Health Service Act 2006 as amended by the 2012 Act

2012 Act Is the Health and Social Care Act 2012

The Constitution

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.
Annual Members' Meeting	Is defined in paragraph 10.1 of the Constitution.
Appointed governor	Means those governors appointed by the appointing organisation.
Auditor	Means an individual or organisation appointed by the Trust's governors to evaluate and verify the accuracy of the financial records and accounting practices of the Trust.
Authorisation	Is the granting of an application made by an aspirant NHS foundation trust by Monitor.
Board of Directors	Is the Board of Directors of the Trust as constituted in accordance with his constitution and referred to in paragraph 21 of the constitution.
Chair	Means the Chair of the Trust, or in relation to the function of presiding at, or chairing a meeting where another person is carrying out that role as required by the constitution.
Chief Executive	Means the chief officer of the Trust with accounting officer responsibility
Constitution	Means this constitution and all annexes to it
Council of Governors	Is the Council of the Trust as constituted in accordance with this constitution and referred to in paragraph 11 of this constitution
Director	Unless directly attributed to a specific role or title, shall mean a person appointed to be a director on the Board of Directors whether non-executive (including the Chair of the Trust) or executive (including the Chief Executive)
Elected governor	Means those governors elected by the public constituency, the service user and carer constituency and the staff constituency
Licence	Is the Trust's licence granted by Monitor under the 2012 Act
Local authority governor	Means a member of the Council of Governors appointed by a local authority for an area which includes the whole or part of one or more areas specified in Annex 1 as an area for the Public Constituency.
Model election rules	Means those election rules as published by the Department of Health from time-to-time

The Constitution

Monitor	is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act (the functions of this body corporate are enacted and carried out by NHS Improvement / England)
Service user and carer constituency	Means those who are referred to collectively as the service user and carer constituency, as constituted in accordance with paragraph 8 of this constitution
Partner organisation	Means any organisation specified in paragraph 13.3 with which the Trust has identified it has close working relations and which it has invited to appoint a governor as its representative on the Council of Governors.
Partner organisation governor	Means a member of the Council of Governors appointed by a Partner Organisation
Public constituency	Means those who live in the area(s) specified in Annex 1 of this constitution as area for any public constituency as constituted in accordance with paragraph 6 of this constitution
Secretary	Is the person with responsibility or acting as the secretary or with responsibility for the corporate affairs of the Trust from time-to-time
Staff constituency	Means those who are referred to collectively as the staff constituency, as constituted in accordance with paragraph 7 of this constitution.
Trust	Shall mean the Leeds and York Partnership NHS Foundation Trust
Voluntary organisation	Is a body, other than a public or local authority, the activities of which are not carried on for profit.

Annex 1

ANNEX 1

THE PUBLIC CONSTITUENCY

(Also see paragraphs 6.1, 6.2 and 6.3 of the Constitution)

1. The Public Constituency is split into three areas namely:

Area	Local authority electoral areas
(1) Leeds	Beeston & Holbeck, Burmantofts & Richmond Hill, City & Hunslet, Hyde Park & Woodhouse, Middleton Park, Alwoodley, Chapel Allerton, Moortown, Roundhay, Adel & Wharfedale, Headingley, Otley & Yeadon, Weetwood, Armley, Bramley & Stanningley, Farnley & Wortley, Kirkstall Crossgates & Whinmoor, Gipton & Harehills, Killingbeck & Seacroft, Temple Newsam, Calverley & Farsley, Guiseley & Rawdon, Horsforth, Pudsey, Garforth & Swillington, Harewood, Kippax & Methley, Rothwell, Wetherby. Ardsley & Robin Hood, Morley North, Morley South, Stanley & Outwood East, Wrenthorpe & Outwood West.
(2) York and North Yorkshire	Acomb, Clifton, Fishergate, Guildhall, Heworth, Holgate, Hull Road, Micklegate, Westfield, Bishopthorpe, Derwent, Dringhouses & Woodthorpe, Fulford, Haxby & Wiggington, Heslington, Heworth Without, Huntington & New Earswick, Osbaldwick, Rural West York, Skelton, Rawcliffe & Clifton Without, Strensall, Wheldrake, Appleton Roebuck, Barlby, Brayton, Camblesforth, Cawood with Wistow, Eggborough, Fairburn with Brotherton, Hambleton, Hemingbrough, Martson Moor, MonkFryston & South Milford, North Duffield, Ouseburn, Ribston, Riccall with Escrick, Saxton and Ulleskelf, Selby North, Selby South, Selby West, Sherburn in Elmet, Spofforth with Lower Wharfedale, Tadcaster East, Tadcaster West, Whitley, and the local authority electoral areas listed at paragraph 5 below.
(3) Rest of England and Wales	Any other electoral area in England or Wales except the above.

2. The classification as to which area within the Public Constituency a member will be in will be based on the postcode in the normal contact address as supplied by that member. Where there is doubt as to the classification of a member the Chair of the Trust's decision will be final.
3. The minimum number of members for each of the areas within the Public Constituency is 25. This makes the total minimum number of members in the Public Constituency to be 75.

Annex 1

4. Should an individual area within the Public Constituency fail to achieve or drop below the above minimum numbers, no election shall take place in that area, until such time as the minimum number is reached. An election within that area will then take place within a time period determined by the Council of Governors.
5. The relevant electoral areas are set out below.

Addlebrough	Hookstone	Richmond East
Aire Valley with Lothersdale	Hornby Castle	Richmond West
Amotherby	Hovingham	Rillington
Ampleforth	Huby and Sutton	Ripon Minster
Barden Fell	Ingleton and Clapham	Ripon Moorside
Barton	Killinghall	Ripon Spa
Bedale	Kirkby Malzeard	Romanby
Bentham	Kirkbymoorside	Rossett
Bilton	Knaresborough East	Rudby
Bishop Monkton	Knaresborough King James	Ryedale South West
Bolton Castle	Knaresborough Scriven Park	Saltergate
Boroughbridge	Leeming	Scalby, Hackness and Staintondale
Brompton	Leeming Bar	Scotton
Brompton-on-Swale and Scorton	Leyburn	Seamer
Broughton and Greenhow	Lindhead	Settle and Ribblesbanks
Castle	Low Harrogate	Sherburn
Catterick	Lower Nidderdale	Sheriff Hutton
Cayton	Lower Wensleydale	Shipton
Central	Malton	Sinnington
Claro	Marston Moor	Skipton East
Colburn	Mashamshire	Skipton North
Cowling	Mayfield	Skipton South
Cowtons	Melsonby	Skipton West
Crakehall	Middleham	Sowerby
Croft	Middleton Tyas	Spofforth with Lower Wharfedale
Cropton	Morton-on-Swale	Starbeck
Dales	Mulgrave	Stepney
Danby	New Park	Stillington
Derwent	Newby	Stokesley
Derwent Valley	Newby	Stray
Easingwold	Newsham with Eppleby	Streonshalh
Eastfield	Nidd Valley	Sutton-in-Craven
Embsay-with-Eastby	North Bay	Swainby
Esk Valley	Northallerton Broomfield	Swaledale
Falsgrave Park	Northallerton Central	Tanfield
Filey	Northallerton North	Thirsk
Fylingdales	Northstead	Thornton Dale
Gargrave and Malhamdale	Norton East	Thorntons
Gilling West	Norton West	Tollerton
Glusburn	Osmotherley	Topcliffe
Granby	Ouseburn	Upper Wharfedale
Grassington	Pannal	Washburn
Great Ayton	Pateley Bridge	Wathvale
Harlow Moor	Penhill	Weaponness
Hawes and High Abbotside	Penyghent	West Craven

Annex 1

Hellifield and Long Preston	Pickering East	Whitby West Cliff
Helmley	Pickering West	White Horse
Helperby	Ramshill	Whitstonecliffe
Hertford	Reeth and Arkengarthdale	Wolds
High Harrogate	Ribston	Woodfield
Hipswell	Richmond Central	Woodlands

(Note: for avoidance of doubt regarding interpretation in this annex, where applicable words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.)

Annex 2

ANNEX 2

THE STAFF CONSTITUENCY

(Also see paragraphs 7.4 and 7.5 of the constitution)

1. The Staff Constituency is split into two classes. These are:
 - a. Clinical Staff, Leeds and York & North Yorkshire
 - b. Non-Clinical Staff, Leeds and York & North Yorkshire
2. The classification of “clinical” and “non-clinical” for the purpose of determining which members of staff will be in which class of the Staff Constituency will be defined in accordance with national occupation codes. Where there is doubt regarding the correct placement of a member, the Chair of the Trust’s decision will be final.
3. The minimum number of members in each class of the Staff Constituency is as follows:

Staff Class	Minimum number of members
Clinical Staff Leeds and York & North Yorkshire	300
Non Clinical Staff Leeds and York & North Yorkshire	75

4. Should an individual class within the Staff Constituency fail to achieve or drop below the above minimum numbers, no election shall take place in that class, until such time as the minimum number is reached. An election within that class will then take place within a time period determined by the Council of Governors.

(Note: for avoidance of doubt regarding interpretation in this annex, where applicable words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.)

Annex 3

ANNEX 3

THE SERVICE USER AND CARER CONSTITUENCY

(Also see paragraphs 8.4 and 8.6 of the constitution)

1. The Service User and Carer Constituency is split into five classes. These are:

Class	Membership	Minimum number of Members
Service User Leeds	Service users residing in the Leeds area of the Public Constituency.	18
Service User York and North Yorkshire	Service users residing in the York and North Yorkshire area of the Public Constituency.	14
Carer Leeds	Carers of service users residing in the Leeds area of the Public Constituency.	18
Carer York and North Yorkshire	Carers of service users residing in the York and North Yorkshire area of the Public Constituency	14
Service User and Carer Rest of United Kingdom	Any other service user or carer of a service user who is not a member of the classes above residing in the United Kingdom.	7

2. The classification as to which class a member will be in will be based on the postcode in the normal contact address as supplied by that member. Where there is doubt as to the placement of a member, the Chair of the Trust's decision will be final.
3. Should an individual class within the Service User and Carer Constituency fail to achieve or drop below the above minimum numbers, no election shall take place in that class, until such time as the minimum number is reached. An election within that class will then take place within a time period determined by the Council of Governors.

(Note: for avoidance of doubt regarding interpretation in this annex, where applicable words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.)

Annex 4

ANNEX 4

COMPOSITION OF COUNCIL OF GOVERNORS

(Also see paragraphs 11.2 and 11.3 of the constitution)

1. The composition of the Council of Governors shall be as follows:

Elected Governors

Constituency	Area/ Class	Number of Governor Seats
Public	Leeds	6
	York and North Yorkshire	1
	Rest of England and Wales	1
Service User and Carer	Service User Leeds	4
	Service User York and North Yorkshire	1
	Carer Leeds	3
	Carer York and North Yorkshire	1
	Service User and Carer Rest of United Kingdom	1
Staff	Clinical Staff Leeds and York & North Yorkshire	4
	Non-Clinical Staff Leeds and York & North Yorkshire	2
Appointed Governors		
Local Authority Governors		
City of York Council		1
Leeds City Council		1
Partner Organisation Governors		
Volition Leeds (mental health representative)		1
Volition Leeds (learning disability representative)		1
York Centre for Voluntary Service		1
Director for Children and Families Programme, West Yorkshire and Harrogate ICS		1

Annex 5

ANNEX 5

RULES FOR ELECTIONS

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1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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“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.

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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.

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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.

Annex 5

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,

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- (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.

Annex 5

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.

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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

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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.

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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.

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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

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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 providedto 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

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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

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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.

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- 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,

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- (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

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voting system in respect of each vote cast by a voter using the telephone that comprises of:

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

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

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

The poll

27. Eligibility to vote

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

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28. Voting by persons who require assistance

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

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

29. Spoilt ballot papers and spoilt text message votes

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

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

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

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

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

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

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

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

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

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- 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

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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.

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- 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.

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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.

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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

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

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

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- 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.

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PART 6: COUNTING THE VOTES

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

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

or

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

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

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

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

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

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

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

“*stage of the count*” means:

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

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

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

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

42. Arrangements for counting of the votes

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

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

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

43. The count

43.1 The returning officer is to:

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

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

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

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

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

STV44.3 Any text voting record:

- (a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (b) on which anything is written or marked by which the voter can be

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identified except the unique identifier, or

(c) which is unmarked or rejected because of uncertainty,

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

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

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

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FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

- (a) does not bear proper features that have been incorporated into the ballot paper,
- (b) voting for more candidates than the voter is entitled to,

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- (c) writing or mark by which voter could be identified, and
- (d) unmarked or rejected because of uncertainty,

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

STV45. First stage

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

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

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

STV46. The quota

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

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

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

STV47. Transfer of votes

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

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

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

STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer

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each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.

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

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

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

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

STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:

- (a) a transfer value calculated as set out in rule STV47.4(b), or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

STV47.8 Each transfer of a surplus constitutes a stage in the count.

STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

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- STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
 - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.

STV47.11 This rule does not apply at an election where there is only one vacancy.

STV48. Supplementary provisions on transfer

STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
- (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.

STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:

- (a) record the total value of the votes transferred to each candidate,
- (b) add that value to the previous total of votes recorded for each candidate and record the new total,
- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
- (d) compare:
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

STV48.3 All ballot documents transferred under rule STV47 or STV49 shall be clearly

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marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.

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

STV49. Exclusion of candidates

STV49.1 If:
(a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
(b) subject to rule STV50, one or more vacancies remain to be filled,

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

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

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

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

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

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

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

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STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

STV50. Filling of last vacancies

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

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

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

STV51. Order of election of candidates

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

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

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

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

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FPP51. Equality of votes

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

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PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

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

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

FPP52.2 The returning officer is to make:

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

available on request.

STV52. Declaration of result for contested elections

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

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –
 - (i) where the election is held under a proposed constitution pursuant to

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powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or

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

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

STV52.2 The returning officer is to make:

(a) the number of first preference votes for each candidate whether elected or not,

(b) any transfer of votes,

(c) the total number of votes for each candidate at each stage of the count at which such transfer took place,

(d) the order in which the successful candidates were elected, and

(e) the number of rejected ballot papers under each of the headings in rule STV44.1,

(f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

53. Declaration of result for uncontested elections

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

(a) declare the candidate or candidates remaining validly nominated to be elected,

(b) give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation, and

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

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PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

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

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

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the list of 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.

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

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

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55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

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

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

57. Retention and public inspection of documents

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

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

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

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

58.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing –
 - (i) any rejected ballot papers, including ballot papers rejected in part,
 - (ii) any rejected text voting records, including text voting records rejected in part,
 - (iii) any disqualified documents, or the list of disqualified documents,

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- (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
- (v) the list of eligible voters, or
- (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,

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

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

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

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

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

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

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

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

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

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PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

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

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

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

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

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

FPP59.5 The returning officer is to:

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

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

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

- (a) its contents,

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

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

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

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PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

61.1 A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:

- (a) personal expenses,
- (b) travelling expenses, and expenses incurred while living away from home, and
- (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

62. Election expenses incurred by other persons

62.1 No person may:

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

62.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

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

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

as it considers necessary.

63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates standing for election, and
- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

64. Information about candidates for inclusion with voting information

64.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

64.2 The information must consist of:

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

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

65.1 In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed

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accordingly.

- 65.2 The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

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PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

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

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PART 12: MISCELLANEOUS

67. Secrecy

67.1 The following persons:

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

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

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

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

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ANNEX 6

ADDITIONAL PROVISIONS FOR THE COUNCIL OF GOVERNORS

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1 INTERPRETATION

- 1.1 Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she shall be advised by the Trust Secretary or Chief Executive).
- 1.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.

2 CRITERIA FOR WHICH AN INDIVIDUAL IS NOT ELIGIBLE TO BE ELECTED OR APPOINTED AS A GOVERNOR OR REMAIN A GOVERNOR ON THE COUNCIL OF GOVERNORS

A person may not become a governor, and if already holding such office shall be disqualified and will immediately cease to do so, if:

- 2.1 He/she is the chair, or a non-executive director or executive director of the Trust.
- 2.2 He/she is the chair, a non-executive director, executive director or a governor of another NHS foundation trust, any other NHS body or health service provider (unless he/she is appointed as a governor by an appointing organisation which is a health service body or provider. For clarity, this organisation will be listed in Annex 4 of this Constitution in the Appointed Governor section).
- 2.3 He/she is the spouse, partner, parent or child of the chair, a non-executive director or executive director of the Trust.
- 2.4 He/she is under the age of 16.
- 2.5 He/she is a member of a Local Authority Overview and Scrutiny Committee to which the Trust has formal accountability.
- 2.6 He/she is a member of Healthwatch or equivalent statutory organisation.
- 2.7 He/she is a vexatious complainant of the Trust, as defined by Trust policy.
- 2.8 He/she has within the last 10 years been a perpetrator of or involved in a serious incident of assault or violence, or one or more incidents of harassment, against any of the Trust's employees or other persons who exercise functions for the purposes of the Trust.
- 2.9 He/she has been excluded from any Trust premises within the last 10 years.
- 2.10 He/she is disqualified in accordance with paragraph 14 of the Constitution.
- 2.11 His/her name has been placed on the registers of Schedule 1 Offenders Pursuant to the Sex Offenders Act 1977 and / or the Children and Young Persons Act 1933, or is subject to a sex offenders' order.

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- 2.12** On the basis of disclosures obtained through an application to the Disclosure and Baring Service (DBS) he/she is not considered suitable in accordance with the Trust's procedure covering the Disclosure and Baring Service.
- 2.13** He/she has been dismissed, otherwise than by reason of redundancy or ill health, from any work with a health service body.
- 2.14** He/she is a person whose tenure of office as the chair, non-executive, executive director or governor of a health service body has been terminated for non-attendance at meetings, for non-disclosure of a pecuniary interest on the grounds that his/her appointment is not in the interests of the health service or for any other reason deemed sufficiently serious as to warrant the termination of office by that body.
- 2.15** He/she has had his/her name erased, removed or struck off a register of professionals maintained by a regulator of healthcare or social work professionals, or has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had his/her name erased removed or struck off a register or had his/her suspension lifted or qualification re-instated (as applicable).
- 2.16** He/she has served a total of three terms of office on the Trust's Council of Governors. For clarity one term of office shall be for up to three years, however, where a governor holds a term of office for less than three years this shall be counted as one term of office.
- 2.17** He/she has had his/her term of office terminated by the Trust's Council of Governors.

3 REASONS FOR THE TERMINATION OF OFFICE, DISQUALIFICATION, REMOVAL AND SUSPENSION OF A GOVERNOR

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

- 3.1** He/she resigns by notice in writing to the Trust Secretary.
- 3.2** In the case of an elected governor, he/she ceases to be a member of the Trust, or ceases to be eligible to be a member of the Trust or ceases to be eligible to be a member of the constituency from which he/she is elected.
- 3.3** In the case of an appointed governor, the appointing organisation terminates the appointment.
- 3.4** It otherwise comes to the notice of the Trust Secretary at the time the governor takes office, or later, that the governor is disqualified in accordance with paragraph 14 of the Constitution.
- 3.5** It otherwise comes to the notice of the Trust Secretary at the time the governor takes office, or later, that the governor is disqualified in accordance with any part of section 2 of this Annex.

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3.6 He/she has failed to sign and deliver to the Trust Secretary a statement in the form required by the Council of Governors confirming acceptance of the Council of Governors' Code of Conduct.

3.7 He/she fails to attend two formal meetings in any financial year, unless the Council of Governors is satisfied that:

3.7.1 The absences were due to reasonable causes; and

3.7.2 He/she will be able to start attending meetings again within such a period as the Council of Governors considers reasonable.

Where the Council of Governors fails to satisfy itself under paragraph 3.7.1 or 3.7.2 of this Annex, the matter shall be dealt with in accordance with paragraph 4 of this Annex.

3.8 He/she has failed to undertake any training which the Council of Governors requires all governors to undertake, unless the Council of Governors is satisfied that:

3.8.1 The failure to undertake training was due to reasonable causes; and

3.8.2 He/she will be able to undertake the required training within such a period as the Council of Governors considers reasonable.

Where the Council of Governors fails to satisfy itself under paragraph 3.8.1 or 3.8.2 of this Annex, the matter shall be dealt with in accordance with paragraph 4 of this Annex.

3.9 He/she is removed from the Council of Governors by a resolution approved by a majority vote of the governors present and eligible to vote, excluding the governor in question, at a public meeting on the grounds that:

3.9.1 He/she has committed a breach of the Council of Governors' Code of Conduct; or

3.9.2 He/she has acted in a way which is detrimental to the Trust or in a manner contrary to the interests of the Trust; or

3.9.3 He/she has failed to discharge his/her responsibilities as a governor; or

3.9.4 His/her attitude and behaviour is deemed unacceptable; or

3.9.5 He/she has been suspended by the Chair of the Council of Governors three times or more; or

3.9.6 Any other grounds the Council of Governors may deem reasonable to remove him/her by.

3.10 Being a member of one of the Public, Service User and Carer or Staff Constituencies, he/she refuses or fails to sign a declaration, in the form specified by the Council of Governors, that he/she is entitled to be a member and to vote

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as a member of one of the afore mentioned Constituencies, and that he/she is not prevented from being a member of the Council of Governors.

- 3.11** It is found that he/she has failed to declare an interest in accordance with paragraph 18 of the Constitution and paragraph 7 and 8 of Annex 7 of the Constitution.
- 3.12** He/she has failed to complete and sign a declaration of interest form in the format agreed and deliver this to the Trust Secretary in accordance with paragraphs 7 and 8 of Annex 7 of this constitution.

4 THE TERMINATION OF OFFICE, DISQUALIFICATION, REMOVAL AND SUSPENSION OF GOVERNORS

- 4.1** Where an individual has been elected or appointed to be a governor and he/she becomes disqualified from office under paragraph 14 of the constitution, or where he/she becomes disqualified from office under any part of paragraph 2 of this Annex, he/she shall notify the Trust Secretary in writing of such a disqualification/s. This notice in writing shall be taken as a letter of resignation.
- 4.2** Where a governor resigns under paragraph 4.1 of this Annex the Council of Governors shall, at their next general meeting, be notified by the Trust Secretary of his/her resignation, and save where disclosure would breach confidentiality, the reason for resignation.
- 4.3** Failure to notify the Trust secretary in writing shall not prevent the governor from being disqualified as a governor.
- 4.4** Where it comes to the attention of the Trust Secretary that a governor is disqualified, or the Chair of the Trust is of the view that there is a prima facie case for removal of the governor on the grounds set out in paragraph 3 of this Annex, the Trust Secretary shall give the said governor 14 days written notice for him/her to show cause why he/she is not disqualified from holding office or reasons why he/she should not have his/her office terminated, as the case may be.
- 4.5** Receipt of written acceptance of the reason for the termination of office shall be taken as a letter of resignation, and his/her resignation shall be notified to the Council of Governors at their next general meeting, and save where this would breach confidentiality, the reason for resignation.
- 4.6** Where a governor fails to respond to a written notice issued under paragraph 4.4 of this Annex, or where the governor disputes the reason outlined in a written notice issued under paragraph 4.4 of this Annex, the Trust Secretary shall refer the matter to the Council of Governors for consideration as to the action necessary.
- 4.7** Where it is for the Council of Governors to determine the termination of office, disqualification, removal or suspension of a governor this shall be done at a general meeting. The Chair shall decide if there is any reason why the public shall be excluded in accordance with the Annex 7 Council of Governors Standing Order 4.1.

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- 4.8** Where the matter is for the Council of Governors to determine under paragraph 4.7 of this Annex, the governor shall be given one month's written notice prior to the meeting and shall be invited to attend and present any such evidence as may be appropriate.
- 4.9** The governor shall be given adequate details of the matters to be considered by the Council of Governors, and the Trust Secretary will agree with the Chair a procedure for the proceedings before the Council of Governors which will give the governor adequate opportunity to both answer and test the case against him/her.
- 4.10** If the governor fails to attend, the meeting may proceed in his/her absence at the discretion of the Chair.
- 4.11** A governor will cease to be a governor and be removed from the Council of Governors upon the declaration by the Chair of the resolution to terminate his/her office, carried by a majority vote of the governors present and eligible to vote at the meeting, excluding the governor in question.

5 VACANCIES ARISING ON THE COUNCIL OF GOVERNORS

- 5.1** Where a vacancy arises due to the expiry of a governor's, or a number of governors' term(s) of office the following provisions shall apply:
- 5.1.1** Where the vacancy arises amongst the appointed governors, the Trust Secretary shall request that the appointing organisation appoints a replacement.
- 5.1.2** Where the vacancy arises amongst the elected governors, the Council of Governors shall:
- 5.1.2.1** Agree to leave the seat vacant until the next round of elections;
or
- 5.1.2.2** Agree to call an election.
- 5.2** Where a vacancy arises on the Council of Governors for any reason other than the expiry of term of office, the following provisions will apply:
- 5.2.1** Where the vacancy arises amongst the appointed governors, the Trust Secretary shall request that the appointing organisation appoints a replacement to hold office.
- 5.2.2** Where the vacancy arises amongst the elected governors the Council of Governors shall:
- 5.2.2.1** If the vacancy arises within six months of an election invite the next highest polling candidate for that seat from that election. Where that candidate is willing to take office, the seat shall be filled for any un-expired period of the term of office; or
- 5.2.2.2** Agree to leave the seat vacant until the next round of elections;
or

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5.2.2.3 Agree to call an election.

- 5.3** In making a decision as to the appropriate course of action, set out in paragraphs 5.1 and 5.2, the need for the elected governors on the Council of Governors to be representative of the membership must be considered.

6 ROLES AND RESPONSIBILITIES OF GOVERNORS AND THE COUNCIL OF GOVERNORS

- 6.1** The roles and responsibilities of the Council of Governors will be set out in a written document. This document will include a clear explanation of the responsibilities of governors towards members and other stakeholders and how governors will seek their views and inform them.
- 6.2** This document shall be agreed by the Council of Governors at a general meeting and reviewed in accordance with the time period specified in the document to ensure it still meets the needs of the work of the Council of Governors.
- 6.3** Notwithstanding any provisions in the agreed document specified in paragraph 6.2 of this Annex the Council of Governors or individual governors may exercise other functions at the request of the Board of Directors.
- 6.4** In the normal course of duties, governors must not visit areas or settings in which treatment is provided, except as arranged by the Board of Directors or their designated representative. Such a visit will only take place where there is a clear purpose and need. (This paragraph does not apply to visits required in a personal capacity, for example where visiting a friend or relative, or attending a personal appointment.)
- 6.5** The Council of Governors does not share collective responsibility with the Board of Directors for decisions taken by the Board of Directors.
- 6.6** The 2006 Act (schedule 7 paragraph 15(2)) provides that all the powers of the Trust are to be exercised by the Board of Directors, therefore the Council of Governors cannot veto decisions made by the Board of Directors.
- 6.7** A governor may refer a question as to whether the Trust has failed or is failing:
- 6.7.1** To act in accordance with its constitution; or
- 6.7.2** To act in accordance with a provision made by or under Chapter 5 of the 2006 Act,
- to a panel of persons appointed by Monitor only if more than half of the members of the Council of Governors voting approve the referral.

7 CODE OF CONDUCT FOR GOVERNORS

- 7.1** The Trust shall publish a Code of Conduct for Governors and this shall be reviewed in accordance with the time period specified in the Code.

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- 7.2** Governors shall comply with the Code of Conduct.
- 7.3** Governors are required to sign a copy of the Code of Conduct as confirmation of acceptance of the Code at the time of appointment / election or at any other point in a governor's period of office as may be determined by the Trust Board Secretary.
- 7.4** A governor not signing the Code of Conduct may be a reason for termination of office as set out in paragraph 3.6 of this Annex.

8 STAFF GOVERNORS – SPECIAL LEAVE POLICY

- 8.1** Members of Trust staff elected to the Council of Governors are entitled to take time out of normal duties in accordance with the Trust's Special Leave Policy.
- 8.1** Special leave to undertake governor duties must be discussed with an individual's line manager, and such leave will be considered by the line manager alongside any other special leave previously or subsequently granted. It shall be for the line manager to decide if it is appropriate to authorise special leave for governor duties.
- 8.2** Any time required over and above that agreed by managers under the Special Leave Policy in order for staff governors to carry out their duties will be taken out of staff's own personal time.
- 8.3** Staff must ensure they are authorised by their line manager to take leave under the Special Leave Policy prior to standing for election.

9 COUNCIL OF GOVERNORS' PERFORMANCE

- 9.1** The Chair of the Trust, being responsible for the leadership of the Council of Governors shall, at least annually hold one to one meetings with each individual governor. These one to one meetings will facilitate conversations and identify any emerging themes for future work-plans of the Council of Governors or areas for development.

10 REMUNERATION OF THE CHAIR OF THE TRUST AND OTHER NON-EXECUTIVE DIRECTORS

- 10.1** It shall be for the Council of Governors to agree the remuneration and allowances, and other terms and conditions of office of the Chair of the Trust and other non-executive directors in accordance with paragraph 30 of the Constitution.
- 10.2** In order to determine the proper level of remuneration and allowances that should be paid to the Chair and other non-executive directors the Council of Governors should take account of the benchmark fees paid in other foundation trusts and may also consult, at the Trust's expense, with external professional advisers.

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11 APPOINTMENT OF NON-EXECUTIVE DIRECTORS (INCLUDING THE CHAIR OF THE TRUST)

- 11.1 The Board of Directors shall establish a Nominations Committee.
- 11.2 The Council of Governors shall establish an Appointments and Remuneration Committee as a sub-committee of the Council of Governors to assist the Council in the process of the appointment of non-executive directors, including the appointment of the Chair of the Trust.
- 11.3 The appointment of all non-executive directors, including the Chair of the Trust shall be made on merit using a process agreed by the Council of Governors.
- 11.4 Where the Council of Governors ratifies an appointment, the Chair of the Trust will convey the decision to the successful candidate. Where it is the appointment of the Chair of the Trust, the Lead Governor supported by the Trust Board Secretary will convey the decision to the successful candidate.

12 APPOINTED GOVERNORS

Local Authority Governors

12.1 Each of:

12.1.1 City of York Council;

12.1.2 Leeds City Council.

shall be entitled to appoint one Local Authority Governor in accordance with a process of appointment agreed by it with the Trust Secretary. The absence of any such agreed process of appointment shall not preclude the relevant local authority from appointing its Local Authority Governor.

12.2 A Local Authority Governor:

12.2.1 shall hold office for a period of up to 3 years;

12.2.2 is eligible for re-appointment at the end of that period;

12.2.3 can be re-appointed on two separate occasions but can serve no more than a maximum of nine years in office; and

12.2.4 shall cease to hold office if any of the provisions of paragraphs 2 to 4 of this Annex 6 apply.

Partner Organisation Governors

12.3 The Trust shall nominate those organisations to be designated as Partner Organisations for the purposes of this Constitution. Each of the Partner Organisations shall be entitled to appoint one Partner Organisation Governor in accordance with a process agreed by it with the Trust Secretary. The absence of

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any such agreed process of appointment shall not preclude any Partner Organisation from appointing its Governor. The organisations so nominated as Partnership Organisations are:

12.3.1 Director for Children and Families Programme, West Yorkshire and Harrogate ICS;

12.3.2 Volition Leeds (mental health representative);

12.3.3 Volition Leeds (learning disability representative); and

12.3.4 York Centre for Voluntary Service.

12.4 A Partner Organisation Governor:

12.4.1 shall hold office for a period of up to 3 years;

12.4.2 it may be deemed necessary to rotate individual partner organisations in some sectors and this would be considered at the point where an individual governor came to the end of their term of office and this shall be done in accordance with a process of appointment agreed with the Trust Secretary;

12.4.3 any one individual partner governor if eligible for reappointment can be re-appointed on two separate occasions but can serve no more than a maximum of nine years in office; and

12.4.4 shall cease to hold office if any of the provisions of paragraphs 2 to 4 of this Annex 6 apply.

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ANNEX 7

**STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF
THE COUNCIL OF GOVERNORS**

FOREWORD

The Leeds and York Partnership NHS Foundation Trust (the “Trust”) is a public benefit corporation that was established in accordance with the provisions of the National Health Service Act 2006.

The principal places of business are all within the boundary of Leeds and the head office is located at Trust Headquarters, St Mary’s House, St Mary’s Road, Potternewton, Leeds, LS7 3JX.

These Standing Orders are for the regulation of the Trust’s Council of Governors’ proceedings and business.

The Trust believes that public service values lie at its heart. High standards of corporate and personal integrity based on a recognition that patients come first, is a fundamental value of the Trust. Governors are expected to observe the Nolan Principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Everything done by the Council of Governors should be able to stand the test of scrutiny, public judgment on propriety, and professional codes of conduct.

The Council of Governors will in its business be as transparent as it can be about its activities in order to promote confidence between itself, the membership, the Board of Directors, staff, services users and the public.

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Annex 7

1 INTERPRETATION

- 1.1** Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders on which he/she shall be advised by the Trust Secretary or Chief Executive.
- 1.2** Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.

2 GENERAL INFORMATION

- 2.1** The Trust's Constitution makes provision for Standing Orders for the practice and procedure of the Council of Governors.
- 2.2** The purpose of the Council of Governors' Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Council of Governors' meetings and associated deliberations. The Council of Governors shall at all times seek to comply with the "NHS Foundation Trust Code of Governance", which is founded on "The Combined Code".
- 2.3** All business conducted by the Council of Governors shall be conducted in the name of the Trust. All decisions must be taken objectively and in the interests of the Trust.
- 2.4** The governors are responsible for representing the views of the Trust's members and partner organisations in the governance of the Trust. In doing so governors must act in the best interests of the Trust and adhere to its values.
- 2.5** Members of the Council of Governors must make decisions together and take joint responsibility for them. The extent to which any one governor or a small group of governors, is empowered to speak for, or take action on behalf of the Trust or the Council of Governors, must be a matter for the Council of Governors to decide. Such decisions must be recorded fully.

3 COMPOSITION OF THE COUNCIL OF GOVERNORS

- 3.1** The composition of the Council of Governors shall be in accordance with Annex 4 of this Constitution, however, there may, from time-to-time, be vacant seats on the Council of Governors.
- 3.2** The Council of Governors shall have a Chair. This shall be the Chair of the Trust.
- 3.3** The Chair of the Trust shall be responsible for the leadership of the Council of Governors.
- 3.4** The Chair of the Trust shall also be responsible for chairing the Council of Governors' meetings. Where the Chair of the Trust is unable to Chair the Council of Governors' meetings the Chair of the meeting shall be determined in accordance with paragraph 4.7 of this Annex.

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- 3.5** The Trust Secretary or their deputy shall be present at all Council of Governors' meetings.

4 MEETINGS OF THE COUNCIL OF GOVERNORS

Meetings of the Council of Governors may be held by virtual conferencing or teleconference facilities or be held face-to-face. By whatever method the meeting is held these standing orders shall apply.

4.1 Meetings Held in Public

- 4.1.1** The public shall be afforded facilities to attend all formal meetings of the Council of Governors subject to the provisions of these Standing Orders paragraph 4.1.2 below.

- 4.1.2** The Council of Governors may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that:

4.1.2.1 Publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted (see resolution at 4.1.3 below); or

4.1.2.2 There are special reasons stated in the resolution and arising from the nature of the business of the proceedings.

- 4.1.3** In the case of Standing Order 4.1.2.1 above the resolution shall state as follows:

"Members of the public be excluded from the [meeting] [remainder of this meeting] having regard to the confidential nature of the business transacted, publicity on which would be prejudicial to the public interest."

- 4.1.4** The Chair may exclude any member of the public from the meeting of the Council of Governors if they are interfering with or preventing the proper or reasonable conduct of that meeting.

- 4.1.5** Members of the public or representatives of the press may not record proceedings in any manner whatsoever, other than writing, or make any oral report of the proceedings as they take place, without the prior agreement of the Council of Governors.

- 4.1.6** The right of attendance at meetings by members of the public as referred to in Standing Order 4.1.1 above, does not give right to the said members of the public to ask questions or otherwise participate in that meeting, unless invited to do so by the Chair.

- 4.1.7** Meetings of the Council of Governors shall be held at least four times each year, inclusive of an Annual Members' Meeting, at times and places that the Council of Governors may determine.

- 4.1.8** When determining the place / arrangements for meetings, the Council of Governors should have regard for the accommodation of the public and

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ensure the business of the Council of Governors can be conducted without interruption and disruption and without prejudice to the power to exclude on grounds of the confidential nature of any business.

4.1.9 Any member of the Board of Directors shall have the right to attend a general meeting of the Council of Governors, but the Council of Governors shall have the right to give prior notice of the requirement for:

4.1.9.1 a director or a representative of the Trust's auditors to attend any general meeting in order that governors may raise questions in respect of particular agenda items or other matters that may arise;

4.1.9.2 one or more of the directors to attend a meeting 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),

and if a director is required to attend a Council of Governors' meeting it shall be incumbent on the director to do so.

4.1.10 Members of the public may request that they address a question to the Council of Governors. Any member of the public wishing to do so must advise the Trust Secretary prior to the commencement of the meeting, stating their name and the nature of their question. These questions shall be brought to the attention of the Chair prior to the commencement of the meeting and the decision as to whether any question will or will not be allowed to be put to the Council of Governors by any member of the public will lie with the Chair, whose decision shall be final.

4.2 Confidentiality

4.2.1 Matters to be dealt with by the Council of Governors following the exclusion of members of the public shall be confidential to the Council of Governors.

4.2.2 Governors, directors, officers or any employee or representative of the Trust in attendance at a private meeting or private part of any meeting, shall not reveal or disclose the contents of the papers, discussions or minutes of the items taken in private, outside the Council of Governors' meetings without the express permission of the Council of Governors.

4.3 Calling Meetings

4.3.1 Notwithstanding, Standing Order 4.1.7 above, the Chair may, in exceptional circumstances, call a meeting of the Council of Governors at any time.

4.3.2 If the Chair refuses to call a meeting after a request for that purpose, signed by at least one third of the whole number of governors and

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delivered to the Trust Secretary, or if without so refusing the Chair does not call a meeting within fourteen days after a request to do so has been delivered to the Trust Secretary, the said governors may forthwith call a meeting.

- 4.3.3** Any meeting called in accordance with paragraph 4.3.2 of this Annex shall be chaired by the Chair of the Trust and attended by the Trust Secretary.

4.4 Notice of Meetings and Agenda

- 4.4.1** Before each meeting of the Council of Governors, a notice of the meeting signed by the Chair of the Trust or by an officer of the Trust authorised by the Chair of the Trust to sign on his/her behalf, and an agenda specifying the business proposed to be transacted at it, shall be delivered to every member of the Council of Governors, or sent by post to the usual place of residence of such a governor, at least eight clear working days before the meeting. Supporting papers shall accompany the agenda except in an emergency and only where the Chair has agreed agenda papers may be to follow.
- 4.4.2** A notice shall be presumed to have been served one day after posting or delivery. Lack of service of the notice on any governor shall not affect the validity of a meeting subject to Standing Order 4.4.3 below.
- 4.4.3** Notwithstanding the above requirement for notice, the Chair may waive notice.
- 4.4.4** In the case of a meeting called by governors in default of the Chair as per Standing Order 4.3.2 above, those governors calling the meeting shall sign the notice and no business shall be transacted at the meeting other than that specified in the notice. The notice and an agenda specifying the business to be transacted at it shall be delivered to every member of the Council of Governors, or sent by post to the usual place of residence of such a governor. Failure to serve such a notice on more than three quarters of the whole number of governors will invalidate the meeting. A notice shall be presumed to have been served one day after posting or delivery.
- 4.4.5** Notice of a meeting called as per Standing Order 4.3.2 above shall be delivered to the Chair of the Trust and the Trust Secretary. Failure to serve such a notice will invalidate the meeting.
- 4.4.6** Before each meeting of the Council of Governors a public notice of the time and place of the meeting and with the exclusion of any item to be held in private the agenda shall be displayed on the Trust website at least three clear days before the meeting.

4.5 Record of Attendance

- 4.5.1** Governors must make every effort to attend meetings of the Council of Governors where appropriate and practicable.

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4.5.2 Where it is not possible for a governor to attend apologies should be sent to the Trust Secretary no later than three working days prior to the meeting.

4.5.3 The names of all individuals who attended and those who gave apologies for each meeting shall be recorded in the minutes.

4.6 Setting the Agenda

4.6.1 The Council of Governors may determine that certain matters shall appear on every agenda of a meeting of the Council of Governors and may request these be addressed prior to any other business being conducted if appropriate.

4.6.2 A governor, or officer of the Trust, desiring a matter to be included on an agenda shall make his/her request in writing to the Trust Secretary at least twelve clear working days before the meeting for consideration by the Chair. The request should state whether the item of business proposed is to be transacted in the presence of the public, and should include appropriate supporting information. Requests made less than twelve days before a meeting may be included on the agenda at the discretion of the Chair.

4.6.3 The Council of Governors will set its own agenda, however there will be items of business, which the Council of Governors is required to consider in order to further the day-to-day business of the Trust. It shall be for either the Chair of the Trust or the Board of Directors to determine when such items will be included on the Council of Governors' agendas.

4.7 Chair of the Council of Governors' Meetings

4.7.1 The Chair of the Trust or in his/her absence or incapacity the Deputy Chair of the Trust will chair meetings of the Council of Governors.

4.7.2 Where the Chair has died or has otherwise ceased to hold office or where he/she is unable to perform his/her duties as a Chair owing to illness, conflict of interest in a matter under discussion, planned absence or any other cause, the role of Chair of the Council of Governors shall be carried out by the Deputy Chair of the Trust until such time as the Chair is able to continue with his/her duties or another chair is appointed. Where the Deputy Chair is carrying out the duties of the chair references to the Chair in these Standing Orders shall, be taken to include references to the Deputy Chair.

4.7.3 Where during a meeting of the Council of Governors both the Chair and the Deputy Chair declare a conflict of interest and withdraws from the discussion of an agenda item or items it shall be for the governors present at the meeting to appoint from amongst them a temporary chair to chair the meeting or part of the meeting. This shall normally be the Lead Governor. It shall be clearly agreed and minuted those agenda item or items the temporary chair shall preside over. Once business on the afore mentioned item or items is concluded, the Chair of the Trust, or Deputy

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Chair of the Trust, as appropriate, shall resume his/her duties as Chair of the Council of Governors, and the temporary chair will resume his/her role as governor.

4.8 Procedure for Motions

4.8.1 Notice of Motions. A member of the Council of Governors desiring to move or amend a motion shall send a written notice thereof at least twelve clear working days before the meeting to the Chair of the Trust, who shall insert the motion into the agenda for the meeting, subject to the notice being in order and permissible under the appropriate regulations. This Standing Order shall not prevent any motion being moved during the meeting without notice on any business mentioned on the agenda, subject to Standing Order 4.4.4.

4.8.2 Emergency Motions. Subject to the agreement of the Chair a governor may give written notice of an emergency motion after the issue of the notice of meeting and agenda, and before the commencement of the meeting. Acceptance of such a motion for inclusion on the agenda will be at the discretion of the Chair. If in order it shall be declared to the Council of Governors at the commencement of the business of the meeting as an additional item included on the agenda. Emergency is defined as a matter which will adversely affect the Trust in the next seven days.

4.8.3 Proposing a Motion. A motion may be proposed by the Chair or by a governor present to the meeting and eligible to vote and must be seconded by a governor present at the meeting and eligible to vote.

4.8.4 Amendment to a Motion. A motion for amendment shall not be discussed unless it has been proposed and seconded in accordance with Standing order 4.8.3 of this Annex. Amendments to motions shall be relevant to the motion and shall not have the effect of negating the motion before the Council of Governors. If there are a number of amendments, the amended motion shall become the substantive motion put before the meeting, upon which any further amendments may be moved.

4.8.5 Withdrawal of Motion or Amendments. A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

4.8.6 Motions Once Under Debate. When a motion is under discussion or immediately prior to discussion it shall be open to a governor to move:

4.8.6.1 An amendment to the motion; or

4.8.6.2 The adjournment of the discussion or the meeting; or

4.8.6.3 That the meeting proceed to the next business; or

4.8.6.4 The appointment of an ad-hoc committee to deal with a specific item of business; or

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4.8.6.5 That the questions should be now put; or

4.8.6.6 That the member of the Council of Governors be not further heard.

In the case of motions under 4.8.5.3 and 4.8.5.5 to ensure objectivity motions may only be put by a governor who has not previously taken part in the debate.

4.8.7 Right of Reply. The mover of an original motion shall have a right of reply at the close of any discussion on the motion. The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but who may not otherwise speak on it.

4.8.8 Motion to Amend or Rescind a Resolution. Notice of motion to amend or rescind any resolution or general substance of any resolution, which has been passed within the preceding six calendar months, shall bear the signature of the governors who give it and also the signature of four other governors. Before considering any such motion of which notice shall have been given the Council of Governors may refer the matter to any appropriate committee for recommendation.

4.8.9 When the Council of Governors has dealt with any such motion, it shall not be competent for any member of the Council of Governors other than the Chair to propose a motion to the same effect within six months.

4.8.10 A motion to remove the Chair or a non-executive director must be moved by one governor, seconded by 10 governors present and eligible to vote, and carried by three quarters of the total number of governors appointed or elected at the time of the vote, and eligible to vote.

4.9 Chair's Ruling

4.9.1 Statements of governors made at the meetings of the Council of Governors must be relevant to the matter under discussion at the material time and the decision of the chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

4.10 Voting

4.10.1 If in the opinion of the Chair a vote should be required on a matter under discussion at a meeting, the result, unless otherwise specified in the Constitution or its Annexes, shall be determined by a majority of votes of governors present at the meeting and eligible to vote. In the case of any equality in votes, the Chair of the meeting shall have a second or casting vote.

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

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paper ballot may also be used if a majority of governors present at the meeting and eligible to vote so request.

4.10.3 If at least one-third of the governors present and eligible to vote so request, the voting other than by paper ballot on any question may be recorded to show how each governor voted or abstained.

4.10.4 If a governor so requests, his/her vote shall be recorded by name upon any vote (other than a paper ballot).

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

4.11 Minutes

4.11.1 The minutes of the proceedings of each meeting of the Council of Governors shall be drawn up and submitted for agreement at the next ensuing meeting,. The acceptance or amendments of the minutes will be recorded in the minutes of the next ensuing meeting. Minutes may be held either electronically or in paper format but always in a way which is accessible and preserves the continuous record of the meeting.

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

4.11.3 Minutes shall be circulated in accordance with the Council of Governors' wishes.

4.11.4 The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of paragraph 4.1.2 of these Standing Orders.

4.12 Quorum

4.12.1 No business shall be transacted at a meeting of the Council of Governors unless at least one third of governors elected or appointed are present, including a public governor, a carer governor, a service user governor, a staff governor and an appointed governor.

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

4.12.3 Non-quorate meetings may go ahead unless there has been an instruction from the Chair not to proceed with the meeting. Any decisions made at the

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non-quorate meeting must be approved by at least one third of the whole number of governors elected or appointed, including a public governor, a carer governor, a service user governor, a staff governor and an appointed governor.

4.13 Suspension of Standing Orders

4.13.1 Except where this would contravene provision in the Constitution any statutory provision or direction given by Monitor, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of governors appointed or elected are present and that the majority of those present and eligible to vote and do so in favour of the suspension.

4.13.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.

4.13.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Council of Governors.

4.13.4 No formal business may be transacted while Standing Orders are suspended.

4.13.5 The Trust's Audit Committee shall review every decision to suspend Standing Orders.

5 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

5.1 Delegation Due to Emergency. The responsibilities which the Council of Governors has may in emergency be exercised by the Chair of the Trust after having consulted at least two elected governors. Where this has been exercised by the Chair of the Trust this shall be reported to the next formal meeting of the Council of Governors for ratification.

5.2 Delegation to Committees. The Council of Governors shall have the power to delegate some of its duties to those committees which it has formally constituted. To ensure clarity of purpose the Terms of Reference of these committees, and their specific powers shall be laid out and approved by the Council of Governors.

5.2.1 Without prejudicing the formation of any other committee as the Council of Governors see fit and agree, the major committees of the Council of Governors shall be the:

5.2.1.1 Appointments and Remuneration Committee.

5.3 Delegation to a Governor. The Council of Governors may delegate duties to an individual governor but only under a clear remit approved by the Council of Governors. It should be noted that the Council of Governors does not have power to delegate any of its statutory duties, but must reserve such duties to itself.

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6 COMMITTEES – FURTHER PROVISIONS

- 6.1 The Council of Governors may appoint committees of the Council of Governors consisting wholly or partly of persons who are governors. Non-governors may attend such committees if appropriate under the committee's Terms of Reference but they shall have no vote.
- 6.2 The committees established by the Council of Governors shall be such committees as are required to assist the Council of Governors in discharging its responsibilities.
- 6.3 Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall decide.
- 6.4 Committees may not delegate their powers or duties to a further sub-committee unless expressly authorised to do so by the Council of Governors.
- 6.5 The Council of Governors shall approve the membership to all committees that it has formally constituted and shall determine the chair of each committee.
- 6.6 These Standing Orders in their entirety, as far as they are applicable, shall apply also, with the appropriate alteration, to meetings of any committees so established by the Council of Governors and to any sub-committees which the Council of Governors authorises to be established.
- 6.7 Without prejudice to Standing Order 6.6 above there is no requirement to hold meetings of committees in public.

7 DECLARATION OF INTERESTS

- 7.1 All existing governors should declare relevant and material interests. Any governors elected or appointed subsequently should do so on appointment.
- 7.2 Interests that should be regarded "relevant and material" and which for avoidance of doubt should be included in the register are:
 - 7.2.1 Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies).
 - 7.2.2 Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
 - 7.2.3 Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
 - 7.2.4 A position of authority in a charity or voluntary organisation in the field of health and social care.

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- 7.2.5** Any connection with a voluntary or other organisation contracting for NHS Services.
- 7.2.6** Any substantial or influential 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.
- 7.2.7** Any other commercial interest in the decision before the meeting.
- 7.3** If a governor has any doubt about the relevance of an interest, he/she should discuss it with the Chair of the Trust. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest.
- 7.4** 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 Council of Governors as soon as he/she becomes aware of it.
- 7.5** Where declarations of interests are made during the course of a Council of Governors' meeting they should be recorded in the minutes. Any changes in interests should be declared at the next meeting of the Council of Governors following the change occurring.
- 7.6** During the course of a Council of Governors' meeting if a conflict of interest is established the Chair or governor concerned should withdraw from the meeting and take no part in the discussion or decision. He/she may take part in the discussion but not the decision or any subsequent vote, if agreed by a majority of governors present and eligible to vote. If there is a dispute as to whether a conflict of interest does exist, a majority vote will resolve the issue with the Chair, or where the Chair is conflicted the person presiding at the meeting having the casting vote.
- 7.7** It is the obligation of a governor to inform the Trust Secretary in writing within seven days of becoming aware of the existence of a relevant or material interest. The Trust Secretary will amend the Register upon receipt of such notification.
- 7.8** Where a governor has an interest as detailed in Standing Order 7.2.1 and 7.2.2 above, this shall be published in the annual report. The information should be kept up to date for inclusion in succeeding annual reports.

8 COUNCIL OF GOVERNORS' REGISTER OF INTERESTS

- 8.1** The Trust Secretary will ensure that a Register of Interests is established to formally record declarations of interests made by governors. Any interests declared by the Chair of the Trust will be recorded in the Board of Directors' Register of Interests.
- 8.2** Details of the Register will be kept up to date by the Trust Secretary who will ensure that all declarations made are incorporated into the register as they arise or are notified in writing to the Trust Secretary; and by means of an annual

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review, whereby governors will be required to complete a declaration form for submission to the Trust Secretary, in a format approved by the Board of Directors.

- 8.3** The Register will be available to the public in accordance with the Constitution.

9 EXCLUSION OF THE CHAIR OF THE COUNCIL OF GOVERNORS OR A GOVERNOR IN PROCEEDINGS ON ACCOUNT OF A PECUNIARY INTEREST

- 9.1** For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order:

9.1.2 "Contract" shall include any proposed contract or other course of dealing.

9.1.3 "Pecuniary interest" shall mean any interest in a matter based on the probability of whether that governor, or his/her spouse, co-habiting partner, direct family or any close associate stands to gain or loses financially from any decision taken.

- 9.2** Subject to the exceptions set out in this Standing Order, a person shall be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter if:

9.2.1 He/she, or a nominee of his/her, is a member of a company or other body not being a public body with which the contract is made, or proposed to be made or which has a direct pecuniary interest in the same, or

9.2.2 He/she is a partner of, associate or employee of any person with whom the contract is made or proposed to be made or who has a direct pecuniary interest in the same.

and in the case of family or close personal relationships the interest of one party shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

- 9.3** A person shall not be regarded as having a pecuniary interest in any contract if:

9.3.1 Neither he/she nor any person connected with him/her has any beneficial interest in the securities of a company of which he/she or such person appears as a member, or

9.3.2 Any interest that he/she or any person connected with him/her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract, or

9.3.3 Those securities of any company in which he/she (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the

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company or of the relevant class of such capital, whichever is the less. Where this paragraph applies he/she shall nevertheless be obliged to disclose/declare his/her interest in accordance with Standing Order 7 above.

9.3.4 Any remuneration, compensation or allowance payable to the Chair or a governor by the Trust shall not be treated as a pecuniary interest for the purpose of this Standing Order.

9.4 If the Chair of the Council of Governors or a governor has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Council of Governors at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

9.5 The Council of Governors may exclude the Chair or a governor from a meeting of the Council of Governors while any contract, proposed contract or other matter in which he/she has a pecuniary interest is under discussion or decision. He/she may take part in the discussion if agreed by a majority of the governors present and eligible to vote, but may not take part in any discussion or subsequent vote should one be necessary.

9.6 This Standing Order applies to any committee or sub-committee of the Council of Governors as it applies to the Trust and applies to a member of any such committee or sub-committee as it applies to an officer of the Trust.

10 RESOLUTION OF DISPUTES WITH THE BOARD OF DIRECTORS

10.1 Should a dispute arise between the Council of Governors and the Board of Directors then the disputes resolution procedure set out below should be followed.

10.2 The Chair, or Deputy Chair (if the dispute involves the Chair) of the Board of Directors or the Council of Governors as appropriate, shall first endeavour through discussion with governors and directors or appropriate representatives of them, to achieve the earliest possible conclusion, to resolve the matter to the reasonable satisfaction of both parties.

10.3 Failing resolution under 10.2 above then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.

10.4 The Chair, or Deputy Chair (if the dispute involves the Chair) of the Board of Directors or the Council of Governors as appropriate, shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or the Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.

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- 10.5** The Chair, or Deputy Chair (if the dispute involves the Chair) of the Board of Directors or the Council of Governors as appropriate, shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 10.2 above shall be repeated.
- 10.6** If, in the opinion of the Chair, or Deputy Chair (if the dispute involves the Chair) of the Board of Directors or the Council of Governors as appropriate, and following the further discussions prescribed in 10.2, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair, or Deputy Chair (if the dispute involves the Chair) of the Board of Directors or the Council of Governors as appropriate, as the case may be, there is no prospect of a resolution (partial or otherwise) then he/she shall advise the Council of Governors and the Board of Directors accordingly.
- 10.7** On the satisfactory completion of this disputes process the Board of Directors shall implement the agreed changes.
- 10.8** On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 10.9** Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing Monitor that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors.

11 COMPLIANCE WITH STANDING ORDERS

- 11.1** If for any reason these Standing Orders are not complied with full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance shall be reported to the next formal meeting of the Council of Governors for action or ratification.
- 11.1** All governors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chair as soon as possible.

12 CANVASSING OF AND RECOMMENDATIONS BY GOVERNORS IN RELATION TO APPOINTMENTS

- 12.1** The canvassing of any governor, directly or indirectly, for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 12.2** A governor shall not solicit for any person any appointment under with the Trust or recommend any person for such appointment: but this Standing Order shall not preclude a governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 12.3** Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

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13 RELATIVES OF GOVERNORS

- 13.1** Candidates for any staff appointment under the Trust shall, when making application, disclose in writing to the Trust whether they are related to any governor or the holder of any office under the Trust. Failure to disclose such a relationship may disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
- 13.2** Governors shall disclose to the Trust Secretary any relationship with a candidate of whose candidature that governor is aware. It shall be the duty of the Trust Secretary to report to the Board of Directors any such disclosure made.
- 13.3** On appointment, governors should disclose to the Trust whether they are related to any other member or holder of any office in the Trust. Where such a relationship is disclosed, the Standing Order 8 of this Annex shall apply.
- 13.4** No formal definition of relationship is made. In considering whether a disclosure is required the influence rather than immediacy of the relationship is more important. In case of doubt disclosure should be made.

14 CHANGES TO THE COUNCIL OF GOVERNORS' STANDING ORDERS

- 14.1** Any changes to these Standing Orders shall be made in accordance with paragraph 44 of the Constitution.
- 14.2** When a change to these Standing Orders is proposed the Council of Governors must ensure that:
- 14.2.1** A notice of motion under Standing Order 4.8 of the Annex has been given; and
 - 14.2.2** At least two thirds of the total number of governors elected and appointed are present; and
 - 14.2.3** A majority of governors present and eligible to vote, vote in favour of the amendment; and
 - 14.2.4** The variation does not contravene anything in the Constitution, statutory provision or any direction given by Monitor; and
 - 14.2.5** The amendment is agreed by Board of Directors.

15 REVIEW OF THE COUNCIL OF GOVERNORS' STANDING ORDERS

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15.1 These Standing Orders will be reviewed by the Council of Governors.

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ANNEX 8

STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

FOREWORD

The Leeds and York Partnership NHS Foundation Trust (the “Trust”) is a public benefit corporation that was established in accordance with the provisions of the National Health Service Act 2006.

The principal places of business are all within the boundary of Leeds and the head office is located at Trust Headquarters, St Mary’s House, St Mary’s Road, Potternewton, Leeds, LS7 3JX.

These Standing Orders are for the regulation of the Trust’s Board of Directors’ proceedings and business.

The Trust believes that public service values lie at its heart. High standards of corporate and personal integrity based on a recognition that patients come first, is a fundamental value of the Trust. Directors are expected to observe the Nolan Principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Everything done by the Board of Directors should be able to stand the test of scrutiny, public judgment on propriety, and professional codes of conduct.

The Board of Directors will in its business be as transparent as it can be about its activities in order to promote confidence between itself the Council of Governors, the membership, staff, services users and the public.

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1. INTERPRETATION

- 1.1 Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders, on which he/she shall be advised by the Trust Secretary or Chief Executive.
- 1.2 Words importing the masculine gender only, shall include the feminine gender; words importing the singular shall import the plural and vice-versa.

2. THE BOARD OF DIRECTORS

- 2.1 All business conducted by the Board of Directors shall be conducted in the name of the Trust. All decisions must be taken objectively and in the interests of the Trust.
- 2.2 The Board of Directors will function as a unitary board. The Board of Directors is collectively responsible for the exercise of the powers and the performance of the Trust. Executive and non-executive directors will have joint responsibility for every decision of the Board of Directors regardless of their individual skills or status.
- 2.3 All funds received in trust shall be in the name of the Trust as corporate trustee. Powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 2.4 **The Role of Directors.**
 - 2.4.1 The role of the directors as members of the Board of Directors is to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions.
 - 2.4.2 **Executive Directors.** Executive directors will exercise their authority within the terms of these Standing Orders, the Trust's Standing Financial Instructions, the Reservation of Powers to the Board of Directors and Council of Governors and Schedule of Decision/Duties Delegated by the Board of Directors.
 - 2.4.3 The Chief Executive is responsible for the overall performance of the executive functions of the Trust. He/she is the Accounting Officer for the Trust and shall be responsible for ensuring the discharge of obligations under Financial Directions and in line with the requirements of the NHS Foundation Trust Accounting Officer Memorandum.
 - 2.4.4 The Chief Financial Officer shall be responsible for the provision of financial advice to the Trust for the supervision of financial control and accounting systems. He/she shall be responsible along with the Chief Executive for ensuring the discharge of obligations under relevant Financial Directions.
 - 2.4.5 **Non-executive Directors.** The non-executive directors will not be granted nor will they seek to exercise any individual executive powers on behalf of the Trust. They may however, exercise collective authority

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when acting as members of, or when chairing a committee of the Trust which has delegated powers.

- 2.4.6** The Chair is responsible for the operation of the Board of Directors and will chair all Board meetings when present. The Chair must comply with the terms of appointment and with these Standing Orders.
- 2.4.7** The Chair will take responsibility either directly or indirectly for the induction of the non-executive directors, their portfolios of interests and assignments, and their performance.
- 2.4.8** The Chair will work in close harmony with the Chief Executive and will ensure that the Board of Directors discusses key and appropriate issues in a timely manner with all the necessary information and advice being made available to the Board of Directors to inform the discussion and ultimate resolutions.
- 2.4.9** The Chair is also responsible for the leadership of the Council of Governors ensuring the Board of Directors and the Council of Governors work effectively together.
- 2.5** The Board of Directors must adopt Standing Financial Instructions which set out the responsibilities of individuals.
- 2.6** The Board of Directors shall approve a formal Letter of Understanding between the Chair and Chief Executive setting out, as clearly as possible, a division of responsibilities. The letter shall be reviewed by the Board of Directors and modified as required.
- 2.7** **Composition of the Board of Directors.** The composition of the Board of Directors will be in accordance with paragraph 21 of the Constitution. The composition shall be as follows:
- 2.7.1** A Non-executive chair.
- 2.7.2** A minimum of four and a maximum of six other non-executive directors.
- 2.7.3** A minimum of four and a maximum of six executive directors.
- 2.8** The number of executive and non-executive directors as set out in paragraph 2.7 of this Standing Order and as constituted may only be changed with the approval of the Board of Directors and the Council of Governors. Any change to the number of executive and non-executive directors must have regard for the need for at least half the Board of Directors excluding the Chair to comprise non-executive directors which the Board of Directors determine to be independent.
- 2.9** The Trust Secretary or their deputy will be in attendance at all Board of Directors' meetings.
- 2.10** **Appointment of Members of the Board of Directors** the Chair and non-executive directors are to be appointed at a general meeting of the Council of Governors. The Chief Executive shall be appointed by the Chair and non-

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executive directors and this appointment shall require the approval of the Council of Governors. The other executive directors shall be appointed by a committee consisting of the Chair, the Chief Executive and non-executive directors and any other person as deemed applicable by the Chair and the non-executive directors.

2.10.1 Appointment of the Deputy Chair of the Trust. The Council of Governors at a general meeting of the Council of Governors shall appoint, with his/her agreement, one of the non-executive directors as a Deputy Chair of the Trust for a period that will not exceed his/her term of office as a non-executive director. In making the appointment the Council of Governors should have regard to the advice of the Chair of the Trust.

2.10.2 Any non-executive director so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. The Deputy Chair may also be removed by the Council of Governors as a non-executive director of the Trust whereupon he/she shall cease to be the Deputy Chair of the Trust. Where the position of Deputy Chair becomes vacant it shall be for the Council of Governors to appoint another non-executive director as Deputy Chair in accordance with Standing Order 2.10.1 of this Annex.

2.10.3 The Deputy Chair of the Trust will also be the Deputy Chair of the Board of Directors and will take on the Chair's duties if he/she is absent for any reason.

2.10.4 Senior Independent Director. The Board of Directors shall appoint one of the independent non-executive directors as the Senior Independent Director this shall be done in consultation with the Council of Governors. The Board of Directors may, but not necessarily, appoint the Deputy Chair to this position.

2.10.5 Joint Directors. Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for executive directorship or in relation to which an executive director is to be appointed, those persons shall become appointed as an executive director jointly, and shall count for the purposes of Standing Order 2.7 as one person.

2.10.6 Where the office of an executive director of the Board of Directors is shared jointly by more than one person:

- (i) either or both of those person may attend or take part in meetings of the Board of Directors,
- (ii) if both are present at a meeting, they should cast one vote if they agree,
- (iii) in the case of disagreements, no vote should be cast,
- (iv) the presence of either or both of those person should count as the presence of one person for the purposes of Standing Order 3.12 (Quorum).

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- 2.11** The Board of Directors shall appoint a Trust Secretary, who shall provide advice on corporate governance issues to the Chair, Council of Governors and Board of Directors and monitor the Trust's compliance with these Standing Orders, the Constitution, statutory provisions and guidance given by Monitor. The Trust Secretary shall also ensure good information flows between the Board of Directors, the Council of Governors, their committees and senior management.
- 2.12** Non-executive directors may, at the Trust's expenses, seek external advice or appoint an external adviser on any material matter of concern provided the decision to do so is a collective one by a majority of non-executive directors.

3 MEETINGS OF THE BOARD OF DIRECTORS

Meetings of the Board of Directors may be held by virtual conferencing or teleconference facilities or be held face-to-face. By whatever method the meeting is held these standing orders shall apply.

3.1 Meetings Held in Public

- 3.1.1** The public shall be afforded facilities to attend all formal meetings of the Board of Directors subject to the provisions of these Standing Orders.
- 3.1.2** The Board of Directors may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that:
- 3.1.2.1** Publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted (see resolution at 3.1.3 below); or
- 3.1.2.2** There are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- 3.1.3** In the case of Standing Order 3.1.2.1 above the resolution shall state as follows:
- “Members of the public be excluded from the [meeting] [remainder of this meeting] having regard to the confidential nature of the business transacted, publicity on which would be prejudicial to the public interest.”
- 3.1.4** The Chair may exclude any member of the public from the meeting of the Board of Directors if they are interfering with or preventing the proper or reasonable conduct of that meeting.
- 3.1.5** Members of the public or representatives of the press may not record proceedings in any manner whatsoever, other than writing, or make any oral report of the proceedings as they take place, without the prior agreement of the Board of Directors.

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- 3.1.6** The right of attendance at meetings by members of the public as referred to in Standing Order 3.1.1 above, does not give right to the said members of the public to ask questions or otherwise participate in that meeting, unless invited to do so by the Chair.
- 3.1.7** Members of the public may request that they address a question to the Board of Directors. Any member of the public wishing to do so should advise the Trust Secretary prior to the commencement of the meeting, stating their name and the nature of their question. These questions shall be brought to the attention of the Chair prior to the commencement of the meeting and the decision as to whether any question will or will not be allowed to be put to the Board of Directors by any member of the public will lie with the Chair, whose decision shall be final. The absence of a written question submitted to the Trust secretary will not preclude the chair allowing a question to be asked.
- 3.1.8** Matters to be dealt with by the Board of Directors following the exclusion of members of the public shall be confidential to the Board of Directors.
- 3.1.9** Governors, directors, officers or any employee or representative of the Trust in attendance at a private meeting or private part of any meeting, shall not reveal or disclose the contents of the papers, discussions or minutes of the items taken in private, outside the Board of Directors' meetings without the express permission of the Board of Directors.
- 3.2** **Calling Meetings.** Meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 3.2.1** The Chair may call a meeting of the Board of Directors at any time.
- 3.2.2** The directors may require the Chair to convene a meeting by presenting a request for that purpose signed by at least one third of the whole of the Board of Directors. If the Chair refuses to call a meeting after receipt of a request, or fails to convene a meeting within seven days of receipt of a request, the said directors who signed the request may convene a meeting of the Board of Directors in default of the Chair.
- 3.3** **Notice of Meetings**
- 3.3.1** Before each meeting of the Board of Directors, a notice signed by the Chair or by an officer authorised by the Chair to sign on his/her behalf and an agenda, specifying the business proposed to be transacted at it, shall be delivered to every member of the Board of Directors, or sent by post to the usual place of residence of such a member of the Board of Directors, at least five clear working days before the meeting. Supporting papers shall accompany the agenda whenever possible, except in an emergency and only where the Chair has agreed agenda papers may be to follow.
- 3.3.2** A notice shall be presumed to have been served one day after posting or delivery. Lack of service of the notice on any member of the Board shall not affect the validity of a meeting.

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3.3.3 In the case of a meeting called by members of the Board of Directors under Standing Order 3.2.2 of this Annex in default of the Chair, the notice shall be signed by those members of the Board of Directors and no business shall be transacted at the meeting other than that specified in the notice.

3.3.4 Before each public meeting of the Board of Directors, a public notice of the time and place of the meeting, and the public part of the agenda, will be displayed on the Trust's website at least three clear days before the meeting. The Board of Directors may also specify other methods for communicating details of public Board of Directors' meetings as they see fit.

3.4 Setting the Agenda

3.4.1 The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Board of Directors.

3.4.2 A member of the Board of Directors desiring a matter for the Board of Directors to be included on an agenda shall make his/her request to the Chair at least twelve clear working days before the meeting. Requests made less than twelve clear working days before a meeting may be included on the agenda at the discretion of the Chair.

3.4.3 Before holding a meeting the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors.

3.5 Chair of Meeting

3.5.1 At any meeting of the Board of Directors, the Chair of the Trust shall chair the meeting. If the Chair is absent from the meeting the Deputy Chair of the Trust, shall chair the meeting.

3.5.2 Where the Chair has died or has otherwise ceased to hold office or where he/she is unable to perform his/her duties as a Chair owing to illness, conflict of interest in a matter under discussion, planned absence or any other cause, the role of the Chair of the Board of Directors shall be carried out by the Deputy Chair of the Trust until such time as the Chair is able to continue with his/her duties.

3.5.3 Where for any reason both the Chair of the Trust and the Deputy Chair of the Trust are not available to chair a meeting or part of a meeting, the directors present shall choose one of the remaining non-executive directors to chair the meeting or remaining part of the meeting.

3.6 Procedure for Motion

3.6.1 Notice of Motions. A member of the Board of Directors desiring to move or amend a motion shall send a written notice thereof at least twelve clear working days before the meeting to the Chair, who shall insert the motion in the agenda for the meeting, subject to the notice being in order and permissible under the appropriate regulations. This Standing Order shall

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not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda, subject to Standing Order 3.3.3 of this Annex.

- 3.6.2 Emergency Motions.** Subject to the agreement of the Chair, a member of the Board of Directors may give written notice of an emergency motion after the issue of the notice of meeting and agenda, and before the commencement of the meeting. The notice shall state the grounds of urgency. Acceptance of such a motion for inclusion in the agenda will be at the discretion of the Chair. If in order, it shall be declared to the Board of Directors at the commencement of the business of the meeting as an additional item included in the agenda. Emergency is defined as a matter which will adversely affect the Trust in the next seven days.
- 3.6.3 Proposing a Motion.** A motion may be proposed by the Chair of the meeting or any member of the Board of Directors present and eligible to vote. It must also be seconded by another member of the Board of Directors eligible to vote.
- 3.6.4 Amendments to Motions.** A motion for amendment shall not be discussed unless it has been proposed and seconded. Amendments to motions shall be moved relevant to the motion and shall not have the effect of negating the substance of the motion before the Board of Directors. If there are a number of amendments, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.
- 3.6.5 Withdrawal of Motion or Amendments.** A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 3.6.6 Motions Once Under Debate.** When a motion is under discussion or immediately prior to discussion it shall be open to a member of the Board of Directors to move:
- 3.6.6.1** An amendment to the motion; or
 - 3.6.6.2** The adjournment of the discussion or the meeting; or
 - 3.6.6.3** That the meeting proceed to the next business; or
 - 3.6.6.4** The appointment of an ad-hoc committee to deal with a specific item of business; or
 - 3.6.6.5** That the question should be now put.; or
 - 3.6.6.6** That a member of the Board of Directors be not further heard.

In the case of Standing Orders 3.6.6.3 and 3.6.6.5 above to ensure objectivity motions may only be put by a member of the Board of Directors who has not previously taken part in the debate and is eligible to vote.

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3.6.7 Right of Reply to Motions. The mover of an original motion shall have a right of reply at the close of any discussion on the motion. The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak on it.

3.6.8 Motion to Amend or Rescind a Resolution. Notice of motion to amend or rescind any resolution or the general substance of any resolution, which has been passed within the preceding six calendar months, shall bear the signature of the member of the Board of Directors who gives it and also the signature of three other members of the Board of Directors. Before considering any such motion of which notice shall have been given, the Board of Directors may refer the matter to any appropriate committee or the Chief Executive for recommendation.

3.6.9 When the Board of Directors has dealt with any such motion, it shall not be competent for any member of the Board of Directors other than the Chair to propose a motion to the same effect within six months.

3.7 Chair's Ruling

3.7.1 Statements of directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

3.8 Voting

3.8.1 If in the opinion of the Chair a vote should be required on a matter under discussion at a meeting, the result, unless otherwise specified in the Constitution or its Annexes, shall be determined by a majority of votes of directors present at the meeting and eligible to vote. In the case of any equality in votes, the Chair of the meeting shall have a second or casting vote.

3.8.2 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the members of the Board of Directors present and eligible to vote so request.

3.8.3 If at least one-third of the members of the Board of Directors present and eligible to vote so request, the voting other than by paper ballot on any question may be recorded to show how each member of the Board of Directors present voted or abstained.

3.8.4 If a member of the Board of Directors so requests, his/her vote shall be recorded by name upon any vote other than by paper ballot.

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

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3.8.6 An officer who has been appointed formally by the Board of Directors to act-up for a director during a period of incapacity or temporarily to fill a director vacancy, shall be entitled to exercise the voting rights of the director. An officer attending the Board to represent a director during a period of incapacity or temporary absence without formal acting-up status may not exercise the voting rights of the director. An officer's status when attending a meeting shall be recorded in the minutes.

3.9 Minutes

3.9.1 The minutes of the proceedings of each meeting of the Board of Directors shall be drawn up and entered into a book kept for that purpose and submitted for agreement at the next ensuing meeting, and thereafter will be signed by the Chair. The acceptance or amendments of the minutes will be recorded in the minutes of the next ensuing meeting. Minutes may be held either electronically or in paper format but always in a way which is accessible and preserves the continuous record of the meeting.

3.9.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate.

3.9.3 Any amendment to the minutes shall be agreed and recorded.

3.9.4 Minutes shall be circulated in accordance with members of the Board of Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public, as required by Code of Practice on Openness in the NHS and Freedom of Information Act.

3.9.5 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.

3.10 Suspension of Standing Orders

3.10.1 Except where this would contravene any statutory provision, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board of Directors are present, including one executive director and one non-executive director, and that a majority of those present and eligible to vote, vote in favour of suspension.

3.10.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.

3.10.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to members of the Board of Directors.

3.10.4 No formal business may be transacted while Standing Orders are suspended.

3.10.5 The Audit Committee shall review every decision to suspend Standing Orders.

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3.11 Record of Attendance

3.11.1 The names of the Chair, non-executive directors, and executive directors present at the meeting and officers in attendance, shall be recorded in the minutes.

3.11.2 Any person in attendance at a meeting of the Board of Directors shall be recorded and shown as “in attendance”.

3.12 Quorum

3.12.1 No business shall be transacted at a meeting of the Board of Directors unless at least one third of the whole number of the members of the Board of Directors are present including at least one executive director and one non-executive director.

3.12.2 An officer in attendance for an executive director but without formal acting-up status may not count towards the quorum.

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

4 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

4.1 Subject to the Constitution, statutory provision and guidance given by Monitor, the Board of Directors may make arrangements for the exercise of any of its functions by a committee or sub-committee appointed by virtue of these Standing Orders; or by a director or officer of the Trust; in each case subject to such restrictions and conditions as the Board of Directors thinks fit.

4.2 Emergency Powers. The powers which the Board of Directors has retained to itself within Standing Order 4.5 may in emergency be exercised jointly by the Chief Executive and the Chair after having consulted at least two non-executive directors. The exercise of such powers jointly by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board of Directors for ratification.

4.3 Delegation to Committees. The Board of Directors shall agree from time to time to the delegation of powers to be exercised by committees or sub-committees, which it has formally appointed in accordance with these Standing Orders. The terms of reference of these committees, or sub-committees, and their specific powers shall be ratified by the Board of Directors.

4.4 Delegation to Officers. Those functions of the Trust that have not been retained as reserved by the Board of Directors or delegated to a committee or

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sub-committee shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate officers to undertake the remaining functions for which he/she will still retain accountability to the Board of Directors.

- 4.5** The Chief Executive shall prepare a document which sets out those powers reserved to the Board of Directors, which shall be called 'Reservation of Powers to the Board of Directors and Council of Governors and Schedule of Decision/Duties Delegated by the Board of Directors', identifying his/her proposals which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the "Schedule of Decision/Duties Delegated by the Board of Directors", which shall be considered and approved by the Board of Directors as indicated above.
- 4.6** Nothing in the "Schedule of Decision/Duties Delegated by the Board of Directors" shall impair the discharge of the direct accountability to the Board of Directors, the Chief Financial Officer or other director to provide information and advise the Board of Directors in accordance with any statutory requirements.
- 4.7** If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All members of the Board of Directors and officers have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

5 COMMITTEES

5.1 Appointment of Committees

- 5.1.1** Subject to the Constitution, statutory provisions and guidance given by Monitor, the Board of Directors may and if directed shall appoint committees of the Trust, consisting wholly of members of the Board of Directors.
- 5.1.2** A committee so formed under Standing Order 5.1.1 may appoint sub-committees consisting wholly or partly of members of the committee whether or not they include members of the Board of Directors; or wholly of persons who are not members of the committee whether or not they include members of the Board of Directors.
- 5.1.3** These Standing Orders in their entirety, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee formed by the Board of Directors.
- 5.1.4** Each committee or sub-committee shall have such terms of reference and powers and be subject to such conditions as the Board of Directors shall decide.

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- 5.1.5** Where committees are authorised to establish sub-committees they may not delegate powers to the sub-committee unless expressly authorised by the Board of Directors.
- 5.1.6** The Board of Directors shall approve the appointments to each of the committees which it has formally constituted. The Board of Directors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and /or expenses in accordance where appropriate with national guidance.
- 5.1.7** Where the Board of Directors is required to appoint persons to a committee and or to undertake statutory functions as required by Monitor, and where such appointments are to operate independently of the Board of Directors such appointment shall be made in accordance with the regulations made by Monitor.
- 5.1.8** Without prejudicing the formation of any other committees or sub-committees as the Board of Directors see fit, the major committees of the Board of Directors shall be:
- 5.1.8.1** Audit Committee
 - 5.1.8.2** Remuneration Committee
 - 5.1.8.3** Nominations Committee
 - 5.1.8.4** Quality Committee
 - 5.1.8.5** Finance and Performance Committee
 - 5.1.8.6** Mental Health Legislation Committee
 - 5.1.8.7** Workforce Committee
- 5.1.9** No one other than the committee chair or committee members are entitled to be present at a meeting of the Audit Committee, Remuneration Committee or Nominations Committee. However, other individuals may attend at the invitation of the committee or as established by these Standing Orders.

5.2 Confidentiality

- 5.2.1** A member of the Board of Directors, a member of a committee or anyone in attendance at a committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential or embargoed.

6 DECLARATION OF INTERESTS

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- 6.1** All existing directors should declare relevant and material interests. Any director appointed subsequently should do so on appointment.
- 6.2** Interests that should be regarded “relevant and material” and which for avoidance of doubt should be included in the register are:
- 6.2.1** Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies).
 - 6.2.2** Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
 - 6.2.3** Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
 - 6.2.4** A position of authority in a charity or voluntary organisation in the field of health and social care.
 - 6.2.5** Any connection with a voluntary or other organisation contracting for NHS Services.
 - 6.2.6** Any substantial or influential 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.
 - 6.2.7** Any other commercial interest in the decision before the meeting.
- 6.3** If a director has any doubt about the relevance of an interest, he/she should discuss it with the Chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest.
- 6.4** If a director 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 Board of Directors, the director shall disclose that interest to the Board of Directors as soon as he/she becomes aware of it.
- 6.5** Where declarations of interests are made during the course of a Board of Directors’ meeting they should be recorded in the minutes. Any changes in interests should be declared at the next meeting of the Board of Directors following the change occurring.
- 6.6** During the course of a Board of Directors’ meeting if a conflict of interest is established the Chair or director concerned should normally withdraw from the meeting and take no part in the discussion or decision. He/she may take part in the discussion but not the decision or any subsequent vote, if agreed by a majority of directors present and eligible to vote. If there is a dispute as to whether a conflict of interest does exist, a majority vote will resolve the issue with the Chair having the casting vote.

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- 6.7** It is the obligation of a director to inform the Trust Secretary in writing within seven days of becoming aware of the existence of a relevant or material interest. The Trust Secretary will amend the Register upon receipt of such notification.
- 6.8** Where a director has an interest as detailed in Standing Order 6.2.1 and 6.2.2 above, this shall be published in the annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 6.9** The interests of directors' spouses and cohabiting partners should also be regarded as relevant and disclosable.

7 BOARD OF DIRECTORS' REGISTER OF INTERESTS

- 7.1** The Trust Secretary will ensure that a Register of Interests is established to record formally declarations of interests made by members of the Board of Directors.
- 7.2** Details of the Register will be kept up to date by the Trust Secretary who will ensure that all declarations made are incorporated into the register as they arise or are notified in writing to the Trust Secretary; and by means of an annual review, whereby directors will be required to complete a declaration form for submission to the Trust Secretary, in a format approved by the Board of Directors.
- 7.3** The Register will be available to the public in accordance with the Constitution.

8 EXCLUSION OF THE CHAIR OF THE BOARD OF DIRECTORS OR A DIRECTOR IN PROCEEDINGS ON ACCOUNT OF A PECUNIARY INTEREST

- 8.1** For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order:
- 8.1.1** "Contract" shall include any proposed contract or other course of dealing.
- 8.1.2** "Pecuniary interest" shall mean any interest in a matter based on the probability of whether that director, or his/her spouse, co-habiting partner, direct family or any close associate stands to gain or lose financially from any decision taken.
- 8.2** Subject to the exceptions set out in this Standing Order, a person shall be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter if:
- 8.2.1** He/she, or a nominee of his/her, is a member of a company or other body not being a public body with which the contract is made, or proposed to be made or which has a direct pecuniary interest in the same, or

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8.2.2 He/she is a partner of, associate or employee of any person with whom the contract is made or proposed to be made or who has a direct pecuniary interest in the same.

and in the case of family or close personal relationships the interest of one party shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

8.3 A person shall not be regarded as having a pecuniary interest in any contract if:

8.3.1 Neither he/she nor any person connected with him/her has any beneficial interest in the securities of a company of which he/she or such person appears as a member, or

8.3.2 Any interest that he/she or any person connected with him/her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract, or

8.3.3 Those securities of any company in which he/she (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less. Where this paragraph applies he/she shall nevertheless be obliged to disclose/declare his/her interest in accordance with Standing Order 6 above.

8.3.4 Any remuneration, compensation or allowance payable to the Chair or a director by the Trust shall not be treated as a pecuniary interest for the purpose of this Standing Order.

8.4 If the Chair of the Board of Directors or a director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

8.5 The Board of Directors may exclude the Chair or a director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which he/she has a pecuniary interest is under discussion or decision. He/she may take part in the discussion if agreed by a majority of the directors present and eligible to vote, but not in the decision or any subsequent vote, should one be necessary.

8.6 This Standing Order applies to any committee or sub-committee of the Board of Directors as it applies to the Trust and applies to a member of any such committee or sub-committee as it applies to an officer of the Trust.

9 STANDARDS OF BUSINESS CONDUCT

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- 9.1 Policy** - Staff must comply with the national guidance contained covering the standards of business conduct and the Trust's detailed Standards of Business Conduct policy document. The following provisions should be read in conjunction with these.
- 9.2 Interests of Officers in Contracts.** Any director or officer of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her has any pecuniary interest, direct or indirect, the director or officer shall declare their interest by giving notice in writing of such fact to the Chief Executive or the Trust Secretary as soon as practicable.
- 9.3** A director or officer must also declare to the Chief Executive any other employment or business or other relationship of his/her, or his/her spouse with whom he/she lives or of a cohabiting partner, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 9.4** The Trust requires interests, employment or relationships so declared by staff to be entered in a register of interests of staff.
- 9.5 Canvassing of and Recommendations by Directors in Relation to Appointments.** Canvassing of members of the Board of Directors or members of any committee of the Board of Directors directly or indirectly for any appointment by the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 9.6** A member of the Board of Directors shall not solicit for any person any appointment by the Board of Directors or recommend any person for such appointment, but this paragraph of this Standing Order shall not preclude a director from giving a written testimonial of a candidate's ability, experience or character for submission to the Board of Directors.
- 9.7** Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 9.8 Relatives of Members of the Board of Directors** – Candidates for any staff appointment shall when making application disclose in writing whether they are related to any member of the Board of Directors or the holder of any office within the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
- 9.9** The Chair, and every director of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that the Chair, or director is aware. It shall be the duty of the Chief Executive or nominated director to report to the Board of Directors any such disclosure made.
- 9.10** On appointment, the Chair and members of the Board of Directors (and prior to acceptance of an appointment in the case of directors) should disclose to the Board of Directors whether they are related to any other member or holder of any office under the Trust.

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- 9.11** Where the relationship of a director or another member of the Board of Directors or another member of the Trust is disclosed, the Standing Order 8 shall apply.

10 RESOLUTION OF DISPUTES WITH THE COUNCIL OF GOVERNORS

- 10.1** Should a dispute arise between the Council of Governors and the Board of Directors then the disputes resolution procedure set out below should be followed.
- 10.2** The Chair, or Deputy Chair (if the dispute involves the Chair) of the Board of Directors or the Council of Governors as appropriate, shall first endeavour through discussion with governors and directors or appropriate representatives of them, to achieve the earliest possible conclusion, to resolve the matter to the reasonable satisfaction of both parties.
- 10.3** Failing resolution under 10.2 above then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 10.4** The Chair, or Deputy Chair (if the dispute involves the Chair) of the Board of Directors or the Council of Governors as appropriate, shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or the Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 10.5** The Chair, or Deputy Chair (if the dispute involves the Chair) of the Board of Directors or the Council of Governors as appropriate, shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 10.2 above shall be repeated.
- 10.6** If, in the opinion of the Chair, or Deputy Chair (if the dispute involves the Chair) of the Board of Directors or the Council of Governors as appropriate, and following the further discussions prescribed in 10.5, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair, or Deputy Chair (if the dispute involves the Chair) of the Board of Directors or the Council of Governors as appropriate, as the case may be, there is no prospect of a resolution (partial or otherwise) then he/she shall advise the Council of Governors and the Board of Directors accordingly.
- 10.7** On the satisfactory completion of this disputes process the Board of Directors shall implement the agreed changes.
- 10.8** On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 10.9** Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing Monitor that, in the Council of Governors' opinion, the Board of

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Directors has not responded constructively to concerns of the Council of Governors.

11 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

11.1 Custody of Seal

11.1.1 The Common Seal of the Trust shall be kept by the Chief Executive or a nominated officer in a secure place.

11.2 Sealing of Documents

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

11.2.2 Before any building, engineering, property or capital document is sealed it must be approved by the Chief Financial Officer or an officer nominated by him/her and by the Chief Executive or an officer nominated by him/her who shall not be within the originating directorate.

11.2.3 The form of the attestation of documents shall be "The Common Seal of the Leeds and York Partnership NHS Foundation Trust was hereto affixed in the presence of".

11.3 Register of Sealing

11.3.1 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and attested the seal. A report of each sealing shall be made to a formal Board of Directors' meeting. The report shall contain details of the seal number, the description of the document and date of sealing.

12 SIGNATURE OF DOCUMENTS

12.1 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 of Directors shall have delegated the necessary authority to some other person for the purpose of such proceedings.

12.2 The Chief Executive or nominated officer(s) as authorised by the Board of Directors, to sign on behalf of the Trust any agreement or other document not required to be executed as a deed, the subject matter of which has been approved by the Board of Directors or committee or sub-committee to which the Board of Directors has delegated appropriate authority.

13 DISSEMINATION OF BOARD OF DIRECTORS' STANDING ORDERS

13.1 The Chief Executive is responsible for ensuring all existing directors and officers, and all new appointees to the Board of Directors are notified of, and understand their responsibility within the Standing Orders, Standing Financial Instructions, the Reservation of Powers to the Board of Directors and Council of Governors and Schedule of Decision/Duties Delegated by the Board of Directors.

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14 CHANGES TO THE BOARD OF DIRECTORS' STANDING ORDERS

- 14.1** Any changes to these Standing Orders be made in accordance with paragraph 44 of the Constitution.
- 14.2** When a change to these Standing Orders is proposed the Board of Directors must ensure that:
 - 14.2.1** A notice of motion under Standing order 3.6 of this Annex has been given; and
 - 14.2.2** At least two thirds of the Board of Directors are present; and
 - 14.2.3** A majority of directors present and eligible to vote, vote in favour of the amendment; and
 - 14.2.4** The variation proposed does not contravene anything in the Constitution, statutory provision or any guidance given by Monitor.
 - 14.2.5** The amendment is agreed by the Council of Governors.

15 REVIEW OF THE BOARD OF DIRECTORS' STANDING ORDERS

- 15.1** These Standing orders will be reviewed by the Board of Directors

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ANNEX 9

FURTHER PROVISIONS IN RELATION TO MEMBERS

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1 THE REGISTER OF MEMBERS

- 1.1** Where an individual applies to become a member of the Trust, the Trust shall consider his/her application for membership as soon as reasonably practicable following its receipt and in any event no later than 28 days from the date upon which the application is received and unless that individual is ineligible for membership or is disqualified from membership the Registrar shall enter his/her name on the Trust's Register of Members and he/she shall thereupon become a member.
- 1.2** Where an individual automatically becomes a member in accordance with paragraph 7.1 of the Constitution, that individual shall have his/her name entered on the Trust's Register of Members when he/she qualifies as being suitably employed by the Trust.
- 1.3** An individual shall become a member on the date upon which his/her name is entered on the Trust's Register of Members and that individual shall cease to be a member upon the date on which his/her name is removed from the Register of Members.

2 RESTRICTIONS ON MEMBERSHIP

- 2.2** A person may not become or remain a member of the Service User and Carer or Public Constituencies if he/she is eligible to become a member of the Staff Constituency under paragraph 7.1 of the Constitution.
- 2.3** A person may not be a member of more than one constituency; neither may he/she be a member of more than one class, or one area within a constituency.

3 DISQUALIFICATION FROM MEMBERSHIP

- 3.1** A person may not become a member or remain a member of the Trust if:
- 3.1.1** He/she is under 13 years of age.
- 3.1.2** He/she has within the last 10 years been a perpetrator of, or involved in a serious incident or assault or violence, or one or more incidents of harassment, against any of the Trust's employees or other persons who exercise functions for the purpose of the Trust.
- 3.1.3** He/she has acted in a way, which is detrimental to the Trust or in a manner contrary to the interests of the Trust.
- 3.2** All members of the Trust shall be under a duty to notify the Membership Office of any change in their particulars, which may affect their entitlement as a member. Failure to notify the Membership Office of such changes shall not prevent the member from being disqualified as a member.

4 TERMINATION OF MEMBERSHIP

- 4.1** A member shall cease to be a member if:

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- 4.1.1 He/she has died.
 - 4.1.2 He/she notifies the Membership Office in writing that he/she is no longer eligible, or no longer wishes to be a member of the Trust.
 - 4.1.3 He/she ceases to be entitled under this Constitution to be a member of any of the Constituencies.
 - 4.1.4 He/she is expelled in accordance with paragraph 6 of this Annex.
 - 4.1.5 He/she is disqualified from being a member under paragraph 3 of this Annex.
 - 4.1.6 It appears to the Membership Office that he/she no longer wishes to be a member and after enquiries made in accordance with a process approved by the Council of Governors, he/she fails to confirm that he/she wishes to continue to be a member of the Trust.
- 4.2 Where notice is received from a third party that a member may be disqualified from membership, or may no longer be eligible to be a member the Membership Office shall, if appropriate to the circumstances, give the said member 14 days written notice for him/her to show cause why his/her name should not be removed from the Register of Members. On receipt of any such information supplied by the member, the registrar may, if he/she considers it appropriate, remove the member from the Register of Members. In the event of any dispute the matter shall be referred to the Trust Secretary who shall bring the matter to the attention of the Council of Governors in accordance with Standing Order 4.6 of Annex 7.

5 EXPULSION OF MEMBERS FOLLOWING DISPUTE

- 5.1 Where it is determined that there is a reason of dispute under paragraph 5.2 of this Annex, the Council of Governors shall at a general meeting consider the matter, having taken such steps as it considers appropriate to ensure that each point of view is heard and may either:
- 5.1.1 Dismiss the complaint and take no further action; or
 - 5.1.2 Arrange for a resolution to expel the member, to be considered at the next meeting of the Council of Governors in accordance with Annex 7 Standing Order 4.8 "procedure for Motions".
- 5.2 If a resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 5.3 At the meeting, the Council of Governors will consider evidence produced in support of the complaint, and any evidence submitted for or on behalf of the member about whom the complaint has been made.

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- 5.4** If the member fails to attend the meeting the meeting may proceed in their absence at the discretion of the Chair.
- 5.5** A person expelled from membership will cease to be a member upon the declaration, by the Chair, that the resolution to expel the member is carried by majority vote of governors present and eligible to vote at the meeting.
- 5.6** No person who has been expelled from membership by resolution of the Council of Governors is to be re-admitted except by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and eligible to vote at the meeting of the Council of Governors.

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ANNEX 10

FURTHER PROVISIONS IN RELATION TO THE ANNUAL MEMBERS' MEETING

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1 Convening the Annual Members' Meeting

- 1.1** The Trust is to hold a members meeting (the 'Annual Members' Meeting') within nine months of the end of each financial year. For clarity a financial year will run from 1 April to 31 March each year.
- 1.2** All formal members' meetings other than Annual Members' Meetings are called special members' meetings and shall, insofar as is possible, follow the requirements and provisions of this Annex.
- 1.3** Annual Members' meetings are public meetings open to all members of the Trust (including staff), governors, directors (both executive and non-executive directors), and the wider public.
- 1.4** The Council of Governors may invite representatives of the media, the Trust's auditors and any experts or advisors whose attendance they consider to be in the best interest of the Trust, to attend the Annual Members' Meeting.
- 1.5** Members of the Council of Governors may declare that members of the public, representatives of the media and anyone who is not a member may be excluded from any meeting or part of any meeting on the grounds that:
- 1.5.1** Publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
- 1.5.2** There are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- 1.6** The Annual Members' Meeting is to be convened by the Trust Secretary by order of the Council of Governors.
- 1.7** The Council of Governors may decide where an Annual Members' Meeting is to be held and may for the benefit of members arrange for the Annual Members' Meeting to be held in different venues each year. As appropriate, the Council of Governors may agree that the event will be held virtually or face-to-face.

2 Notice of meetings

- 2.1** Notice of the Annual Members' Meeting is to be given at least 14 clear days before the date of the meeting:
- By notice to all members
 - By notice prominently displayed at the Trust Headquarters (Trust Headquarters, St Mary's House, St Mary's Road, Potternewton, Leeds, LS7 3JX)
 - By notice on the Trust's website.
- 2.2** The notice must:
- Be given to the Council of Governors and the Board of Directors and to the financial auditor

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- Give the time, date and place of the meeting
- Indicate the business to be dealt with at the meeting.

2.3 The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceeding at that meeting.

3 Information to be presented at the Annual Members' Meeting

3.1 At the Annual Members' Meeting at least one member of the Board of Directors shall present the following information to the governors and members (but not to the exclusion of any other information):

- The annual accounts
- Any report of the financial auditor
- Any report of any other external auditor of the Foundation Trust's affairs
- Forward planning information for the next financial year.

3.2 At the Annual Members' meeting the Council of Governors shall present the following information to the members (but not to the exclusion of any other information):

- A report on the steps taken to secure that (taken as a whole) the actual membership of its public, service user and carer, and staff constituencies are representative of those eligible for such membership
- The progress of the membership strategy
- Any proposed changes to the policy for the composition of the Council of Governors and of the non-executive directors
- The results of any election and appointment of governors and the appointment of non-executive directors
- How governors have carried out their role on behalf of members.

4 Amendments to the Constitution in relation to the powers or duties of the Council of Governors

4.1 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) this shall be presented at the Annual Members' Meeting by at least one member of the Council of Governors for consideration and members of the Trust must be given an opportunity to vote (by whatever method is agreed upon) on whether they approve the amendment.

4.2 It is the responsibility of the Council of Governors, the Chair of the meeting and the Trust Secretary to ensure that at the Annual Members' Meeting:

- The issues to be decided are clearly explained
- Sufficient information is provided to members to enable a rational discussion to take place or questions to be asked.

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5 Quoracy

5.1 Before an Annual Members' Meeting can do business there must be a quorum present. Except where the Constitution says otherwise a quorum is 10 members.

5.2 If no quorum is present within half an hour of the time fixed for the start of the meeting, the number of members present during the meeting is to be quorum.

6 Chairing of the Annual Members' Meeting

6.1 The Chair of the Trust or in his /her absence the Deputy Chair of the Trust, or in his /her absence one of the other non-executive directors shall preside at the Annual Members' Meeting.

6.2 If neither the Chair of the Trust nor the Deputy Chair of the Trust or one of the other non-executive directors are present the Council of Governors present shall elect one of their number to be chair and if there is only one governor present and willing to act they shall be the chair of the meeting.

6.3 If no governor is willing to act as chair or if no governor is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be chair.

7 Voting

7.1 Only members of the Trust and governors are entitled to vote at the Annual Members' Meeting.

7.2 Should a vote be required the chair of the meeting may make whatever arrangements he/she considers appropriate to enable those attending an Annual Members' Meeting to vote.

7.3 Every member present at the Annual Members' Meeting is to have one vote. In the case of equity of votes the chair of the meeting is to have a second or casting vote.

7.4 Proxy votes shall not be permitted.

7.5 The result of any vote will be declared by the chair of the meeting and entered in the minutes. The minutes shall provide conclusive evidence of the result of the vote.

8 Speaking at the Annual Members' Meeting

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- 8.1** The chair of the meeting may permit members of the Trust (including staff), governors, directors (both executive and non-executive directors) and the public to attend and speak or ask questions at an Annual Members' Meeting and the chair of the meeting may make whatever arrangements he/she considers appropriate to enable those attending an Annual Members' Meeting to speak at the meeting.