

Norfolk and Suffolk NHS Foundation Trust

Constitution

Approved

Council of Governors – 01 September 2020

Board of Directors – 24 September 2020

Annual Members' Meeting – 09 October 2020

Includes Standing Orders
for the Council of Governors (Annex 7)
for the Board of Directors (Annex 8)

Norfolk and Suffolk NHS Foundation Trust Constitution

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THE CONSTITUTION OF NORFOLK AND SUFFOLK NHS FOUNDATION TRUST

1. Interpretation and definitions

- 1.1 Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.
- 1.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 1.3 References to paragraphs and Annexes are to the paragraphs and Annexes to this Constitution, unless the context otherwise requires.
- 1.4 the **2006 Act** is the National Health Service Act 2006.
- 1.5 the **2012 Act** is the Health and Social Care Act 2012.
- 1.6 **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.
- 1.7 **Annual Members Meeting** is defined in paragraph 13 of the Constitution and Annex 10.
- 1.8 **Council of Governors** means the Council of Governors as set out in this Constitution which has the same meaning as “Council of Governors” in the 2006 Act.
- 1.9 **Constitution** means this constitution and all annexes to it.
- 1.10 **Effective Date** means 1 October 2020 on which the Council of Governors approved the amended Constitution following its approval by the Board of Directors on 24 September 2020, and Annual Members’ Meeting on 9 October 2020.
- 1.11 **Monitor** is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.
- 1.12 **Service Users’ and Carers’ Constituency** is the name this Trust gives to its Patients’ Constituency.
- 1.13 **Service Users** means patients.
- 1.14 **Voluntary organisation** is a body, other than a public or local authority, the activities

of which are not carried out for profit.

2. Name

2.1 The name of the foundation trust is Norfolk & Suffolk NHS Foundation Trust (the Trust).

3. Principal purpose

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

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

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

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

3.3.2 the promotion and protection of public health.

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

4. Powers

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

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

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

4.4 The discharge of patients under Section 23 of the Mental Health Act 1983 (as amended by Section 45 of the Mental Health Act 2007) provides that such powers of discharge may be exercised by three (3) or more "*persons authorised by the Board of the Trust in that behalf each of whom is neither an executive director of the Board nor an employee of the Trust*".

5. Membership and Constituencies

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

following constituencies:

- 5.1.1 a public constituency.
- 5.1.2 a staff constituency; and
- 5.1.3 a service users' and carers' constituency.

5.2 Members must be at least eleven (11) years old at the time of their application.

6. Application for membership

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

7. Public Constituency

7.1 An individual who lives in the Norfolk area or the Suffolk area or the Rest of Region or neighbouring areas as specified in Annex 1 as an area for the public constituency may become or continue as a member of the trust.

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

7.3 The minimum number of members in the Public Constituency is as specified in Annex 1.

8. Staff Constituency

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

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

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

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

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

8.4 The minimum number of members in the Staff Constituency is specified in Annex 2.

9. Automatic membership by default – staff

9.1 An individual who is:

9.1.1 eligible to become a member of the Staff Constituency; and

9.1.2 invited by the Trust to become a member of the Staff Constituency

shall become a member of the Trust as a member of the Staff Constituency without an application being made, unless they inform the Trust that they do not wish to do so in writing to the Trust Secretary.

10. The Service Users' and Carers' Constituency

10.1 An individual who has, within the period specified below, attended any of the Trust's hospitals as either a service user or as the carer of a service user may become a member of the Trust.

10.2 The period referred to above shall be the period of three (3) years immediately preceding the date of an application by the service user or carer to become a member of the Trust.

10.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Service Users and Carers' Constituency.

10.4 The Service Users' and Carers' Constituency shall be divided into classes as specified in Annex 3

10.5 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Service Users' and Carers' Constituency.

10.6 The minimum number of members in each class of the Service Users' and Carer's Constituency is specified in Annex 3.

11. Automatic membership by default – patients [Not used]

12. Restriction on membership

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

12.2 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.

12.3 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.

13. Annual Members' Meeting

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

13.2 Further provisions about the Annual Members' Meeting are set out in Annex 10 – Annual Members' Meeting.

14. Council of Governors – composition

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

14.2 The composition of the Council of Governors is specified in Annex 4.

14.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

15. Council of Governors – election of governors

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

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

15.3 The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules are attached at Annex 5.

15.4 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of Paragraph 48 of the Constitution (amendment of the Constitution).

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

16. Council of Governors – tenure

- 16.1 An elected governor may hold office for a period of up to three (3) years.
- 16.2 An elected governor shall cease to hold office if they cease to be a member of member of the constituency or class by which they were elected.
- 16.3 An elected governor shall be eligible for re-election at the end of their term, but may not hold office for longer than nine (9) years in total (three, three-year terms). An elected governor having already served nine years may stand again for election for a term of office starting where a minimum of two years has elapsed since their last term of office ended.
- 16.4 Where a vacancy arises on the Council of Governors due to an elected governor ceasing to hold office as a governor before the expiry of their term of office howsoever caused, the Council of Governors has the option to appoint an interim governor to end the term of office of the elected governor they are replacing. The rules governing the appointment of interim governors will be approved by the Council of Governors, as amended from time to time.
- 16.5 An appointed governor may hold office for a period of up to three (3) years. An appointed governor shall be eligible for re-appointment at the end of their term, but may not hold office for longer than nine (9) years in total (three, three-year terms). This may be extended in exceptional circumstances on a strictly case-by-case basis without setting any precedence for any future decisions. Any extension past nine years would require approval from over half the members of the Council of Governors.
- 16.6 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.
- 16.7 Where a vacancy arises on the Council of Governors due to an appointed governor ceasing to hold office as a governor before the expiry of their term of office howsoever caused, the Trust Chair, or Trust Secretary on their behalf, shall request that the appointing organisation provides a replacement appointed governor.

17. Council of Governors – disqualification and removal

- 17.1 The following may not become or continue as a member of the Council of Governors:
- 17.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 17.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it; and
 - 17.1.3 a person who within the preceding five years has been convicted in the British

Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.

17.2 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.

18. Council of Governors – duties of governors

18.1 The general duties of the Council of Governors are:

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

18.1.2 to represent the interests of the members of the trust as a whole and the interests of the public.

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

19. Council of Governors – meetings of governors

19.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of Paragraph 28 below) or, in their absence the Vice Chair (appointed in accordance with the provisions of Paragraph 30 below), shall preside at meetings of the Council of Governors.

19.2 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 a meeting for reasons of commercial confidentiality, or on other proper grounds including, but not limited to, the maintenance of order, infection control and public safety.

19.3 Members of the public and Governors may be excluded from a meeting by the Chair of the meeting if they are interfering with or preventing the proper conduct of the meeting. The Chair's decision shall be final in this matter.

19.4 The Chair, or in their absence the person presiding at the meeting, is to have a casting vote in the event of a deadlock at a meeting of the Council of Governors.

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

20. Council of Governors – standing orders

20.1 The standing orders for the practice and procedure of the Council of Governors are attached at Annex 7.

21. Council of Governors – referral to the Panel

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

21.1.1 to act in accordance with its constitution; or

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

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

22. Council of Governors – conflicts of interest of governors

22.1 If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as they become aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

23. Council of Governors – travel expenses

23.1 The Trust may pay reasonable travel and other expenses to members of the Council of Governors at the same rates as staff as determined by the Trust.

24. Council of Governors – further provisions

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

25. Board of Directors – composition

25.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors. At least half the Board shall comprise non-executive directors determined by the Board to be independent.

25.2 The Board of Directors is to comprise:

25.2.1 a non-executive Chair

25.2.2 up to seven (7) other non-executive directors; and

25.2.3 up to seven (7) executive directors.

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

25.4 The Chief Executive shall be the Accounting Officer.

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

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

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

25.8 In the event that the number of non-executive directors (including the Chair) is equal to the number of executive directors, the Chair (or in their absence, the Vice Chair), shall have a second and casting vote at meetings of the Board of Directors in accordance with the Standing Orders for the Board of Directors.

26. Board of Directors – general duty

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

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

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

27.1.1 they are a member of a Public Constituency, or

27.1.2 they are a member of Service Users' and Carers' Constituency; and

27.1.3 they are not disqualified by virtue of paragraph 33 below.

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

28.1 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.

28.2 The Chair and other non-executive directors shall hold office for an initial three-year term, unless otherwise agreed, which could be extended by another three-year term to six years. In exceptional circumstances, the Chair and non-executive directors may hold office for a further three years to a maximum of nine years. This will be subject to a review before and during the third, three-year term by the Senior Independent

Director for the Chair, or by the Chair for the other non-executive directors. In addition, the Board will have undertaken a review of its needs and succession planning, or because of regulators' requirements, to illustrate why this continuation is required.

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

28.4 The Chair and non-executive directors shall be appointed via open competition unless there are specific reasons not to, such as but not limited to, interim appointments or appointments required by regulators.

29. Board of Directors – appointment of initial Chair and initial non-executive directors [Not used]

30. Board of Directors – appointment of Vice Chair

30.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a Vice Chair to act for the Chair in their absence.

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

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

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

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

31.4 The Chief Executive and other executive directors shall be appointed via open competition, unless there are specific reasons not to, such as but not limited to, interim appointments or appointments required by regulators.

32. Board of Directors – appointment and removal of initial Chief Executive [Not used]

33. Board of Directors – disqualification

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

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

33.1.2 a person who has made a composition or arrangement with, or granted a trust

deed for, their creditors and has not been discharged in respect of it;

- 33.1.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them;
- 33.1.4 a person who is a member of the Trust's Council of Governors;
- 33.1.5 a person who is a governor or director of another National Health Service Trust unless appointed to do so or with the agreement of the Trust in that capacity, or is an appointed Governor;
- 33.1.6 a person who is a member of the local Healthwatch Committee;
- 33.1.7 a person who is a member of the Local Authority's scrutiny committee covering health matters
- 33.1.8 a person who is subject to a sex offender order or has received a caution or conviction for a violent and / or sexual offence
- 33.1.9 a person who has been disqualified from being a member of a relevant authority under the provisions of the Local Government Act 2000
- 33.1.10 a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986
- 33.1.11 a person who has been disqualified from being a trustee of a charity under the Charities (Protection and Social Investment) Act 2016
- 33.1.12 a person who is not eligible to be a member of the Trust or whose membership of the Trust has been terminated
- 33.1.13 a person whose tenure of office as the Chair or as a member of director of a health service body has been terminated on any of the following grounds:
- 33.1.13.1 that their appointment is not in the interests of the health service;
 - 33.1.13.2 for non-attendance at meetings without good reason;
 - 33.1.13.3 for non-disclosure of a pecuniary interest;
- 33.1.14 a person who has within the preceding two year been dismissed from any paid employment with a National Health Trust on the grounds of misconduct or gross misconduct

- 33.1.15 a person who has refused without reasonable cause to fulfil any training requirement established by the Board of Directors
- 33.1.16 a person who had refused to sign and deliver to the Trust Secretary, a statement in the form required by the Board of Directors confirming acceptance of the terms and conditions of their appointment
- 33.1.17 a person who is not considered a “fit and proper person” under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 – Regulation 19

34. Board of Directors – meetings

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

35. Board of Directors – standing orders

- 35.1 The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 8.

36. Board of Directors - conflicts of interest of directors

- 36.1 The duties that a director of the Trust has by virtue of being a director include in particular:
 - 36.1.1 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
 - 36.1.2 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.
- 36.2 The duty referred to in sub-paragraph 36.1.1 is not infringed if:
 - 36.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 36.2.2 The matter has been authorised in accordance with the Constitution.
- 36.3 The duty referred to in sub-paragraph 36.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

36.4 In sub-paragraph 36.1.2, “third party” means a person other than:

36.4.1 the Trust; or

36.4.2 a person acting on its behalf.

36.5 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.

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

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

36.8 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.

36.9 A director need not declare an interest:

36.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

36.9.2 if, or to the extent that, the directors are already aware of it; or

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

36.9.3.1 by a meeting of the Board of Directors; or

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

37. Board of Directors – remuneration and terms of office

37.1 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.

37.2 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.

37.3 Non-executive directors and the Chair may not hold office for more than nine (9) years in total.

38. Registers

38.1 The Trust shall have:

- 38.1.1 a register of members showing, in respect of each member, the constituency to which they belong and, where there are classes within it, the class to which they belong;
- 38.1.2 a register of members of the Council of Governors;
- 38.1.3 a register of interests of governors;
- 38.1.4 a register of directors; and
- 38.1.5 a register of interests of the directors.

39. Admission to and removal from the registers

39.1 Registers will be managed by the Trust Secretary, and updated and received by the Board of Directors (Section 38.1.4 and 38.1.5) and Council of Governors (Sections 38.1.2 and 38.1.3) at least annually.

40. Registers – inspection and copies

40.1 The Trust shall make the registers specified in paragraph 38 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

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

- 40.2.1 any member of the Service Users' and Carers' Constituency; or
- 40.2.2 any other member of the Trust, if they so request.

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

- 40.3.1 they are to be available for inspection free of charge at all reasonable times; and
- 40.3.2 a member of the Trust who requests a copy of, or extract from, the registers is to be provided with a copy or extract free of charge.

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

41. Documents available for public inspection

- 41.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 41.1.1 a copy of the current constitution:
 - 41.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and
 - 41.1.3 a copy of the latest annual report.
- 41.2 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:
- 41.2.1 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;
 - 41.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 41.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 41.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 41.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
 - 41.2.6 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
 - 41.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 41.2.8 a copy of any final report published under section 65I (administrator's final report);
 - 41.2.9 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

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

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

41.4 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.

42. Auditor

42.1 The Trust shall have an auditor.

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

43. Audit committee

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

44. Accounts

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

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

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

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

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

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

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

45.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.

- 45.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 45.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 45.5 Each forward plan must include information about:
- 45.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on; and
 - 45.5.2 the income it expects to receive from doing so.
- 45.6 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 45.5.1, the Council of Governors must:
- 45.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions; and
 - 45.6.2 notify the directors of the Trust of its determination.
- 45.7 A Trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.
- 46. Presentation of the annual accounts and reports to the governors and members**
- 46.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 46.1.1 the annual accounts;
 - 46.1.2 any report of the auditor on them; and
 - 46.1.3 the annual report.
- 46.2 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.
- 46.3 The Trust may combine a meeting of the Council of Governors convened for the

purposes of sub-paragraph 46.1 with the Annual Members' Meeting.

47. Instruments

47.1 The trust shall have a seal.

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

48. Amendments to the Constitution

48.1 The Trust may make amendments of its Constitution only if:

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

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

48.2 Amendments made under Paragraph 48.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

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

48.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and

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

48.4 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.

48.5 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.

49. Mergers etc. and significant transactions

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

49.2 The Trust may enter into a significant transaction only if more than half the members

of the Council of Governors of the Trust voting approve entering into the transaction.

49.3 'Significant transaction' is any that significantly affects the services the Trust provides to its service users:

49.3.1 a transaction which increases or decreases the Trust's total income by 15% or above;

49.3.2 a transaction which increases or decreases the total number of the Trust's employees by 15% or above;

49.3.3 a transaction which increases or decreases the Trust's Fixed Assets by 15% of non-current assets

49.3.4 a transaction which requires public consultation.

49.4 For the avoidance of doubt clause 49.3 above does not apply where the other party to a contract has served notice on the Trust to terminate the contract or where the contract is for a fixed term and the fixed term has expired or is due to expire and the other party to the contract does not agree to extend or renew the contract.

49.5 For ease of reference only the following table summarises the Significant Transactions contained in clause 49.3:

Clause Number	Description	Variance
49.3.1	Change in the Trust's income	15% or above
49.3.2	Change in the number of the Trust's employees	15% or above
49.3.3	Change of the Trust's Fixed Assets	15% or above
49.3.5	A transfer of services	15% or above

ANNEX 1 – THE PUBLIC CONSTITUENCIES

(Paragraphs 7.1 and 7.3)

The Public Constituency will be open to all eligible members of the public who live in (a) the County of Norfolk, (b) the County of Suffolk, and (c) any of the Counties of Essex, Cambridgeshire and Peterborough, Hertfordshire, Lincolnshire, Bedfordshire, Luton and Milton Keynes, and the London Borough of Newham; (a), (b) and (c) being the three geographical areas identified as public constituencies of the Trust.

There will be a minimum of 500 public members drawn from each of areas (a) and (b), and a minimum of 25 members drawn from area (c).

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 8.4 and 8.5)

There will be a single Staff Constituency of at least 800 members.

ANNEX 3 – THE PATIENTS’ CONSTITUENCY

(Paragraphs 10.4 and 10.6)

The Service Users’ and Carers’ Constituency shall be divided into the following classes:

Service Users in Norfolk
Service Users in Suffolk

Carers in Norfolk
Carers in Suffolk.

There will be a minimum of 80 members in each of the Service Users’ classes.

There will be a minimum of 20 members in each of the Carers’ classes.

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraphs 14.2 and 14.3)

The Council of Governors shall comprise:

by Election

Public Constituency – Norfolk	7 Governors
Public Constituency – Suffolk	6 Governors
Staff Constituency	4 Governors
Service Users' and Carers' Constituency Classes:	
Service Users in Norfolk	2 Governors
Service Users in Suffolk	2 Governors
Carers who care for Service Users in Norfolk	1 Governor
Carers who care for Service Users in Suffolk	1 Governor

by Appointment (including partnership organisations)

Norfolk County Council	1 Governor
Suffolk County Council	1 Governor
University of East Anglia	1 Governor
University of Suffolk	1 Governor
Suffolk Constabulary	1 Governor
Norfolk Constabulary	1 Governor
Suffolk Youth Council	1 Governor
Norfolk Youth Advisory Board	1 Governor

ANNEX 5 –THE MODEL ELECTION RULES

(Paragraph 15.2 and 15.3)

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PART 2: TIMETABLE FOR ELECTION

2. Timetable
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PART 3: RETURNING OFFICER

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PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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

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- 60. Election expenses
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- 66. Application to question an election

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(Model Election Rules 2014 – NHS Providers and Lancashire Teaching Hospitals NHS Foundation Trust)

PART 1: INTERPRETATION**1. Interpretation**

1.1 In these rules, unless the context otherwise requires:

2006 Act means the National Health Service Act 2006;

Corporation means the public benefit corporation subject to this constitution;

Council of Governors means the council of governors of the corporation;

Declaration of identity has the meaning set out in rule 21.1;

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

E-voting means voting using either the internet, telephone or text message;

E-voting information has the meaning set out in rule 24.2;

ID declaration form has the meaning set out in Rule 21.1;

Internet voting record has the meaning set out in rule 26.4(d);

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

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

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

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

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

Numerical voting code has the meaning set out in rule 64.2(b)

Polling website has the meaning set out in rule 26.1;

Postal voting information has the meaning set out in rule 24.1;

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

Telephone voting facility has the meaning set out in rule 26.2;

Telephone voting record has the meaning set out in rule 26.5 (d);

Text message voting facility has the meaning set out in rule 26.3;

Text voting record has the meaning set out in rule 26.6 (d);

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

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

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

Voting information means postal voting information and/or e-voting information.

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

Proceeding	Time
Publication of notice of election.	Not later than the fortieth day before the day

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

3. Computation of time

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

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

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

4.2 Where two or more elections are to be held concurrently, the same returning officer

may be appointed for all those elections.

5. Staff

5.1 Subject to rule 69, the returning officer may appoint and pay such staff, including such technical advisers, as they consider 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 their 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 their functions under these rules.

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination forms may be obtained,
- (e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for

such return) and the date and time by which they must be received by the returning officer,

- (f) the date and time by which any notice of withdrawal must be received by the returning officer,
- (g) the contact details of the returning officer,
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

- (a) any financial interest that the candidate has in the corporation, and

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

12. Declaration of eligibility

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

- (a) that they are 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 their qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

- (a) decides that the candidate is not eligible to stand,

- (b) decides that the nomination form is invalid,
- (c) receives satisfactory proof that the candidate has died, or
- (d) receives a written request by the candidate of their withdrawal from candidacy.

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

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

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

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and

the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

19.1 The votes at the poll must be given by secret ballot.

19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.

19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.

19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:

- (a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate internet voting record in respect of any voter who casts

- their 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 their 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 their vote using the text message voting system.

20. The ballot paper

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

20.2 Every ballot paper must specify:

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,

- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

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

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

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

- (a) that the voter is the person:
 - (i) to whom the ballot paper was addressed, and/or
 - (ii) to whom the voter ID number contained within the e-voting information was allocated,
- (b) that they have not marked or returned any other voting information in the election, and

the particulars of their qualification to vote as a member of the constituency or class within the constituency for which the election is being held (“declaration of identity”) and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form (“ID declaration form”) or the use of an electronic method.

21.2 The voter must be required to return their declaration of identity with their ballot.

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

Action to be taken before the poll

22. List of eligible voters

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

22.2 The list is to include, for each member:

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

to which their voting information may, subject to rule 22.3, be sent.

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

23. Notice of poll

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

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,

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

24. Issue of voting information by returning officer

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

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

("postal voting information").

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

- (a) instructions on how to vote and how to make a declaration of identity (if required),

- (b) the voter's voter ID number,
 - (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate,
 - (d) contact details of the returning officer,
- ("e-voting information").

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

- (a) only be sent postal voting information; or
- (b) only be sent e-voting information; or
- (c) be sent both postal voting information and e-voting information; for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

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

25.3 There should be clear instructions, either printed on the covering envelope or

elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer:

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

26. E-voting systems

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

26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").

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

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

- (a) require a voter to:
 - (i) enter their 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 their vote;

- (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,

- (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (v) instructions on how to vote and how to make a declaration of identity,
- (vi) the date and time of the close of the poll, and
- (vii) the contact details of the returning officer;

prevent a voter from voting for more candidates than they are entitled to at the election

- (a) 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,
- (b) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- (c) 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 their voter ID number in order to be able to cast their vote; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;

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

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

- (a) require a voter to:

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

The Poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

28.2 Where the returning officer receives a request from a voter who requires assistance to

vote, the returning officer is to make such arrangements as they consider necessary to enable that voter to vote.

29. Spoilt ballot papers and spoilt text message votes

- 29.1 If a voter has dealt with their ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if they can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless they:
- (a) are satisfied as to the voter’s identity; and
 - (b) have 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 their text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if they can obtain it.
- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless they satisfied as to the voter’s identity.
- 29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote,

the returning officer shall enter in a list (“the list of spoilt text message votes”):

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

30. Lost voting information

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

30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless they:

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

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

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

31. Issue of replacement voting information

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

that a declaration of identity if required has already been received by the returning officer in the name of that voter.

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

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

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

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 their 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 their 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 their vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom they wish to cast their vote.

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

34. Voting procedure for remote voting by telephone

34.1 To cast their 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 their voter ID number using the keypad.
- 34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4 When prompted to do so the voter may then cast their vote by keying in the numerical voting code of the candidate or candidates, for whom they wish to vote.
- 34.5 The voter will not be able to access the telephone voting facility for an election once their vote at that election has been cast

35. Voting procedure for remote voting by text message

- 35.1 To cast their 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 their voter ID number and the numerical voting code for the candidate or candidates, for whom they wish to vote.
- 35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

36. Receipt of voting documents

- 36.1 Where the returning officer receives:
- (a) a covering envelope, or
 - (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,
- before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.

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

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

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

37. Validity of votes

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

37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, they are to

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

37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, they are to:

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

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

correctly made.

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

37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, they are to:

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

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

38.3 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 they shall:

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

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

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

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

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

40 Sealing of packets

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

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

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

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

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

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

“*stage of the count*” means:

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

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

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

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

42. Arrangements for counting of the votes

- 42.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:

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

43. The count

43.1 The returning officer is to

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

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

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

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

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

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

STV44.3 Any text voting record:

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

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

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

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

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

FPP44.5 The returning officer is to draw up a statement showing the number of rejected

ballot papers under the following headings:

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

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

STV45. First stage

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

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

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

STV46. The quota

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

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

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

rules STV47.1 to STV47.3 has been complied with.

STV47. Transfer of votes

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

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

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

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

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

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

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

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

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

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

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

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

whichever is the less.

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

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

STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:

- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
- (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.

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

STV48. Supplementary provisions on transfer

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

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and

- (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.

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

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

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

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

STV49. Exclusion of candidates

STV49.1 If:

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

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

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

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

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

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

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

STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).

STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.

STV49.8 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 they shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.

STV49.10 The returning officer shall after each stage of the count completed under this rule:

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

STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.

STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.

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

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

STV50. Filling of last vacancies

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

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

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

STV51. Order of election of candidates

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

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

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

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

FPP51. Equality of votes

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

Part 7: Final Proceedings in Contested and Uncontested Elections

FPP52. Declaration of result for contested elections

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

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

Part 8: Disposal of Documents

54. Sealing up of documents relating to the poll

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

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

voting records,

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

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

the poll, or

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

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

57. Retention and public inspection of documents

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

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

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

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

58.1 The corporation may not allow:

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

(v) the list of eligible voters, or

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

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

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

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

(a) persons,

(b) time,

(c) place and mode of inspection,

(d) production or opening,

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

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

(a) in giving its consent, and

(b) in making the documents available for inspection

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

(i) that their vote was given, and

- (ii) that Monitor has declared that the vote was invalid.

Part 9: Death of a Candidate during a Contested Election

FPP59. Countermand or abandonment of poll on death of candidate

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

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

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

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

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

FPP59.5 The returning officer is to:

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

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

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

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

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

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

Part 10: Election Expenses and Publicity

Election expenses

60. Election expenses

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

63. Publicity about election by the corporation

63.1 The corporation may:

- (a) compile and distribute such information about the candidates, and
- (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

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

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

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

- (a) a statement submitted by the candidate of no more than 250 words,

- (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and
- (c) a photograph of the candidate.

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

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

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

ANNEX 6 – ADDITIONAL PROVISIONS : COUNCIL OF GOVERNORS

(Paragraph 17)

1. Persons also may not become or continue as a Governor of the Trust if:
 - 1.1 they are an executive or non-executive director of the Trust, or a Governors or Director of another NHS body, or of an independent / private sector healthcare provider. These restrictions do not apply to appointed governors where there is not a direct conflict of interest;
 - 1.2 being a member of the Public Constituency or the Service Users' and Carers' Constituency, they were or were entitled to be a member of one of the classes of the Staff Constituency at any point during the preceding two years prior to the date their term of office would start;
 - 1.3 they refuse to sign a declaration in the form specified by the Council of Governors of the particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors;
 - 1.4 they are the subject of a sex offender order or have received a caution or conviction for a violent and / or sexual offence;
 - 1.5 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, expiry of a fixed-term contract, disability, ill-health or age, from any paid employment with a health service body. In other cases of dismissal, such as capability, an individual may be permitted to become a Governor at the discretion of the Trust, and subject to full disclosure of the relevant circumstances and facts concerning their dismissal;
 - 1.6 they are a person whose tenure of office as the Chair or as a member or as a Director of a health service body had been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest.
 - 1.7 they have had their name removed by a direction under the National Health Service Act 2006, or have otherwise been disqualified or suspended from any health care profession, and have not subsequently had their name included in such a list or had their qualification reinstated or suspension lifted (as applicable);
 - 1.8 they have been disqualified from being a member of a relevant authority under the provisions of the Local Government Act 2000;
 - 1.9 they have been excluded from being a member of the Trust;

- 1.10 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
 - 1.11 they are a member of the local authority's scrutiny committee covering health matters;
 - 1.12 they fail to, or indicate that they are unwilling to, act in the best interests of the Trust and in accordance with The Seven Principles of Public Life laid out by The Committee on Standards in Public Life in its first report (commonly known as The Nolan Principles) as amended from time-to-time;
 - 1.13 they fail to agree, or having agreed, fail to abide by the values and principles of the Trust.
 - 1.14 they fail to disclose any spent or unspent criminal convictions;
 - 1.15 where the spent or unspent conviction does not fall within any of the disqualification provisions of this constitution, the Trust may assess whether they are a fit and proper person to hold office. Any such decisions will not be taken as a precedent for future decisions and be strictly on a case-by-case basis;
 - 1.16 in accordance with clause 1.16, if the person is deemed to be fit and proper to hold office, they may stand for election and hold office as a governor;
 - 1.17 in accordance with clause 1.16, if the person is not deemed to be fit and proper to hold office, they will be excluding from standing for election and holding office as a Governor until they are deemed to be fit and proper;
 - 1.18 the person may submit an application to the Trust for the purpose of deciding whether they are fit and proper;
2. A person hold office as a governor shall immediately cease to do so if:
- 2.1 they are incapable of managing or administering their own property or affairs due to illness or injury which would go beyond a three-month leave of absence (Annex 9, Paragraph 16);
 - 2.2 they resign by notice in writing to the Trust Chair or the Trust Secretary;
 - 2.3 they fail to attend two consecutive Council of Governors' meetings without an agreed leave of absence from the Chair, this will trigger contact between the Chair and the appropriate officer of the partner organisation;
 - 2.4 they are an Elected Governor and they cease to be a member of the constituency or class by which they were elected. This may include, but is not

- restricted to, the reasons for ceasing to be a member identified in Annex 9;
- 2.5 they are a Governor appointed by a partnership organisation and they cease to be sponsored by the partnership organisation;
 - 2.6 they refuse, without reasonable cause, to undertake any training which the Council of Governors require all Governors to undertake;
 - 2.7 they fail to sign and deliver to the Trust Secretary a statement in the form required by the Trust confirming acceptance of the Code of Conduct of Governors, as agreed by the Council of Governors, or other declarations that may be required;
 - 2.8 they are removed by a resolution of the Council of Governors, in accordance with the Code of Conduct for Governors, as agreed by the Council of Governors.
 - 2.9 Monitor has exercised its powers to remove the person as a governor of the Council of Governors of the Trust or has suspended them from holding office as a governor of the Trust for a specified period of time, or Monitor has exercised any of those powers in relation to the person concerned at any time whether in relation to the Trust or another NHS Foundation Trust.
3. Governors are required to inform the Chair if they become disqualified for appointment within fourteen (14) calendar days of them becoming disqualified.
 4. Where a public, service user, carer or staff elected governor fails to attend two consecutive Council of Governors' meetings without an agreed leave of absence from the Chair, this will trigger the process under the Code of Conduct arrangements for the Council of Governors.
 5. An elected governor shall represent the members of their constituency: they shall not represent any professional body, political party, trade union or other interested party that they may be a member of.
 6. Criticism of a Governor's actions, accepted as a prima facie case to be heard, is to be reviewed by a sub-committee of the Council of Governors in accordance with the Trust's Code of Conduct for Governors, which is based on the NHS Improvement Code of Governance (July 2014).

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

(Paragraph 20)

1. Interpretation and Definitions for the Standing Orders

- 1.1 Save as otherwise permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of the Standing Orders (on which they should be advised by the Trust Secretary).
- 1.2 Any expression to which a meaning is given in or by virtue of the National Health Service Act 2006, or any legislation amending, re-enacting or replacing it, shall have the same meaning in these Standing Orders, and in addition:
- 1.2.1 **Board of Directors** means the Trust Chair, Executive and other Non-Executive Directors of the Trust collectively;
- 1.2.2 **Council of Governors** means the Council of Governors constituted in accordance with this Constitution, which has the same meaning as the Council of Governors in the National Health Service Act 2006;
- 1.2.3 **Chair of the Board of Directors (Trust) or Trust Chair** is the person appointed by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression “the Chair of the Trust” shall be deemed to include the Vice Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable;
- 1.2.4 **Trust** means Norfolk & Suffolk NHS Foundation Trust;
- 1.2.5 **Trust Secretary** means a person appointed to act independently of the Board of Directors to provide advice on corporate governance issues to the Board of Directors, Council of Governors and the Chair, and to monitor the Trust’s compliance with the law, its terms of authorisation, binding guidance issued by NHS Improvement and the Trust’s Constitution and Standing Orders.

2. Standing Orders for the Governors – Principle (see also Annex 6 of this Constitution)

- 2.1 These Standing Orders and all provisions of the Trust’s Constitution (including but not limited to Annex 6) shall apply to the Council of Governors.
- 2.2 All Governors’ business shall be conducted in the name of the Trust.

3. Composition of the Council of Governors

- 3.1 The composition of the Council of Governors shall be in accordance with Paragraph 14 and Annex 4 of this Constitution.

4. Appointment and Removal of the Chair and Vice Chair of the Council of Governors

- 4.1 The appointment shall be made by the Council of Governors in accordance with Paragraphs 25, 26, 27 and 28 of this Constitution.

5. Duties of the Vice Chair

- 5.1 Where the Chair of the Trust has died, or has otherwise ceased to hold office, or where they are unable to perform their duties as Chair owing to illness, absence from England and Wales, or any other cause, references to the Chair shall, so long as there is no Chair able to perform the Chair's duties, be taken to include references to the Vice Chair.

6. Meetings of the Council of Governors

6.1 Meetings held in Public

- 6.1.1 Meetings of the Council of Governors shall be held at least four times each year at times and in places (in person or electronic) that the Council of Governors may determine.
- 6.1.2 Meetings of the Council of Governors shall be held in public except in the circumstances specified in Paragraph 19.2 of this Constitution.

6.2 Calling Meetings

- 6.2.1 Notwithstanding 6.1.1 above, the Chair may in exceptional circumstances, call a meeting of the Council of Governors at any time.
- 6.2.2 If the Chair refuses to call a meeting after a requisition for that purpose signed by a majority of Governors, or if without so refusing the Chair does not call a meeting within fourteen (14) calendar days after the requisition to do so, then the Governors may forthwith call a meeting provided they have been requisitioned to do so by more than 50% of their members.

7. Notice of meetings of the Council of Governors

- 7.1 Before each meeting of the Council of Governors, a notice of the meeting specifying the business proposed to be transacted at it, and approved by the Chair, or by an Officer of the Trust authorised by the Chair to approve on their behalf, shall be delivered or emailed to every Governor, or sent by post to the usual place of residence of such Governors, at least seven (7) calendar days before the meeting. Lack of service of the notice on any Governors shall not affect the validity of a meeting.

7.2 Notwithstanding the above requirement for notice, the Chair may waive notice on written receipt of the agreement of at least 50% of the Governors.

7.3 In the case of a meeting called by the Governors in default of the Chair, the notice shall be signed by those Governors calling the meeting, and no business shall be transacted at the meeting other than that specified in the notice.

7.4 Failure to serve such a notice on more than three-quarters of Governors will invalidate the meeting. A notice will be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

8. Setting the agenda

8.1 The Council of Governors may determine that certain matters shall appear on every agenda or specific meetings of the Council of Governors, and set an annual plan of items for the Council of Governors.

8.2 A Governor desiring a matter to be included on an agenda shall make their request in writing to the Chair at least fifteen (15) calendar days before the meeting. Requests made less than fifteen (15) calendar days before a meeting may be included on the agenda at the discretion of the Chair, in consultation with the Lead Governor and Trust Secretary to ensure that the Council of Governors fulfils its statutory duties effectively.

9. Notices of Motions

9.1 A Governor desiring to move or amend a motion shall send a written notices thereof at least ten (10) calendar days before the meeting to the Chair, who shall insert the motion into the agenda of the meeting. All notices so received so received are subject to the notice given being permissible under the application regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to Standing Order 9.5 below.

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

9.3 Notice of a motion to amend or rescind any resolution (or the general substance of any resolution) which had been passed within the preceding six (6) months, shall bear the signature of the Governors who propose it and four (4) other Governors. When any such motion has been disposed of by the Council of Governors, a Governor cannot propose a motion to the same effect within the next six (6) months; however the Chair may do so if they consider it appropriate.

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

9.5 When a motion is under discussion, or immediately prior to discussion, to shall be open to the Governor to move:

9.5.1 An amendment to the motion;

9.5.2 The adjournment of the discussion or the meeting;

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

9.5.4 That the meeting process to the next business;

9.5.5 That the motion be now put.

Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the option of the Chair of the meeting, the amendment negates the substance of the motion.

9.6 In the case of motions under Paragraphs 9.5.4 and 9.5.5, to ensure objectivity, motions may only be put by a Governors who had not previously taken part in the debate.

10. Chair's Ruling

10.1 Statements of Governors made at meetings of the Council of Governors 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 and observed at the meeting.

11. Voting

11.1 Decisions at meetings shall be determined by a majority of the votes of the Governors present and voting. In the case of any equality of votes, the Chair of the meeting shall have a casting vote. Neither the Chair nor any Governor can vote on a resolution if they have a conflict of interest, and may be requested to leave the Council of Governors' meeting. If this results in a quorum not being available, it should be recorded in the minutes and the Council of Governors should move to the next item of business.

11.2 All decisions 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 Governors present so request.

11.3 If at least one-third of the Governors present so request, the voting (other than by

paper ballot) on any question may be recorded to show how each Governor present voted or abstained.

- 11.4 If a Governor so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 11.5 For voting on a resolution at a Council of Governors' meeting, each Governor shall have one vote.
- 11.6 In no circumstances may an absent Governor or the Trust Chair vote by proxy. Absence is defined as being absent at the time of the vote.

12. Suspension of these Standing Orders

- 12.1 Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of members of the Council of Governors are present and that a majority of those present vote in favour of a suspension.
- 12.2 A decision to suspend these Standing Orders shall be recorded in the minutes of the meeting.
- 12.3 A separate record of matters discussed during the suspension of these Standing Orders shall be made and shall be available to the Directors.
- 12.4 No formal business may be transacted while these Standing Orders are suspended.
- 12.5 The Audit & Risk Committee shall review every decision made by the Governors to suspend these Standing Orders.

13. Variation and Amendments of Standing Orders

- 13.1 These Standing Orders shall be amended if:
- 13.1.1 a notice of motion has been given; and
 - 13.1.2 no fewer than half the total of the Governors vote in favour of amendment; and
 - 13.1.3 at least two-thirds of the Governors are present; and
 - 13.1.4 the variation proposed does not contravene a statutory provision or any requirement of Monitor.

14. Record of Attendance

- 14.1 The names of the Governors present, and other non-voting attendees, at the meeting shall be recorded in the minutes.

15. Recording proceedings using electronic devices

- 15.1 A set out in the clause below no-one may record proceedings in whole or in part of Council of Governors' meetings using electronic devices, except in accordance with a resolution of the Council of Governors. Members of the public and governors may record proceedings in writing using pen or pencil and paper.
- 15.2 For the avoidance of doubt representatives of the press are members of the public for the purposes of Paragraph 15.1 above.
- 15.3 Any permissions given pursuant to Paragraph 15.1 above is made on a strictly case by case basis and without setting any precedents for any further or future permission. The Trust Chair has the unreserved right to withdraw permission at any time without notice.
- 15.4 Members of the Trust Secretariat present at Council of Governors' meetings for the purpose in whole or in part of taking and preparing formal minutes of the proceedings of the meeting in accordance with Paragraph 15.1 above may record the entire proceedings using written or electronic means for the purposes of preparing formal minutes. The Trust Secretary is responsible for ensuring that any and all information recorded under this paragraph is safeguarded and remains confidential.

16. Minutes

- 16.1 The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. There will be submitted for agreement at the next meeting, where they will be signed by the person presiding at it.
- 16.2 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 at the next meeting.
- 16.3 Minutes shall be circulated in accordance with the Governors' wishes. The minutes of the meeting shall be made available to the public except for minutes relating to the business conducted when members of the public are excluded under the terms of Paragraph 19.2 of this Constitution.

17. Chair of the meeting

- 18.1 At any meeting of the Council of Governors, the Trust Chair, if present, shall preside.
- 18.2 If the Trust Chair is absent from the meeting or temporarily absent due to potential or

actual conflicts of interest, the Vice Chair shall preside.

- 18.3 If the Vice Chair is absent from the meeting or temporarily absent due to potential or actual conflicts of interest, an independent non-executive director as agreed by the Council of Governors shall preside.
- 18.4 If neither the Chair, Vice Chair nor another independent non-executive director are present to preside, the meeting shall be adjourned for no longer than seven days.
- 18.5 Where the Council of Governors is exercising its function in relation to the appointment or removal of the Chair, the Senior Independent Director shall preside. If the Council of Governors is exercising its function in relation to the appointment or removal of one of the other non-executive directors, the Chair shall preside.

19 Quorum

- 19.1 No business shall be transacted at a meeting of the Council of Governors unless at least one-third of the whole number of the Governors is present.
- 19.2 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 they 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 the meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 19.3 If a Council of Governors' meeting is not quorate within 30 minutes of the start time detailed in the notice of the meeting referred to in clause above the governors in attendance may decide either:
- 19.3.1 to proceed with the meeting; or
- 19.3.2 to adjourn the meeting for seven (7) calendar days.
- 19.4 If the Chair of the meeting and governors decide to proceed with a Council of Governors' meeting in accordance with clauses above, no resolution may be passed at the meeting until it becomes quorate. The status of the quorum must be recorded in the minutes of the meeting.
- 19.5 If the Chair of the meeting and the governors decide to adjourn a Council of Governors' meeting for seven (7) calendar days in accordance with clauses above the adjourned meeting will be held seven (7) calendar days later in the same place and with the same start time. Those governors present at the reconvened meeting will constitute a quorum.

20 Arrangements for Delegation

- 20.1 The Council of Governors may agree from time to time to establish committees or sub-committees, which it has formally constituted, to assist in the carrying out of its duties. The constitution and terms of reference of these committees or sub-committees, and their specific powers shall be approved by the Council of Governors. Such committees may not be decision-making: however, they may make recommendations to both the Council of Governors and the Board of Directors.
- 20.2 The Council of Governors may request that external advisors assist them or any committee or sub-committee set up in accordance with the clause above. This request shall be made to the Trust Secretary and Trust Chair or Senior Independent Director for such assistance, with clear reasons given if this request is declined and appropriate advisor(s) provided instead.

21 Committees

- 21.1 The Council of Governors may appoint committees of the Council consisting wholly of persons who are Governors and shall approve their terms of reference. Non-Governors may attend such committees if appropriate under the Committee's terms of reference, but they shall have no vote.
- 21.2 A Joint Committee of the Council of Governors and the Board of Directors may be established.
- 21.3 A Committee so appointed may appoint sub-committees consisting of wholly 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.
- 21.4 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees so established by the Council of Governors.
- 21.5 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Council of Governors) as the Council of Governors shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 21.6 Committees may not delegate their responsibilities to a sub-committee unless expressly authorised by the Council of Governors.
- 21.7 The Council of Governors shall approve the membership of all committees and sub-committees that it has formally constituted and shall determine the Chair of each committee and / or sub-committee.

22 Confidentiality

- 22.1 A member of the Council of Governors or an attendee on a committee or other meeting of the Council of Governors shall not disclose a matter dealt with by, or brought before, the Council of Governors without its permission or until the committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter.
- 22.2 A Governor or a Non-Governor in attendance at a committee or other meeting shall not disclose any matter dealt with, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee resolves that it is confidential.
- 22.3 Any actual or alleged breach in confidentiality shall be dealt with under the Code of Conduct for Governors as agreed by the Council of Governors.

23 Declaration of interests

- 23.1 Governors are required to comply with the Trust's Standards of Business Conduct and to declare interests that are relevant and material to the Council of Governors. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.
- 23.2 Interests regarded as "relevant and material" are:
- 23.2.1 directorships, including Non-Executive Directorships held in private companies or public limited companies (with the exception of those of dormant companies;
 - 23.2.2 ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
 - 23.2.3 employment with any private company, business or consultancy;
 - 23.2.4 significant shareholdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS;
 - 23.2.5 a position of authority in a charity or voluntary organisation in the field of health and social care;
 - 23.2.6 any connection with a voluntary or other organisation contracting for NHS services;
- 23.3 If a Governor has any doubt about the relevance of an interest, that Governor should discuss it with the Trust Secretary who shall advise that Governor whether or not to disclose the interest.
- 23.4 At the time Governors' interests are declared, they should be recorded in the Council

of Governors minutes and entered on a Register of Interests of Governors to be maintained by the Secretary. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring.

23.5 Governors' Directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report.

23.6 During the course of a Council of Governors meeting, if a conflict of interest is established, the Governor concerned shall, unless two-thirds of those Governors present agree otherwise, withdraw from the meeting and play no part in the relevant discussion or decision.

23.7 There is no requirement for the interests of Governors' spouses or partners to be declared.

23.8 Failure to declare an interest by a Governor will be considered under the Code of Conduct for Governors as approved by the Council of Governors.

24 Register of Interests

22.1 The Trust Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Governors.

22.2 Details of the Register will be kept up-to-date and reviewed annually. The Register will be available to the public and published on the Trust's website.

25 Compliance – other matters

22.1 All Governors shall comply with the "Standards of Business Conduct for NHS staff" set by the Board of Directors for the guidance of all staff employed by the Trust.

22.2 All Governors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Trust.

22.3 All Governors shall comply with the Trust's Code of Conduct for Governors.

22.4 The conduct and business of the Council of Governors will comply with all relevant legislation.

26 Senior Independent Director

23.1 The Council of Governors is entitled to be consulted by the Board of Directors on the appointment of the Trust's Senior Independent Director.

23.2 The role of the Senior Independent Director is as set out in the Trust's "Senior Independent Director role description", as amended from time-to-time.

27 Decisions taken in good faith (Annex 9, Paragraph 5)

27.1 The Trust Secretary and members of the Council of Governors and Board of Directors

who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly and the Trust may also take out and maintain for their benefit insurance against such risks. Any costs arising in this way, will be met by the Trust.

ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

(Paragraph 35)

A. INTERPRETATIONS & DEFINITIONS

1. Interpretation and definitions for the Standing Orders and Standing Financial Instructions

1.1 Save as otherwise permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Chief Executive or Trust Secretary).

1.2 Any expression to which a meaning is given in or by virtue of the National Health Service Act 2006, or any legislation amending or re-enacting it, shall have the same meaning in these Standing Orders and Standing Financial Instructions and in addition:

1.2.1 **Accounting Officer** means the Officer responsible and accountable for funds entrusted to the Trust. The Officer shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive;

1.2.2 **Board of Directors** means the Trust Chair, Executive and Non-Executive Directors of the Trust collectively;

1.2.3 **Council of Governors** means the Council of Governors of the Trust as constituted in accordance with this constitution, which has the same meaning as the Council of Governors in the 2006 Act;

1.2.4 **Budget** means a resource, expressed in financial terms, proposed by the Board of Directors for the purpose of carrying out, for a specific period, any or all of the functions of the Trust;

1.2.5 **Budget holder** means the Director or employee with delegated authority to manage finances (income and expenditure) for a specific area of the organisation;

1.2.6 **Chair of the Board of Directors (Trust) or Trust Chair** is the person appointed by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression “the Chair of the Trust” shall be deemed to include the Vice Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable;

1.2.7 **Chief Executive** means the Chief Officer of the Trust;

1.2.8 **Commissioning** means the process for determining the need for and for

obtaining the supply of healthcare and related services by the Trust within available resources;

- 1.2.9 **Committee** means a committee or sub-committee created and appointed by the Board of Directors;
- 1.2.10 **Committee members** means persons formally appointed by the Board of Directors to sit on or to chair specific committees;
- 1.2.11 **Contracting and procuring** means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets;
- 1.2.12 **Director of Finance** means the Chief Financial Officer of the Trust;
- 1.2.13 **Executive Director** means a Director who is also an employee of the Trust;
- 1.2.14 **Funds held on trust** shall mean those funds which the Trust holds on date of incorporation, or subsequently receives as Trust funds. Such funds may or may not be charitable;
- 1.2.15 **Nominated Officer** means an Officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions;
- 1.2.16 **Non-Executive Director** means a Director of the Trust who is not an employee of the Trust;
- 1.2.17 A **person** includes a company and is **connected** with a Director for the purposes of these Standing Orders if the Director is their spouse, civil partner, co-habiting partner, minor child, minor step-child, business partner or a company of which the Director, or any person connected with them, is a Director or in which they and all persons connected with them are interested in shares carrying one-fifth of the voting rights or comprising one-fifth of the nominal value of the company's capital;
- 1.2.18 **Quality Governance** means a committee of the Board of Directors whose functions are concerned with the arrangements for the purpose of monitoring and improving the quality of healthcare for which the Trust has responsibility;
- 1.2.19 **SFIs** means Standing Financial Instructions;
- 1.2.20 **SOs** means Standing Orders;
- 1.2.21 **Trust** means the Norfolk and Suffolk NHS Foundation Trust;
- 1.2.22 **Trust Secretary** means a person appointed to act independently of the Board of Directors to provide advice on corporate governance issues to the Board of

Directors, Council of Governors and the Chair, and monitor the Trust's compliance with the law, Standing Orders, the Trust's terms of authorisation as an NHS Foundation Trust, the Trust's constitution and binding guidance issued by Monitor (together the "Regulatory Framework")

- 1.2.23 **Vice Chair** means the Non-Executive Director appointed by the Council of Governors to take on the Chair's duties if the Chair is absent for any reason.

B. INTRODUCTION

2. Frameworks

2.1 Statutory Framework

- 2.1.1 The Norfolk and Suffolk NHS Foundation Trust is a statutory body which came into existence on 1 February 2008 upon its authorisation as an NHS Foundation Trust by the Independent Regulator for NHS Foundation Trusts ("Monitor").
- 2.1.2 The principal place of business of the Trust shall be at such a place as the Board of Directors shall decide.
- 2.1.3 NHS Foundation Trusts are governed by the Regulatory Framework.
- 2.1.4 The functions of the Trust are conferred by the National Health Service Act 2006.
- 2.1.5 As a statutory body, the Trust has power to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable.
- 2.1.6 The Regulatory Framework requires the Board of Directors to adopt Standing Orders for the regulation of its proceedings and business. The Trust has also decided to adopt Standing Financial Instructions (SFIs) setting out the responsibilities of individuals in relation to financial matters.
- 2.1.7 The Trust will also be bound by such other statutes and legal provisions which govern the conduct of its affairs.

2.2 Framework

The Board of Directors has drawn up a schedule of decisions reserved to the Board of Directors, and wishes to ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior Executives (a scheme of delegation). The Regulatory Framework requires the establishment of Audit and Risk, and Appointments and Remuneration Committees with formally agreed terms of reference. The Code of Conduct and Code of Accountability in the NHS makes various requirements concerning possible conflicts of interest of Board members.

2.3 Delegation of Powers

The Trust has powers to delegate and make arrangements for delegation. The Standing Orders set out the detail of these arrangements. Under the Standing Orders relating to the Arrangements for the Exercise of Functions (Section F of Annex 8) the Trust is given powers to "make arrangements for the exercise, on behalf of the Trust of any of their functions by a committee or sub-committee or by an Officer of the Trust, in each case subject to such restrictions and conditions as the Trust thinks fit". Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers). This document has effect as if incorporated into the Standing Orders. Delegated Powers are covered in a separate document entitled – "Schedule of Matters reserved to the Board and Scheme of Delegation" and have effect as if incorporated into the Standing Orders and Standing Financial Instructions.

C. THE BOARD OF DIRECTORS: COMPOSITION OF MEMBERSHIP, TENURE AND ROLE OF MEMBERS

3. Composition of the membership of the Board of Directors

3.1 In accordance with the Trust's constitution the composition of the Board of Directors shall be:

3.1.1 The Chair of the Trust (appointed by the Governors), Non-Executive Director;

3.1.2 Up to seven other Non-Executive Directors (appointed by the Governors);

3.1.3 Up to seven Executive Directors including:

- the Chief Executive;
- the Director of Finance;
- at least one of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984);
- one of the Executive Directors is to be a registered nurse or a registered midwife.

4. Appointment of Chair and Non-Executive Directors of the Trust

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.

5. Terms of Office of the Chair and Non-Executive Directors

Non-Executive Directors and the Trust Chair may not hold office for longer than nine (9) years in total.

6. Appointment and powers of Vice Chair

- 6.1 The Council of Governors of the Trust may appoint one of the Non-Executive Directors to be Vice Chair, for such period, not exceeding the remainder of their as a Non-Executive Director, as they may specify on appointing them.
- 6.2 Any Director so appointed may at any time resign from the office of Vice Chair by giving notice in writing to the Chair.
- 6.3 Where the Chair of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chair owing to illness or any other cause, the Vice Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties, as the case may be. References to the Chair in these Standing Orders shall, so long as there is no Chair able to perform those duties, be taken to include references to the Vice Chair.

7. Role of members

The Board of Directors will function as a corporate decision-making body. Executive Directors and Non-Executive Directors will be full and equal members. Their role as members of the Board of Directors will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions. Section 57 of Annex 8 provides the supporting principles for Board members as outlined in “The NHS Foundation Trust Code of Governance” document.

7.1 Executive Directors

7.1.1 Executive Directors shall exercise their authority within the terms of these Standing Orders and Standing Financial Instructions and the Scheme of Delegation.

7.1.2 Where more than one person is appointed jointly to an executive directorship, those persons can jointly attend the Board of Directors’ meeting, but shall have only one vote and shall count as one person for the purposes of quoracy.

7.2 Chief Executive

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust. The Chief Executive 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.

7.3 Director of Finance

The Director of Finance shall be responsible for the provision of financial advice to the Trust and to its members and for the supervision of financial control and accounting systems. The Director of Finance shall be responsible along with the Chief Executive for ensuring the discharge of obligations under relevant Financial Directions.

7.4 Non-Executive Directors

The Non-Executive Directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust. They may however, exercise collective authority when acting as members of or when chairing a committee of the Trust which has delegated powers.

7.5 *Chair*

- 7.5.1 The Chair shall be responsible for the operation of the Board of Directors and Chair all Board meetings when present. The Chair has certain delegated executive powers. The Chair must comply with the terms of appointment and with these Standing Orders.
- 7.5.2 The Chair shall take responsibility either directly or indirectly for the induction, portfolios of interests and assignments, and the performance of Non-Executive Directors.
- 7.5.3 The Chair shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board of Directors in a timely manner with all the necessary information and advice being made available to the Board of Directors to inform the debate and ultimate resolutions.

7.6 *Senior Independent Director*

- 7.6.1 The Board of Directors should in consultation with the Council of Governors appoint a Non-Executive Director, to be the Senior Independent Director, for such period, not exceeding the remainder of their term as a Non-Executive Director, as they may specify on appointing them. The Senior Independent Director shall perform the role set out in the Trust's "Senior Independent Director Job Description", as amended from time-to-time by a resolution of the Board of Directors and a resolution of the Council of Governors.
- 7.6.2 Any Non-Executive Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Board of Directors may thereupon in consultation with the Council of Governors appoint another Non-Executive Director as Senior Independent Director.
- 7.6.3 The Senior Independent Director should attend sufficient meetings of the Council of Governors to listen to their views to help develop a balanced understanding of the issues and concerns of the members of the Council of Governors.

8. Corporate role of the Board of Directors

- 8.1 All business shall be conducted in the name of the Trust.
- 8.2 All funds received in trust shall be held in the name of the Trust as corporate trustee.

- 8.3 The powers of the Trust established under statute shall be exercised by the Board except as otherwise provided for in Section F of Annex 8.
- 8.4 The Board of Directors shall define and regularly review the functions it exercises on behalf of the Secretary of State.

9. Schedule of matters reserved to the Board of Directors and Scheme of Delegation

The Board of Directors has resolved that certain powers and decisions may only be exercised by the Board of Directors in formal session. These powers and decisions are set out in the 'Schedule of Matters Reserved to the Board' and shall have effect as if incorporated into the Standing Orders. Those powers which it has delegated to Officers and other bodies are contained in the Scheme of Delegation.

10. Lead roles for Board members

The Chair will ensure that the designation of lead roles or appointments of Board members as required by the Regulatory Framework or as set out in any statutory or other guidance binding on the Trust will be made in accordance with that requirement or guidance

D. MEETINGS OF THE BOARD OF DIRECTORS

11 Calling meetings

- 11.1 Ordinary meetings of the Board of Directors shall be held at regular intervals at such times and places as the Board of Directors may determine.
- 11.2 The Chair of the Trust may call a meeting of the Board of Directors at any time.
- 11.3 One-third or more members of the Board of Directors may requisition a meeting in writing. If the Chair refuses, or fails, to call a meeting within seven (7) calendar days of a requisition being presented, the members signing the requisition may forthwith call a meeting.

12. Notice of meetings and the business to be transacted

- 12.1 Before each meeting of the Board of Directors a written notice specifying the business proposed to be transacted shall be delivered or emailed to every member, or sent by post to the usual place of residence of each member, so as to be available to members seven (7) calendar days before the meeting. The notice shall be approved by the Chair, or by an Officer authorised by the Chair to approve on their behalf. Want of service of such a notice on any member shall not affect the validity of a meeting.
- 12.2 In the case of a meeting called by members in default of the Chair calling the meeting, the notice shall be signed by those members.

12.3 No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under SO 17 below.

12.4 A member desiring a matter to be included on an agenda shall make their request in writing to the Chair at least fifteen (15) clear days before the meeting. The request should include appropriate supporting information. Requests made less than fifteen (15) calendar days before a meeting may be included on the agenda at the discretion of the Chair.

13 Agenda and supporting papers

The Agenda will be sent to members seven (7) calendar days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three (3) calendar days before the meeting, save in emergency.

14 Petitions

Where a petition has been received by the Trust the Chair shall include the petition as an item for the agenda of the next meeting.

15 Notice of motion

15.1 Subject to the provision of SO 18 'Motions: Procedure at and during a meeting', a member of the Board of Directors wishing to move a motion shall send a written notice to the Chief Executive who will ensure that it is brought to the immediate attention of the Chair.

15.2 The notice shall be delivered at least fifteen (15) clear days before the meeting. The Chief Executive shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

16 Emergency motions

Subject to the agreement of the Chair, and subject also to the provision of SO 17 'Motions: Procedure at and during a meeting', 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, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. 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. The Chair's decision to include the item shall be final.

17 Motions – Procedure at, and during, a meeting

17.1 *Who may propose*

- 17.1.1 A motion may be proposed by the Chair of the meeting, or any member present. It must also be seconded by another member.

17.2 *Contents of motions*

- 17.2.1 The Chair may exclude from the debate, at their discretion, any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

- the reception of a report;
- consideration of any item of business before the Board of Directors;
- the accuracy of minutes;
- that the Board of Directors proceed to next business;
- that the Board of Directors adjourn;
- that the question be now put.

17.3 *Amendments to motions*

- 17.3.1 A motion for amendment shall not be discussed unless it has been proposed and seconded.

- 17.3.2 Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board of Directors.

- 17.3.3 If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

17.4 *Rights of reply to motions*

- 17.4.1 Amendments: 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.

- 17.4.2 Substantive / original motion: The member who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

17.5 *Withdrawing a motion*

- 17.5.1 A motion, or an amendment to a motion, may be withdrawn.

17.6 *Motions once under debate*

- 17.6.1 When a motion is under debate, no motion may be moved other than:

- an amendment to the motion;
- the adjournment of the discussion, or the meeting;

- that the meeting proceed to the next business;
- that the question should be now put;
- the appointment of an 'ad-hoc' committee to deal with a specific item of business;
- that a member / Director be not further heard.

17.6.2 In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a member of the Board of Directors who has not taken part in the debate and who is eligible to vote.

17.6.3 If a motion to proceed to the next business or that the question be now put is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

17.7 *Motion to Rescind a Resolution*

17.7.1 Notice of motion to 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 Board member who gives it and also the signature of three other Board members, and 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.

17.7.2 When any such motion has been dealt with by the Board of Directors it shall not be competent for any Director, other than the Chair, to propose a motion to the same effect within six (6) months. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a committee or the Chief Executive.

18. **Chair of the meeting**

18.1 At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting, the Vice Chair (if the Board of Directors has appointed one), if present, shall preside.

18.2 If the Chair and Vice Chair are absent, such Non-Executive Director as the directors present shall choose shall preside.

19 **Chair's ruling**

The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

20 **Quorum**

- 20.1 No business shall be transacted at a meeting unless at least one-third of the whole number of the Chair and members (including at least one Executive Director and at least one Non-Executive Director) is present.
- 20.2 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 20.3 If the Chair or member has been disqualified from participating in the discussion on any matter and / or from voting on any resolution by reason of a declaration of a conflict of interest (see SO 52) that person 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.
- 20.4 If Board of Directors' meeting is not quorate within 30 minutes of the start time detailed in the notice of the meeting, the directors may decide to either:
- 20.4.1 to proceed with the meeting; or
 - 20.4.2 to adjourn the meeting for seven days

21 Voting

- 21.1 Save as provided in SO 22 - Suspension of Standing Orders, and SO 23 - Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of members present and voting on the question. In the event that the number of Non-Executive Directors (including the Chair) is equal to the number of Executive Directors, the person presiding the meeting shall have a second vote. In the case of an equal vote, the person presiding the meeting shall have a further casting vote.
- 21.2 At the discretion of the Chair all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.
- 21.3 If at least one-third of the members present so request, the voting on any question may be recorded so as to show how each member present voted or did not vote (except when conducted by paper ballot).
- 21.4 If a member so requests, their vote shall be recorded by name.
- 21.5 In no circumstances may an absent member vote by proxy. Absence is defined as being absent at the time of the vote.
- 21.6 A manager who has been formally appointed to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy shall be entitled to exercise the voting rights of the Executive Director.

21.7 A manager attending the Board of Directors' meeting to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

22 Suspension of Standing Orders

22.1 Except where this would contravene any statutory provision or the rules relating to the quorum, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board of Directors are present (including at least one Executive Director and at least one Non-Executive Director) and that at least two-thirds of those members present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Board's minutes.

22.2 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and members of the Trust.

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

22.4 The Audit and Risk Committee shall review every decision to suspend Standing Orders.

23. Variation and amendment of Standing Orders

23.1 These Standing Orders shall not be varied except in the following circumstances:

23.1.1 upon a notice of motion under SO 16;

23.1.2 upon a recommendation of the Chair or Chief Executive;

23.1.3 that two-thirds of the Board of Directors are present at the meeting where the variation or amendment is being discussed, and that at least half of the Trust's Non-Executive Directors vote in favour of the amendment;

23.1.4 providing that any variation or amendment does not contravene a statutory provision.

24. Record of attendance

The names of the Chair and Directors present at the meeting shall be recorded.

25. Minutes

25.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they shall be signed by the person presiding at it.

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

26. Confidentiality of proceedings

26.1 Business transacted at meetings

26.1.1 Matters to be dealt with by the Board of Directors shall be confidential to the members of the Board of Directors.

26.1.2 Directors and any employee of the Trust in attendance shall not reveal or disclose the contents of Board of Directors' meetings or reports or papers to be discussed at such meetings. This prohibition shall apply equally to the content of any discussion during the Board meeting which may take place on such reports or papers.

26.2 Use of Mechanical or Electrical Equipment for Recording or Transmission of Meetings

26.2.1 Nothing in these Standing Orders shall be construed as permitting the introduction by any person of recording, transmitting, video or similar apparatus into meetings of the Trust or Committee thereof. Such permission shall be granted only upon resolution of the Trust.

27. Observers at Board of Directors' meetings

The Board of Directors will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Board of Directors' meetings and may change, alter or vary these terms and conditions as it deems fit.

E. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

28. Appointment of committees

28.1 Subject to any constraints placed on them by the Regulatory Framework, the Board of Directors may appoint committees of the Trust.

28.2 The Trust shall determine the membership and terms of reference of committees and sub-committees and shall if it requires to, receive, and consider reports of such committees.

29. Applicability of Standing Orders and Standing Financial Instructions to committees

The Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall as appropriate apply to meetings and any committees established

by the Trust. In which case the term “Chair” is to be read as a reference to the Chair of other committees as the context permits, and the term “member” is to be read as a reference to a member of other committee also as the context permits. (There is no requirement to hold meetings of committees established by the Trust in public.)

30. Terms of Reference

Each such committee shall have such Terms of Reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide and shall be in accordance with the Regulatory Framework. Such terms of reference shall have effect as if incorporated into the Standing Orders.

31. Delegation of powers by committees to sub-committees

Where committees are authorised to establish sub-committees, they may not delegate executive powers to the sub-committee unless expressly authorised by the Board of Directors.

32. Approval of appointments to committees

The Board of Directors shall approve the appointments to each of the committees which it has formally constituted.

33. Appointments for Statutory functions

Where the Board of Directors is required to appoint persons to a committee and / or to undertake statutory functions as required by the Regulatory Framework, such appointments shall be made in accordance with the Regulatory Framework.

34. Committees established by the Board of Directors

The committees and sub-committees established by the Board of Directors are:

34.1 *Audit and Risk Committee*

34.1.1 An Audit and Risk Committee will be established and constituted to provide the Board of Directors with an independent and objective review on its financial systems, financial information and compliance with laws, clinical governance, clinical risk management and quality accounts guidance and regulations applicable to the Trust. The terms of reference will be approved by the Board of Directors and reviewed on a periodic basis. The committee will be known as the Audit and Risk Committee.

34.1.2 The Trust’s terms of authorisation require that the committee comprises Non-Executive Directors, of which at least one must have recent, and relevant financial experience.

34.2 *Appointments and Remuneration Committee*

- 34.2.1 In accordance with the Trust's constitution an Appointments and Remuneration Committee will be established and constituted, comprised exclusively of Non-Executive Directors.
- 34.2.2 The purpose of the Committee will be to advise the Board of Directors about appropriate remuneration and terms of service for the Chief Executive and other Executive Directors including:
- all aspects of salary (including any performance-related elements / bonuses);
 - provisions for other benefits, including pensions and cars;
 - arrangements for termination of employment and other contractual terms.

34.3 *Charitable Funds Committee*

- 34.3.1 In line with its role as a corporate trustee for any funds held in Trust, either as charitable or non-charitable funds, the Board of Directors will establish a Trust and Charitable Funds Committee to administer those funds in accordance with any statutory or other legal requirements or best practice required by the Charities Commission.
- 34.3.2 The provisions of this Standing Order must be read in conjunction with SO 9 and the Trust's Standing Financial Instructions.

34.4 *Other Committees*

The Board of Directors may also establish such other committees as required to discharge the Trust's responsibilities.

F. ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION

35. Delegation of functions to committees and officers

Subject to compliance with the Regulatory Framework, the Board of Directors may make arrangements for the exercise, on its behalf, of any of its functions by a committee or sub-committee appointed by virtue of SO 37 or by an Officer of the Trust, in each case subject to such restrictions and conditions as the Trust thinks fit.

36. Emergency powers and urgent decisions

The powers which the Board of Directors has reserved to itself within these Standing Orders may in emergency, or for an urgent decision, be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Board of Directors for noting.

37. Delegation to committees

The Board of Directors shall agree from time-to-time to the delegation of executive powers to be exercised by other committees, or sub-committees, which it has formally constituted in accordance with the Regulatory Framework. The Constitution and Terms of Reference of these committees or sub-committees and their specific executive powers shall be approved by the Board of Directors in respect of its sub-committees.

38 Delegation to officers

38.1 Those functions of the Trust which have not been retained as reserved by the Board of Directors, or delegated to other committee or sub-committee, shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions the Chief Executive will perform personally and shall nominate Officers to undertake the remaining functions for which the Chief Executive will still retain accountability to the Trust.

38.2 The Chief Executive shall prepare a Scheme of Delegation identifying proposals which shall be considered and approved by the Board of Directors. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board of Directors.

38.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Director of Finance to provide information and advise the Board of Directors in accordance with the requirements of the Regulatory Framework. Outside these statutory requirements the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.

39. Schedule of matters reserved to the Trust and Scheme of Delegation of powers

The arrangements made by the Board of Directors as set out in the "Schedule of Matters Reserved to the Board" and "Scheme of Delegation" of powers shall have effect as if incorporated in these Standing Orders.

40. Duty to report non-compliance with the Standing Orders and Standing Financial Instructions

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 for action or ratification. All members of the Board of Directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive and Trust Secretary as soon as possible.

G. OVERLAP WITH OTHER TRUST POLICY STATEMENTS / PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS**41. Policy Statements – General principles**

The Board of Directors will from time-to-time agree and approve policy statements / procedures which will apply to all or specific groups of staff employed by the Trust. The decisions to approve such policies and procedures will be recorded in an appropriate Board of Directors minute and will be deemed where appropriate to be an integral part of the Trust's Standing Orders and Standing Financial Instructions.

42. Specific policy statements

42.1 Notwithstanding the application of SO 42 above, these Standing Orders and the Trust's Standing Financial Instructions must be read in conjunction with the following Policy statements:

42.1.1 the Standards of Business Conduct for NHS Staff and Conflicts of Interest Policy for the Trust staff; and

42.1.2 the staff disciplinary and appeals procedures adopted by the Trust both of which shall have effect as if incorporated in these Standing Orders.

43. Standing Financial Instructions

Standing Financial Instructions adopted by the Board of Directors in accordance with the Financial Regulations shall have effect as if incorporated in these Standing Orders.

44. Specific guidance

44.1 These Standing Orders and the Trust's Standing Financial Instructions must be read in conjunction with the Regulatory Framework, which includes, but not limited to, the following statutes:

44.1.1 Caldicott Guardian – Report on the Review of Patient-Identifiable Information 1997;

44.1.2 Human Rights Act 1998;

44.1.3 Freedom of Information Act 2000;

44.1.4 General Data Protection Regulation and the Data Protection Act (2018).

H. DUTIES AND OBLIGATIONS OF BOARD MEMBERS / DIRECTORS AND SENIOR MANAGERS UNDER THESE STANDING ORDERS

45. Declaration of interests**45.1 Requirements for declaring interests and applicability to Board Members**

45.1.1 The Code of Conduct and Code of Accountability in the NHS, which has been adopted by the Trust, requires Board members to declare interests which are relevant and material to the Board of which they are a member. All existing Board members should declare such interests. Any Board members appointed subsequently should do so on appointment.

45.2 Interests which should be regarded as "relevant and material" are:

45.2.1 Directorships, including Non-Executive Directorships, held in private companies or PLCs (with the exception of those of dormant companies);

45.2.2 ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the Trust;

45.2.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the Trust;

45.2.4 a position of Authority in a charity or voluntary organisation in the field of health and social care;

45.2.5 any connection with a voluntary or other organisation contracting for NHS services;

45.2.6 research funding / grants that may be received by an individual or their department;

45.2.7 interests in pooled funds that are under separate management.

45.2.8 Any member of the Board of Directors who comes to know that the Trust has entered into or proposes to enter into a contract in which they or any person connected with them has any pecuniary interest, direct or indirect, the Board member shall declare their interest by giving notice in writing of such fact to the Trust Secretary as soon as practicable.

45.3 Advice on Interests

45.3.1. If Board members have any doubt about the relevance of an interest, this should be discussed with the Chair of the Trust or with the Trust Secretary.

45.3.2 Financial Reporting (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in

assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

46. Recording of interests in Board of Directors' minutes

46.1 At the time Board members' interests are declared, they should be recorded in the Board of Directors' minutes.

46.2 Any changes in interests should be declared at the next Trust Board meeting following the change occurring and recorded in the minutes of that meeting.

47. Publication of declared interests in the Annual Report

Board members' Directorships of companies likely or possibly seeking to do business with the Trust should be published in the Trust's Annual Report. The information should be kept up-to-date for inclusion in succeeding Annual Reports.

48. Conflicts of interest which arise during the course of a meeting

During the course of a Board meeting, if a conflict of interest is established, the Board member concerned should withdraw from the meeting and play no part in the relevant discussion or decision. (See SO 52.2.1)

49. Register of Interests

49.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board or committee members. In particular the Register will include details of all Directorships and other relevant and material interests (as defined in above) which have been declared by both Executive and Non-Executive Board members.

49.2 These details will be kept up to date by means of a monthly review of the Register in which any changes to interests declared during the preceding month will be incorporated.

49.3 The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of local residents and to publicise arrangements for viewing it.

49.4 Detailed guidance has been locally adopted by the Trust in line with the "Standards of business conduct in the NHS" and "Code of Conduct for NHS Managers".

50. Exclusion of Chair and Members in proceedings on account of pecuniary interest

50.1 Definition of terms used in interpreting 'pecuniary' interest

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

- "spouse" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);
- "contract" shall include any proposed contract or other course of dealing.

50.1.2 "Pecuniary interest": Subject to the exceptions set out in this Standing Order, a person shall be treated as having an indirect pecuniary interest in a contract if:

- that person, or a nominee of that person, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same; or
- that person is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.

50.1.3 Exception to pecuniary interests: A person shall not be regarded as having a pecuniary interest in any contract if:

- neither that person or any person connected with that person has any beneficial interest in the securities of a company of which they or such person appears as a member, or
- any interest that that person or any person connected with that person may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in relation to considering or voting on that contract: or
- those securities of any company in which that person (or any person connected with that person) has a beneficial interest do not exceed £5 000 in nominal value or 1% of the total issued share capital of the company or of the relevant class of such capital, whichever is the less. Provided however, that where the paragraph above applies the person shall nevertheless be obliged to disclose / declare their interest in accordance with these Standing Orders.

51. Exclusion in proceedings of the Board of Directors

51.1 Subject to the following provisions of this Standing Order, if the Chair or a member of the Board of Directors 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.

51.3 The Board of Directors may exclude the Chair or a member of the Board from a meeting of the Board while any contract, proposed contract or other matter in which they have a pecuniary interest is under consideration.

51.4 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.

51.5 This Standing Order applies to a committee or sub-committee and to a sub-committee as it applies to the Trust and applies to a member of any such committee or sub-committee (whether or not they are also a member of the Trust) as it applies to a member of the Trust.

52. Standards of Business Conduct

52.1 Trust Policy and National Guidance

52.1.1 All Trust staff and members must comply with the Trust's Standards of Business Conduct and Conflicts of Interest Policy, the Regulatory Framework and the national guidance contained in Health Service Guidance (93)5 on 'Standards of Business Conduct for NHS staff'.

52.2 Interest of Officers in Contracts

52.2.1 Any Officer or employee of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which they or any person connected with them have any pecuniary interest, direct or indirect, the Officer shall declare their interest by giving notice in writing of such fact to the Chief Executive or Trust Secretary as soon as practicable.

52.2.2 An Officer should also declare to the Chief Executive any other employment or business or other relationship of theirs, or of a co-habiting spouse / partner, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

52.2.3 The Trust will require interests, employment or relationships so declared to be entered in a register of interests of staff.

52.3 Canvassing of and Recommendations by Members in Relation to Appointments

52.3.1 Canvassing of members of the Trust or of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Orders shall

be included in application forms or otherwise brought to the attention of candidates.

- 52.3.2 Members of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a member from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

52.4 *Relatives of Members or Officers*

- 52.4.1 Candidates for any staff appointment under the Trust shall, when making an application, disclose in writing to the Trust whether they are related to any member or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.
- 52.4.2 The Chair and every member and Officer of the Trust shall disclose to the Board of Directors any relationship between themselves and a candidate of whose candidature that member or Officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- 52.4.3 On appointment, members (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust Secretary whether they are related to any other member or holder of any office under the Trust.
- 52.4.4 Where the relationship to a member of the Trust is disclosed, then SO 49 shall apply.

I. CUSTODY OF THE SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS

53. Custody of Seal

The common seal of the Trust shall be kept by the Trust Secretary in a secure place.

54. Sealing of documents

Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two senior managers, duly authorised by the Chief Executive, and not also from the originating department, and shall be attested by them.

55. Register of Sealing

The Trust Secretary shall keep a register in which the Trust Secretary, or another manager of the Trust authorised by the Chief Executive, shall enter a record of the sealing of every document.

56. Signature of documents

- 56.1 Where any document will be a necessary step in legal proceedings on behalf of the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any Executive Director.
- 56.2 In land transactions, the signing of certain supporting documents will be delegated to Managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale / purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).
- 56.3 The minimum limit above which a contract shall be embodied in a formal document shall be £25 000.

57. The Board of Directors – Additional principles (see SO 8)**57.1 Main Principle**

- 57.1.1 Every NHS Foundation Trust should be headed by an effective Board of Directors, since the Board is collectively responsible for the exercise of the powers and the performance of the NHS Foundation Trust.

57.2 Supporting Principles

- 57.2.1 The Board of Directors' role is to provide active leadership of the NHS Foundation Trust within a framework of prudent and effective controls which enables risk to be assessed and managed.
- 57.2.2 The Board of Directors is responsible for ensuring compliance by the NHS Foundation Trust with its terms of authorisation, its constitution, mandatory guidance issued by Monitor, relevant statutory requirements and contractual obligations.
- 57.2.3 The Board of Directors should set the NHS Foundation Trust's strategic aims, taking into consideration the views of the Council of Governors, ensuring that the necessary financial and human resources are in place for the NHS Foundation Trust to meet its objectives and review management performance.
- 57.2.4 The Board of Directors as a whole is responsible for ensuring the quality and safety of healthcare services, education, training and research delivered by the NHS Foundation Trust and applying the principles and standards of clinical governance set out by the Department of Health, the Care Quality Commission and other relevant NHS bodies. The Board of Directors should also ensure that the NHS Foundation Trust exercises its functions effectively, efficiently and economically.

- 57.2.5 The Board of Directors should set the NHS Foundation Trust's values and standards of conduct and ensure that its obligations to its members, patients and other stakeholders are understood and met.
- 57.2.6 All Directors must take decisions objectively in the interests of the NHS Foundation Trust.
- 57.2.7 All Directors have joint responsibility for every decision of the Board of Directors regardless of their individual skills or status. This does not impact upon the particular responsibilities of the Chief Executive as the Accounting Officer. The Chief Executive should refer to guidance from Monitor on the responsibilities and obligations of the Accounting Officer (NHS Foundation Trust Accounting Officer Memorandum, April 2005).
- 57.2.8 The concept of the Unitary Board refers to the fact that within the Board of Directors, the Non-Executive Directors and the Executive Directors share the same liability, as per the main principle. All Directors, Executive and Non-Executive, have responsibility to constructively challenge the decisions of the Board and help develop proposals on strategy.
- 57.2.9 As part of their roles as members of a Unitary Board, Non-Executive Directors have a particular duty to ensure such a challenge is made. Non-Executive Directors should scrutinise the performance of the management in meeting agreed goals and objectives and monitor the reporting of performance. They should satisfy themselves as to the integrity of financial, clinical and other information, and that financial and clinical quality controls and systems of risk management are robust and defensible. They are responsible for determining appropriate levels of remuneration of Executive Directors and have a prime role in appointing, and where necessary removing, Executive Directors, and in succession planning.

ANNEX 9 – FURTHER PROVISIONS

(Paragraph 12.4)

1. A person may not become a member of the Foundation Trust if:
 - 1.1 within the last five (5) years, they have been involved as a perpetrator in an incident of violence or abuse at any NHS hospital or facility; against any NHS employees or other persons who exercise functions for the purposes of the NHS; against registered volunteers; against patients or the public on NHS hospitals; or if they are the subject of a security alert.
2. A member shall cease to be a member if:
 - 2.1 they resign by notice to the Trust Secretary;
 - 2.2 they die;
 - 2.3 they are expelled from membership under this constitution;
 - 2.4 they cease to be entitled under this constitution to be a member of any of the public constituencies, or the service user constituency or classes, or of any of the classes of the staff constituency;
 - 2.5 if after enquiries made in accordance with a process approved by the Council of Governors, they fail to establish that they wish to continue to be a member of the Trust.
3. A member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a General Meeting of the Council of Governors. The following procedure is to be adopted:
 - 3.1 any member may complain to the Trust Secretary that another member has acted in a way detrimental to the interests of the Trust;
 - 3.2 the Chair of the Council of Governors, assisted by the Trust Secretary, will judge the manner in which the complaint should be managed;
 - 3.3 if the Council of Governors consider it appropriate, the Council of Governors will consider the complaint having taken such steps as it considers appropriate to ensure that the point of view of the members involved is heard and may either:
 - 3.3.1 dismiss the complaint and take no further action; or
 - 3.3.2 arrange for the complaint to be considered at the next General Meeting of the Council of Governors.

- 3.4 details of the complaint must be sent to the member complained of not less than one (1) calendar month before the meeting with an invitation to answer the complaint and attend the next General Meeting of the Council of Governors;
- 3.5 at the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them;
- 3.6 if the member complained of fails to attend the meeting without reasonable case, the meeting may proceed in their absence;
- 3.7 the Council of Governors will take a view on the complaint and may decide to expel the member from membership of the Foundation Trust. To effect expulsion from membership, the Board of Directors will adopt a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a General Meeting;
- 3.8 a person expelled from membership will cease to be a member upon the declaration of the Chair of the meeting that the resolution to expel them is carried.
4. A member who is expelled from membership may apply for re-admission to membership. This application is to be made in writing to the Chair, who will arrange for the application to be considered by the next General Meeting of the Council of Governors.
5. The Trust Secretary and members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly and the Trust may also take out and maintain for their benefit insurance against such risks. Any costs arising in this way, will be met by the Trust.
6. The validity of any act of the Trust is not affected by any vacancy among the Directors or the Governors or by any defect in the appointment of any Director or Governor.
7. If:
 - 7.1 an Executive Director is temporarily unable to perform their duties due to illness or some other reason (the "Absent Director"); and
 - 7.2 the Board of Directors agree that it is inappropriate to terminate the Absent Director's term of office and appoint a replacement Executive Director; and
 - 7.3 the Board of Directors agree that the duties of the Absent Director need to be carried out,

then the Chair (if the Absent Director is the Chief Executive) or the Chief Executive (in any other case) may appoint an Acting Director as an additional Director to carry out the Absent Director's duties temporarily.

8. For the purposes of paragraph 7 of this Annex, the maximum number of Directors that may be appointed under paragraph 22.2 of the Constitution shall be relaxed accordingly.
9. The Acting Director will vacate office as soon as the Absent Director returns to office, or if earlier, the date on which the person entitled to appoint them under paragraph 7, notifies them that they are no longer to act as an Acting Director.
10. An Acting Director shall be an Executive Director for the purposes of the 2006 Act. They shall be responsible for their own acts and defaults and they shall not be deemed to be the agent of the Absent Director.
11. If:
 - 11.1 an Executive Director post is vacant ("Vacant Position"); and
 - 11.2 the Board of Directors agree that the Vacant Position needs to be filled by an interim postholder pending appointment of a permanent postholder, then the Chair (if the Vacant Position is the Chief Executive) or the Chief Executive (in any other case) may appoint a Director as an Interim Director ("Interim Director") to fill the Vacant Position pending appointment of a permanent postholder.
12. The Interim Director will vacate office on the appointment of a permanent postholder or, if earlier, the date on which the person entitled to appoint them under paragraph 11 notifies them that they are no longer to act as an Interim Director.
13. An Interim Director shall be an Executive Director for the purpose of the 2006 Act.
14. The Trust may confer on senior staff the title "Director" as an indication of their corporate responsibility within the Trust, but such persons will not be Directors of the Trust for the purposes of the 2006 Act ("Statutory Directors") unless their title is that of "Executive Director" or "Non-Executive Director" or "Chair" and will not have the voting rights of Statutory Directors or any power to bind the Trust.
15. When a vacancy arises for one or more Elected Governors, the Council of Governors shall at its discretion appoint a replacement Governor from the list of candidates who stood for election in the most recently held election for the constituency (or class within a constituency) in question, but who was not elected as a Governor at that election provided that the relevant candidate secured at least 66% of the total number of votes cast for the lowest polling successfully elected governor at that election.
 - 15.1 This procedure shall be available to the Council of Governors on two occasions within twelve (12) months of the previous election and replacement Governors appointed in

this way shall hold office for the remainder of the unexpired term of office for those governors vacating office.

16. A Governor may take a leave of absence of no longer than three (3) months, with the agreement of the Chair.
17. Elections shall not be invalidated by any administrative or clerical error on the part of the Trust or on any acts or omissions of the Returning Officer acting in good faith on the basis of such error.

ANNEX 10 – ANNUAL MEMBERS’ MEETING

(Paragraph 13.2)

1. Interpretation

- 1.1 Save as permitted by law, the Chair shall be the final authority on the interpretation of these standing orders (on which they shall be advised by the Chief Executive and the Trust Secretary).

2. General Information

- 2.1 The purpose of the standing orders for Annual Members’ Meetings is to ensure that the highest standards of corporate governance and conduct are applied to all Annual Members’ Meetings.
- 2.2 All business shall be conducted in the name of the Trust.

3. Attendance

- 3.1 Each member shall be entitled to attend an Annual Members’ Meeting.

4. Meetings in Public

- 4.1 Meetings of the Annual Members’ Meetings must be open to the public subject to the provisions of paragraph 4.2 below.
- 4.2 The Chair may exclude any member of the public from an Annual Members’ Meeting if they are interfering with or preventing the reasonable conduct of the meeting.
- 4.3 Annual Members’ Meetings shall be held annually at such times and places as the Chair may determine.

5. Notice of Meetings

- 5.1 Before each Annual Members’ Meeting, a notice of the meeting, specifying the business proposed to be transacted at it, and approved by the Chair, or by an officer of the Trust authorised by the Chair to approve on their behalf, shall be served upon every member at least 10 clear days before the meeting and posted on the Trust’s website.
- 5.2 The Annual Report and Accounts shall be circulated to Governors and published on the website at the earliest and appropriate opportunity. Copies of the Annual Report and Accounts shall be sent to any member upon written request to the Trust Secretary and shall be available for inspection by a member free of charge at the place of the meeting.

6. Setting the Agenda

- 6.1 The Chair shall determine the agenda for Annual Members’ Meetings, in consultation with the Lead Governor and the Trust Secretary, which must include the business required by the Act.

7. Chair of Annual Members’ Meetings

- 7.1. The Chair, if present, shall preside. If the Chair is absent from the meeting, the Vice Chair shall preside. If neither the Chair nor Vice-Chair are present the Directors and Governors shall elect one of the independent non-executive directors to act as Chair.

8. Chair's Ruling

- 8.1. Statements of members made at Annual Members' Meetings 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.

9. Voting

- 9.1 Decisions at meetings shall be determined by a majority of the votes of the members present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote subject to the Act.
- 9.2 All decisions 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.
- 9.3 In no circumstances may an absent member, governor or director vote by proxy.

10. Suspension of Standing Orders

- 10.1. Except where this would contravene any statutory provision, any one or more of these standing orders may be suspended at an Annual Members' Meeting, provided that a majority of members present vote in favour of suspension.
- 10.2 A decision to suspend the standing orders shall be recorded in the minutes of the meeting.
- 10.3 A separate record of matters discussed during the suspension of the standing orders shall be made and shall be available to the members.
- 10.4 No formal business may be transacted while the standing orders are suspended.
- 10.5 The Trust's Audit and Risk Committee shall review every decision to suspend the standing orders.

11. Variation and Amendment of Standing Orders.

- 11.1 These standing orders may be amended in accordance with paragraph 48 of the Constitution.

12. Record of Attendance

- 12.1 The Trust Secretary shall keep a record of the names of all attendees present at an Annual Members' Meeting.

13. Minutes

- 13.1 The minutes of the proceedings of an Annual Members' Meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next Annual Members' Meeting where they will be signed by the person presiding at it.

13.2 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 at the meeting.

13.3 The minutes of an Annual Members' Meeting shall be made available to the public on the Trust's website.

14. Quorum

14.1 No business shall be transacted at an Annual Members' Meeting unless at least 20 members are present.

Version History

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Amended for change to name of Council of Governors from Board of Directors. Amendment to the Board of Directors membership 22.1, Amended substitute governor rule to whole term with 66% threshold. Changed Trust Secretary to Company Secretary. Approved 01.10.15 CoG and 22.10.15 BoD.

Amended wording of Annex 9 S.14 (procedure when a Governor stands down mid-term).

Removal of SUF and SFC partner governor seats at end of agreed year 03 Feb 2016

Amended appointed governors and election cut off for membership plus formatting changes. As approved by CoG BoD October 2016.

Amended public constituency – Jan 2019 CoG and Mar 2019 BoD

Amended job titles, gender neutrality, significant business definition, constituencies, and partner organisations – 1 Oct 2020 CoG, 24 Sept 2020 BoD, 9 Oct 2020 AMM/AGM