

Constitution

February 2025



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**University
Hospital
Association**

MEMBER

SUSSEX PARTNERSHIP NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)

CONSTITUTION

Sussex Partnership NHS Foundation Trust Constitution

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Constitution

1 NAME

- 1.1 The name of the foundation trust is Sussex Partnership NHS Foundation Trust (the Trust).

2 PRINCIPAL PURPOSE

- 2.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.
- 2.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 2.3 The Trust may provide goods and services for any purposes related to:
 - 2.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - 2.3.2 the promotion and protection of public health
- 2.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

3 POWERS

- 3.1 The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the Terms of Authorisation.
- 3.2 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 3.3 Any of these powers may be delegated to a Committee of Directors or to an Executive Director. Where permitted by the 2006 Act, powers may be delegated to or operated jointly with other organisations in accordance with the statutory provisions including by new joint committees of those organisations as may be established from time to time with the approval of the Board of Directors.

- 3.4 Where the Trust is exercising its powers under section 23 of the Mental Health Act 1983 (as amended by section 45 of the Mental Health Act 2007), those functions may be exercised by any three or more persons authorised by the Board of Directors in that behalf each of whom is neither an Executive Director of the Trust, nor an employee of the Trust.

4 MEMBERSHIP AND CONSTITUENCIES

- 4.1 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
- 4.1.1 A public constituency;
 - 4.1.2 A staff constituency; and
 - 4.1.3 Service users and Carers.

5 APPLICATION FOR MEMBERSHIP

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

6 PUBLIC CONSTITUENCY

- 6.1 An individual who lives in an area specified in ANNEX 1 as an area for a public constituency may become or continue as a member of the Trust.
- 6.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the public constituency.
- 6.3 The minimum number of members in each area for the public constituency is specified in ANNEX 1.

7 STAFF CONSTITUENCY

- 7.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
- 7.1.1 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least twelve months; or
 - 7.1.2 they have been continuously employed by the Trust under a contract of employment for at least twelve months.

- 7.2 Individuals who exercise functions wholly for the purpose of the Trust, other than under a contract of employment with the Trust, must exercise those functions for a continuous period of at least twelve months to be eligible to join the staff constituency.
- 7.3 An individual who is eligible to become a member of the staff constituency, and 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.
- 7.4 The staff constituency shall be divided into five descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within ANNEX 2 and being referred to as a class within the staff constituency.
- 7.5 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the staff constituency.
- 7.6 The minimum number of members in each class of the staff constituency is specified in ANNEX 2.

8 SERVICE USERS AND CARERS

- 8.1 An individual who has, within the period specified below, attended the Trust as either a service user or as the carer of a service user may become or continue as a member of the Trust.
- 8.2 The period referred to above shall be the period of five years immediately preceding the date of an application by the service user or carer to become a member of the Trust.
- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to as the service user constituency.
- 8.4 The Service user constituency shall be divided into five classes to represent geographical areas West Sussex, Brighton and Hove, East Sussex, South-East England and Greater London and a carer's class.
- 8.5 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary

organisation, does not come within the category of those who qualify for membership of the service user constituency.

- 8.6 The minimum number of members in each class of the service user constituency is specified in ANNEX 3.

9 RESTRICTION ON MEMBERSHIP AND TERMINATION OF MEMBERSHIP.

- 9.1 An individual who is a member of a constituency, or of a class within the constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 9.2 An individual who satisfies the criteria for membership of the staff constituency may not become or continue as a member of any other constituency other than the staff constituency.
- 9.3 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 7.
- 9.4 An individual must be at least 16 years old to become a member of the Trust. (See also 14.2)

10 ANNUAL MEMBERS' MEETING

- 10.1 The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public. (See also ANNEX 10).

11 COUNCIL OF GOVERNORS – COMPOSITION

- 11.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 11.2 The appointment process for Appointed Governors is specified in ANNEX 4).
- 11.3 The composition of the Council of Governors is specified in ANNEX 5.
- 11.4 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 5.

12 COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS

- 12.1 Elections of the elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.
- 12.2 The Trust will use single transferable voting as the chosen voting method for contested elections.
- 12.3 The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at ANNEX 11.
- 12.4 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this Constitution. For the avoidance of doubt, the Trust cannot amend the Model Rules.
- 12.5 An election, if contested, shall be by secret ballot.

13 COUNCIL OF GOVERNORS – TENURE

13.1 Elected governors

- 13.1.1 An elected governor may hold office for a period of up to three years.
- 13.1.2 An elected governor shall be eligible for re-election at the end of their term, but may not hold office for longer than nine years.
- 13.1.3 An elected governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected. This will take effect at the end of their current term of office, or 12 months after the change of primary residence, whichever is sooner.
- 13.1.4 In the event that an elected governor resigns due to no longer meeting the eligibility requirements of the constituency to which they have been elected they can re-stand in the next election should a vacant seat be available in their eligible constituency.
- 13.1.5 In exceptional circumstances where the Trust is unable to hold elections elected governors may be designate Associate Governors until such time as elections have taken place. Associate Governors can be present and participate in governor meetings, but they cannot vote.

13.2 Appointed governors

- 13.2.1 An appointed governor may hold office for a period of up to three years.
- 13.2.2 An appointed governor shall, where the sponsoring organisation remains eligible to appoint such a governor, be eligible for re-appointment at the end of their term but may not hold office for longer than nine years.
- 13.2.3 An appointed governor shall cease to hold office if the sponsoring organisation withdraws its sponsorship of them by notice in writing to the Secretary.
- 13.2.4 Where the Constitution permits the selection of different organisations to appoint an appointed governor, the Secretary shall notify the Council of Governors of the proposed organisation and the Council of Governors shall approve or reject the proposed organisation.
- 13.2.5 Appointed governors will be appointed by the partnership organisations in accordance with a process agreed with the Secretary.

14 COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL

- 14.1 The following may not become or continue as a member of the Council of Governors:
 - 14.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
 - 14.1.2 a person who has made a composition or arrangement with, or granted a Trust deed for, their creditors and has not been discharged in respect of it.
 - 14.1.3 a person who within the preceding five years has been convicted in the British Isles of an 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.
- 14.2 Governors must be at least sixteen years of age at the day they are nominated for election or appointment.
- 14.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in ANNEX 7.
- 14.4 A governor may resign from office at any time during their term of office by giving notice in writing to the Secretary, such notice specifying the date of resignation.

15 COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS

15.1 The general duties of the Council of Governors are

15.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and

15.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public at large.

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

15.3 The Trust must also take steps, such as applying reasonable adjustments and support, where considered necessary, to enable governors to carry out their duties.

16 COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS

16.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 25.1 below) or, in their absence, the Deputy Chair (appointed in accordance with the provisions of paragraph 26.1 below), shall preside at meetings of the Council of Governors.

16.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting by resolution of the Council of Governors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or the proceedings.

17 COUNCIL OF GOVERNORS – STANDING ORDERS

17.1 The standing orders for the Council of Governors are attached at ANNEX 9.

17.2 The standing orders for the Council of Governors do not form part of this Constitution and any amendment of the Standing Orders shall not constitute an amendment of the terms of this Constitution for the purposes of paragraph 42 of this Constitution.

- 17.3 The standing orders for the Council of Governors may be amended in accordance with the procedure set out in those standing orders. If there is any conflict between standing orders and the Constitution, the Constitution shall prevail.

18 COUNCIL OF GOVERNORS – REFERRAL TO THE PANEL

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

18.1.1 to act in accordance with its constitution, or

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

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

19 COUNCIL OF GOVERNORS – CONFLICTS OF INTEREST OF GOVERNORS

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

20 COUNCIL OF GOVERNORS – TRAVEL EXPENSES

- 20.1 The Trust may pay travelling and other expenses to members of the Council of Governors at such rates determined by the Trust from time to time.

21 COUNCIL OF GOVERNORS – ADDITIONAL PROVISIONS

- 21.1 Additional provisions with respect to the Council of Governors are set out in ANNEX 6.

22 BOARD OF DIRECTORS – COMPOSITION

- 22.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.
- 22.2 The Board of Directors is to comprise:
 - 22.2.1 a Non-Executive Chair
 - 22.2.2 plus a number that enables Non-Executive Directors to have a voting majority that complies with guidance contained in the Code of Governance. Note this states that at least half the Board of Directors, excluding the Chair, should be Non-Executive Directors whom the Board considers to be independent. (B.2.7 of new Code of Governance)
 - 22.2.3 up to eight Executive Directors.
- 22.3 One of the Executive Directors shall be the Chief Executive.
- 22.4 The Chief Executive shall be the Accounting Officer.
- 22.5 One of the Executive Directors shall be the Finance Director.
- 22.6 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 22.7 One of the Executive Directors is to be a Registered Nurse or a Registered Midwife.
- 22.8 The Board may determine that other Trust officers may attend meetings of the Board of Directors as and when required to provide operational advice and support to the Board to assist the Board in the discharge of their responsibilities. For the avoidance of doubt, such an officer attending will not be a director for the purpose of the 2006 Act, nor will they be able to vote and will bear no responsibility or liability for any action or decision of the Board of Directors.

23 BOARD OF DIRECTORS – GENERAL DUTY

- 23.1 The general duty of the Board of Directors and of each director individually, is to act with a view to promoting the success of the Trust so as to maximise the benefits for the members of the Trust as a whole and for the public.
- 23.2 The Board's role is now to promote the long-term sustainability of the Trust as part of the Integrated Care System (ICS) and wider healthcare system in England,

generating value for members in the case of Foundation Trusts, and for all Trusts, patients, service users and the public. (A.1.1 of new Code of Governance).

- 23.3 The Board of Directors is required to assess and monitor culture. The Annual Report should explain the Board's activities and any action taken, and the Trust's approach to investing in, rewarding and promoting the wellbeing of its workforce. (A.2.3 of the new Code of Governance).

24 BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR

- 24.1 A person may be appointed as a Non-Executive Director only if:

24.1.1 they are a member of the public constituency, or

24.1.2 they are a member of the service user constituency, or

24.1.3 where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purpose of that university; and

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

25 BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS

- 25.1 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.

- 25.2 Removal of the Chair or another Non-Executive Director shall require the approval of three quarters of the members of the Council of Governors.

26 BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIR

- 26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a Deputy Chair.

27 BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS

- 27.1 The Chair and Non-Executive Directors shall appoint or remove the Chief Executive.

27.2 The appointment of the Chief Executive shall require the approval of a majority of the Council of Governors present and voting at a meeting of the Council of Governors.

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

28 BOARD OF DIRECTORS – DISQUALIFICATION

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

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

28.1.2 a person who has made a composition or arrangement with, or granted a Trust deed for, their creditors and had not been discharged in respect of it.

28.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) or a period of not less than three months (without the option of a fine) was imposed on them.

28.2 They are a member of the Council of Governors.

28.3 They are the spouse, partner, parent or child of a member of the Board of Directors.

28.4 They are subject to a disqualification order made under the Company Directors' Disqualification Act 1986.

28.5 They have had their name removed from a list maintained under regulations pursuant to sections 91, 106, 123 or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and they have not subsequently had their name included in such a list.

28.6 In the case of a Non-Executive Director they are no longer a member of one of the public or service user constituencies. This will take effect at the end of their current term of office, or 12 months after the change of primary residence, whichever is sooner.

28.7 In the case of the Non-Executive Director nominated by the Medical School, that they no longer exercise these functions on behalf of the Medical School.

- 28.8 They have within the preceding two years been dismissed, otherwise than by reason of redundancy from any paid employment with a health service body.
- 28.9 They have a tenure of office as a Chair or as a member or as a Director of a health service body 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.
- 28.10 In case of a Non-Executive Director if they have failed without reasonable cause to fulfil any training requirement established by the council governors.
- 28.11 In the case of Directors on the Board of Directors and, for Foundation Trusts, Governors on the Council of Governors should meet the “fit and proper” persons test described in the provider licence. For the purpose of the licence and application criteria, “fit and proper” persons are defined as those having the qualifications, competence, skills, experience and ability to properly perform the functions of a Director. They must also have no issues of serious misconduct or mismanagement, no disbarment in relation to safeguarding vulnerable groups and disqualification from office, be without certain recent criminal convictions and director disqualifications, and not bankrupt (undischarged). Code of Governance C.4.1

29 BOARD OF DIRECTORS – MEETINGS

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

30 BOARD OF DIRECTORS – STANDING ORDERS

- 30.1 The standing orders for the Board of Directors are attached as ANNEX 8.
- 30.2 The standing orders for the Board of Directors do not form part of this Constitution and any amendment of the Standing Orders shall not constitute an amendment of the terms of this Constitution for the purposes of paragraph 42 of this Constitution.

- 30.3 The standing orders for the Board of Directors may be amended in accordance with the procedure set out in those standing orders. If there is any conflict between the standing orders and the Constitution, the Constitution shall prevail

31 BOARD OF DIRECTORS – CONFLICTS OF INTEREST OF DIRECTORS

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

32 BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE

- 32.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors.
- 32.2 The Trust shall establish a Committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief executive and other Executive Directors.

33 REGISTERS

- 33.1 The Trust shall have:
- 33.1.1 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;
 - 33.1.2 a register of the members of the Council of Governors;
 - 33.1.3 a register of the interests of the members of the Council of Governors;
 - 33.1.4 a register of directors; and
 - 33.1.5 a register of the interests of the directors.

34 REGISTERS – INSPECTION AND COPIES

- 34.1 The Trust shall make the registers specified in paragraph 33 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 34.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:
 - 34.2.1 any member of the service user constituency; or
 - 34.2.2 any other member of the Trust, if they so request.
- 34.3 So far as the registers are required to be made available:
 - 34.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 34.3.2 a person who requests a copy or extract from the registers is to be provided with a copy or extract.
- 34.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

35 DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

- 35.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
 - 35.1.1 a copy of the current Constitution.
 - 35.1.2 a copy of the current Provider Licence.
 - 35.1.3 a copy of the latest annual accounts and of any report of the Auditor on them.
 - 35.1.4 a copy of the latest Annual Report.
 - 35.1.5 a copy of the latest information as to its forward planning; and
 - 35.1.6 a copy of any notice given under section 52 of the 2006 Act.
- 35.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy, or extract.
- 35.3 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

36 AUDITOR

- 36.1 The Trust shall have an Auditor.
- 36.2 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.

37 AUDIT COMMITTEE

- 37.1 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.

38 ACCOUNTS

- 38.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 38.2 NHS England may, with the approval of the Secretary of State, give directions to the Trust as to the content and form of its accounts.
- 38.3 The accounts are to be audited by the Trust's Auditor.
- 38.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as NHS England may with the approval of the Secretary of State direct.
- 38.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

39 ANNUAL REPORT, FORWARD PLAN AND NON-NHS WORK

- 39.1 The Trust shall prepare an Annual Report and send it to NHS England.
- 39.2 The Trust shall give information as to its forward planning in respect of each Financial Year to NHS England.
- 39.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 39.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 39.5 Each forward plan must include information about –

- 39.5.1 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
- 39.5.2 the income it expects to receive from doing so.
- 39.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 39.5.1 the Council of Governors must –
 - 39.6.1 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
 - 39.6.2 notify the directors of the Trust of its determination
- 39.7 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 the members of the Council of Governors of the Trust voting approve its implementation.

40 MEETING OF COUNCIL OF GOVERNORS TO CONSIDER ANNUAL ACCOUNTS AND REPORTS.

- 40.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors.
 - 40.1.1 the annual accounts
 - 40.1.2 any report of the Auditor on them
 - 40.1.3 the Annual Report

41 INSTRUMENTS

- 41.1 The Trust shall have a seal.
- 41.2 The seal shall not be affixed except under the authority of the Board of Directors as set out in the standing orders for the Board of Directors.

42 AMENDMENT OF THE CONSTITUTION

- 42.1 The Trust may make amendments of its constitution only if –

- 42.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments, and
- 42.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments
- 42.2 Amendments made under paragraph 42.1 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.⁴⁷
- 42.3 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):
 - 42.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
 - 42.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.
- 42.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 42.5 Amendments by the Trust of its constitution are to be notified to NHS England. For the avoidance of doubt, NHS England's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act

43 MERGERS ETC. AND SIGNIFICANT TRANSACTIONS

- 43.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 43.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 43.3 In this paragraph 43, significant transaction means a transaction which meets all or any one of the tests below:

43.3.1 the fixed asset test; and/or

43.3.2 the turnover test; and/or

43.3.3 the gross capital test.

The fixed asset test:

43.3.4 is met if the assets which are the subject of the transaction exceed 25% of the fixed assets of the Trust.

The turnover test:

43.3.5 is met if, following the completion of the relevant transaction, the income of the Trust will increase or decrease by more than 25%.

The gross capital test:

43.3.6 is met if the gross capital of the corporation or business which is the subject of the transaction represents more than 25% of the gross capital of the Trust, where gross capital is:

43.3.6.1 the aggregate of the market value of the relevant corporation's or business's equity; and its debt due in more than one (1) year; and any excess of current liabilities over its current assets or, if there is no market value; then

43.3.6.2 the aggregate of the of the relevant corporation's or business's capital and reserves; and its debt due in more than one (1) year; and any excess of current liabilities over its current assets; and

43.3.6.3 the Trust's gross capital is the aggregate of its capital and reserves; and its debt due in more than one (1) year; and any excess of current liabilities over its current assets.

43.3.7 for the purposes of calculating the tests in this paragraph 43, figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.

A transaction:

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

- 43.3.9 excludes a transaction in the ordinary course of business (including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Trust);
- 43.3.10 excludes any agreement or changes to healthcare services carried out by the Trust following a reconfiguration of services led by the commissioners of such services; and
- 43.3.11 excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the Trust.
- 43.3.12 excludes changes to services taking place as a result of a merger or acquisition on separation or dissolution.
- 43.4 The clauses above concern the statutory roles and responsibilities of the Governors in respect of mergers, acquisitions, separations or dissolution.
- 43.5 The Trust will also consult with the Council of Governors in respect of mergers and transactions which do not meet the tests detailed above but concern the statutory duties of the Council of Governors in respect of representing the interests of members of the Trust and the interests of the public as a whole.

44 INTERPRETATION AND DEFINITIONS

- 44.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006.
- 44.2 References in this Constitution to legislation include all amendments, replacements or re-enactments made.
- 44.3 References to legislation include all regulations, orders, statutory guidance or directives.
- 44.4 Headings are for ease of reference only and are not to affect interpretation.
- 44.5 In this Constitution:

2006 Act	means the National Health Service Act 2006.
2012 Act	the 2012 Act is the Health and Social Care Act 2012
Accounting Officer	means the NHS Officer responsible and accountable for the 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.
Annual Report	means a report prepared by the Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act.
Audit Committee	means a committee of the Board of Directors as established pursuant to paragraph 37 of this Constitution.
Auditor	means the Auditor of the Trust appointed by the Council of Governors pursuant to paragraph 36 of this Constitution.
Budget	means a resource, expressed in financial terms, proposed by the Board of Directors for the purposes of carrying out, for a specific period, any or all of the functions of the Trust.
Budget Holder	means the director or employee with delegated authority to manage finance (Income and Expenditure) for a specific area of the organisation.
Clear Day	means a day of the week not including Saturday, Sunday or a public holiday.
Committee	means a committee or sub-Committee created and appointed by the Trust.
Constitution	means this Constitution together with the annexes and appendices attached hereto.
Council of Governors	means the Council of Governors as constituted in accordance with this constitution.
Deputy Chair	means the Non-Executive director appointed by the Council of Governors pursuant to paragraph 26 of this Constitution to take on the Chair's duties if the Chair is absent for any reason.

Finance Director	means the Chief Financial Officer of the Trust.
Financial year	means <ul style="list-style-type: none"> (a) a period beginning with the date on which the Trust is granted its licence as an NHS Foundation Trust and ending with the next 31 March; and (b) each successive period of twelve months beginning with 1 April.
Health Overview and Scrutiny Committee	means a committee whose functions are concerned with the arrangements for monitoring and improving the equality of health and social care services for which Sussex Partnership NHS Foundation Trust has responsibility.
Hospital	means those premises of the Sussex Partnership NHS Foundation Trust and all associated hospitals and facilities at which the Trust provides and/or manages the provision of goods and/or services.
Independent Regulator	means the regulator of NHS Foundation Trusts established under Part 2, Chapter 5 (Section 31) of the 2006 Act and known as NHS England (formerly Monitor).
Officer	means employee of the Trust or any other person holding a paid appointment or office with the Trust.
NHS England	NHS England now incorporates the body corporate formerly known as Monitor, as provided by Section 61 of the 2012 Act.
Provider Licence	means the Licence issued to the Trust by the Independent Regulator under section 35 of the 2006 Act.
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 and the Chair and monitor the Trust's compliance with the law, standing orders and guidance issued by the Independent Regulator.

Sex Offenders Order	means a Sexual Offences Preventative Order made under section 104 of the Sexual Offences Act 2003, or a Risk of Sexual Harm Order made under section 123 of the Sexual Offences Act 2003.
Sex Offenders Register	means the Register of Sex Offenders maintained under Part 1 of the Sex Offenders Act 1997 (as amended by the Sexual Offences Act 2003).
Trust	means Sussex Partnership NHS Foundation Trust.

ANNEX 1 – THE PUBLIC CONSTITUENCY

Area	Minimum numbers of Members for each Public Constituency
Brighton and Hove The electoral area covered by Brighton and Hove City Council	20
East Sussex The electoral area covered by East Sussex County Council	20
West Sussex The electoral area covered by West Sussex County Council	20
South East England and Greater London The electoral areas in the counties of Kent, Surrey, Sussex, Hampshire, Isle of Wight, Berkshire, Buckinghamshire, Oxfordshire and Greater London	20
Total	80

ANNEX 2 – THE STAFF CONSTITUENCY

The minimum number of members in the staff constituency is 60, divided into the following classes

Constituency Class	Minimum number of Members for each Class within the Staff Constituency
West Sussex Division	12
East Sussex Division	12
Brighton and Hove Division	12
Specialist Division	12
Corporate	12
Total	60

The elected members of the staff constituency who were governors immediately prior to the adoption of this Constitution shall remain as governors until the conclusion of their existing term, but shall continue as the elected member for their relevant constituency class. The Secretary shall determine which constituency class applies to such members, and arrange for elections to the two new governors.

ANNEX 3 – SERVICE USERS AND CARERS

Area	Minimum numbers of Members for Service User Constituency
Brighton and Hove The electoral area covered by Brighton and Hove City Council	40
East Sussex The electoral area covered by East Sussex County Council	40
West Sussex The electoral area covered by West Sussex County Council	40
South East England and Greater London The electoral areas in the counties of Kent, Surrey, Sussex, Hampshire, Isle of Wight, Berkshire, Buckinghamshire, Oxfordshire and Greater London	20
Carers	30
Total	170

ANNEX 4 – APPOINTED GOVERNORS

Appointed Governors	Number
Local Authority- one from each Council i.e East Sussex County Council, West Sussex County and Council, and Brighton and Hove City Council.	3
A total of three Voluntary / Partner Organisation Governors from partnership organisations or voluntary sector organisations, local business, voluntary sector, other NHS Trusts or Foundation Trusts or organisations that supports children and young people with a mental health problem. Which from time to time, as necessary, will be selected by the Trust Secretary subject to the approval of the Council of Governors.	3
University Governor appointed by the Brighton and Sussex Medical School.	1
Total	7

ANNEX 5 – COMPOSITION OF THE COUNCIL OF GOVERNORS

Governors elected by the public constituency or service user / carer constituencies as follows:	Number	Total
Brighton and Hove - Public	1	2
Brighton and Hove - Service User / Carer	1	
West Sussex - Public	3	6
West Sussex - Service User / Carer	3	
East Sussex - Public	2	4
East Sussex - Service User / Carer	2	
Outside of Sussex	1	1
Total	13	13
Staff Constituency Governors elected by the staff constituency	Number	Total
West Sussex Division (clinical)	1	1
East Sussex Division (clinical)	1	1
Brighton and Hove Division (clinical)	1	1
Specialist Division (clinical)	1	1
Corporate	1	1
Total	5	5
Appointed Governors	Number	Total
Local Authority- one from each Council i.e East Sussex County Council, West Sussex County and Council, and Brighton and Hove City Council.	3	3
Voluntary/Partner organisations (local business, voluntary sector and other NHS Trusts or an organisation that supports children and young people with a mental health problem).	3	3
University Governor appointed by the Brighton and Sussex Medical School.	1	1
Total	7	7

Total number of Governors is 25

ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

1 ELIGIBILITY TO BE ON THE COUNCIL OF GOVERNORS

- 1.1 A person may not become or continue as a governor of the Trust if:
- 1.1.1 in the case of an elected governor, they cease to be a member of the constituency they represent; This will take effect at the end of their current term of office, or 12 months after the change of primary residence, whichever is sooner.
 - 1.1.2 in the case of an appointed governor, the sponsoring organisation withdraws their sponsorship of the individual;
 - 1.1.3 in the case of an appointed governor, the governor is elected or appointed as a governor for a different constituency, such election or appointment shall supersede their appointment and commence a new term of office;
 - 1.1.4 they have within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a health service body;
 - 1.1.5 they are a person whose tenure of office as the Chair or as a member or director of a health service body has been terminated on the grounds that his appointment is not in the interest of the health service;
 - 1.1.6 they are a director of the Trust, or a Governor, Executive Director, Non-Executive Director, Chair, Chief Executive of another health service body, or a body corporate whose business involves the provision of health care services or whose business involves the provision of goods or services to the Trust;
 - 1.1.7 they have had their name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and have not subsequently had their name included in such a list;
 - 1.1.8 they have refused without reasonable cause to undertake any training which the Trust and/or Council of Governors requires all governors to undertake;

- 1.1.9 they are a member of a local authority Health Overview and Scrutiny Committee;
- 1.1.10 they are the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register;
- 1.1.11 they have failed to repay (without good cause) any amount of monies properly owed to the Trust;
- 1.1.12 they have failed to sign and deliver to the Secretary a statement in the form required by the Trust confirming acceptance of the governor's code of conduct;
- 1.1.13 they have demonstrated aggressive or violent behaviour at any Trust site and following such behaviours have been asked to leave, have been removed or excluded from any Trust site or healthcare facility in accordance with the relevant Trust policy for withholding treatment from violent/aggressive patients;
- 1.1.14 they are deemed to have acted in a manner contrary to the interests of the Trust.
- 1.2 Where a person has been elected or appointed to be a governor and they become disqualified or are removed from office, the Secretary shall immediately declare that the person in question is disqualified and notify them in writing to that effect. Upon despatch of any such notification:
 - 1.2.1 that person's tenure of office, if any, shall be terminated and they shall cease to act as a governor; and
 - 1.2.2 the Secretary shall inform the Chair of the actions taken in respect of the person in question and the reasons for such action.
- 1.3 The Chair (or in the event of conflict, such other member of the Board as the Chair may nominate as their deputy for this purpose) may suspend a Governor whose conduct and tenure are subject to review or investigation if in the opinion of the Chair such review or investigation may lead to the Governor's removal.

2 ROLES AND RESPONSIBILITIES OF GOVERNORS

- 2.1 The roles and responsibilities of the governors are:

- 2.1.1 at a general meeting (which may be the annual meeting):
 - 2.1.1.1 Subject to paragraph 25 of this Constitution, to appoint or remove the Chair and the other Non-Executive Directors. The removal of a Non-Executive director requires the approval of three-quarters of the members of the Council of Governors;
 - 2.1.1.2 to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors;
 - 2.1.1.3 to appoint or remove the external Auditor;
 - 2.1.1.4 to be presented with the annual accounts, any report of the external Auditor on them and the Annual Report;
 - 2.1.1.5 to consider disputes as to membership and/or
 - 2.1.1.6 to consider resolutions to remove a governor.
- 2.2 at a general meeting or otherwise:
 - 2.2.1 approve (by a majority of the Council of Governors voting) and appointment (by the Non-Executive Directors) of the Chief Executive (and Accounting Officer)
 - 2.2.2 give the views of the council of governors to the directors for the purposes of the preparation (by the directors) of the forward planning in respect of each Financial Year to be given to the Independent Regulator;
 - 2.2.3 consider the annual accounts, and report of the External Auditor on them and the Annual Report; and/or
 - 2.2.4 respond as appropriate when consulted by the directors.
 - 2.2.5 appoint one of the governors to be Lead Governor of the Council of Governors
- 2.3 The governors also have the specific role and function of:
 - 2.3.1 providing views to the Board of Directors on the strategic direction of the Trust;
 - 2.3.2 developing membership;

- 2.3.3 representing the interest of all the members (and not just the constituency which elected them); and
- 2.3.4 holding the Board of Directors to account in relation to the Trust's performance in accordance with the terms of the Provider Licence.
- 2.4 Exercising other functions at the request of the Board of Directors.
- 2.5 The governors are expected to bring their individual skills and knowledge to bear on the exercise of their functions but are expected to act collectively and not in pursuit of sectional interest.

3 REMUNERATION

- 3.1 Governors are not to receive remuneration for undertaking their role and responsibilities as governors of the Trust.

4 VACANCIES

- 4.1 In the event of an elected governor's seat falling vacant for any reason before the end of the term of office it shall be filled by the second place candidate in the last held election for that seat, provided that the second place candidate achieved at least five percent of the vote in the last held election for that seat. If that individual declines it shall be filled by the third place candidate, provided that the third place candidate achieved at least five percent of the vote in the last held election for that seat (the "reserve governor"). If the vacancy is filled in this way the reserve governor shall be eligible to serve two full three year terms (subject to re-election) in addition to the partial term served. If the vacancy is not filled in this way elected governors shall be replaced by by-elections, in accordance with the Model Rules for Election.
- 4.2 In the event that a reserve governor is not available a by-election may be held unless an election is due within six months in which case the seat shall stand vacant until the following scheduled election.
- 4.3 In the event of an appointed governor's seat falling vacant for any reason before the end of the term of office, the Trust will request that the relevant other partnership organisation appoint a "replacement governor" within thirty days.

- 4.4 The validity of any act of the Council of Governors is not affected by any vacancy among the governors or by any defect in the appointment of any governor.

5 MEETINGS

- 5.1 The Council of Governors is to meet at least four times per year, including an annual meeting no later than 30 September in each year, when the Council of Governors is to receive and consider the annual accounts and any report of the External Auditor on them and the Board of Directors is to present to the council of governors the Annual Report and a report on the membership strategy.
- 5.2 The Secretary shall call meetings in accordance with standing order 4 of the standing orders for the Council of Governors (ANNEX 9).
- 5.3 Any meeting of the Council of Governors requires a quorum of one third of the whole Council present, with at least one member from each constituency'

6 COMMITTEES AND SUB-COMMITTEES

- 6.1 The Council of Governors may appoint Committees consisting wholly or partly of its members to assist it in carrying out its functions. A Committee appointed under this paragraph may appoint a sub-Committee.
- 6.2 The Council of Governors may appoint members to serve on joint Committees with the Board of Directors or Committees thereof.
- 6.3 These Committees or sub-Committees may call upon outside advisers to help them in their tasks, provided that the financial and other implications of seeking outside advisers have been discussed and agreed by the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph will be determined in accordance with the dispute resolution procedures.

7.Terms of office

- 6.4 Elected Foundation Trust Governors must be subject to re-election by the members of their constituency at regular intervals not exceeding three years.

ANNEX 7 – FURTHER PROVISIONS

1 REPRESENTATIVE MEMBERSHIP

- 1.1 The Trust shall at all times strive to ensure that, taken as a whole, its actual membership is representative of those eligible for membership. To this end:
- 1.2 The Trust shall at all times have in place a membership strategy which shall be approved by the Council of Governors and shall be reviewed by them from time to time and at least every year.
- 1.3 The Trust shall present to each annual meeting of the Council of Governors: assurance that the actual membership of its constituencies and the classes of constituencies is representative of those eligible for such membership;
 - 1.3.1 the status of the membership strategy;
 - 1.3.2 any changes to the membership strategy.

2 COLLABORATION WITH HEALTH SERVICE AND OTHER BODIES

- 2.1 In exercising its functions the Trust shall collaborate with health service bodies and any local authority with which the Trust has a local authority partnership agreement.
- 2.2 Notwithstanding the provisions of paragraph 2.1 above, the Trust shall collaborate with any specific third-party body that it has a duty (statutory, contractual, or otherwise) to co-operate with.

3 RESPECT FOR RIGHTS OF PEOPLE

- 3.1 In conducting its affairs, the Trust shall respect the rights of the members of the community it serves, its employees and people dealing with the Trust as set out in the Human Rights Act 1998.

4 DISQUALIFICATION FROM MEMBERSHIP

- 4.1 A person may not be a member of the Trust if they are under 16 years of age.
- 4.2 A person may not become or remain a member of the Trust if they do not meet the requirements of eligibility under this Constitution.

- 4.3 A person may not become a member of the Trust if they have been removed from membership by the Council of Governors within the preceding 5 years.
- 4.4 Where the Trust is on notice that a member may be disqualified from membership, or may no longer be eligible to be a member, the Secretary shall give the member 14 days written notice to show cause why their name should not be removed from the register of members. On receipt of any such information supplied by the member, the Secretary may, if he considers it appropriate, remove the member from the register of members. Any dispute about entitlement to membership will be resolved by the Secretary.
- 4.5 All members of the Trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a member.

5 EXPULSION FROM MEMBERSHIP OF THE TRUST

- 5.1 A member may be expelled by a resolution approved by not less than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors on the following grounds:
 - 5.1.1 if they have demonstrated aggressive or violent behaviour at any Trust site and following such behaviours has been asked to leave, has been removed or excluded from any Trust site or other healthcare facility in accordance with the relevant Trust policy for withholding treatment from violent/aggressive patients, or
 - 5.1.2 if they are deemed to have acted in a manner contrary to the values of the Trust.
- 5.2 The following procedure is to be adopted:
 - 5.2.1 Any member may complain to the Secretary that another member has acted in a way which would justify expulsion in accordance with paragraphs 5 – 6 above.
 - 5.2.2 If a complaint is made, the Council of Governors will itself consider the complaint, having taken such steps as it considers appropriate, to ensure that each member's point of view is heard and may either:
 - 5.2.2.1 dismiss the complaint and take no further action; or

5.2.2.2 arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.

6 TERMINATION OF MEMBERSHIP

6.1 A member shall cease to be a member on:

6.1.1 death;

6.1.2 notice to the membership office;

6.1.3 ceasing to fulfil the requirements of paragraphs 6, 7 and 8 of this Constitution, as the case may be; or

6.1.4 being disqualified pursuant to paragraph 4 above or being expelled pursuant to paragraph 5 above.

7 INDEMNITY

7.1 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. Any costs arising in this way will be met by the Trust.

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

8 DISPUTE RESOLUTION PROCEDURES

8.1 In the event of any dispute about the entitlement to membership the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the member or applicant (as the case may be) is aggrieved at the decision of the Secretary they may appeal in writing within 14 days of the Secretary's decision to the Council of Governors whose decision shall be final.

8.2 In the event of any dispute about the eligibility and disqualification of a governor, the dispute shall be referred to the Council of Governors whose decision shall be final.

8.3 In the event of dispute between the Council of Governors and the Board of Directors or between a governor and the Council of Governors the appropriate dispute resolution procedure will be followed.

9 DISSOLUTION OF THE TRUST

9.1 The Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the provisions of the 2006 Act.

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

SECTION A – INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

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 Secretary to the Board of Directors).

Any expression to which a meaning is given in the National Health Service Act 1977, National Health Service and Community Care Act 1990 and other Acts relating to the National Health Service or the financial Regulations made under the Acts shall have the same meaning in these standing orders and standing financial instructions and in addition:

“2006 Act”

means the National Health Service Act 2006.

“Accounting Officer”

means the NHS Officer responsible and accountable for the 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.

“Annual Report”

means a report prepared by the Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act.

“Audit Committee”

means a committee of the Board of Directors as established pursuant to paragraph 37 of this Constitution.

“Auditor”

means the Auditor of the Trust appointed by the Council of Governors pursuant to paragraph 36 of this Constitution.

“Authorisation”

means the Authorisation issued to the Trust by the Independent Regulator under section 35 of the 2006 Act.

“Budget”

means a resource, expressed in financial terms, proposed by the Board of Directors for the purposes of carrying out, for a specific period, and or all of the functions of the Trust.

“Budget Holder”

means the director or employee with delegated authority to manage finances (Income and Expenditure) for a specific area of the organisation.

“Clear Day”

means a day of the week not including Saturday, Sunday, or a public holiday.

“Committee”

means a committee or sub-committee created and appointed by the Trust.

“Constitution”

means the Constitution of the Trust together with the annexes and appendices attached thereto

“Deputy 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.

“Directors Code of Conduct”

means the Code of Conduct for directors of the Trust, as adopted by the Trust and as amended from time to time by the Board of Directors, to which all directors must subscribe.

“Finance Director”

Means the Chief Financial Officer of the Trust.

“Financial Year”

means:

- (a) a period beginning with the date on which the Trust is authorised as an NHS Foundation Trust and ending with the next 31 March; and
- (b) each successive period of twelve months beginning with 1 April.

Health Overview and Scrutiny Committee”

means a committee whose functions are concerned with the arrangements for monitoring and improving the quality of health and social care services for which Sussex Partnership NHS Foundation Trust has responsibility.

“Hospital”

means those premises of the Sussex Partnership NHS Foundation Trust and all associated hospitals and facilities at which the Trust provides and/or manages the provision of goods and/or services.

“Independent Regulator”

means the regulator of NHS Foundation Trusts established under Part 2, Chapter 5 (Section 31) of the 2006 Act and known as NHS England or NHSE (formerly known as Monitor).

“Officer”

means employee of the Trust or any other person holding a paid appointment or office with the 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 and the Chair and monitor the Trust’s compliance with the law, standing orders and guidance issued by the Independent Regulator.

“Sex Offenders Order”

means a Sexual Offences Preventative Order made under section 104 of the Sexual Offences Act 2003, or a Risk of Sexual Harm Order made under section 123 of the Sexual Offences Act 2003.

“Sex Offenders Register”

means the Register of Sex Offenders maintained under Part I of the Sex Offenders Act 1997 (as amended by the Sexual Offences Act 2003).

“Trust”

means Sussex Partnership NHS Foundation Trust.

SECTION B – STANDING ORDERS

1 INTRODUCTION

1.1 Statutory Framework

- 1.1.1 The Sussex Partnership NHS Foundation Trust (“the Trust”) became a Public Benefit Corporation on 1 August 2008 following Authorisation by the Independent Regulator of NHS Foundation Trusts (the “Independent Regulator” pursuant to the National Health Service Act 2006 (the “2006 Act”).
- 1.1.2 The principal place of business of the Trust is Trust Headquarters, Portland House, 44 Richmond Road, Worthing, West Sussex BN11 1HS.
- 1.1.3 The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Board Directors of the Trust to adopt standing orders for the regulation of its proceedings and business.
- 1.1.4 As a public benefit corporation the Trust has specific powers 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. The Trust also has a common law duty as a bailee for patients’ property held by the Trust on behalf of patients.
- 1.1.5 The standing orders and standing financial instructions provide a comprehensive business framework. All Executive and Non-Executive Directors, and all members of staff, should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.
- 1.1.6 The Trust shall deal with the Independent Regulator in an open and co-operative manner and shall promptly notify the Independent Regulator of anything relating to the Trust of which the Independent Regulator would reasonably expect prompt notice, including, without prejudice to the foregoing generality, any anticipated failure or anticipated prospect of failure on the part of the Trust to meet its obligations under its Licence or any financial or performance thresholds which the Independent Regulator may specify from time to time.

- 1.1.7 The Chair, Chief Executive or any other person giving information to the public on behalf of the Trust shall ensure that they follow the Nolan principles and that they will adhere to the principles set out within the Independent Commission's Good Governance Standard for Public Service.

1.2 Delegation of Powers

- 1.2.1 Subject to the paragraph 3 of the Constitution, the Trust has powers to delegate and make arrangements for delegations. The standing orders set out the detail of these arrangements. Under the standing order relating to the arrangements for the exercise of Trust functions by delegation (standing order 5) the Trust is given powers to "make arrangements for the exercise, on behalf of the Trust of any of their functions by a Committee, sub-Committee or joint Committee appointed by virtue of standing order 4 or by an Officer of the Trust, in each case subject to such restrictions and conditions as the Trust thinks fit or as the Independent Regulator may direct".
- 1.2.2 The Board of Directors will separately agree a Reservation of Powers / Scheme of Delegation reservation.

1.3 Integrated Governance

- 1.3.1 Boards of directors are now encouraged to move away from silo governance and develop integrated governance that will lead to good governance and to ensure that decision-making is informed by intelligent information covering the full range of corporate, financial, clinical, information and research governance. Guidance from the Department of Health on the move toward and implementation of integrated governance has been issued (see Integrated Governance Handbook 2016). Integrated governance will better enable the Board of Directors to take a holistic view of the organisation and its capacity to meet its legal and statutory requirements and clinical, quality and financial objectives.

2 THE BOARD OF DIRECTORS: COMPOSITION OF DIRECTORSHIP, TENURE AND ROLE OF DIRECTORS

2.1 Composition of the directorship of the Board of Directors

In accordance with Constitution the Board of Directors shall be:

- 2.1.1 The Chair of the Trust (a Non-Executive Director appointed by the Council of Governors).
- 2.1.2 Up to eight Non-Executive Directors (appointed by the Council of Governors).
- 2.1.3 Up to eight Executive Directors (but not exceeding the number of Non-Executive Directors) including:
 - 2.1.3.1 Chief Executive
 - 2.1.3.2 Chief Finance Officer
 - 2.1.3.3 Chief Nursing Officer
 - 2.1.3.4 Chief Medical Officer
- 2.1.4 The Board of Directors will have a Secretary. The Secretary is able to attend Board of Directors meetings but does not have voting rights.
- 2.1.5 There is a clearly established division of responsibilities between the Chair and the Chief Executive which should be set out in writing and agreed by the Board of Directors.

2.2 Appointment of the Chair and Directors of the Trust.

- 2.2.1 Appointment of the Chair and Directors of the Trust shall be in accordance with the Constitution.

2.3 Terms of Office of the Chair and Directors

- 2.3.1 The regulations setting out the tenure of the Chair and Non-Executive Directors and rules governing the removal or disqualification from office of the Chair and directors are contained in the Constitution.

2.4 Appointment and powers of Deputy Chair

- 2.4.1 At a general meeting, the Council of Governors may appoint one of the Non-Executive Directors to be Deputy Chair, for such a period not exceeding the remainder of the individual's term as a Non-Executive Director as they specify on appointing them.
- 2.4.2 Any Non-Executive Director so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. The Chair and

Council of Governors may thereupon appoint another member as Deputy Chair in accordance with paragraph 25 of the Constitution.

- 2.4.3 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 Deputy Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties, as the case may be; and 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 Deputy Chair.

2.5 Appointment of Senior Independent Director

- 2.5.1 The Board of Directors (in consultation with the Council of Governors) may appoint any independent Non-Executive Director as the Senior Independent Director, for such period not exceeding the remainder of their term of office. The Senior Independent Director shall perform the role set out in “The NHS Code of Governance (2022), issued by NHS England.

2.6 Joint Directors

- 2.6.1 Where more than one person is appointed jointly to a post those persons shall count for the purpose of standing order 2.1 as one person.
- 2.6.2 Where the office of a member of the Board of Directors is shared jointly by more than one person:
- a) either or both of those persons may attend or take part in the meeting of the Board of Directors.
 - b) if both are present at a meeting they should cast one vote if they agree.
 - c) in the case of disagreements, no vote should be cast.
 - d) the presence of either or both of those persons should count as the presence of one person for the purposes of standing order 3.11 Quorum and standing order 2.1 Composition.

2.7 Role of Directors

The Board of Directors is collectively responsible for the exercise of the powers and performance of the Trust. Their role as directors 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.

2.7.1 Executive Directors

Executive Directors shall exercise their authority within the terms of these standing orders and standing financial instructions.

2.7.2 Chief Executive

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust. The individual 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 April 2005.

2.7.3 Finance Director

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

2.7.4 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 directors of or when chairing a Committee of the Trust which has delegated powers.

2.7.5 Chair

The Chair shall be responsible for the operation of the Board of Directors and Chair all Board of Directors' meetings when present. The Chair has certain delegated executive powers. The Chair must comply with the terms of appointment and with these standing orders.

The Chair shall take responsibility for Non-Executive Directors either directly or indirectly for their induction, their portfolios of interests and assignments, and their performance.

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.

2.8 Corporate role of the Board of Directors

2.8.1 All business shall be conducted in the name of the Trust.

2.8.2 All funds received in trust shall be held in the name of the Trust as corporate trustee.

2.8.3 The powers of the Trust established under statute shall be exercised by the Board of Directors meeting in private session except as otherwise provided for in standing order 3.

2.9 Lead roles for Board Directors

The Chair will ensure that the designation of lead roles or appointments of board directors as required by the Independent Regulator or as set out in any statutory or other guidance will be made in accordance with the guidance or statutory requirement (e.g. appointing a lead board member with responsibilities for infection control or child protection services etc).

3. MEETINGS OF THE BOARD OF DIRECTORS

3.1 Calling meetings

3.1.1 Ordinary meetings of the Board of Directors shall be held at regular intervals at such times and places as the Board may determine.

3.1.2 The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting for the purposes of standing order 3.11 (quorum).

- 3.1.3 The Chair of the Trust may call a meeting of the Board of Directors at any time.
- 3.1.4 One third or more directors of the Board of Directors may requisition a meeting in writing. If the Chair refuses, or fails, to call a meeting within seven days of a requisition being presented, the directors signing the requisition may forthwith call a meeting.

3.2 Notice of meetings and the business to be transacted

- 3.2.1 Before each meeting of the Board of Directors a written notice specifying the business proposed to be transacted shall be delivered to every member or sent by post to the usual place of residence of each member, so as to be available to directors at least three Clear Days before the meeting. The notice shall be signed by the Chair or by an Officer authorised by the Chair to sign on their behalf. Want of service of such a notice on any director shall not affect the validity of a meeting.
- 3.2.2 In the case of a meeting called by directors in default of the Chair calling the meeting, the notice shall be signed by those directors.
- 3.2.3 No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under standing order 3.6.
- 3.2.4 A director desiring a matter to be included on an agenda shall make his request in writing to the Chair at least ten clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.
- 3.2.5 Before each public meeting of the Board of Directors a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed on the Trust public website at least three clear days before the meeting, (required by the Public Bodies (Admission to Meetings) Act 1960 Section 1(4)(a)).

3.3 Agenda and supporting papers

- 3.3.1 The agenda will be sent to directors five clear days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three clear days before the meeting, save in an emergency.

3.4 Petitions

- 3.4.1 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.

3.5 Notice of motion

- 3.5.1 Subject to the provision of standing orders 3.7 'Motions: procedure at and during a meeting' and 3.8 'Motion to rescind a resolution', 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.
- 3.5.2 The notice shall be delivered at least ten 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.

3.6 Emergency motions

- 3.6.1 Subject to the agreement of the Chair, and subject also to the provision of standing order 3.7 '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 or 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.

3.7 Motions: procedure at and during a meeting

3.7.1 Who may propose

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

3.7.2 Contents of motions

The Chair may exclude from the debate at his 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.

3.7.3 Amendments to motions

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

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

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.

3.7.4 Rights of reply to motions

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.

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.

3.7.5 Withdrawing a motion.

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

3.7.6 Motions once under debate

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 proceeds 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.

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.

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.

3.8 Motion to rescind a resolution.

3.8.1 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 member who gives it and also the signature of three other directors, 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.

3.8.2 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 months. This standing order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

3.9 Chair of meeting

3.9.1 At any meeting of the Board of Directors the Chair, if present, shall preside. If the is absent from the meeting, the Deputy Chair, if present, shall preside.

3.9.2 If the Chair and Deputy Chair are absent, such member (who is not also an Officer of the Trust) as the Directors present shall choose shall preside.

3.10 Chair's ruling

The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and his interpretation of the standing orders and standing financial instructions, at the meeting, shall be final.

3.11 Quorum

3.11.1 No business shall be transacted at a meeting unless at least one-third of the whole number of the Chair and directors (including at least one person who is a director of the Trust and one who is a Non-Executive Director) is present.

3.11.2 Only those officers with acting up status may deputise for an Executive Director and count towards the quorum.

3.11.3 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 standing order 7) 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.

3.12 Voting

3.12.1 Save as provided in paragraph 10.1 (ANNEX 7) of the Constitution, and in these standing orders 3.13 – Suspension of standing orders and 3.14 – 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 directors present and voting on the question. In the case of an equal vote, the person presiding (i.e. the Chair of the meeting) shall have a second, and casting vote.

- 3.12.2 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 ballot.
- 3.12.3 If at least one third of the directors 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 ballot).
- 3.12.4 If a director so requests, their vote shall be recorded by name.
- 3.12.5 Board members participating in the meeting by telephone, video or computer link shall be deemed to constitute presence in person at the meeting and shall be entitled to vote.
- 3.12.6 In no circumstances may an absent member vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.12.7 An Officer 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.
- 3.12.8 An Officer 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.
- 3.12.9 In the case of exercising provision 5.2 – emergency powers and urgent decision, board members can cast an electronic vote and be deemed to constitute as present.
- 3.12.10 For the voting rules relating to joint directors see standing order 2.6.

3.13 Suspension of standing orders

- 3.13.1 Except where this would contravene any statutory provision or any direction made by the Independent Regulator or the rules relating to the quorum, standing order 3.11, 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 directors of the board are present (including at least one member who is an Executive Director of the Trust and one member who is not) and that at least two-thirds of those directors present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Board of Directors' minutes.

3.13.2 A separate record of matters discussed during the suspension of standing orders shall be made and shall be available to the Chair and directors of the Trust.

3.13.3 No formal business may be transacted while standing orders are suspended.

3.13.4 The Audit Committee shall review every decision to suspend standing orders.

3.14 **Variation and amendment of standing orders**

These standing orders shall not be varied except in the following circumstances:

- upon a notice of motion understanding order 3.5.
- upon a recommendation of the Chair or Chief Executive included on the agenda for the meeting.
- that two-thirds of the Board 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.
- providing that any variation or amendment does not contravene a statutory provision or direction made by the Independent Regulator
- the views of the Council of Governors have been sought and considered.

3.15 **Record of attendance**

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

3.16 **Minutes**

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.

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

3.17 **Admission of public and the press**

3.17.1 Attendance at meetings

The public and representatives of the press shall be afforded facilities to attend all public events or public meetings of the Board of Directors, which will include the annual general meeting.

The public and representatives of the press shall be required to withdraw as follows:

“that representatives of the press, and other directors of the public, be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest, Section 1(2), Public Bodies (Admission to Meetings) Act 1960”.

3.17.2 The Chair (or Deputy Chair if one has been appointed) or the person presiding over the meeting shall give such directions as they think fit with regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Trust’s business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Trust Board resolving as follows:

‘That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Trust Board to complete its business without the presence of the public’. Section 1(8) Public Bodies (Admissions to Meetings) Act 1960.’

3.17.3 Business proposed to be transacted when the press and public have been excluded from a meeting.

Matters to be dealt with by the Board of Directors following the exclusion of representatives of the press, and other members of the public, as provided in 3.17.1 and 3.17.2 above, shall be confidential to the directors of the Board.

Directors or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked ‘In Confidence’ outside of the Trust, without the express permission of the Trust. This prohibition shall apply equally to the content of any discussion during the board meeting which may take place on such reports or papers, and a to Committees and sub-Committees of the Board.

3.17.4 Use of mechanical or electrical equipment for recording or transmission of meetings.

Nothing in these standing orders shall be construed as permitting the introduction of recording, transmitting, video or similar apparatus into meetings of the Trust or Committees thereof by third parties. Such permissions shall be granted only upon resolution of the Trust. The Trust aims to livestream public meetings of the Board and will notify the meeting through a notice on the agenda. The Trust may also undertake to record meetings for the process of supporting production of the minutes. The record will be deleted once the draft minutes are available.

3.17.5 Observers at Trust 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.

4. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

4.1 Appointment of Committees

Subject to such directions as may be given by the Independent Regulator, the Board of Directors may appoint Committees of the Trust.

The Board of Directors shall determine the directorship and terms of reference of Committees and sub-Committees and shall if it requires to, receive and consider reports of such Committees.

4.2 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 Board of Directors. 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 Committees also as the context permits. (There is no requirement to hold meetings of Committees established by the Board of Directors in public).

4.3 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 shall decide. Such terms of reference shall have effect as if incorporated into the standing orders.

4.4 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.

4.5 Approval of appointment to Committees

The Board of Directors shall approve the appointments to each of the Committees which it has formally constituted. Where the Board of Directors determines, and regulations permit, that persons, who are neither directors nor Officers, shall be appointed to a Committee the terms of such appointment shall be within the powers of the Board of Directors as defined by the Independent Regulator for Foundation Trusts. The Board of Directors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance. The Chair of the Board of Directors shall be entitled to attend all Committee meetings, with the exception of the Audit Committee.

4.6 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 Independent Regulator, and where such appointments are to operate independently of the Board, such appointment shall be made in accordance with the regulations and directions made by the Independent Regulator.

4.7 Committees established by the Board of Directors

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

4.7.1 **Audit Committee**

4.7.1.1 The Board of Directors will establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the Trust's Auditors.

The National Audit Office Audit *Code for NHS Foundation Trusts* gives further guidance.

4.7.1.2 The Board of Directors must establish an Audit Committee composed of Non-Executive Directors. Membership of the Committee is specified in the Committee's terms of reference. The Board of Directors should satisfy itself that at least one member of the Audit Committee has recent and relevant financial experience.

4.7.1.3 The main role and responsibilities of the Audit Committee will be set out in written terms of reference including details of how it will:

- monitor the integrity of the financial statements of the Trust, and any formal announcements relating to the Trust's financial performance, reviewing significant financial reporting judgments contained in them, review the Trust's internal financial controls and the Trust's internal control and risk management systems.
- monitor and review the effectiveness of the Trust's internal audit function.
- review and monitor the external Auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant UK professional and regulatory requirements.
- develop and implement policy on the engagement of the external Auditor to supply non-audit services, taking into account relevant ethical guidance and regarding the provision of non-audit services by the external audit firm; and
- report to the board of directors, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken.

4.7.1.4 The terms of reference of the Audit Committee, including its role and the authority delegated to it by the Board of Directors and by the Council of Governors, should be made publicly available. A separate section of the Annual Report should describe the work of the Committee in discharging those responsibilities.

- 4.7.1.5 The Audit Committee should review arrangements by which staff of the Trust may raise, in confidence, concerns about possible improprieties in matters of financial reporting and control, clinical quality, patient safety or other matters. The Audit Committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.
- 4.7.1.6 The Council of Governors should take the lead in agreeing with the Audit Committee the criteria for appointing, reappointing and removing Auditors. The Audit Committee should make recommendations to the Council of Governors in relation to the appointment, re-appointment and removal of the external Auditor and approve the remuneration and terms of engagement of the external Auditor. If the council of governors does not accept the Audit Committee's recommendation, the Board of Directors should include in the Annual Report a statement from the Audit Committee explaining the recommendation and should set out reasons why the Council of Governors has taken a different position.
- 4.7.1.7 When the Council of Governors ends an Auditor's appointment in disputed circumstances, the Chair should write to the Independent Regulator informing it of the reasons behind the decision.
- 4.7.1.8 The Annual Report should explain to members how, if the Auditor provides non-audit services, Auditor objectivity and independence is safeguarded.

4.7.2 Appointments and Remuneration Committee

(see also SFI 10)

- 4.7.2.1 In line with the requirements of the NHSE Code of Governance for NHS provider Trusts (2022), the directors must establish a Remuneration Committee composed of Non-Executive Directors which will include at least three Non-Executive Directors. The Appointments and Remuneration Committee will make available its terms of reference, explaining its role and the authority delegated to it by the Board of Directors. Where remuneration consultants are appointed, a statement should be made available of whether they have any other connection with the Trust.

4.7.2.2 The Appointments and Remuneration Committee has delegated authority for setting remuneration for all Executive Directors, including pension rights and any compensation payments. The Committee will recommend and monitor the level and structure of remuneration for senior management.

4.7.2.3 The Council of Governors is responsible for setting the remuneration of Non-Executive Directors and the Chair. The Council of Governors will consult external professional advisors to market-test the remuneration levels of the Chair and other Non-Executive Directors at least once every three years and when they intend to make a large change to the remuneration of a Non-Executive Director.

4.7.3 Charity Committee

4.7.3.1 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 Charity Committee to administer those funds in accordance with any statutory or other legal requirements or best practice required by the Charities Commission.

4.7.3.2 The provision of this standing order must be read in conjunction with standing order 2.8 and standing financial instructions 20.

4.7.3.3 Membership of the Committee is specified in the Committee's terms of reference.

4.7.4 Quality Committee

4.7.4.1 The Committee will consider the arrangements for monitoring and improving the quality and health and social care services for which Sussex Partnership NHS Foundation Trust is responsible for, supporting the provision of safe, high quality patient centred care, aspects of workforce and organisational development. It oversees the development and delivery of workforce plan, monitors workforce performance indicators, and ensures compliance with legal and regulatory requirements. For the purposes of these standing orders, that Committee will be referred to as the Quality Committee, although the name may be amended in line with national trends or best practice.

4.7.4.2 Membership of the Committee is specified in the Committee's terms of reference.

4.7.5 Finance and Investment Committee

4.7.5.1 Membership of the Committee is specified in the Committee's terms of reference.

4.7.5.2 The Committee will conduct objective board level review of financial and investment policies and financial performance issues.

4.7.6 Mental Health Act Committee

4.7.6.1 The Mental Health Act Committee will ensure that the Trust's statutory responsibilities under the Mental Health Act 1983 (and any subsequent amendments) are met and review and audit the Trust's policies and procedures relating to the Mental Health Act and the Mental Capacity Act 2005

4.7.6.2 Membership of the Committee is specified in the Committee's Terms of Reference.

aspects of workforce and organisational development, supporting the provision of safe, high-quality, patient-centred care. It oversees the development and delivery of workforce plan, monitors workforce performance indicators, and ensures compliance with legal and regulatory requirements

4.7.7 Other Committees

The Board of Directors may also establish such other Committees as required to discharge the Trust's responsibilities. This includes ad hoc extraordinary committees. The extraordinary committee should only be established if it can be demonstrated that the business of the new committee cannot be effectively conducted by any existing committee. The terms of reference and membership must be approved by the Board.

Any proposal to dissolve an extraordinary committee should be taken formally to the Board for approval

4.7.8 Joint Working Committees

4.7.8.1 The Board may approval that any committee of the Trust or Board may sit as a committee in common with other organisations. The Board may establish joint committees with other organisations. The Trust shall work co-operatively with any committee in common or joint committee so approved in accordance with the terms of reference as agreed with system partners.

5. ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATIONS

5.1 Delegation of functions to Committees, Officers or other bodies

5.1.1 Subject to the Constitution and terms of the Licence and such directions as may be given by the Independent Regulator, the Board of Directors may make arrangements for the exercise, on behalf of the Board of any of its functions by a Committee, sub-Committee appointed by virtue of standing order 4, or by an Officer of the Trust, or by another third party body below, or by a joint committee established under paragraph 4.7.8., in each case subject to such restrictions and conditions as the Board thinks fit.

5.1.2 Where the function is delegated to another health service body or Trust, then that Trust or health service body exercises the function in its own right; the receiving Trust has responsibility to ensure that the proper delegation of the function is in place. In other situations, i.e. delegation to Committees, sub-Committees or Officers, the Trust delegating the function retains full responsibility.

5.2 Emergency powers and urgent decisions

5.2.1 The powers which the Board has reserved to itself within these standing orders, standing order 2.9 may in emergency or for an urgent decision be exercised by

5.2.1.1 the Board of Directors casting an electronic vote, in accordance with standing order 3.12.9 and 3.11.1 or

5.2.1.2 the Chief Executive and the Chair after having consulted at least two Non-Executive Directors.

5.2.2 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 formal ratification.

5.2.3 The Board of Directors may make decisions/make approvals to motions in writing, outside of the Board meetings where required. Directors can indicate their agreement/non agreement to a written motion where a process for such voting has been agreed by the Board of Directors. The minutes of the decision/s in writing/voting results will be presented at the next meeting of the Board of Directors. A secure virtual application/platform may be used to facilitate an electronic voting process if a formal vote is needed.

5.3 Delegation to Committees

The Board 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. 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.

5.4 Delegation to Officers

5.4.1 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 or joint-Committee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate officers to undertake the remaining functions for which they will still retain accountability to the Board of Directors.

5.4.2 The Chief Executive shall prepare a scheme of reservation and delegation of powers identifying his proposals which shall be considered and approved by the Board of Directors. The Chief Executive may periodically propose amendment to the scheme of reservation and delegation of powers which shall be considered and approved by the Board of Directors.

5.4.3 Nothing in the scheme of reservation and delegation of powers shall impair the discharge of the direct accountability to the Board of the Chief Finance Officer to provide information and advise the Board of Directors in accordance with statutory requirements or any requirement of the Independent Regulator. Outside these statutory requirements the roles of the Chief Finance Officer shall be accountable to the Chief Executive for operational matters.

5.5 Duty to report non-compliance with standing orders and standing financial instructions.

The Chief Executive shall be advised of any breaches of standing orders. These shall be investigated by an Officer they nominate. See also standing order 10.

6. OVERLAP WITH OTHER TRUST POLICY STATEMENTS, PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS

6.1 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.

6.2 Specific policy statements

Notwithstanding the application of standing order 6.1 above, these standing orders and standing financial instructions must be read in conjunction with the following policy statements:

- the Anti-fraud and Bribery Policy Statement and Response Plan.
- the staff disciplinary and appeals procedures adopted by the Trust, both of which shall have effect as if incorporated in these standing orders.
- the scheme of reservation and delegation of powers.

6.3 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.

6.4 Specific guidance

Notwithstanding the application of standing order 6.1 above, these standing orders and standing financial instructions must be read in conjunction with the following guidance and any other issued by the Independent Regulator for Foundation Trusts.

- Caldicott Guardian 1997.
- Human Rights Act 1998.
- Freedom of Information Act 2000.

7. DUTIES AND OBLIGATIONS OF BOARD DIRECTORS AND SENIOR MANAGERS UNDER THESE STANDING ORDERS

7.1 Board of Directors – conflicts of interest of Directors

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

7.1.2 Interests which are relevant and material.

Interests that should be regarded as “relevant and material” are:

- Directorship, including Non-Executive directorships held in private companies (with the exception of those of dormant companies).
- Directorships of other NHS or NHS Foundation Trust Boards.
- Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
- A position of authority in a charity or voluntary organisation in the field of health and social care.
- Any connection with a voluntary or other organisation contracting for NHS services.
- Research funding/grants that may be received by an individual or their department.
- Interests in pooled funds that are under separate management.

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 (as defined in standing order 7.3 below and elsewhere) has any pecuniary interest, direct or indirect, the board member shall declare his interest by giving notice in writing of such fact to the Trust as soon as practicable.

All board members, senior managers and senior clinical staff, and all staff in the procurement and capital projects departments must complete a “Declaration of Interests” form on an annual basis.

7.1.3 Advice on interests

If board directors have any doubt about the relevance of an interest, this should be discussed with the Chair of the Board of Directors or with the Secretary.

Financial Reporting Standard No. 8 (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.

7.1.4 Recording of interests in the Board of Directors minutes

At the time board directors’ interests are declared, they should be recorded in the Board of Directors’ minutes.

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

7.1.5 Publication of declared interests in Annual Report

Board directors’ directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust’s Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

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

During the course of a Board of Directors 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 overlap with standing order 7.3.

7.2 Register of interests

The Chair will ensure that a register of interests is established to record formally declarations of interest of board or Committee directors. In particular the register will include details of all directorships and other relevant and material interests, as defined in standing order 7.1.2, which have been declared by both executive and Non-Executive Directors.

7.2.2 These details will be kept up to date by means of an annual review of the register in which any changes to interests declared during the preceding twelve months will be incorporated.

7.2.3 The register will be available to the public and the Chair will take reasonable steps to bring the existence of the register to the attention of local residents and to publicise arrangements for viewing it.

7.3 Exclusion of Chair and Directors in proceedings on account of pecuniary interest

7.3.1 Definition of terms used in interpreting 'pecuniary' interest.

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.
- "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: -
 - a) they, or a nominee of their, 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
 - b) they are 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.

- “exception to pecuniary interests”, a person shall not be regarded as having a pecuniary interest in any contract if: -
 - a) neither they or any person connected with them has any beneficial interest in the securities of a company of which they or such person appears as a member, or
 - b) any interest that they or any person connected with them 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
 - c) those securities of any company in which they (or any person connected with them) has a beneficial interest do not exceed £5,000 in nominal value or one percent 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 paragraph c) above applies, the person shall nevertheless be obliged to disclose/declare their interest in accordance with standing order 7.1.2.

7.3.2 Exclusion in proceedings of the Board of Directors

- a) 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.
- b) The Board of Directors may exclude the Chair or a member of the Board from a meeting of the Board of Directors while any contract, proposed contract or other matter to which they have a pecuniary interest is under consideration.
- c) Any remuneration, compensation, or allowance payable to the Chair or a member by virtue of paragraph 11 of Schedule 5A to the National Health Service Act 1977 (pay and allowances) shall not be treated as a pecuniary interest for the purpose of this standing order.

d) This standing order applies to a committee and to a sub-committee as it applies to the Board of Directors and applies to a member of any such Committee or sub-Committee (whether or not they are also a member of the Board) as it applies to a member of the Board of Directors.

7.4 Standards of business conduct

7.4.1 Trust policy and national guidance

All Trust staff and directors of the board must comply with the Trust's Anti Fraud and Bribery Policy, the national guidance contained in HSG (93)5 on 'Standards of Business Conduct for NHS Staff' and the NHSE Standards of Business Conduct 2017.

7.4.2 Interest of Officers in contracts

a) 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 (as defined in standing order 7.3) has any pecuniary interest, direct or indirect, the Officer shall declare their interest by giving notice in writing of such fact to the Secretary as soon as practicable.

b) An Officer should also declare to the Secretary any other employment or business or other relationship of his, or of a spouse (see definition in 7.3.1), that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

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

7.4.3 Canvassing of and recommendations by directors in relation to appointments

a) Canvassing of directors 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 order shall be included in application forms or otherwise brought to the attention of candidates.

b) Directors 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.

7.4.4 Relatives of Directors or Officers

- a) Candidates for any staff appointment under the Trust shall, when making an application, disclose in writing on their application whether they are related to any director or governor 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.
- b) The Chair and every director and Officer of the Trust shall disclose to the recruiting officer any relationship between them and a candidate of whose candidature that member or Officer is aware.
- c) On appointment, directors (and prior to acceptance of the appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other member or holder of any office under the Trust.
- d) Where the relationship to a member of the Trust is disclosed, the standing order headed 'Duties and Obligations of Board Directors and Senior Managers' (standing order 7) shall apply.

8. **CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS**

8.1 **Custody of Seal**

The Trust shall maintain a register of sealed documents which can be viewed by members of the public on request. The common seal of the Trust shall be kept by the Chief Executive or a nominated manager by them in a secure place.

8.2 **Sealing of documents**

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

8.3 **Register of sealing**

The Chief Executive shall keep a register in which they, or another manager of the authority authorised by them, shall enter a record of the sealing of every document. A report of all sealings shall be made to the Board of Directors every six months.

8.4 Signature of documents

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.

In land transactions, the signing of certain supporting documents will be delegated to managers and set out clearly in the scheme of reservation and delegation of powers 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).

9. MISCELLANEOUS

9.1 Joint finance arrangements

The Board of Directors may confirm contracts to purchase from a voluntary organisation or a local authority using its powers under Section 46 and Section 47 of the NHS Act 2006. The Board of Directors may confirm contracts to transfer money from the NHS to the voluntary sector or the health-related functions of local authorities where such a transfer is to fund services to improve the health of the local population more effectively than equivalent expenditure on NHS services, using its powers under Section 75 of the NHS Act 2006.

9.2 Dispute resolution procedure

In the event of a dispute between the Council of Governors and Board of Directors:

- in the first instance the Chair on the advice of the Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute.
- if the Chair is unable to resolve the dispute, they shall appoint a special Committee, comprising equal numbers of directors and governors, to consider the circumstances and to make recommendations to the Council of Governors and Board of Directors with a view to resolving the dispute.
- if the recommendations (if any), of the special Committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

9.3 **Distribution and review**

The standing orders, standing financial instructions, scheme of delegation and reservation and delegated financial limits will be made available to all staff on the Trust website and will be reviewed on a regular basis.

10. **BREACHES OF STANDING ORDERS**

10.1 The Chief Executive shall be advised of any breaches of standing orders. These shall be investigated by an Officer nominated by them.

10.2 The investigating Officer shall carry out his investigation in accordance with the relevant Trust policies and procedures for such investigations.

10.3 The investigation shall seek to determine:

- the circumstance of the breach and ascertain, as far as possible, why the breach occurred.
- possible implications for the Trust and actions that can be taken to mitigate these.
- recommendations to prevent the breach happening again.

10.4 The investigating Officer will report back to the Chief Executive (or to an Officer nominated by them). Where, after investigation a breach is determined to be non-material then a report will be made to the Audit Committee for information. For all other breaches, a formal report will be made to the Board of Directors for action.

10.5 The determination of the materiality of the breach will be determined by the Chief Executive (or the Officer nominated by them) using the following criteria:

- the breach was trifling; and
- the outcome would have been the same had standing orders not been breached; and
- the breach does not have any adverse financial, legal or public opinion implications.

10.6 Nothing in this section shall be construed as preventing a member of staff from making a disclosure under the Public Interest Disclosure Act.

10.7 The Trust Freedom to Speak Up Policy will apply to any staff reporting a breach of standing orders.

ANNEX 9 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

1 INTRODUCTION

- 1.1 The Sussex Partnership NHS Foundation Trust (“the Trust”) became a Public Benefit Corporation on 1 August 2008 following the granting of a Licence by NHS England (formerly Monitor).
- 1.2 The principal place of business of the Trust is Trust Headquarters, Portland House, 44 Richmond Road, Worthing, West Sussex BN11 1HS
- 1.3 The Trust is governed by the 2006 Act, its Constitution and its terms of Licence granted by NHS England. The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Governors of the Trust to adopt standing orders for the regulation of its proceedings and business and to adhere at all times to the code of conduct for governors.

2 DEFINITIONS

- 2.1 Headings are for ease of reference only and are not to affect interpretation.
- 2.2 In these standing orders:

“2006 Act”

means the National Health Service Act 2006;

“Accounting Officer”

means the NHS Officer responsible and accountable for the 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;

“Annual Report”

means a report prepared by the Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act;

“Audit Committee”

means a Committee of the Board of Directors as established pursuant to paragraph 37 of this Constitution;

“Auditor”

means the External Auditor to the Trust appointed by the Council of Governors pursuant to paragraph 36 of this Constitution;

”Licence”

means the Provider licence issued to the Trust by NHS England under section 35 of the 2006 Act;

“Budget”

means a resource, expressed in financial terms, proposed by the board for the purposes of carrying out, for a specific period, and or all of the functions of the Trust;

“Budget Holder”

means the director of employee with delegated authority to manage finances (Income and Expenditure) for a specific area if the organisation;

“Clear Day”

means a day of the week not including Saturday, Sunday or public holiday;

”Committee”

means a Committee or sub-Committee created and appointed by the Council of Governors;

“Constitution”

means this Constitution together with the annexed and appendices attached hereto;

“Deputy Chair”

means the Non-Executive Director appointed by the Council of Governors pursuant to paragraph 26 of the Constitution to take on the Chair’s duties if the Chair is absent for any reason;

“Directors Code of Conduct”

means the Code of Conduct for directors of the Trust, as adopted by the applicant NHS Trust and as amended from time to time by the Board of Directors, to which all directors must subscribe;

“Finance Director”

means the Chief Financial Officer of the Trust;

“Financial Year”

means:

2.2.1 a period beginning with the date on which the Trust is licenced as an NHS Foundation Trust and ending with the next 31 March; and

2.2.2 each successive period of twelve months beginning with 1 April;

“Health Overview and Scrutiny Committee”

means a Committee whose functions are concerned with the arrangements for monitoring and improving the quality of health and social care services for which Sussex Partnership NHS Foundation Trust has responsibility;

“Hospital”

means those premises of the Sussex Partnership NHS Foundation Trust and all associated hospitals and facilities at which the Trust provides and/or manages the provision of goods and/or services;

“Officer”

means employee of the Trust or any other person holding a paid appointment or office with the Trust;

“Secretary”

means a person appointed to act independently of the board or directors to provide advice on corporate governance issues to the Board of Directors and the Chair and monitor the Trust’s compliance with the law, standing orders and guidance issued by NHS England (formerly Monitor);

“Sex Offenders Order”

means a Sexual Offences Preventative Order made under section 104 of the Sexual Offences Act 2003, or a Risk of Sexual Harm Order made under section 123 of the Sexual Offences Act 2003;

“Sex Offenders Register”

means the Register of Sex Offenders maintained under Part I of the Sex Offenders Act 1997 (as amended by the Sexual Offences Act 2003);

“Trust”

means Sussex Partnership NHS Foundation Trust;

3 THE COUNCIL OF GOVERNORS

- 3.1 The roles and responsibilities of the governors are set out in Paragraph 2 of ANNEX 8 of the Constitution and also have effect as if incorporated into the standing orders. Certain powers and decisions may only be exercised by the Council of Governors in formal session.
- 3.2 At a general meeting, the Council of Governors shall appoint one of the governors to be the lead governor, for such a period not exceeding the remainder of the individual's term as governor as they specify on appointing them.
- 3.3 The Council of Governors shall determine the method of appointment of the lead governor
- 3.4 Any governor so appointed may at any time resign from the office of lead governor by giving notice in writing to the Chair. The governors may thereupon appoint another member as lead governor in accordance with the provision of standing order 3.3.
- 3.5 The lead governor will undertake the duties of lead governor as prescribed by NHS England, and other duties as agreed by the Council of Governors.
- 3.6 The Council of Governors may choose to appoint one or two Deputy Lead Governors.

4 MEETING OF THE COUNCIL OF GOVERNORS

4.1 **Admission of the public and the press**

- 4.1.1 The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors except where it resolves by special resolution that members of the public and representatives of the press be excluded from all or part of a meeting on the grounds that:
 - 4.1.1.1 any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
 - 4.1.1.2 for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Council of Governors believe

are special reasons for excluding the public from the meeting in accordance with the Constitution.

4.2 Confidentiality

- 4.2.1 Nothing in these standing orders shall require the Council of Governors to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council of Governors.
- 4.2.2 Matters to be dealt with by the Council of Governors following the exclusion of members of the public and representatives of press shall be confidential to the Council of Governors.
- 4.2.3 Council members, directors and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked “In Confidence” outside of the meeting of the Council of Governors without the express permission of the Council of Governors. This prohibition shall apply equally to the content of any discussion during the Council of Governors’ meeting which take place on such reports or papers.

4.3 Calling meetings

- 4.3.1 Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine.
- 4.3.2 There shall be at least four meetings in any year including:
 - 4.3.2.1 an annual meeting no later than the 30 September in each year apart from the first year, when the Council of Governors is to receive and consider the annual accounts and any report of the Auditor on them, and the Board of Directors is to present to the Council of Governors the Annual Report and a report on the membership strategy.
 - 4.3.2.2 any other meetings required of the governors in order to fulfil their functions in accordance with the Constitution.
- 4.3.3 The Chair may call a meeting of the Council of Governors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one third of governors and specifying the business to be transacted

at the meeting, has been presented to them, or if, without so refusing, the Chair does not call a meeting within five Clear Days after such requisition has been presented to them at the Trust's Headquarters, such one third or more of the governors may forthwith call a meeting for the purpose of conducting that business.

4.3.4 The Council of Governors may invite the Chief Executive, a member of the Board of Directors or a representative of the Auditors or other advisors to attend a meeting of the Council of Governors.

4.3.5 The Council of Governors may agree that its governors can participate in its meetings by telephone or video link. and shall constitute presence in person at the meeting for the purposes of standing order 4.18 (Quorum).

4.4 Notice of Meetings

4.4.1 Before each meeting of the Council of Governors, a written notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an Officer authorised by the Chair to sign on his behalf, shall be delivered to, or sent by post to the usual place of residence of every governor, so as to be available to them at least five clear days before the meeting save in the case of emergencies.

4.4.2 Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and if possible the public part of the agenda, shall be advertised on the Trust's website at leave five Clear Days before the meeting, save in the case of emergencies.

4.4.3 No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under standing order 4.11.9

4.4.4 Want of service of the notice on any one governor shall not affect the validity of a meeting.

4.4.5 In the case of a meeting called by governors in default of the Chair, the notice shall be signed by those governors and no business shall be transacted at the meeting other than that specified in the notice. Failure to serve such a notice on more than three governors will invalidate the meeting. A notice shall be presumed to have been served on day after posting.

- 4.4.6 Agendas will be sent to governors before the meeting and supporting papers, wherever possible, shall accompany the agenda, but will certainly be despatched no later than five clear days before the meeting, save in the case of emergencies. It is the responsibility of the Chair to ensure that sufficient information is provided to governors to ensure that rational discussion can take place.
- 4.4.7 In the event of an emergency giving rise to the need for an immediate meeting, failure to comply with the notice periods referred to in standing order 4.4 shall not prevent the calling of or invalidate such meeting provided that every effort is made to contact members of the Council of Governors who are not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.

4.5 Setting the Agenda

- 4.5.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.5.2 A member of the Council of Governors desiring a matter to be included on an agenda, including a formal proposition for discussion and voting on at a meeting, shall make his request in writing to the Chair at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 clear days before a meeting may be included on the agenda at the discretion of the Chair.

4.6 Motions and Propositions

- 4.6.1 Where a governor has requested inclusion of a matter on the agenda in accordance with standing order 4.5.2 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this standing order 4.6 shall apply in respect of the proposition:
- 4.6.2 The mover of the proposition shall have a right of reply at the close of any discussion in the proposition or any amendment thereto.

- 4.6.3 When a proposition is under discussion or immediately prior to discussion it shall be open to a governor to move:
- 4.6.3.1 an amendment to the proposition;
 - 4.6.3.2 the adjournment of the discussion or the meeting;
 - 4.6.3.3 that the meeting proceed to the next business;
 - 4.6.3.4 the appointment of an ad hoc Committee to deal with a specific item of business;
 - 4.6.3.5 that the motion be now put;
 - 4.6.3.6 that the public be excluded from the meeting in relation to the discussion concerning the proposition understanding order 4.1.
- 4.6.4 To ensure objectivity matters may only be put by a governor who has not previously taken part in the debate and who is eligible to vote.
- 4.6.5 No amendment to the proposition shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the proposition.
- 4.7 Petitions**
- 4.7.1 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 of the Council of Governors.
- 4.8 Chair of Meeting**
- 4.8.1 If the Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, the Deputy Chair shall exercise all the rights and obligations of the Chair.
- 4.8.2 If the Deputy Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director as shall be appointed by the Governors present shall preside.
- 4.8.3 If any matter relates to the conduct or interests of the Non-Executive Directors as a class, the Council of Governors shall elect one of their number to preside during that period and that person shall exercise all the rights and obligations of the Chair.

4.9 Report from the Board of Directors

- 4.9.1 At each meeting of the Council of Governors, the Board of Directors is required to report to the Council of Governors on the Trust's general progress and forward planning.

4.10 Chair's Ruling

- 4.10.1 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.
- 4.10.2 The decision of the Chair of the meeting on questions of interpretation of these standing orders shall be final.

4.11 Voting

- 4.11.1 A governor may not vote at a meeting of the Council of Governors unless, within ten Clear Days prior to the commencement of the meeting they have made a declaration in the form specified within Schedule A of these standing orders, that they are a member of the constituency which elected them and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 8 to the 2006 Act or under the Constitution.
- 4.11.2 Subject to paragraphs 6.1 of ANNEX 8 of the Constitution and standing orders 4.11.4, 4.13.5, 4.13.8, 4.14.1, and 4.15.1.2 below, every question at a meeting shall be determined by a majority of the votes of members present and voting on the question.
- 4.11.3 Subject to paragraphs 6.1 of ANNEX 8 of the Constitution and standing order 4.11.4, 4.13.5, 4.13.8, 4.14.1 and 4.15.1.2 below, whoever is Chair of the meeting of the Council of Governors shall in the case of an equality of votes on any question or proposal have a second or casting vote.
- 4.11.4 A resolution for the removal of the Chair or a Non-Executive Director shall be passed only if three quarters of the total number of governors vote in favour of it.

- 4.11.5 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. An electronic ballot may also be used on request.
- 4.11.6 If at least one-third of the Governors present so request, the voting (other than by electronic ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.11.7 If a Governor so requests, his vote shall be recorded by name upon any vote (other than by electronic ballot).
- 4.11.8 A Governor may only vote if present at the time of the vote on which the question is to be decided; no governor may vote by proxy but a Governor is considered to have been present at the meeting if they took part by telephone or video link and so is therefore entitled to vote.
- 4.11.9 In the case of an urgent decision, Governors can cast an electronic vote and deemed to constitute as present.
- 4.11.10 The Council of Governors may make decisions/make approvals to motions in writing, outside of the meetings where required. Governors can indicate their agreement/non agreement to a written motion where a process for such voting has been agreed by the Council of Governors. The minutes of the decision/s in writing/voting results will be presented at the next meeting of the Council of Governors. A secure virtual application/platform may be used to facilitate an electronic voting process if a formal vote is needed

Annual Meeting

- 4.11.11 The Council of Governors shall hold an annual meeting of the Council of Governors in every calendar year so that there are no more than fifteen calendar months between one meeting and the next and shall present to that meeting:
 - 4.11.11.1 A report on the proceedings of its meetings held since the last annual meeting;
 - 4.11.11.2 A report on the status since the last annual meeting of the membership strategy including assurance that the actual membership of the public

and service user constituencies is representative of the persons who are eligible to be members under the Constitution;

4.11.11.3A report on any change to the governors which has taken place since the last annual meeting, and

4.11.11.4A report containing such comments as it wishes to make regarding the performance of the Trust and the accounts of the Trust for the preceding Financial Year and the future service development plans of the Trust.

4.12 Special Provisions relating to the Termination of a Governor's Tenure

4.12.1 Where a person has been elected or appointed to be a Governor and they become disqualified from office under paragraph 14 of the Constitution, the individual shall notify the Secretary in writing of such disqualification as soon as is practicable and in any event within 14 days of the first becoming aware of those matters which render them disqualified. The Secretary shall forthwith remove them from the register of the governors.

4.12.2 If it comes to the notice of the Secretary that the Governor is disqualified under paragraph 14 of the Constitution, whether at the time of the governor's appointment or later, the Secretary shall immediately declare that the individual in question is disqualified and give them notice in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration. In the event that the Governor shall dispute that they are disqualified the Governor may refer the matter to the dispute resolution procedures set out in paragraph 8 of ANNEX 7 of the Constitution within 28 days of the date upon which the notice was given to the governor

4.12.3 If a governor fails to attend two consecutive meetings of the Council of Governors, their tenure of office is to be terminated immediately unless the Council of Governors is satisfied by a two thirds majority that:

4.12.3.1 the absence was due to reasonable cause; and

4.12.3.2 the Governor concerned will be able to start attending meetings of the Council of Governors again within such period as they consider reasonable.

- 4.12.4 The Chair shall be authorised to take such action as may be immediately required including but not limited to exclusion of the governor concerned so that any allegation made against a Governor on the following grounds can be investigated:
- 4.12.4.1 non-compliance with the License, the Code of Conduct, standing orders and standing financial instructions; or
 - 4.12.4.2 failure to declare an interest as required by the Constitution or these standing orders, or if the governor in question has spoken or voted at a meeting on a matter in which they have an interest contrary to the Constitution or standing orders in accordance with paragraph 17 of the Constitution.
- 4.12.5 Where any grounds within standing order 4.12.4 are alleged, the complaints procedure will be followed.
- 4.12.6 In the event that the process leads to an expulsion or an appeal the Chair will convene a meeting where the governors, by three quarters majority of those present and voting will make the final decision whether to uphold the charge of non-compliance or misconduct detrimental to the Trust.
- 4.12.7 The governors can impose such sanctions as shall be deemed appropriate. Such sanctions will range from the issuing of a written warning as to the Governor's future conduct and consequence, non-payment of expenses and removal of the Governor from office.
- 4.12.8 Upon disqualification in accordance with the complaint's procedure, removal or termination of a Governor's office under this standing order, the Secretary shall cause his name to be removed immediately from the register of governors.
- 4.12.9 A Governor may resign from that office at any time during the term of that office by giving notice to the Secretary in writing, upon which they shall cease to hold office.
- 4.12.10 A Governor who resigns understanding order 4.12.9 above or whose office is terminated under this standing order or Paragraph 14 of the Constitution shall not be eligible to stand for re-election to the Council of Governors for a period of five years from the date of his resignation or removal from office or the date

upon which any appeal against his removal from office is disposed of whichever is later.

- 4.12.11 In the event that an elected governor's seat falls vacant before the end of the term of office, the provisions as set out at Paragraph 4 of ANNEX 6 of the Constitution shall apply.

4.13 Minutes

- 4.13.1 The minutes of the proceedings of a meeting shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting where they will be signed by the Chair presiding at it.
- 4.13.2 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 next meeting.

4.14 Suspension of Standing Orders

- 4.14.1 Except where this would contravene any statutory provision or any direction made by NHS England or the rules relating to quorum, any one or more of the standing orders may be suspended at any meeting, provided that at least two-thirds of the Governors are present, there is a majority of Governors who are members of the public and service user constituencies of the Trust, and that a majority of those present vote in favour of suspension.
- 4.14.2 A decision to suspend the standing orders and the reason for suspending shall be recorded in the minutes of the meeting.
- 4.14.3 A separate record of matters discussed during the suspension of standing orders shall be made and shall be available to the Chair and Governors.
- 4.14.4 No formal business may be transacted while standing orders are suspended.
- 4.14.5 The Audit Committee of the Board of Directors shall review every decision of the Council of Governors to suspend standing orders.

4.15 Variation and Amendment of Standing Orders

- 4.15.1 These standing orders shall be amended only if:

4.15.1.1 a notice of proposal under standing order 4.5.2 has been given; and

4.16.1.2 no fewer than half the total number of Governors vote in favour of amendment; and

4.15.1.2 no fewer than half the total number of Governors is present; and

4.15.1.3 the variation proposed has been approved by the Board of Directors and does not contravene the Constitution or a statutory provision.

4.16 Record of Attendance

4.16.1 The names of the Chair and Governors present at the meeting shall be recorded in the minutes.

4.17 Quorum

4.17.1 No business shall be transacted at a meeting unless at least one third of the whole Council is present, with at least one member from each constituency

4.17.2 If at any meeting there is not quorum present within thirty minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for a minimum of five clear days to a maximum of twenty clear Days and upon reconvening, those present shall constitute a quorum.

4.17.3 If a governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest as provided in standing order 6, 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 of any matter, that matter may not be discussed further or voted upon at that meeting. Such a position must then proceed to the next business.

5 COMMITTEES

5.1 Subject to such best practice advice and/or guidance as may be issued by NHS England, the Council of Governors may and, if directed by NHS England, shall appoint Committees of the Council of Governors to assist it in the proper performance of its functions under the Constitution and the regulatory framework, consisting wholly or partly of the Chair and governors.

5.2 All decisions taken in good faith at the meeting of the Council of Governors or at any meeting of a Committee shall be valid even if it is subsequently discovered that there was a defect in the calling of the meeting or the appointment of the governors attending the meeting.

- 5.3 A Committee appointed under standing order 5 may, subject to such best practice advice and/or guidance as may be issued by NHS England or the Council of Governors, appoint sub-Committees consisting wholly or partly of members of the Committee.
- 5.4 These standing orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any Committees established by the Council of Governors with the term “Chair” to be read as a reference to the Chair of the Committee, and the term “Governor” to be read as a reference to a member of the Committee as the context permits.
- 5.5 Each such Committee shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the regulatory framework and any best practice advice and/or guidance issued by NHS England, but the Council of Governors shall not delegate to any Committee and powers or responsibilities which are to be exercised by the Council of Governors at a formal meeting. Such terms of reference shall have effect as if incorporated into the standing orders.
- 5.6 Where Committees are authorised to establish sub-Committees they may not delegate their powers to the sub-Committee unless expressly authorised by the Council of Governors.
- 5.7 Any Committee or sub-Committee established under this standing order 5 may call upon outside advisers to assist them with their tasks, subject to the advance agreement of the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph shall be determined in accordance with the dispute resolution procedures as set out in Paragraph 9 of ANNEX 9 of the Constitution.
- 5.8 The Council of Governors shall approve the appointments to each of the Committees which it has formally constituted.
- 5.9 Where the Council of Governors is required to appoint persons to a Committee to undertake statutory functions, and where such appointments are to operate independently of the Council of Governors, such appointments shall be made in accordance with applicable statute and regulations and with best practice advice and/or guidance issued by NHS England.

5.10 Where the Council of Governors determines that persons who are neither governors, nor directors or Officers of the Trust, shall be appointed to a Committee, the terms of such appointment shall be determined by the Council of Governors subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Board of Directors,

5.11 The Council of Governors may appoint members to serve on joint Committees with the Board of Directors or Committees of the Board of Directors.

5.12 Council of Governor Committees

5.12.1 Nominations and Remuneration Committee

The Nominations and Remunerations Committee is a Committee constituted by the Council of Governors. The Committee is responsible for making recommendations to the Council of Governors relating to:

- The appointment and re-appointment of the Chair and Non-Executive Directors
- The evaluation of the performance of the Chair and Non-Executive Directors
- The remuneration, allowances and other terms and conditions of office for the Trust Chair, and Non-Executive Directors
- The recruitment process for the selection of candidates for the office of Chair or other Non-Executive Directors

5.12.2 Training and Development Committee

The Training & Development Committee is a Committee constituted by the Council of Governors and is responsible for making recommendations to the Council of Governors relating to:

- Regularly Identifying Governor training needs
- Setting the agendas for the Governor Training and Development Days
- Regularly reviewing the Governor Code of Conduct and Governor Promises
- Maintaining and developing the Governors Handbook in conjunction with the Governance Support Office

The Committee is authorised by the Council of Governors to carry out any activity within its Terms of Reference

5.12.3 Membership Committee

The Membership Committee is a Committee constituted by the Council of Governors. The Committee is responsible for making recommendations to the Council of Governors relating to:

- Membership recruitment and development
- Member retention and engagement with the Trust
- Member engagement with the Governors
- Member communication and feedback

The Committee is authorised by the Council of Governors to carry out any activity within its Terms of Reference.

6 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

6.1 Declarations of Interests

6.1.1 The Regulatory Framework and the Constitution require each governor to declare to the Secretary:

6.1.1.1 any actual or potential interest, direct or indirect, in any contract, which is relevant and material to the business of the Trust, as described in standing order 6.2.1; and

6.1.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, as described in standing orders 6.2.2 and 6.2.3; and

6.1.1.3 any actual or potential family interest, direct or indirect, of which the governor is aware, as described in standing order 6.2.5.

6.1.2 Such a declaration shall be made either at the time of the governor's election or appointment or as soon thereafter as the interest arises, but within five clear days of becoming aware of the existence of that interest, and in a form prescribed by the Secretary which shall be known as Schedule B.

6.1.3 In addition, if a governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall withdraw from the meeting and play no part in further discussion or decision.

- 6.1.4 Subject to standing order 6.2.4, if a Governor has declared a pecuniary interest (as described in standing orders 6.2.2 and 6.2.3) they shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the governors' meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring and recorded in the minutes of that meeting.
- 6.1.5 This standing order 6 applies to any Committee, sub-Committee or joint Committee of the Council of Governors and applies to any member of such Committee, sub-Committee, or joint Committee (whether or not they are also a governor).
- 6.1.6 The interests of governors in companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

6.2 Nature of Interests

- 6.2.1 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by NHS England :
- 6.2.1.1 Directorship of other NHS Trusts or NHS Foundation Trusts;
 - 6.2.1.2 directorships, including Non-Executive directorships held in private companies or public limited companies (with the exception of those or dormant companies); or
 - 6.2.1.3 ownership, part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or
 - 6.2.1.4 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS; or
 - 6.2.1.5 a position of authority in a charity or voluntary organisation in the field of health and social care; or
 - 6.2.1.6 any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or

- 6.2.1.7 any connection with the organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks.
- 6.2.2 A governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
 - 6.2.2.1 they, or a nominee of theirs, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 6.2.2.2 they are a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 6.2.3 A governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
 - 6.2.3.1 of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body; or
 - 6.2.3.2 of an interest in any company, body or person with which they are connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or
 - 6.2.3.3 of any travelling or other expenses or allowances payable to a governor in accordance with the Constitution.
- 6.2.4 Where a governor:
 - 6.2.4.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
 - 6.2.4.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and

6.2.4.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued share capital of that class;

the governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.

6.2.5 A family interest is an interest of the spouse or partner or any parent, child, brother or sister of a governor which if it were the interest of that governor would be a personal interest or a pecuniary interest of his.

6.2.6 If governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair or Secretary. 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.

6.3 Register of Governors

6.3.1 The register of governors shall list the names of governors, their category of membership of the Council of Governors and an address through which they may be contacted which may be the Secretary.

6.4 Register of Governors' Interests

6.4.1 The Secretary shall keep a register of interests of governors which shall contain the names of each governor, whether they have declared any interest, and if so, the interest declared.

6.4.2 These details will be kept up to date by means of an annual review of the register.

7 STANDARDS OF BUSINESS CONDUCT

7.1 Members of the Council of Governors shall comply with the Governors' Code of Conduct and any best practice advice and/or guidance issued by NHS England.

8 APPOINTMENTS AND RECOMMENDATIONS

- 8.1 A governor 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 governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.
- 8.2 Informal discussions outside appointments panels or Committees, whether solicited or unsolicited, should be declared to the panel or Committee.
- 8.3 Candidates for any staff appointment under the Trust shall, when making such an application, disclose in writing to the Trust whether they are related to any director or governor or the holder of any office within the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.
- 8.4 The Chair and every governor shall disclose to the Chief Executive or their delegated Officer any relationship between themselves and a candidate of whose candidature that governor or Officer is aware. It shall be the duty of the Chief Executive or their delegated Officer to report to the Council of Governors any such disclosure made.
- 8.5 On appointment, members of the Council of Governors should disclose to Council whether they are related to any other member of the Council of Governors or holder of any office in the Trust.
- 8.6 Where the relationship to a member of the Council of Governors of the Trust is disclosed, standing order 6 shall apply.

9 DISPUTE RESOLUTION PROCEDURE

- 9.1 In the event of a dispute between the Council of Governors and the Board of Directors:
 - 9.1.1 In the first instance the Chair on the advice of the Secretary and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;
 - 9.1.2 If the Chair is unable to resolve the dispute they shall appoint a special Committee comprising equal numbers of directors and governors to consider

the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute;

- 9.1.3 If the recommendations (if any) of the special Committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

10 MISCELLANEOUS

- 10.1 The Secretary shall provide a copy of these standing orders to each governor and endeavour to ensure that each governor understands his responsibilities within these standing orders.
- 10.2 If for any reason these standing orders are not complied with, full details of the non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All governors have a duty to disclose any non-compliance with these standing orders to the Chair as soon as possible.

SCHEDULE A

Declaration to the Company Secretary of Sussex Partnership NHS Foundation Trust

I hereby declare that I am at the date of this declaration a member of the [Public/Service User/Staff] constituency, and I am not prevented from being a member of the Council of Governors by reason of any provision of paragraph 8 of Schedule 7 to the 2006 Act or the Constitution.

Print Name:

Constituency:

Signed:

Date:

CONSTITUTION

ANNEX 10 – STANDING ORDERS FOR ANNUAL MEMBERS' MEETING

1. 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 the Annual Members' Meetings.

2. Calling meetings

2.2 The Trust shall hold a meeting for all of its members (called the Annual Members' Meeting) within six (6) months of the end of each financial year of the Trust.

2.3 Annual Members' Meetings shall be open to all members of the Trust, members of the Council of Governors and members of the Board of Directors, together with representatives of the auditors, and to the public. The Board of Directors may invite representatives of the media and any experts or advisors, whose attendance it considers to be in the best interests of the Trust, to attend any such meeting.

2.4 The Board of Directors may convene an Annual Members' Meeting when it thinks fit, subject to standing order 1.

3. Notice of Meetings

3.1 The Secretary shall give notice of all Annual Members' Meetings:

3.1.1 in writing to all members;

3.1.2 by notice prominently displayed at the Trust's headquarters;

3.1.3 on the Trust's website; and

3.1.4 to the Council of Governors, the Board of Directors, and to the Trust's auditors, stating whether the meeting is an Annual Members' Meeting and including the time, date, place of the meeting, and the business to be dealt with at the meeting, at least 14 clear days before the date of the relevant members' meeting (or, in the case of an Annual Members' Meeting, at least 21 clear days before the date of the relevant meeting).

3.23 An accidental omission to give notice of an Annual Members' Meeting or to send, supply or make available any document or information relating to the Annual

Members' Meeting, or the non-receipt of any such notice, document or information by a person entitled to receive any such notice, document or information shall not invalidate the proceedings at that meeting.

4. Setting the agenda

4.1 The Board of Directors (or at least one (1) member thereof) shall present to the members at the Annual Members' Meeting:

4.1.1 the annual accounts;

4.1.2 any report of the auditor on them; and

4.1.3 the annual report.

4.24 The Chair in consultation with the Lead Governor, shall determine the agenda for the Annual Members' Meetings, subject to standing order 4.1.

5 Chair of the meeting

5.1 The Chair or in their absence the Deputy Chairman of the Board of Directors shall preside at all Annual Members' Meetings of the Trust. If neither the Chair nor the Deputy Chair is present, the Lead Governor should present or the governors present shall elect one (1) of their number to act as Chair.

6 Chair's Ruling

6.1 Statements made by any person at an Annual Members' Meeting 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.

6.2 The Chair on behalf of Board of Directors may make any arrangement and impose any restriction it reasonably considers appropriate to ensure the security of an Annual Members' Meeting.

7 Quorum

7.1 The quorum for an Annual Members' Meeting shall be eight (8) members present and entitled to vote. If a quorum is not present within thirty minutes from the time appointed for the meeting, the meeting shall stand adjourned for a minimum of seven (7) clear days until such time as the Chair determines.

7.2 In the case that an Annual Members' Meeting is adjourned or postponed for fourteen clear days or more, at least seven (7) clear days' notice shall be given specifying the time and place of the adjourned members' meeting and the general nature of the business to be transacted.

8 Voting

8.1 Decisions at Annual Members 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.

8.2 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.

8.3 A person may not vote at an Annual Members' Meeting if the Chair is not satisfied that they are a Member (on which they shall be advised by the Company Secretary).

8.4 In no circumstances may an absent Member vote by proxy.

9 Minutes

9.1 The minutes of the proceedings of standing order 4.1 of an Annual Members Meeting shall be drawn up and maintained as a public record. The draft minutes to be received by governors at the next Council of Governors meeting for information purposes only. They will be submitted for agreement at the next Annual Members Meetings where they will be signed by the person presiding at it.

9.2 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.

10 Variation and Amendment of Standing Orders

10.1 These Standing Orders may be amended in accordance with paragraph 43 of the Constitution.

ANNEX 11 – THE MODEL RULES FOR ELECTIONS TO THE COUNCIL OF GOVERNORS

Part 1 – Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning Officer

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

Part 4 – Stages Common to Contested and Uncontested Elections

8. Notice of election
9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
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13. Signature of candidate
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17. Withdrawal of candidates
18. Method of Election

Part 5 – Contested elections

19. Poll to be taken by ballot
20. The ballot paper
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Action to be taken before the poll

22. List of eligible voters
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- 27. Eligibility to vote
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Procedure for receipt of envelopes, internet votes, telephone votes and text message votes

- 36. Receipt of voting documents
- 37. Validity of ballot paper
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Part 6 – Counting the votes

- STV41. Interpretation of Part 6
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- STV48. Supplementary provisions on transfer
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Part 7 – Final proceedings in contested and uncontested elections

- FPP52. Declaration of result for contested elections
- STV52. Declaration of result for contested elections
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Part 8 – Disposal of documents

- 54. Sealing up documents relating to poll
- 55. Delivery of documents
- 56. Forwarding of documents received after close of poll
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58. Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during a contested election

FFP59. Countermand or abandonment of poll on death of candidate

STV59. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

60. Election Expenses

61. Expenses and payments by candidates

62. Expenses incurred by other persons

Publicity

63. Publicity about election by the corporation

64. Information about candidates for inclusion with voting information

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

Part 11 – Questioning elections and irregularities

66. Application to question an election

Part 12 – Miscellaneous

67. Secrecy

68. Prohibition of disclosure of vote

69. Disqualification

70. Delay in postal service through industrial or unforeseen event

Part 1 – Interpretation

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

“Council of Governors” means the Council of Governors of the corporation;

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

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

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

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

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

“internet voting record” has the meaning set out in rule 26.4(d);

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

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

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

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

“NHS England (formerly Monitor) ” means the corporate body known as NHS England 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 2006 Act have the same meaning in these rules as in that Schedule.

Part 2 – Timetable for election

2. Timetable

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

Proceeding	Time
Publication of Notice of election	No later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination papers 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 the 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
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 purpose 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 his functions under these rules,
- (b) such remuneration and other expenses as the corporation may determine.

7. Duty of co-operation

7.1 The corporation is to co-operate with the returning Officer in the exercise of his 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 the 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 papers may be obtained;
- (e) the address for return of nomination papers 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, and
- (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 paper.

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 paper 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 paper 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 paper 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 paper must include a declaration made by the candidate:

- (a) that they are not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of his 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 paper 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

14. Decisions as to the validity of nomination

14.1 Where a nomination paper 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 paper 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 papers, as specified in the notice of 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, as required by rule 13.

14.3 The returning Officer is to examine each nomination form as soon as is practicable after they has received it, and decide whether that 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 nominated papers

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

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

(c) 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 documents 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 email 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;

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

(d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of

- (i) the voter's voter ID number;
- (ii) the voter's declaration of identity (where required);
- (iii) the candidate or candidates for whom the voter has voted; and
- (iv) the date and time of the voter's vote,

(e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and

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

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

(a) require a voter to

- (i) enter 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;
- (c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote

- (d) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (e) prevent any voter from voting after the close of poll.

The Poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as 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) has ensured that the completed ID declaration form, if required, has not been returned.

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

- (a) the name of the voter, and

(b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and

(c) the details of the unique identifier of the replacement ballot paper.

29.5 If a voter has dealt with 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 are 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) has no reason to doubt that the voter did not receive the original voting information,

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

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

(a) the name of the voter

(b) the details of the unique identifier of the replacement ballot paper, if applicable, and

(c) the voter ID number of the voter.

31. Issue of replacement voting information

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

- (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 will:

- (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 will 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 will

- (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)

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

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

39. De-duplication of votes

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

39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election they will:

- (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.

Part 6 – Counting the votes

STV41.1 In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

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

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

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

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

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

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

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

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

- (a) the determination of the first preference vote of each candidate,

- (b) the transfer of a surplus of a candidate deemed to be elected, or

- (c) the exclusion of one or more candidates at any given time,

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

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

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

42. Arrangements for counting of the votes

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

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

(a) the Board of Directors and the Council of Governors of the corporation have approved:

(i) the use of such software for the purpose of counting votes in the relevant election, and

(ii) a policy governing the use of such software, and

(b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result

43. The count

43.1 The returning officer is to:

(a) count and record the number of:

(iii) ballot papers that have been returned; and

(iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and

(b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

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

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
 - (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
 - (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
 - (d) which is unmarked or rejected because of uncertainty,
- shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

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

STV44.3 Any text voting record:

- (a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
 - (b) on which anything is written or marked by which the voter can be identified except the unique identifier, or
 - (c) which is unmarked or rejected because of uncertainty,
- shall be rejected and not counted, but the text voting record shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

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

STV44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by them under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by them 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 subparcel 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 subparcel 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 nontransferable 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 subparcels 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 subparcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.

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

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

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

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

STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.

STV49.9 After the returning officer has completed the transfer of the ballot documents in the subparcel 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 nontransferable 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 there upon 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 Sussex Partnership 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 [insert name] NHS 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 NHS England (formerly) 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 them 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 NHS England (formerly 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.

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

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

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

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

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

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

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

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

65.2 The provision by any individual of 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.

Part 11 – Questioning elections and the consequence of irregularities

66. Application to question an election

66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHS England (formerly Monitor).

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

66.3 An application may only be made to NHS England (formerly Monitor) by:

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

66.4 The application must:

- (a) describe the alleged breach of the rules or electoral irregularity, and

(b) be in such a form as NHS England (formerly Monitor) may require.

66.5 The application must be presented in writing within 21 days of the declaration of the result of the election.

66.6 If NHS England (formerly Monitor) requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

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

66.8 The determination by the person or panel of persons nominated in accordance with rule 66.7 shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

66.9 NHS England (formerly Monitor) may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

67. Secrecy

67.1 The following persons:

- (a) the returning officer,
- (b) the returning officer's staff, must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to:
 - (i) the name of any member of the corporation who has or has not been given voting information or who has or has not voted,
 - (ii) the unique identifier on any ballot paper,
 - (iii) the voter ID number allocated to any voter,
 - (iv) the candidate(s) for whom any member has voted.

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

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

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll by such period as they consider appropriate.

71. Non-acceptance of governor tenure

71.1 If an elected governor fails to accept their tenure within 4 weeks of the election results being published the vacant seat shall be filled by the second-place candidate. If that individual declines exercise the process set out in ANNEX 6; 4.1 and 4.2.



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