

JPUH COVID-19

JAMES PAGET UNIVERSITY HOSPITALS

NHS FOUNDATION TRUST

(A PUBLIC BENEFIT CORPORATION)

Constitution

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1. Interpretation and definitions

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

the 2006 Act is the National Health Service Act 2006 (as amended by the 2012 Act).

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

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

Annual Members' Meeting is defined in paragraph 10 of this constitution.

constitution means this constitution and all annexes to it.

Monitor is the corporate body known as Monitor, as provided by Section 61 of the 2012 Act.

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

2. Name

The name of the foundation trust is "James Paget University Hospitals NHS Foundation Trust" (the "**Trust**").

3. Principal purpose

- 3.1 The Trust's principal purpose is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Trust may provide goods and services for any purposes related to —
 - 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
 - 3.3.2 the promotion and protection of public health.
- 3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order to better carry on its principal purpose.

4. Powers

- 4.1 The powers of the Trust are set out in the 2006 Act.
- 4.2 All powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director.

5. Membership and constituencies

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

- 5.1 the public constituency; and
- 5.2 the staff constituency.

6. Application for membership

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

7. Public Constituency

- 7.1 An individual who lives in the area specified in Annex 1 as the area for the public constituency may become or continue as a member of the Trust.
- 7.2 Those individuals who live in the area specified for public constituency are referred to collectively as a Public Constituency.
- 7.3 The minimum number of Members in the Public Constituency is specified in Annex 1.
- 7.4 The Trust's volunteers will form part of the Public Constituency (provided such volunteers live in an area specified in Annex 1).

8. Staff Constituency

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided the person:
 - 8.1.1 is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 8.1.2 has been continuously employed by the Trust under a contract of employment for at least 12 months.

- 8.2 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.3 The minimum number of members in the Staff Constituency is specified in Annex 2.
- 8.4 An individual who is:
- 8.4.1 eligible 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.
- 8.4.2

9. Restriction on membership

- 9.1 An individual, who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 9.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 9.3 An individual must be at least 16 years old to become a member of the Trust.
- 9.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 8.

10. Annual Members' Meeting

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

11. Council of Governors - composition

- 11.1 The Trust is to have a Council of Governors which shall comprise both elected and appointed Governors. A Lead Governor will be nominated by the Council of Governors.
- 11.2 The composition of the Council of Governors is specified in Annex 3.
- 11.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

12. **Council of Governors – election of Governors**

- 12.1 Elections for elected members of the Council of Governors shall be conducted on the basis of the single transferable vote (STV) polling in accordance with the Election Rules.
- 12.2 The Model Election Rules form part of this constitution. The Model Election Rules current at the date of this constitution are attached at Annex 4.
- 12.3 A subsequent variation of the Model Election Rules as published by NHS Providers (previously the Foundation Trust Network) shall not constitute a variation of the terms of this constitution for the purposes of paragraph 45 of the constitution.
- 12.4 An election, if contested, shall be by secret ballot.
- 12.5 Further provisions regarding elections are set out in Annex 5.

13. **Council of Governors – tenure**

- 13.1 An elected Governor may hold office for a period of up to 3 years.
- 13.2 An elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 13.3 An elected Governor shall be eligible for re-election at the end of their first term (of three years) only. For the avoidance of doubt, an elected Governor may not, if re-elected for more than one term of office, hold office for more than 6 consecutive years in total other than during a national Level 4 incident when temporary arrangements will be established as set out in Annex 5, paragraph 5.1.
- 13.4 An appointed Governor may hold office for a period of up to 3 years.
- 13.5 An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.
- 13.6 An appointed Governor shall be eligible for re-appointment at the end of their term in line with paragraph 13.3.

14. **Council of Governors – disqualification and removal**

- 14.1 In line with the Trust's Licence no person who is an unfit person may become or continue as a Governor, except with the approval in writing of NHS Improvement nor may any person who is an unfit person by reference to a finding of serious misconduct or incompetence (notwithstanding any such NHS Improvement approval).
- 14.2 In addition to 13.2 and 13.5 above, the following may not become or continue as a member of the Council of Governors.
 - 14.2.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 14.2.2 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;

- 14.2.3 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
- 14.2.4 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) for a period of not less than three months (without the option of a fine) was imposed on him;
- 14.2.5 a person who has been involved in any act of violence against staff or other members of the Trust or has been dismissed otherwise than by reason of redundancy, from any paid employment with a health service body;
- 14.2.6 a person who is or has been identified as an habitual or repetitive complainant;
- 14.2.7 a person who has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 14.2.8 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 their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 14.2.9 a person who has been suspended or disqualified from any healthcare profession and has not subsequently had their suspension lifted or qualification reinstated (as applicable);
- 14.2.10 a person who is a Director of another Foundation Trust;
- 14.2.11 a Governor who fails to abide by the approved Council of Governors' Code of Conduct, including the Trust's agreed values and behaviours; or
- 14.2.12 a person who does not achieve satisfactory certification on the basis of disclosures obtained through an application to the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012,

For a Staff Governor,

- 14.2.13 a person who has not yet completed their probationary period.
- 14.2.14 a person who is subject to formal sickness absence monitoring, performance or disciplinary procedures.
- 14.2.15 a person who, due to the nature and/or demands of their employment for the Trust, is not able to commit the time required to undertake the role and attend sufficient meetings to meet the requirements of paragraph 14.5.

- 14.3 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 14.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.
- 14.5 If a Governor fails to attend at least four Council meetings in a 12 month period (including the Annual Members' Meeting), their tenure of office is to be immediately terminated unless the other Governors are satisfied that:
 - 14.5.1 the absence was due to a reasonable cause; and
 - 14.5.2 they will be able to start attending meetings of the Trust again within such a period as the other Governors consider reasonable.

15. Council of Governors – duties of Governors

- 15.1 The general duties of the Council of Governors are:
 - 15.1.1 to hold the Non Executive Directors individually and collectively to account for the performance of the Board of Directors; and
 - 15.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.
- 15.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.
- 15.3 Further details of the duties of the Council of Governors can be found at Annex 5.

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 or paragraph 26.1 below) or, in their absence, the Deputy Chair of the Board of Directors, or in their absence one of the Non Executive Directors, is to preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Non Executive Deputy Chair of the Council of Governors will chair that part of the meeting.
- 16.2 Meetings of the Council of Governors shall be open to members of the public except in the following circumstances:
 - 16.2.1 where issues concerning confidential details of a personal nature are to be discussed, in which case such items will be discussed as closed items from which members of the public and press will be excluded;
 - 16.2.2 where the Council of Governors resolves that the public and representatives of the media be excluded from the meeting because the business to be conducted is confidential and/or publicity would be prejudicial to the public interest and/or the interests of the Trust; and/or
 - 16.2.3 where the Council of Governors resolves that the meeting be adjourned in the interests of public order and to allow them to conclude the business in hand in private. The resolution shall specify the period of any adjournment.

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

17. **Council of Governors – standing orders**

The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6.

18. **Council of Governors – conflicts of interest of Governors**

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

19. **Council of Governors – travel expenses**

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

20. **Council of Governors – further provisions**

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

21. **Board of Directors - composition**

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

21.2 The Board of Directors is to comprise:

21.2.1 a Non Executive Chair;

21.2.2 no fewer than five other independent Non Executive Directors, one of whom may be an appointee of a University within the Trust's membership area under paragraph 23.2; and

21.2.3 not less than five voting Executive Directors.

21.3 One of the Executive Directors shall be the Chief Executive.

21.4 The Chief Executive shall be the Accounting Officer.

21.5 One of the Executive Directors shall be the finance director.

21.6 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

21.7 One of the Executive Directors is to be a registered nurse or a registered midwife.

21.8 The power to appoint Non Executive Directors and Executive Directors shall at all times be exercised so as to ensure that the aggregate voting rights vested in the Chair and Non Executive Directors exceed the aggregate of those votes vested in the Executive Directors. The Directors shall at all times have one vote each save that the Chair shall be entitled to exercise a second or casting vote where the number of votes for and against a motion is equal.

21.9 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

22. **Board of Directors – general duty**

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

23. **Board of Directors – qualification for appointment as a Non Executive Director**

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

23.1 they are a member of a Public Constituency; or

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

23.3 they are not disqualified by virtue of paragraph 29 below.

24. **Board of Directors – appointment and removal of Chair and other Non Executive Directors**

24.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other Non Executive Directors.

24.2 Where the Non Executive Director is an appointee of a University, the Council of Governors shall ratify that appointment unless the candidate is considered unsuitable. Should this be the case, the Council shall state the reasons and request the University to reconsider the nomination. Further provisions with respect to this appointment are set out in Annex 8.

24.3 The Chair should not simultaneously be the substantive Chair of another NHS foundation trust unless recommended or deemed appropriate by NHSE/I.

24.4 Removal of the Chair or another Non Executive Director shall require the approval of three-quarters of the members of the Council of Governors, acting in accordance with the Trust's disciplinary policy in arriving at this decision.

24.5 The initial Chairman and the initial Non Executive Directors were appointed in accordance with paragraph 27 below.

24.6 The term of office is to be for no more than three years, prior to reappointment being considered. Non Executive Directors may, in exceptional circumstances, serve longer than six years (at a maximum two three-year terms (following authorisation of the Trust) but this shall be subject to annual re-appointment.

25. **Board of Directors – appointment of initial Chair and initial other Non Executive Directors**
- 25.1 The initial Chair and other Non Executive Directors were appointed for the unexpired period of their respective terms of office or 12 months whichever was the longer in accordance with the constitution of the Trust at that time.
26. **Board of Directors - appointments of Deputy Chair and Senior Independent Director**
- 26.1 The Council of Governors at a general meeting of the Council of Governors may appoint one of the Non Executive Directors as Deputy Chair.
- 26.2 In consultation with the Council of Governors, the Board of Directors shall appoint one of the independent Non Executive Directors to be the Senior Independent Director.
27. **Board of Directors - appointment and removal of the Chief Executive and other Executive Directors**
- 27.1 The Non Executive Directors shall appoint or remove the Chief Executive.
- 27.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 27.3 The initial Chief Executive was appointed in accordance with paragraph 29.
- 27.4 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 – appointment and removal of initial Chief Executive**
- 28.1 The chief officer of the applicant NHS Trust was appointed as the initial Chief Executive of the Trust.
- 28.2 The appointment of the chief officer of the applicant NHS Trust as the initial Chief Executive of the Trust did not require the approval of the Council of Governors.
29. **Board of Directors – disqualification**
- In line with the Trust’s Licence no Board member or equivalent person who is not a fit and proper person may become or continue as a Board member, except with the approval in writing of NHS Improvement, nor may any person who is an unfit person by reference to a finding of serious misconduct or incompetence (notwithstanding any such NHS Improvement approval). The following may not become or continue as a member of the Board of Directors:
- 29.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 29.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
- 29.3 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;

- 29.4 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) for a period of not less than three months (without the option of a fine) was imposed on him;
 - 29.5 a person who is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland;
 - 29.6 a person who is included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland;
 - 29.7 a person who is prohibited from holding the relevant office or position, or in the case of an individual from carrying on the regulated activity, by or under any enactment; or
 - 29.8 a person who does not satisfy all of the requirements of Regulation 5(3) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014/2936 (as amended or updated from time to time).
30. In addition, judgement is required on whether the Board member or equivalent person may become or continue as a Board member in regard to the following if:
- 30.1 they are not able by reason of their health, after reasonable adjustments are made, to properly perform tasks which are intrinsic to the work for which they are employed;
 - 30.2 they do not have the qualifications, competence, skills and experience which are necessary for the work to be performed by them;
 - 30.3 the person has been convicted in the United Kingdom of any offence or has been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence;
 - 30.4 the person has been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals, and/or
 - 30.5 the person has been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity, or
 - 30.6 the person is a full time Executive Director with more than one non executive directorship of an NHS foundation trust or another organisation of comparable size or complexity.
31. **Board of Directors – meetings**
- 31.1 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.
 - 31.2 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.

32. Board of Directors – standing orders

The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 7.

33. Board of Directors – conflicts of interest of Directors

33.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:

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

33.1.2 a duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.

33.2 The duty referred to in sub-paragraph 34.1.1 is not infringed if:

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

33.2.2 the matter has been authorised in accordance with the constitution.

33.3 The duty referred to in sub-paragraph 34.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

33.4 In sub-paragraph 34.1.2, “third party” means a person other than:

33.4.1 the Trust, or

33.4.2 a person acting on its behalf.

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

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

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

33.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.

33.9 A Director need not declare an interest:

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

33.9.2 if, or to the extent that, the Directors are already aware of it;

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

33.9.3.1 by a meeting of the Board of Directors; or

33.9.3.2 by a committee of the Directors appointed for the purpose under the constitution.

33.10 A matter shall have been authorised for the purposes of paragraph 34.2.2 if:

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

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

33.10.3 the Director's conflict of interest arises from a permitted cause.

34. **Board of Directors – remuneration and terms of office**

34.1 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.

34.2 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.

35. **Registers**

The Trust shall have:

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

35.2 a register of members of the Council of Governors;

35.3 a register of interests of Governors;

35.4 a register of Directors; and

35.5 a register of interests of the Directors.

35.6 All registers will be held by the Trust Secretary, who will ensure members' details are held correctly, and to whom members should direct any amendments to their circumstances.

36. **Registers – inspection and copies**

36.1 The Trust shall make the registers specified in paragraph 36 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

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

- 36.3 So far as the registers are required to be made available:
- 36.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 36.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4 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.

37. Documents available for public inspection

- 37.1 The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times:
- 37.1.1 a copy of the current constitution;
 - 37.1.2 a copy of the latest annual accounts and of any report of the auditor on them;
 - 37.1.3 a copy of the latest annual report;
- 37.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 37.2.1 a copy of any order made under section 65D (appointment of Trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (Trusts coming out of administration) or 65LA (Trusts to be dissolved) of the 2006 Act.
 - 37.2.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.
 - 37.2.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act.
 - 37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 37.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
 - 37.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHS Improvement's decision), 65KB (Secretary of State's response to NHS Improvement's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
 - 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 37.2.8 a copy of any final report published under section 65I

(administrator's final report),

37.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.

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

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

37.4 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.

38. **Auditor**

38.1 The Trust shall have an auditor.

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

39. **Audit Committee**

The Trust shall establish a committee of Non Executive Directors as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

40. **Accounts**

40.1 The Trust shall keep proper accounts and proper records in relation to the accounts.

40.2 NHS Improvement may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

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

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

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

41. **Annual report and forward plans and non NHS work**

41.1 The Trust shall prepare an annual report and send it to NHS Improvement.

41.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS Improvement.

41.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.

- 41.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 41.5 Each forward plan must include information about:
- 41.5.1 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
 - 41.5.2 the income it expects to receive from doing so.
- 41.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 42.5.1 the Council of Governors must:
- 41.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions; and
 - 41.6.2 notify the Directors of the Trust of its determination.
- 41.7 A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

42. Presentation of the annual accounts and reports to the Governors and members

- 42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 42.1.1 the annual accounts;
 - 42.1.2 any report of the auditor on them;
 - 42.1.3 the annual report.
- 42.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 42.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 43.1 with the Annual Members' Meeting.

43. Instruments

- 43.1 The Trust shall have a seal.
- 43.2 The seal shall not be affixed except under the authority of the Board of Directors.

44. **Amendment of the constitution**

- 44.1 The Trust may make amendments of its constitution only if:
- 44.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments; and
 - 44.1.2 more than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 44.2 Amendments made under paragraph 45.1 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.
- 44.3 Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 44.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
 - 44.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 44.4 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.
- 44.5 Amendments by the Trust of its constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

45. **Mergers etc. and significant transactions**

- 45.1 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.
- 45.2 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.
- 45.3 In paragraph 46.2, the following words have the following meanings:
- 45.3.1 "Significant transaction" means a transaction which meets all of any one of the tests below:
 - the fixed asset test; or
 - the turnover test; or
 - the gross capital test (relating to acquisitions or divestments).

- 45.3.2 The fixed asset test is met if the assets which are the subject of the transaction exceed 25% of the fixed assets of the Trust.
- 45.3.3 The turnover test is met if, following the completion of the relevant transaction, the income of the Trust will increase or decrease by more than 25%;
- 45.3.4 The gross capital test is met if the gross capital of the company or business being acquired or divested represents more than 25% of the capital of the Trust following completion (where “gross capital” is the market value of the relevant company or business’ shares and debt securities, plus the excess of current liabilities over current assets, and the Trust’s capital is determined by reference to its balance sheet).
- 45.3.5 For the purposes of calculating the tests in this paragraph 46, figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.
- 45.3.6 A transaction includes all agreements (including amendments to agreements) entered into by the Trust;
- 45.3.7 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);
- 45.3.8 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
- 45.3.9 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.

Annex 1

The Public Constituency

There shall be one Public Constituency. Members of the public shall be eligible for membership of the Public Constituencies as shown in the table below:

Public Constituency	Electoral area	Minimum number of members
Norfolk and Suffolk	The area of the Public Constituency is as defined by the following electoral wards: Norfolk County Council Suffolk County Council	500

Annex 2

The Staff Constituency

The Staff Constituency is divided into one class. Staff shall be eligible for membership of the class within the Staff Constituency as shown in the table below.

Staff Constituency class	Description	Minimum number of members
Staff	Individuals who are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of more than twelve months; or have been continuously employed by the Trust under a contract of employment for at least 12 months.	750
Total		750

Annex 3

Composition of Council of Governors

The Council of Governors of the Trust is to include:

1. Elected Governors

- 1.1 10 Governors in the Public Constituency;
- 1.2 4 Governors in the Staff Constituency.

2. Appointed Governors

The organisations listed are authorised to appoint Governor(s) pursuant to a process agreed with the Trust for the purposes of sub-paragraph 9(5) & (6) of Schedule 7:

- 2.1 2 local authority Governors – one each for Great Yarmouth Borough Council and East Suffolk Council representing the Waveney area;
- 2.2 1 University Governor – University of East Anglia or University of Suffolk;
- 2.3 2 other partnership Governors (and in each case the following organisations are specified for the purposes of sub-paragraph 9(7) of Schedule 7 of the 2006 Act). These Governors are to be appointed by the organisations listed below, in accordance with a process agreed with the Trust:
 - 2.3.1 2 representatives, one each from Norfolk County Council and Suffolk County Council.

3. Public and Appointed Governors

- 3.1 More than half of the members of the Council of Governors are to be elected by members of the Trust other than those who come within the Staff Constituency.
- 3.2 Where for any reason the aggregate number of public Governors falls to the same number or below the number of the other Governors then the appointed Governors shall temporarily stand down in the following order, until there is a majority of public Governors. In such circumstances, the Governors will be permitted to attend Council of Governors' meetings but will not have a vote:
 - 3.2.1 firstly, the most recently appointed local authority Governor who is appointed by one of the local authorities referred to in paragraph 2.1 above;
 - 3.2.2 secondly, the most recently appointed Governor from the remaining appointed Governors.
- 3.3 Where members of the same class of appointed Governor are of equal seniority by appointment, and one of them is required to stand down temporarily under the procedure at paragraph 3.2 above, then they may agree between themselves which of them is to stand down, and in default the Chair of the Trust shall decide.
- 3.4 The validity of any act of the Trust is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

4. Staff Governors

- 4.1 Members of the staff constituency may elect any of their number to be a staff Governor provided they are not disqualified by the provisions of paragraph 14 of this constitution, and the proposed staff Governor is 16 years of age or older as at the final date that nominations for election are to be accepted.
- 4.2 Members will self-nominate with applications encouraged from all areas of the Trust regardless of working hours, job title or previous experience, subject to the written approval of their line manager to meet the requirements of paragraph 14.2.15.
- 4.3 In the event that the number of nominations from one service area risks service delivery, managers must alert their head of service. A reasonable selection of nominees from the service area will be negotiated with the nominees, led by the head of service.
- 4.4 If insufficient valid nominations are received for the vacant Staff Governor posts, the Trust may appoint those members who have been nominated while it seeks further nominations for the remaining unfilled posts.
- 4.5 If contested, the election must be by secret ballot.

5. Committees and Sub-Committees

- 5.1 The Council of Governors may appoint committees consisting of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.
- 5.2 The Council of Governors may not delegate any of its powers to these committees or sub-committees.

Annex 4

The Model Election Rules

Paragraph 59-60

Schedule 7,9(1)

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1. Interpretation

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

"2006 Act" means the National Health Service Act 2006;

"corporation" means the public benefit corporation subject to this constitution;

"council of governors" means the council of governors of the corporation;

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

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

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

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

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

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

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

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

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

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

"Monitor" means the corporate body known as Monitor as provided by section 61 of the 2012 Act. References in the Model Election Rules to "Monitor" shall be read as "NHS Improvement";

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

"numerical voting code" has the meaning set out in rule 64.2(b);

"polling website" has the meaning set out in rule 26.1;

"postal voting information" has the meaning set out in rule 24.1;

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

"telephone voting facility" has the meaning set out in rule 26.2;

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

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

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

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

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

"voter ID number" means a unique, randomly generated numeric identifier allocated to each voter by the returning officer for the purpose of e-voting;

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

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

PART 2 TIMETABLE FOR ELECTIONS

2. Timetable

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

Proceeding	Time
Publication of notice of election	Not later than the 40th day before the day of the close of the poll.
Final day for delivery of nomination forms to returning officer	Not later than the 28th day before the day of the close of the poll.
Publication of statement of nominated Candidates	Not later than the 27th 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 25th day before the day of the close of the poll.
Notice of the poll	Not later than the 15th day before the day of the close of the poll.
Close of the poll	By 5pm on the final day of the election.

3. Computation of time

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

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

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

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

4. Returning Officer

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

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

5. Staff

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

6. Expenditure

6.1. The corporation is to pay the returning officer:

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

7. Duty of co-operation

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

8. Notice of election

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

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

9. Nomination of candidates

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

9.2. The returning officer:

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

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

10. Candidate's particulars

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

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

11. Declaration of interests

11.1. The nomination form must state:

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

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

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

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

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

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

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

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

15. Publication of statement of candidates

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

15.2. The statement must show:

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

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

- 18.2. If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- 18.3. If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:
- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules; and
 - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

PART 5 COUNTING THE VOTES

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 email address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 19.5. Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:
- (a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
 - (b) if telephone voting is to be a method of polling, the telephone voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
 - (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

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

20.2. Every ballot paper must specify:

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

20.3. Each ballot paper must have a unique identifier.

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

21. The declaration of identity (public constituency)

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

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

and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form ("ID declaration form") or the use of an electronic method.

- 21.2. The voter must be required to return his or her declaration of identity with his or her ballot.
- 21.3. The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

- 22.1. The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2. The list is to include, for each member:
- (a) a postal address; and,
 - (b) the member's email address, if this has been provided;
- to which his or her voting information may, subject to rule 22.3, be sent.
- 22.3. The corporation may decide that the e-voting information is to be sent only by email to those members in the list of eligible voters for whom an email address is included in that list.

23. Notice of poll

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

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

24. Issue of voting information by returning officer

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

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

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

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

- 24.3. The corporation may determine that any member of the corporation shall:
- (a) only be sent postal voting information; or
 - (b) only be sent e-voting information; or
 - (c) be sent both postal voting information and e-voting information;
- for the purposes of the poll.
- 24.4. If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by email 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 email.
- 24.5. The voting information is to be sent to the postal address and/or email 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 to the returning officer:
- (a) the completed ID declaration form if required; and
 - (b) the ballot paper envelope, with the ballot paper sealed inside it.

26. E-Voting systems

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

- 26.3. If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4. The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public constituency, make a declaration of identity;
in order to be able to cast his or her vote;
 - (b) specify:
 - (i) the name of the corporation;
 - (ii) the constituency, or class within a constituency, for which the election is being held;
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency;
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;
 - (v) instructions on how to vote and how to make a declaration of identity;
 - (vi) the date and time of the close of the poll; and
 - (vii) the contact details of the returning officer;
 - (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
 - (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote;
 - (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
 - (f) prevent any voter from voting after the close of poll.
- 26.5. The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:
- (a) require a voter to:
 - (i) enter his or her voter ID number in order to be able to cast his or her vote; and

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

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

- (a) require a voter to:
 - (i) provide his or her voter ID number; and
 - (ii) where the election is for a public constituency, make a declaration of identity;

in order to be able to cast his or her vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote;

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

- 28.1. The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 28.2. Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

29. Spoilt ballot papers and spoilt text message votes

- 29.1. If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2. On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3. The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
 - (a) is satisfied as to the voter's identity; and
 - (b) has ensured that the completed ID declaration form, if required, has not been returned.
- 29.4. After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers"):
 - (a) the name of the voter; and
 - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it); and
 - (c) the details of the unique identifier of the replacement ballot paper.

- 29.5. If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a "spoilt text message vote"), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6. On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 29.7. The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter's identity.
- 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 his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2. The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter's identity;
 - (b) has no reason to doubt that the voter did not receive the original voting information;
 - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3. After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):
- (a) the name of the voter;
 - (b) the details of the unique identifier of the replacement ballot paper, if applicable; and
 - (c) the voter ID number of the voter.

31. Issue of replacement voting information

- 31.1. If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2. After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
- (a) the name of the voter;
 - (b) the unique identifier of any replacement ballot paper issued under this rule;
 - (c) the voter ID number of the voter.

32. ID declaration form for replacement ballot papers (public constituency)

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

- 33.1. To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2. When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.3. If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4. To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5. The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

34. Voting procedure for remote voting by telephone

- 34.1. To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.
- 34.2. When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 34.3. If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4. When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes wish to vote.
- 34.5. The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

35. Voting procedure for remote voting by text message

- 35.1. To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.
- 35.2. The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.
- 35.3. The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

36. Receipt of voting documents

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

- 36.2. The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:
- (a) the candidate for whom a voter has voted; or
 - (b) the unique identifier on a ballot paper.

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

37. Validity of votes

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

- 37.2. Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) put the ID declaration form if required in a separate packet; and
 - (b) put the ballot paper aside for counting after the close of the poll.

- 37.3. Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) mark the ballot paper "disqualified";
 - (b) if there is an ID declaration form accompanying the ballot paper, mark it "disqualified" and attach it to the ballot paper;
 - (c) record the unique identifier on the ballot paper in a list of disqualified documents (the "list of disqualified documents"); and
 - (d) place the document or documents in a separate packet.

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

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

- 37.6. Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) "disqualified";
 - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
 - (c) place the document or documents in a separate packet.

38. Declaration of identity but no ballot paper (public 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 he or she shall:
- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
 - (b) mark as "disqualified" all other votes that were cast using the relevant voter ID number.
- 39.3. Where a ballot paper is disqualified under this rule the returning officer shall:
- (a) mark the ballot paper "disqualified";
 - (b) if there is an ID declaration form accompanying the ballot paper, mark it "disqualified" and attach it to the ballot paper;
 - (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
 - (d) place the document or documents in a separate packet; and
 - (e) disregard the ballot paper when counting the votes in accordance with these rules.

- 39.4. Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:
- (a) mark the internet voting record, telephone voting record or text voting 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 spoiled ballot papers and the list of spoiled text message votes;
 - (d) the list of lost ballot documents;
 - (e) the list of eligible voters; and
 - (f) the list of tendered voting information;
- and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

PART 6 COUNTING THE VOTES

41. Interpretation of Part 6

41.1. In Part 6 of these rules:

"ballot document" means a ballot paper, internet voting record, telephone voting record or text voting record;

"continuing candidate" means any candidate not deemed to be elected, and not excluded;

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

"deemed to be elected" means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll;

"mark" means a figure, an identifiable written word, or a mark such as "X";

"non-transferable vote" means a ballot document:

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

or

(b) which is excluded by the returning officer under rule 49;

"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 46;

"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 47.4 or 47.7.

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.

44. Rejected ballot papers and rejected text voting records

44.1. Any ballot paper:

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

44.2. The returning officer is to endorse the word "rejected" on any ballot paper which under this rule is not to be counted.

44.3. 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.

44.4. The returning officer is to endorse the word "rejected" on any text voting record which under this rule is not to be counted.

44.5. The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule 44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule 44.3.

45. First stage

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

45.2. 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.

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

46. The quota

46.1. 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.

46.2. The result, increased by one, of the division under rule 46.1 (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").

46.3. 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 47.1 to 47.3 has been complied with.

47. Transfer of votes

47.1. 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.

47.2. The returning officer is to count the number of ballot documents in each parcel referred to in rule 47.1.

- 47.3. The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.1 (a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.4. The vote on each ballot document transferred under rule 47.3 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).
- 47.5. 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.
- 47.6. The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.7. The vote on each ballot document transferred under rule 47.6 shall be at:
- (a) a transfer value calculated as set out in rule 47.4(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.
- 47.8. Each transfer of a surplus constitutes a stage in the count.
- 47.9. Subject to rule 47.10, 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.
- 47.10. 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.

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

48. Supplementary provisions on transfer

48.1. 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.

48.2. The returning officer shall, on each transfer of transferable ballot documents under rule 47:

- (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.

48.3. All ballot documents transferred under rule 47 or 49 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.

48.4. Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule 47 or 49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

49. Exclusion of candidates

49.1. If:

- (a) all transferable ballot documents which under the provisions of rule 47 (including that rule as applied by rule 49.11) and this rule are required to be transferred, have been transferred; and
- (b) subject to rule 50, 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 49.12 applies, the candidates with the then lowest votes).

49.2. The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule 49.1 into two sub-parcels so that they are grouped as:

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

49.3. The returning officer shall, in accordance with this rule and rule 48, transfer each sub-parcel of ballot documents referred to in rule 49.2 to the candidate for whom the next available preference is given on those ballot documents.

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

49.5. If, subject to rule 50, 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 49.1 into sub-parcels according to their transfer value.

49.6. 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).

- 49.7. The vote on each transferable ballot document transferred under rule 49.6 shall be at the value at which that vote was received by the candidate excluded under rule 49.1.
- 49.8. Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- 49.9. After the returning officer has completed the transfer of the ballot documents in the sub-paragraph of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-paragraph of ballot documents with the next highest value and so on until he has dealt with each sub-paragraph of a candidate excluded under rule 49.1.
- 49.10. The returning officer shall after each stage of the count completed under this rule:
- (a) record:
 - (i) the total value of votes; or
 - (ii) the total transfer value of votes transferred to each candidate;
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total;
 - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total; and
 - (d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- 49.11. 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 47.5 to 47.10 and rule 48.
- 49.12. 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.
- 49.13. 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.

50. Filling of last vacancies

50.1. 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.

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

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

51. Order of election of candidates

51.1. 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 47.10.

51.2. 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 or she obtained the quota.

51.3. 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.

51.4. 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.

52. Declaration of result for contested elections

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

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected;
- (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on James Paget Healthcare 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 he or she has declared elected.

52.2. 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 44.1;
- (f) the number of rejected text voting records under each of the headings in rule 44.3;

available on request.

53. Declaration of result for uncontested elections

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

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

54. Sealing up of documents relating to the poll

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

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

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1. Where:

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

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

57. Retention and public inspection of documents

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

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

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

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

58.1. The corporation may not allow:

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

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

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

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

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

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

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

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

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

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

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

59. Countermand or abandonment of poll on death of candidate

59.1. 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.

59.2. 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

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1. No person may:

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

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

Publicity

63. Publicity about election by the corporation

63.1. The corporation may:

- (a) compile and distribute such information about the candidates; and
- (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 his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

PART 11 QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

- 66.1. An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor.
- 66.2. An application may only be made once the outcome of the election has been declared by the returning officer.
- 66.3. An application may only be made to Monitor by:
- (a) a person who voted at the election or who claimed to have had the right to vote; or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 66.4. The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as 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 Monitor requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7. Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8. The determination by the 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. 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; and
- (b) the returning officer's staff;

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

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

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

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

68. **Prohibition of disclosure of vote**

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

69. **Disqualification**

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

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

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

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

- (a) the delivery of the documents in rule 24; or
- (b) the return of the ballot paper;

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

Annex 5

Additional Provisions – Council of Governors

1. Role and responsibilities of Governors

The general duties of the Council of Governors are set out at paragraph 15 of this constitution:

- 1.1 to hold the Non Executive Directors individually and collectively to account for the performance of the Board of Directors; and
- 1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

Subject to the terms of this constitution, the Council of Governors of the Trust will also be responsible for:

- 1.3 appointing the Chair and the other Non Executive Directors and, as appropriate, removing;
- 1.4 deciding the remuneration, allowances and the other terms and conditions of office of the Chair and other Non Executive Directors;
- 1.5 approving the appointment of a Chief Executive (the Non Executive Directors appoint or remove the Executive Directors);
- 1.6 appointing or removing the auditor;
- 1.7 expressing views for consideration in the Directors' preparation of the forward plan;
- 1.8 receiving the annual accounts, auditor's report and annual report;
- 1.9 approving an increase of 5% or more in non NHS income/private patient work in any one financial year;
- 1.10 approving all "significant transactions" including mergers, acquisitions, separations and dissolutions (for the avoidance of doubt, approval of significant transactions requires approval of half of the Council of Governors present and voting at a meeting of the Council of Governors, and approval of mergers, acquisitions, separations and dissolutions requires approval of half of the Council of Governors, as referred to in paragraph 46 of the constitution);
- 1.11 approving amendments to the Trust's constitution prior to the Board of Directors' consideration.

2. Declarations of Disqualification

- 2.1 Where a person has been elected or appointed to be a Governor and he becomes disqualified for appointment under paragraph 14 of the constitution he shall notify the Trust Secretary in writing of such disqualification.
- 2.2 If it comes to the notice of the Trust Secretary at the time of their appointment or later that the Governor is so disqualified, the Trust Secretary shall immediately declare that the person in question is disqualified and notify them in writing to that effect.
- 2.3 Upon the making of such declaration that person's tenure of office, if any, shall be terminated and they shall cease to act as a Governor.
- 2.4 Where a person has been declared disqualified by the Trust Secretary under clause 2.2 above, they may appeal the Secretary's decision to the Chair, whose decision on the matter will be final, [other than for issues of non-compliance with the Council's Code of Conduct].
- 2.5 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary.

3. Vacancies

- 3.1 Where membership of the Council of Governors ceases for one of the reasons set out in paragraph 2, where necessary to achieve appropriate quorum, public and staff Governors shall be replaced by by-elections, in accordance with the relevant Electoral Scheme set out in Annex 4. Appointed and other Partnership Governors are to be replaced in accordance with the processes agreed pursuant to paragraph 2 of Annex 3.
- 3.2 New appointments of appointed Governors are to be made following discussions between the Trust and the relevant organisation.

4. Elections

- 4.1 When a vacancy arises for one or more elected Governors (other than for one of the reasons set out in paragraph 2), the following provisions shall apply:
 - 4.1.1 the Council of Governors shall have the option to take from the list of members who stood for election at the most recent election of Governors for the class or constituency in question, whichever member who was not elected as a Governor at the recent election but had secured the next most votes at that time.

This procedure, which shall be an uncontested election for the purposes of the Election Rules as they apply to the Trust, shall be available to the Governors on two occasions within 12 months of the previous election. Governors appointed in this way shall hold office for a minimum of six months from their appointment until the next election of Governors (except where the vacancy arose through expiry of a term of office). In all other cases the Trust shall not be obliged to call an election if meetings of the Council of Governors in the intervening period can still be quorate without the appointment of further Governors.

- 4.1.2 if no such reserve candidate is available, chosen, or willing to fill the vacancy, an election will then be held in accordance with the Election Rules save that if an election is due to be held within nine months of the vacancy having arisen the position shall stand vacant unless this causes the aggregate number of Governors who are Public Governors to be less than half of the total membership of the Council of Governors. In that case an election will be held in accordance with the Election Rules as soon as reasonably practicable.
- 4.2 Elections shall not be invalidated by any administrative or clerical error on the part of the Trust or any acts or omissions of the returning officer acting in good faith on the basis of such error.
- 4.3 Notwithstanding any provision of the Election Rules, the Trust and the Returning Officer shall:
 - 4.3.1 not be obliged to send any information or photographs unless received by the Trust from the candidate;
 - 4.3.2 not be in breach of any obligation to include in any communication, or otherwise provide, information which is equivalent in size and content for all candidates if the information provided by one or more of the candidates does not so allow;
 - 4.3.3 have the right to edit or not publish any election statement if it exceeds the permitted number of words or because it contains statements which the Trust or the Returning Officer reasonably believes are factually inaccurate, offensive or libellous.

5. Temporary arrangements during a national Level 4 incident

- 5.1 Should a national incident be declared, a number of changes may be enacted affecting the Council of Governors:
 - 5.1.1 A reduction in the number of serving Governors, whilst retaining the Public majority;
 - 5.1.2 Suspension of best practice with regard to the eligibility for re-election and the limit of 6 consecutive years in total, for example, Governors to stand for election for a maximum of one further year, at which time fresh elections would be held;
 - 5.1.3 Amendment to the Quorum required for Council of Governors' meetings;
 - 5.1.4 Temporary suspension of Board meetings held in public and of scheduled Council of Governors' meetings.

Annex 6

James Paget University Hospitals



NHS Foundation Trust

Standing Orders of the Council of Governors

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INTERPRETATION

In these Standing Orders, the provisions relating to interpretation in the constitution shall apply and the words and expressions defined in the constitution shall have the same meaning and, in addition:-

“LICENCE” shall mean the provider licence of the Trust issued by NHS Improvement (previously Monitor) with any amendments for the time being in force.

“TRUST” means James Paget University Hospitals NHS Foundation Trust, which is a public benefit corporation.

“CHAIR” means the person appointed to be Chair of the Trust (see constitution).

“CHIEF EXECUTIVE” shall mean the chief officer of the Trust.

“CONSTITUTION” shall mean the constitution (with any variations from time to time approved by the Council of Governors, Board of Directors and Trust Members, where appropriate).

“GOVERNOR” shall mean a member of the Council of Governors (as defined in the constitution).

“MOTION” means a formal proposition to be discussed and voted on during the course of a meeting.

“OFFICER” means an employee of the Trust.

“DEPUTY CHAIR” means the Non Executive Deputy Chair of the Trust, who will preside at meetings of the Council of Governors in the Chair’s absence.

“DEPUTY CHAIR OF THE COUNCIL” means the Non Executive Deputy Chair of the Council of Governors, who will preside at meetings if the person presiding at any such meeting has a conflict of interest in relation to the business being discussed

"SECRETARY" means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary of the Trust, including a Joint, Assistant or Deputy Secretary.

SECTION A: CONDUCT OF MEETINGS

Admission of the Public and the Press

1. Meetings of the Council of Governors, which may also be attended by members of the Board of Directors by invitation, are to be open to members of the public except in the following circumstances:-
 - a. where issues concerning confidential details of a personal nature are to be discussed – in which case such items will be discussed as closed items from which members of the public and press will be excluded;
 - b. where the Council of Governors resolves that the public and members of the press be excluded from the meeting because the business to be conducted is confidential and/or publicity would be prejudicial to the public interest and/or the interests of the Trust; and/or
 - c. where the Council of Governors resolves that the meeting be adjourned in the interests of public order and to allow them to conclude the business in hand in private. The resolution shall specify the period of any adjournment.

Calling and notice of meetings

2. The Council of Governors is to meet at least four times per year, of which one will be the Annual Members' Meeting.
3. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least **fourteen (14)** days written notice (including Saturday and Sunday and any bank holiday) of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published on the Trust's website www.jpaget.nhs.uk.
4. The names of Governors present at the meetings shall be recorded.
5. The Chair may call a meeting of the Council of Governors at any time.
6. If the Chair refuses to call a meeting after a requisition for that purpose signed by at least 10 Governors has been presented to him specifying the business to be carried out, the Secretary shall call a meeting with at least 14 but not more than 28 days' notice to discuss the specified business. If the Secretary fails to call such a meeting, the 10 Governors shall call such a meeting.
7. 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 on the notice.
8. Following notice of the meeting per paragraph 3, an agenda for the meeting, specifying the business proposed to be transacted at it and signed by the Chair or by the Secretary, shall be delivered to every Governor, or sent by post to the usual place of residence of such persons, so as to be available to him at least **five (5)** clear days (including Saturday and Sunday and any bank holiday) before the meeting.
9. The agendas will include all supporting papers available at the time of posting. Further supporting papers will be received no later than **three (3)** clear days (including Saturday and Sunday and any bank holiday) before the meeting.
10. Lack of service of the notice on any one person above shall not affect the validity of the meeting, but failure to serve such a notice on more than six Governors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

Quorum

11. The quorum for transaction of business shall be seven Governors present in person of which at least four are drawn from the public constituency. If at any meeting there is no quorum within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for seven days and upon reconvening, those present shall constitute a quorum.

Setting the agenda

12. The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted; however the Chair shall lead on setting the agenda for meetings.
13. A Governor desiring a matter to be included on an agenda shall make the request in writing to the Chair at least **fourteen (14)** clear days (including Saturday and Sunday and any bank holiday) before the meeting. Requests made less than 14 clear days before a meeting may be included on the agenda at the discretion of the Chair or the Secretary.

Chairing the meeting

14. The Chair of the Trust or, in their absence the Deputy Chair of the Trust (if there is one), or in their absence one of the Non Executive Directors, is to preside at meetings of the Council of Governors and will have a casting vote.
15. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Non Executive Deputy Chair of the Council of Governors will chair that part of the meeting.

Notices of motion

16. A Governor desiring to move or amend a motion shall send a written notice thereof at least **fourteen (14)** clear days (including Saturday and Sunday and any bank holiday) before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting without notice on any business mentioned on the agenda subject to preceding provisions.

Withdrawal of motion or amendments

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

Motion to rescind a resolution

18. Notice of motion to amend or rescind any resolution (or general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Governors who give it and also the signature of four other Governors, of whom at least two shall be public or patient Governors. When any such motion has been disposed of by the Trust, it shall not be competent for any Governor other than the Chair to propose a motion to the same effect within six months, although the Chair may do so if they consider it appropriate.

Motions

19. The mover of a motion shall have the right of reply at the close of any discussions on the motion or any amendment thereto.
20. When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:-
 - a. An amendment to the motion.
 - b. The adjournment of the discussion or the meeting.
 - c. That the meeting proceed to the next business. (*)
 - d. The appointment of an ad hoc committee to deal with a specific item of business.
 - e. That the motion be now put. (*)

* In the case of sub-paragraphs denoted by (*) above, to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate.
21. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

Chair's ruling

22. The decision of the Chair of the meeting on the question of order, relevancy and regularity shall be final. The Chair of the Trust, advised by the Secretary, shall be the final authority in the interpretation of this.

Voting

23. Except as expressly provided in the constitution, every question at a meeting will be determined by a majority of the votes of the Governors present and voting on the question and, in the case of an equality of votes, the person presiding shall have a second or casting vote.
24. All questions put to the vote shall, at the discretion of the Chair, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request, or the Secretary deems it advisable or necessary.
25. If a Governor so requests their vote shall be recorded by name upon any vote (other than by paper ballot).
26. In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote. Where virtual meetings are conducted, for example in the case of a Level 4 incident, all Governors attending the virtual meeting will be entitled to vote.

Minutes

27. The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
28. No discussion shall take place upon the minutes, except upon their accuracy, or where the Chair considers discussion appropriate. Any amendments to the minutes shall be agreed and recorded at the next meeting.

SECTION B: COMMITTEES

Appointment of Committees

29. Subject to paragraph 33 below and such directions as may be given by NHS Improvement, the Council of Governors may and, if directed by him, shall appoint committees of the Council of Governors, consisting wholly or partly of Governors. In all cases, each committee shall have a majority of public or patient Governors.
30. A committee appointed under paragraph 29 may, subject to such directions as may be given by NHS Improvement or the Council of Governors, appoint sub-committees consisting wholly or partly of members of the committee.
31. These Standing Orders, as far as it is applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Council of Governors.
32. Each such committee or sub-committee shall have such terms of reference and be subject to such conditions (as to reporting back to the Council of Governors), as the Council of Governors shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.
33. The Council of Governors may not delegate any of its powers to committees or sub-committees.
34. The Council of Governors shall approve the appointments to each of the committees which it has formally constituted. Where the Council of Governors determines that persons who are neither Governors, nor Directors or Officers, shall be appointed to a committee, the terms of such an appointment shall be determined by the Council of Governors subject to the payment of travelling and other expenses being in accordance with such sum as may be determined by the Board of Directors or NHS Improvement.
35. Where the Council of Governors is required to appoint persons to a committee or to undertake statutory functions as required by NHS Improvement, and where such appointments are to operate independently of the Council of Governors or the Board of Directors, such appointments shall be made in accordance with any regulations laid down by the Chief Executive or their nominated officer or any directions or guidance issued by NHS Improvement from time to time.

Confidentiality

36. A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter.
37. A Governor or a member of a committee shall not disclose any matter reported to the Council of Governors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee shall resolve that it is confidential.
38. In relation to patient confidentiality, the provisions at paragraphs 36 and 37 above for disclosure of information by Governors or members of committees established by the Council of Governors shall not apply, and such information shall not be disclosed under any circumstances.

Appointment of the Chair and Non Executive Directors

39. For the appointment of a Chair of the Trust and Non Executive Directors other than those initially appointed to the Board of Directors and the determination of their terms and conditions, the Council of Governors will establish a Nomination & Remuneration Committee.
40. The arrangements for the composition and functioning of the Nomination & Remuneration Committee will be as set out in the Terms of Reference of that Committee and agreed by the Council of Governors.

SECTION C: REGISTER AND DECLARATION OF GOVERNORS' INTERESTS

41. If a Governor has a relevant and material interest, whether direct or indirect, in any contract, proposed contract or other matter which is under consideration by the Council of Governors, he shall disclose that to the rest of the Council of Governors as soon as he is aware of it. If a governor is in any doubt whether an interest should be disclosed, he shall discuss the position with the Chair/Secretary. Interests which should be regarded as "relevant and material" are:
- a. directorships, including Non Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies);
 - b. ownership, part-ownership or Directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
 - c. majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
 - d. a position of authority in a charity or voluntary organisation in the field of health and social care;
 - e. any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; and/or
 - f. any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.
42. At the time the interests are declared, they should be recorded in the minutes of the Council of Governors. Any changes in interests should be officially declared at the next meeting as appropriate following the change occurring.
43. It is the obligation of a Governor to inform the Secretary in writing within seven days of becoming aware of the existence of a relevant or material interest. The Secretary will amend the register upon receipt within five working days.
44. The details of Governors' interests recorded in the register will be kept up to date by means of a regular review of the register carried out by the Secretary, during which any changes of interests declared will be incorporated.
45. Subject to the requirements of the Public Benefit Corporation (Register of Members) Regulations 2004 and the Data Protection Act 1998, the register will be available for inspection by the public free of charge. The Chair will take reasonable steps to bring the existence of the register to the attention of the local population and to publicise arrangements for viewing it.
46. Copies or extracts of the register must be provided to members of the Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the register.
47. Any travelling or other expenses or allowances payable to a Governor shall not be treated as a pecuniary interest.

48. During the course of a meeting of the Council of Governors, if a conflict of interest is established the Governor(s) concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt, this includes voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, the majority will resolve the issue with the Chair having the casting vote.
49. If, in relation to paragraph 48, the Chair has a conflict of interest, the Non Executive Deputy Chair or Senior Independent Director will exercise the casting vote. If the Deputy Chair or Senior Independent Director has a conflict of interest, another Non Executive Director will preside and exercise the casting vote.
50. Subject to any other provision of the constitution a Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter if:-
- a. the Governor 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
 - b. the Governor is 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, and in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purpose of these Standing Orders to be also an interest of the other.
51. A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- a. of their membership of a company, or other body if the Governor has no beneficial interest in any securities of that company or other body; or
 - b. of an interest in any company, body or person with which the Governor is connected as mentioned in paragraph 50 which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration of discussion, or in voting on, any question with respect to that contract or matter.
52. Where a Governor:
- a. has an indirect pecuniary interest in a contract or other matter by reason only of a beneficial interest in securities of a company or other body;
 - b. 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
 - c. if the share capital is of more than one class, the total nominal value of shares of any one class in which he has the 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 consideration or discussion of the contract or other matter or from voting on any question in respect to it without prejudice however to the duty to disclose their interest.

53. Section C applies to a committee or sub-committee of the Council of Governors as it applies to the Council of Governors and applies to any member of any such committee or sub-committee (whether or not he is also a Governor) as it applies to a Governor.

SECTION D: DISQUALIFICATION

54. The Trust's constitution identifies the circumstances in which a person may not become or continue to be a Governor.
55. Where a person has been elected or appointed to be a Governor and he becomes disqualified for appointment under paragraph 54, he shall notify the Secretary in writing of such disqualification.
56. If it comes to the notice of the Secretary at the time of their appointment or later that the Governor is so disqualified, the Secretary shall immediately declare that the person in question is disqualified and notify the person in writing to that effect. Upon receipt of any such notification, that person's tenure of office, if any, shall be terminated and they shall cease to act as a Governor.

Where a person has been declared disqualified by the Secretary under paragraph 56 above, they may appeal the Secretary's decision to the Chair, other than for issues of non-compliance with the Council's Code of Conduct.

57. SECTION E: REMUNERATION AND PAYMENT OF EXPENSES

Remuneration

58. Governors are not to receive remuneration.

Payment of expenses

59. The Trust may pay travelling and other expenses to Governors at such rates as it decides.
60. Reimbursement will be for expenses which, other than travel to and from Council meetings, will be agreed with the Trust Secretary prior to the expense being incurred. Expenses will be administered and authorised through the Secretary's office on receipt of a completed and signed expenses form, evidenced by receipts.

SECTION F: STANDARDS OF CONDUCT OF GOVERNORS

Policy

61. In relation to their conduct as a member of the Council of Governors, each Governor must comply with the Trust's and the Council's Code of Conduct. In particular, the Council of Governors must be impartial and honest in the conduct of its business and its office holders and staff Governors must remain beyond suspicion. Governors are expected to be impartial and honest in the conduct of official business.

Interest of Governors in contracts

62. If it comes to the knowledge of a Governor that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust, he shall, at once, give notice in writing to the Secretary of the fact that he has such an interest.
63. A Governor shall not solicit for any person any appointment in the Trust.
64. Informal discussions outside the Nomination & Remuneration Committee, whether solicited or unsolicited, should be declared to the committee.

SECTION G: MISCELLANEOUS PROVISIONS

Suspension of Standing Orders

65. Standing Orders may be suspended at any general meeting provided that:-
- a. more than half of the Council of Governors are present, including at least six drawn from the public constituency;
 - b. the Secretary does not advise against it; and
 - c. a majority of those present vote in favour.
66. Standing Orders cannot be suspended if to do so would contravene any statutory provision, or the Trust's Licence, or the Trust's constitution.
67. A decision to suspend Standing Orders shall be recorded in the minutes of the meeting and any matters discussed during the suspension of Standing Orders shall be recorded separately and made available to all members of the Council of Governors.
68. No formal business may be transacted while Standing Orders are suspended.

Variation and amendment of Standing Orders

69. Standing Orders may only be varied or amended:
- a. if the proposed variation does not contravene any statutory provision, or the Trust's Licence, or the Trust's constitution; and
 - b. the provision is amended in accordance with paragraph 44 of the constitution.

Review of Standing Orders

70. Standing Orders shall be reviewed annually by the Council of Governors. The requirement for review shall extend to all and any documents having effect as if incorporated in Standing Orders.

Annex 7

James Paget University Hospitals 
NHS Foundation Trust

Standing Orders for the Practice and Procedure of the Board of Directors

1. INTRODUCTION

The James Paget University Hospitals NHS Foundation Trust is governed by the National Health Service Act 2006 (the “**2006 Act**”) as amended by the Health and Social Care Act 2012 (the “**2012 Act**”); its constitution; and its Licence granted by NHS Improvement.

In accordance with the constitution the Board of Directors and Council of Governors are required to adopt Standing Orders for their practice and procedure.

The principal place of business of the Trust is the James Paget University Hospital and such other place or places as the Trust requires.

As a statutory body, the Trust has specified 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.

2. INTERPRETATION

- 2.1 Save as otherwise permitted by law, at any meeting, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which should be advised by the Chief Executive or Secretary to the Board of Directors).
- 2.2 Any expression to which a meaning is given in the 2006 Act and other Acts relating to the National Health Service or in the Financial Regulations made under the Acts shall have the same meaning in these Standing Orders and in addition:
- 2.2.1 “**Accountable Officer**” is the Chief Executive, who is responsible for the overall organisation, management and staffing of the Foundation Trust and for its procedures in financial and other matters (see “*NHS Foundation Trust Accounting Officer Memorandum*”).
- 2.2.2 “**Board of Directors**” means the Chair, Executive, Non Executive Directors of the Trust collectively as a body as constituted in accordance with the Trust’s constitution and the 2006 Act as amended by the 2012 Act.
- 2.2.3 “**Council of Governors**” means the Council of Governors as constituted in accordance with the Trust’s constitution and the 2006 Act as the 2012 Act.
- 2.2.4 “**Budget**” means a resource, expressed in financial terms, proposed by the Trust for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.
- 2.2.5 “**Chief Executive**” means the Chief Officer of the Trust.
- 2.2.6 “**Committee**” means a committee appointed by the Trust.
- 2.2.7 “**Committee members**” mean persons formally appointed by the Board of Directors to sit on or to chair specific committees.
- 2.2.8 “**Director**” means an Executive (including the Chief Executive) or Non Executive Director (including the Chair) of the Board.
- 2.2.9 “**Director of Finance**” means the Chief Financial Officer of the Trust.

2.2.10 "**Executive Director**" means a Director who is also an officer of the Trust.

2.2.11 "**Nominated officer**" means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.

2.2.12 "**Non Executive Director**" means a Director who is not an officer of the Trust.

2.2.13 "**Officer**" means employee of the Trust or any other person holding a paid appointment or office with the Trust.

3. THE TRUST

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

3.2 All funds received in trust shall be held in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Board of Directors as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.

3.3 Accountability for charitable funds held on trust is to the Charity Commission.

3.4 The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in the document "Reservation of Powers to the Board of Directors" and have effect as if incorporated into the Standing Orders. Those powers which it has delegated to officers and other bodies are contained in that document.

3.5 The requirements placed on NHS Foundation Trusts are set out in the Risk Assessment Framework and specifically, for each individual organisation, within its Licence. This requires the Trust to meet the following conditions, with which it shall be obliged to comply:

- **The General Conditions** apply to all providers and impose certain conditions, such as that directors must be "fit and proper" and providers must respond to information requests from NHS Improvement.
- **The Pricing Conditions** oblige providers, for example, to record information that NHS Improvement needs to set prices, check that the data is accurate and, where required, charge commissioners in accordance with any applicable National Tariff document.
- **The Choice and Competition Conditions** oblige providers to help patients to make the right choice of provider, where appropriate, and to prohibit anti-competitive behaviour where it is against the interests of patients.
- **The Integrated Care Condition** enables the provision of integrated services by obliging providers not to do anything detrimental to enabling integrated care, where it is in the interests of patients.

- **The Continuity of Services Conditions** apply to providers of Commissioner Requested Services – services whose absence would have a significant negative impact on the local population. They allow NHS Improvement to assess whether there is a risk to services, and they set out how services will be protected if a provider gets into financial difficulties.
- **The NHS Foundation Trust Conditions** only apply to foundation trusts and impose obligations around appropriate standards of governance.

3.6 **Role and responsibilities of Governors** – In accordance with the Trust’s constitution the role and responsibilities of Governors and the Council of Governors is set out at Annex 5 of the Trust’s constitution.

3.7 **Composition of the Board** - In accordance with the Trust’s constitution and in line with independent regulator guidance, at least half the Board, excluding the Chair, will comprise Non Executive Directors. The composition of the Board shall be:

- The Chair of the Trust
- All other Non Executive Directors
- All Executive Directors.

The Board may invite various Trust officers, including Associate Directors and the Trust Secretary (without limitation) to be members of the Board but such individuals shall have no voting rights.

3.8 **Appointment and Powers of Deputy Chair** – For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, a Non Executive Director may be appointed by the Council of Governors if required from amongst the Non Executive Directors to be Deputy Chair for such a period not exceeding the remainder of their term as a Director. .

3.9 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 Council of Governors may thereupon appoint another Non Executive Director as Deputy Chair in accordance with the provisions of Standing Order 3.8.

3.10 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 or another Non Executive Director 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 their duties, be taken to include references to the Deputy Chair.

3.11 The Deputy Chair may be the Senior Independent Director, appointed by the Board of Directors in consultation with the Council of Governors. The Senior Independent Director liaises with the Directors, Governors and members of the Trust to address any issues of concern which they do not feel able to raise through the normal channels. This appointment is reviewed on an annual basis as part of the appraisal process.

3.12 On appointment the Chair must meet the independence criteria set out in paragraph B.1.1 of NHS Improvement’s (previously Monitor’s) Code of Governance. The Board will actively consider whether the Chair is independent and only if they are considered to meet the independence criteria will they be appointed. The Board of Directors will identify in the annual report each Non Executive Director it considers to be independent in accordance with NHS Improvement’s (previously Monitor’s) Code of Governance. A record of this will also be maintained in the relevant minutes.

- 3.13 The Chair will ensure that new Directors and Governors receive a full, formal and tailored induction on joining the Board of Directors or Council of Governors. Directors and Governors will have access, at the Trust's expense, to training and/or materials as determined, for individual and collective development.
- 3.14 **Joint Directors** - Where more than one person is appointed jointly to a post which qualifies the holder for Executive Directorship those persons shall count for the purpose of the constitution as one person.
- 3.15 The Chair should ensure that the Board of Directors undertakes a formal and rigorous evaluation of its own performance and that of its committees and individual Directors on an annual basis.
- 3.16 The division of responsibilities between the Chair and the Chief Executive must be established and agreed by the Board of Directors.
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THE BOARD OF DIRECTORS

4. MEETINGS OF THE BOARD

- 4.1 The Chair (or Deputy Chair) shall give such directions as he thinks fit in regard to the arrangements for meetings.
- 4.2 All meetings of the Board of Directors are to be held in public. Where there are matters of a confidential nature to be considered, the Board may resolve to exclude the public.
- 4.3 **Confidentiality** - Matters to be dealt with by the Board of Directors in private shall be confidential to the members of the Board of Directors.
- 4.4 Directors and officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers outside of the Board of Directors meeting, without the express permission of the Board of Directors. This applies equally to the content of any discussion during the Board of Directors meeting which may take place on such papers or in such session.
- 4.5 **Calling Meetings** - Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 4.6 The Chair of the Trust may call a meeting of the Board of Directors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of members, has been presented, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented at the Trust's Headquarters, such one third or more members may forthwith call a meeting.
- 4.7 **Notice of Meetings** - Before each meeting of the Board of Directors, a 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 their behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him at least three clear days before the meeting.
- 4.8 Lack of service of the notice on any Director shall not affect the validity of a meeting.

- 4.9 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice. Failure to serve such notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 4.10 Agendas will wherever possible be sent to members six days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three clear days before the meeting, save in an emergency.
- 4.11 **Annual Members' Meeting** – The Trust will publicise and hold an Annual Members' Meeting, which may be combined with a meeting of the Council of Governors convened for the purposes of presentation of the annual accounts and reports, and any report of the auditor on them.
- 4.12 **Setting the Agenda** - The Board may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted; however the Chair shall lead on setting the agenda for meetings.
- 4.13 A Director desiring a matter to be included on an agenda shall make their request in writing to the Chair/Secretary at least 10 clear days before the meeting. The request should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.14 **Petitions** - Where a petition has been received by the Trust, the Chair of the Board of Directors shall include the petition as an item for the agenda of the next Board of Directors meeting subject to the powers granted to the Chair by these Standing Orders to regulate arrangements for Board of Directors' meetings.
- 4.15 **Chair of Meeting** - At any meeting of the Board of Directors, the Chair of the Board of Directors, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair or Senior Independent Director (SID), shall preside. If the Chair, Deputy Chair and SID are absent such Non Executive Director as the Directors present shall choose shall preside.
- 4.16 If the Chair is absent temporarily on the grounds of a declared conflict of interest the Deputy Chair or SID, shall preside. If the Chair, Deputy Chair and SID are absent, or are disqualified from participating, such Non Executive Director as the Directors present shall choose shall preside. If any matter for consideration at a meeting of the Board of Directors relates to the interests of the Chair or to the interests of the Non Executive Directors as a class, neither the Chair nor any of the Non Executive Directors shall preside over the period of the meeting during which the matter is under discussion. The Directors (excluding the Chair or the Non Executive Directors) shall elect one of their number to preside during that period and that person shall exercise all the rights and obligations of the Chair including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 4.17 **Notices of Motion** – A Director desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Standing Order 4.8.

- 4.18 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 4.19 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of four other members of the Board of Directors. When any such motion has been disposed of 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, however the Chair may do so if they consider it appropriate.
- 4.20 **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.21 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- an amendment to the motion;
 - the adjournment of the discussion or the meeting;
 - that the meeting proceed to the next business; (*)
 - the appointment of an ad hoc committee to deal with a specific item of business;
 - that the motion be now put; (*)
- * In the case of sub-paragraphs denoted by (*) above, to ensure objectivity motions may only be put by a Director who has not previously taken part in the debate and who is eligible to vote.

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

- 4.22 **Chair's Ruling** - Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.
- 4.23 **Voting** - Every question at a meeting shall be determined by a majority of the votes of the Chair of the meeting and Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.
- 4.24 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 and shall take account of the views of those members deemed as non-voting. A paper ballot may also be used if a majority of the Directors present so request.
- 4.25 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.

- 4.26 If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.27 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.28 An officer who has been appointed formally by the Board of Directors 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. An officer attending the Board of Directors 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 member. An officer's status when attending a meeting shall be recorded in the minutes.
- 4.29 **Minutes** - The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 4.30 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.
- 4.31 Minutes shall be circulated in accordance with Directors' wishes.
- 4.32 **Joint Members** - Where the office of a Director is shared jointly by more than one person:
- (a) Either or both of those persons may attend or take part in meetings 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 4.40 (Quorum).
- 4.33 **Suspension of Standing Orders** - Except where this would contravene any provision of the constitution or any direction made by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board of Directors are present, including one Executive Director and one Non Executive Director, and that a majority of those present vote in favour of suspension.
- 4.34 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 4.35 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Board of Directors.
- 4.36 No formal business may be transacted while Standing Orders are suspended.
- 4.37 The Audit Committee shall review every decision to suspend Standing Orders.

- 4.38 **Variation and Amendment of Standing Orders** - These Standing Orders, as annexed to the Trust's constitution, shall be amended only once it has been approved by a majority of those Governors present and voting at a meeting of the Council of Governors; a majority of those Directors present and voting at a meeting of the Board of Directors; and Trust members where appropriate.
- 4.39 **Record of Attendance** - The names of the Directors present at the meeting shall be recorded in the minutes.
- 4.40 **Quorum** - No business shall be transacted at a meeting of the Board of Directors unless at least one third of the whole number of the Directors appointed, (including at least one Non Executive Director in addition to the Chair and one Executive Director), are present.
- 4.41 An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 4.42 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 7 or 8) he 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. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Executive Nomination and Remuneration Committee).
- 4.43 **Observers at Board of Directors meetings in private** – 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.
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5. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 5.1 The constitution provides for all the powers of the corporation to be exercisable by the Board of Directors on its behalf. The Board of Directors may make arrangements for the exercise of any of those powers to be delegated:
- to a committee of Directors or
 - to an Executive Director.
- 5.2 **Emergency Powers** - The powers which the Board of Directors has retained to itself within these Standing Orders (Standing Order 3.4) may in an emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non Executive Directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Board of Directors for ratification.
- 5.3 **Delegation to Committees** - The Board of Directors shall agree from time to time to the delegation of Executive powers to be exercised by committees which it has formally constituted. The constitution and terms of reference of these committees and their specific Executive powers shall be approved by the Board of Directors.

- 5.4 **Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate officers to undertake the remaining functions for which he will still retain accountability to the Board of Directors.
- 5.5 The Chief Executive shall prepare a Scheme of Delegation identifying their proposals which shall be considered and approved by the Audit Committee, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendments to the Scheme of Delegation, which shall be considered and approved by the Audit Committee as indicated above.
- 5.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors, of the Director of Finance or other Executive Director to provide information and advise the Board of Directors in accordance with the constitution. Outside these statutory requirements the role of the Director of Finance shall be accountable to the Chief Executive for operational matters.
- 5.7 The arrangements made by the Board of Directors as set out in the “Reservation of Powers to the Board of Directors and Delegation of Powers” document shall have effect as if incorporated in these Standing Orders.
- 5.8 **Overriding Standing Orders** – If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All Directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.
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6. COMMITTEES

- 6.1 In line with the Trust’s constitution, the Board of Directors may appoint committees of the Board of Directors, consisting wholly or partly of Directors.
- 6.2 A committee appointed under this regulation may, subject to such directions as may be given by NHS Improvement or the Board of Directors, appoint sub-committees consisting wholly or partly of members of the committee (whether or not they are Directors of the Trust or wholly of persons who are not Directors of the Trust).
- 6.3 The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors.
- 6.4 Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide.
- 6.5 Committees may not delegate Executive powers to a sub-committee unless expressly authorised by the Board of Directors.

- 6.6 The Board of Directors shall approve the appointments to each of the committees which it has formally constituted. The Chair of each Board of Directors committee shall be a Non Executive Director. Where the Board of Directors determines that persons who are neither Directors nor officers shall be appointed to a committee, the terms of such appointment shall be determined by the Board of Directors subject to the payment of travelling and other expenses being in accordance with such sum as may be determined by the Trust.
- 6.7 In addition, the Board of Directors acts as the collective Trustee of the JPUH Charitable Trust. A Charitable Trust oversight meeting is held quarterly, attended by all Board Directors and chaired by the Chair of the Trust.
- 6.8 **Confidentiality** – A member of a committee shall not disclose a matter dealt with by or brought before the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.

A Director of the Trust or a member of a committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

7. DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

- 7.1 **Declaration of Interests** - The constitution requires Directors to declare interests which are relevant and material to the Board of Directors. All existing Directors should declare such interests. Any Directors appointed subsequently should do so on appointment.
- 7.2 Interests which should be regarded as "relevant and material" are to be interpreted in accordance with guidance issued by NHS Improvement and include:
- a) Directorships, including Non Executive Directorships held in private companies or public limited companies (with the exception of those of dormant companies).
 - b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
 - c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
 - d) A position of authority in a charity or voluntary organisation in the field of health and social care.
 - e) Any connection with a voluntary or other organisation contracting for or commissioning NHS services.
 - f) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.
- 7.3 At the time the Directors' interests are declared they should be recorded in the Board minutes. Any changes in interests should be declared at the next Board of Directors' meeting following the change occurring. It is the obligation of the Director to inform the Secretary of the Trust in writing within seven days of becoming aware of the existence of a relevant or material interest. The Secretary will amend the Register upon receipt within five working days.
- 7.4 Directors' Directorships of companies likely or possibly seeking to do business with the NHS should be published in the annual report. The information should be kept up to date for inclusion in succeeding Annual Reports.
- 7.5 During the course of a Board of Directors' meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 7.6 There is no requirement for the interests of Directors' family or close personal relationships to be declared. However Standing Order 7 requires that the interests of Directors' family or close personal relationships if living together, in contracts, should be declared.
- 7.7 If Directors have any doubt about the relevance 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.

- 7.8 **Register of Interests** - The details of Directors' interests recorded in the Register will be kept up to date by means of a regular review of the Register by the Secretary in which any changes to interests declared will be incorporated. The Register of Interests is reviewed by the Chair on an annual basis.
- 7.9 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 the local population and to publicise arrangements for viewing it.

8. DISABILITY OF CHAIR AND DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

- 8.1 Subject to the following provisions of this Standing Order if the Director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 8.2 The Board of Directors may exclude the Director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which the person has a pecuniary interest, is under consideration.
- 8.3 Any remuneration, compensation or allowances payable to the Director shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 8.4 For the purpose of this Standing Order a Director shall be treated, subject to Standing Order 8.2 and Standing Order 8.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- (a) the relevant person, or their nominee, 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
 - (b) the relevant person is a partner of, or is in the employment of an individual or organisation 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;

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

- 8.5 The Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- (a) of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;
 - (b) of an interest in any company, body or person with which they are connected as mentioned in Standing Order 8.4 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence

a member in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

8.6 Where a Director has:

- (a) 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
- (b) 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 body, whichever is the less, and
- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

this Standing Order shall not prohibit the person 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 the duty to disclose any interest.

- 8.7 The Standing Order applies to a committee or sub-committee and to a joint committee as it applies to the Board of Directors and applies to a member of any such committee or sub-committee (whether or not the person is also a Director) as it applies to a Director.
- 8.8 In line with NHS Improvement's (previously Monitor's) Code of Governance, the Chief Executive may not become Chair of the Trust.
- 8.9 No individual should hold at the same time, positions of Director and Governor of NHS Foundation Trusts.

9. STANDARDS OF BUSINESS CONDUCT POLICY

- 9.1 **General** - Staff must comply with the national guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff", the main principles of which are contained within the Trust's Corporate Governance document (the section titled "Guidance for Directors and Staff on Business Conduct"). This section of Standing Orders should be read in conjunction with these principles. A code of conduct is also in place for the Board of Directors.
- 9.2 **Interest of Officers in Contracts** - If it comes to the knowledge of a Director or an officer of the Trust that a contract in which they have any pecuniary interest not being a contract to which the individual concerned is a party, has been, or is proposed to be, entered into by the Trust they shall, at once, give notice in writing to the Chief Executive of the fact that they are interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 9.3 An officer should also declare to the Chief Executive any other employment or business or other relationship of theirs, or of a member of their family or someone with whom they have a close personal relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Trust requires interests, employment or relationships declared, to be entered in a register of interests of staff.

- 9.4 **Canvassing of, and Recommendations by, Members in Relation to Appointments -** Canvassing of Directors or of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Orders shall be included in the declaration statement within the offer process.
- 9.5 A Director 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 Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 9.6 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 9.7 **Relatives of Directors or Officers -** Candidates for any staff appointment under the Trust shall, when making application, disclose in writing to the Trust whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 9.8 Every Director and officer of the Trust shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that member or officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- 9.9 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Board of Directors whether they are related to any other Director or holder of any office in the Trust.
- 9.10 Where the relationship to a Director is disclosed, the Standing Order headed 'Disability of Chair and Directors in proceedings on account of pecuniary interest' (Standing Order 8) shall apply.
- 9.11 No full time Executive Director will take on more than one Non Executive Directorship of an NHS Foundation Trust or another organisation of comparable size or complexity, nor the Chairship of such an organisation.

10. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 10.1 **Custody of Seal –** The Common Seal of the Trust shall be kept by the Chief Executive or their nominated officer in a secure place.
- 10.2 **Sealing of Documents -** The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board of Directors or of a committee thereof or where the Board has delegated its powers. The Seal shall be used whenever required by law, or on the advice of the Trust's solicitor. Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two senior managers duly authorised by the Chief Executive and also from the originating department, and shall be attested by them.

- 10.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an officer nominated by him) and authorised and countersigned by the Chief Executive (or an officer nominated by him who shall not be within the originating Directorate).
- 10.4 **Register of Sealing** - An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealings shall be made to the Board annually. (The report shall contain details of the seal number, the description of the document and date of sealing).

11. SIGNATURE OF DOCUMENTS

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

12. TENDERING AND CONTRACT PROCEDURE

- 12.1 The procedure for making all contracts by or on behalf of the Trust shall comply with the constitution, the Licence and such directions as may be issued by NHS Improvement, these Standing Orders, and the Trust's Standing Financial Instructions. Detailed procedures are contained at Appendix A of the Corporate Governance Framework. Such contracts involving charitable funds shall comply with the requirements of the Charities Act and the Trust deed.

13. MISCELLANEOUS

- 13.1 **Standing Orders to be given to Directors and Officers** - It is the duty of the Chief Executive to ensure that existing Directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and Standing Financial Instructions. Updated copies of the Standing Orders and Standing Financial Instructions are to be made available on the Trust's Intranet.
- 13.2 **Documents having the standing of Board of Directors' Standing Orders** - Standing Financial Instructions and Reservation of Powers to the Board and Delegation of Powers shall have effect as if incorporated into the Standing Orders of Directors.
- 13.3 **Review of Board of Directors' Standing Orders** - Standing Orders shall be reviewed annually by the Board of Directors and shall be amended if and as agreed appropriate by the Board of Directors and in accordance with paragraph 44 of the constitution. The Trust will maintain records necessary for the appropriate delegation and control of this process. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

Annex 8

ANNUAL MEMBERS' MEETING

1. MEMBERS' MEETINGS

- 1.1.** The Trust shall hold a members' meeting for all members (called the "Annual Members' Meeting") within six months of the end of each financial year of the Trust.
- 1.2.** Any members' meeting other than the Annual Members' Meeting shall be called a "Special Members' Meeting".
- 1.3.** Both Annual Members' Meetings and any Special 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 Trust's auditors, and to members of the public. The Trust may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend any such meeting.
- 1.4.** The Board of Directors may convene an Annual Members' Meeting or a Special Members' Meeting when it thinks fit. The Council of Governors may request the Board of Directors to convene a members' meeting.
- 1.5.** The Board of Directors (or at least one member thereof) shall present to the members at the Annual Members' Meeting:
 - 1.5.1.** the annual accounts;
 - 1.5.2.** any report of the auditor on them;
 - 1.5.3.** the annual report.
- 1.6.** The Trust shall give notice of all members' meetings:
 - 1.6.1.** by notice in writing to all members;
 - 1.6.2.** by notice prominently displayed at the Trust's headquarters and at all of the Trust's hospitals;
 - 1.6.3.** by notice on the Trust's website; and
 - 1.6.4.** to the Council of Governors, the Board of Directors, and to the Trust's auditors,
stating whether the meeting is an Annual Members' Meeting or a Special Members' Meeting including the time, date, place of the meeting, and the business to be dealt with at the meeting at least 14 working days before the

date of the relevant members' meeting (or, in the case of an Annual Members' Meeting, at least 21 working days before the date of the relevant meeting).

- 1.7.** An accidental omission to give notice of a members' meeting or to send, supply or make available any document or information relating to the 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.
- 1.8.** The Chair, or in their absence the Deputy Chair, or in their absence one of the Non Executive Directors, shall preside at all members' meetings of the Trust.
- 1.9.** The quorum for a members' meeting shall be 8 (eight) members present and entitled to vote. If a quorum is not present within 30 minutes from the time appointed for the meeting, the meeting shall stand adjourned for a minimum of seven days until such time as the Board of Directors determine.
- 1.10.** The Chair may, with the consent of a members' meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn a members' meeting from time to time and from place to place or for an indefinite period.
- 1.11.** A resolution put to the vote of a members' meeting shall be decided on a show of hands.
- 1.12.** No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.
- 1.13.** If the Board of Directors, in its absolute discretion, considers that it is impractical or unreasonable for any reason to hold a members' meeting at the time, date or place specified in the notice calling that meeting, it may move and/or postpone the general meeting to another time, date and/or place.
- 1.14.** In the case of a members' meeting adjourned or postponed for 14 days or more, at least seven working 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. Otherwise, it shall not be necessary to give any such notice.
- 1.15.** The Board of Directors may make any arrangement and impose any restriction it considers appropriate to ensure the security of a members' meeting.
- 1.16.** The Board of Directors shall cause minutes to be made and kept, in writing, of all proceedings at members' meetings.

Annex 9

Further Provisions

1. The Secretary

- 1.1 The Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary and their department's functions shall include:
- 1.1.1 acting as Secretary to the Council of Governors and the Board of Directors, and any committees;
 - 1.1.2 summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;
 - 1.1.3 keeping the register of members and other registers and books required by this constitution to be kept;
 - 1.1.4 having charge of the Trust's seal as the Chief Executive's nominated officer;
 - 1.1.5 publishing to members in an appropriate form information which they should have about the Trust's affairs;
 - 1.1.6 preparing and sending to NHS Improvement and any other statutory body all returns which are required to be made.
- 1.2 Minutes of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept by the Secretary's Department. Minutes of meetings will be read at the next meeting and signed by the Chair of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.

2. Indemnity

- 2.1 The Secretary and members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, including (but not limited to) any liability arising by reason of the Trust acting as a Corporate Trustee, save where they have acted recklessly. The Trust may also take out and maintain for their benefit insurance against such risks and may participate in risk pooling schemes, including (but not limited to) insurance and schemes operated by the NHS Litigation Authority. Any costs arising in this way will be met by the Trust.

3. **Board of Directors - Role**

3.1 Subject to the terms of this constitution, the Board of Directors of the Trust will be responsible for:

3.1.1 exercising the powers of the Trust;

3.1.2 the effective management of the Trust;

3.1.3 in consultation with the Council of Governors, producing plans regarding the future development of the Trust to be sent to NHS Improvement;

3.1.4 compliance with all obligations lawfully imposed upon the Trust by NHS Improvement and any other statutory body or agency;

3.1.5 preparing the Trust's annual report and accounts.

4. **Board of Directors – Vacancies**

4.1 The validity of any act of the Trust is not affected by any vacancy among the Directors or the Governors or by any defect in the appointment of any Director or Governor.

4.2 If:

4.2.1 an Executive Director is temporarily unable to perform their duties due to illness or some other reason (the "Absent Director"); and

4.2.2 the Board of Directors agree that it is inappropriate to terminate the Absent Director's term of office and appoint a replacement Director; and

4.2.3 the Board of Directors agree that the duties of the Absent Director need to be carried out;

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

4.3. For the purposes of paragraph 4.2 of this Annex, the maximum number of Directors that may be appointed under paragraph 21 of the constitution shall be relaxed accordingly.

4.4 The acting Director will vacate office as soon as the absent Director returns to office or, if earlier, the date on which the person entitled to appoint him under this paragraph notifies him that he is no longer to act as an acting Director.

4.5 The acting Director shall be an Executive Director for the purposes of the 2006 Act as amended. They shall be responsible for their own acts and defaults and shall not be deemed to be the agent of the absent Director.

- 4.6 If:
- (a) an Executive Director post is vacant (“Vacant Position”); and
 - (b) the Board of Directors agree that the Vacant Position needs to be filled by an interim postholder pending appointment of a permanent postholder, then the Chair (if the Vacant Position is the Chief Executive) or the Chief Executive (in any other case) may appoint a Director as an interim director (“Interim Director”) to fill the Vacant Position pending appointment of a permanent postholder.
- 4.7 The Interim Director will vacate office on the appointment of a permanent post holder or, if earlier, the date on which the persons entitled to appoint him under this paragraph notifies him that he is no longer to act as an Interim Director.
- 4.8 The Interim Director shall be an Executive Director for the purposes of the 2006 Act as amended.
- 4.9 The Trust may confer on senior staff the title “Director” as an indication of their corporate responsibility within the Trust but such persons will not be Directors of the Trust for the purposes of the 2006 Act as amended (“statutory directors”) unless their title includes the title “Chief”, “Executive” or “Non Executive Director” or “Chair” and will not have the voting rights of statutory Directors or any power to bind the Trust.
- 5. Board of Directors – Process for the Non Executive Director appointee of a University within the Trust’s membership area**
- 5.1 In line with paragraph 24.2 of the Trust’s constitution the Board of Directors will agree the requirements for this role, as is the case for any other Non Executive Director appointment, some months ahead of a new appointment being required.
- 5.2 The Chair will initiate a discussion with the University to agree a potential appointee, ensuring that the Lead Governor is kept up to date on progress. He will ensure that the appropriate University processes are confirmed to enable this appointment to form part of the University’s governance structure and that this is in alignment with the Trust’s processes and expectations.
- 5.3 The Chair and Lead Governor will meet with the candidate and present to the Council of Governors, after consideration at the Governors’ Nomination & Remuneration Committee, proposing confirmation of the appointment.
- 6. Role of Membership**
- Subject to the terms of this constitution, the members of the Trust will be able to
- 6.1 Elect representatives to the Council of Governors;
 - 6.2 Stand for election to the Council of Governors;
 - 6.3 If they are members of the public constituency put themselves forward for appointment as Chair of the Trust or for appointment as Non Executive Directors on the Board of Directors;
 - 6.4 Through the Council of Governors, receive information about the Trust and be consulted on plans regarding the future development of the Trust and its services.

7. Restrictions on membership

- 7.1 Should a dispute arise as to the eligibility of an individual to be a member of the Trust, the Secretary shall determine the dispute in accordance with the 2006 Act and the eligibility criteria set out in the constitution. There will be a right of appeal to the Council of Governors. In any event the Secretary's decision shall be considered and either approved or over-turned by the Council of Governors at the next meeting of the Council of Governors immediately following the Secretary's decision. The Council of Governors' decision shall be final.
- 7.2 It is the responsibility of members to ensure their eligibility and not the Trust's, but if the Trust is on notice that a member may be disqualified from membership, they shall carry out all reasonable enquiries to establish if this is the case.

8. Termination of membership

- 8.1 A member shall cease to be a member if he-
- 8.1.1 resigns by notice to the Secretary; or
 - 8.1.2 fails to agree (or, having agreed, fails) to abide by the values of the Trust; or
 - 8.1.3 is disqualified under paragraph 8, Annex 8, or any other provision of this constitution; or
 - 8.1.4 is involved in any act of violence against staff or other members of the Trust; or
 - 8.1.5 is or has been identified as an habitual or repetitive complainant.

9. Dispute resolution procedures

- 9.1 Except where otherwise specified in this constitution or the Standing Orders of the Council of Governors, questions of eligibility, procedure and administrative matters in relation to Governorship of meetings of members or Governors shall be determined by the Trust's Secretary. There will be a right of appeal to the Chair whose decision shall be final and binding except in the case of manifest error.
- 9.2 In the event of a dispute between the Council of Governors and the Board of Directors, the Council of Governors and the Board of Directors shall meet and attempt to resolve the dispute by negotiation. If agreement cannot be reached then, subject to paragraph 9.1, the dispute shall be referred to the Senior Independent Director, whose decision shall be final.
- 9.3 In the event that a dispute is referred to the Chair or Senior Independent Director under paragraphs 9.1 to 9.2 (inclusive) and they consider that they have a perceived or real interest in the outcome of that dispute and that the dispute would be better resolved externally, then the Senior Independent Director may refer the dispute for resolution by arbitration under the Rules of the Chartered Institute of Arbitrators (as amended or re-issued from time to time) and these rules are deemed to be incorporated by reference to this paragraph, save that the arbitrators' costs are to be borne by the corporation in all cases.