
West Suffolk NHS Foundation Trust

Constitution

May 2023

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1. Name

The name of the foundation trust is West Suffolk NHS Foundation Trust (the trust).

2. Principal purpose

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

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

3. Other purposes and powers

3.1 The trust may provide goods and services for any purposes related to:

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

3.1.2 the promotion and protection of public health.

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

3.3 The powers of the trust are set out in the 2006 Act.

3.4 All the powers of the trust shall be exercised by the Board of Directors on behalf of the trust.

3.5 Any of these powers may be delegated to a committee of Directors or to an Executive Director.

4. Membership and constituencies

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

4.1 the public constituencies or

4.2 the staff constituency

5. Application for membership

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

6. Public Constituency

- 6.1** An individual who lives in the area specified in Annex 1 as an area for a public constituency may become or continue as a Member of the trust.
- 6.2** Those individuals who live in the area specified for a public constituency are referred to collectively as the Public Constituency for that area.
- 6.3** The minimum number of Members in each Public Constituency is specified in Annex 1.

7. Staff Constituency

- 7.1** An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided:
 - 7.1.1** they are employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 7.1.2** they have been continuously employed by the trust under a contract of employment for at least 12 months.
- 7.2** Individuals who exercise functions for the purposes of the trust, otherwise than under a contract of employment with the trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For clarity this does not include individuals who exercise functions for the purposes of the trust on a voluntary basis.
- 7.3** The Trust Secretary must have regard to Chapter 1 of Part 14 of the Employment Rights Act 1996 for the purposes of determining whether an individual has been continuously employed by the Trust, or has continuously exercised functions for the purposes of the Trust.
- 7.4** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 7.5** The minimum number of members in the Staff Constituency is specified in Annex 2.

Automatic membership by default – staff

7.6 An individual who is:

7.6.1 eligible to become a Member of the Staff Constituency, and

7.6.2 invited by the trust to become a Member of the Staff Constituency,

shall become a Member of the trust as a Member of the Staff Constituency without an application being made, unless they inform the trust that they do not wish to do so. This does not apply to staff who are eligible for membership under 7.2, who must make an application for membership.

8. Restriction on membership

8.1 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.

8.2 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.

8.3 An individual must be at least 16 years old to become a member of the trust.

8.4 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 10 – Further Provisions.

9. Annual Members' Meeting

9.1 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.

10. Council of Governors – composition

10.1 The trust is to have a Council of Governors, which shall comprise both elected and appointed Governors.

10.2 The composition of the Council of Governors is specified in Annex 3.

10.3 The aggregate number of public Governors is to be more than half the total membership of the Council of Governors.

10.4 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where

there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

11. Council of Governors – election of governors

- 11.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections.
- 11.2** The Model Rules for Elections as published from time to time by the Department of Health form part of this Constitution. The Model Rules for Elections current at the date this constitution is approved are attached at Annex 4. Elections for elected members of the Council of Governors shall be conducted using the first past the post system. Thus, where appropriate, the alternative rules marked "FPP" (First Past the Post) should be used.
- 11.3** A subsequent variation of the Model Rules for Elections by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 46 of the Constitution (amendment of the constitution).
- 11.4** An election, if contested, shall be by secret ballot.
- 11.5** Where a vacancy arises for an elected Governor the trust may, instead of holding a by-election, fill the vacancy by appointing the highest polling unsuccessful candidate at the most recent election of governors for the constituency or class in respect of which the vacancy has arisen. Any person so appointed shall hold office for the unexpired term of office of the retiring Governor.

12. Council of Governors - tenure

- 12.1** An elected Governor may hold office for a period of up to 3 years.
- 12.2** An elected Governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.
- 12.3** Subject to Paragraph 12.4 below, an elected Governor shall be eligible for re-election at the end of their term.
- 12.4** An elected Governor may not hold office for longer than 9 years or be re-elected if, by virtue of this paragraph 12.4, they would not be able to remain in office for the full three year period.
- 12.5** An appointed Governor may hold office for a period of up to 3 years.
- 12.6** An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.

12.7 An appointed Governor shall be eligible for re-appointment at the end of their term, but may not hold office for more than nine years.

12.8 A person may not stand for election as a Governor or be appointed as a Governor in accordance with clause 10 if their tenure as a governor was terminated following a breach of the Governors' Code of Conduct.

13. Council of Governors – disqualification and removal

13.1 The following may not become or continue as a member of the Council of Governors:

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

13.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;

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

13.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.

13.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.

14. Council of Governors – Termination of tenure

14.1 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary to the trust.

14.2 If a Governor fails to attend any meeting of the Council of Governors, for a period of one year or three consecutive public meetings (whichever is the shorter) their tenure of office is to be terminated unless the other Governors agree by a majority vote that:

14.2.1 the absence was due to a reasonable cause; and

14.2.2 he will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.

- 14.3** Where a person has been elected or appointed to be a Governor and they become disqualified for appointment under paragraph 13, they shall notify the Secretary in writing of such disqualification.
- 14.4** If it comes to the notice of the Secretary at the time of their appointment or later that the Governor is so disqualified, they shall immediately declare that the person in question is disqualified and notify them in writing to that effect.
- 14.5** 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.

15. Council of Governors – Vacancies

Where membership of the Council of Governors ceases, Public and Staff Governors shall be replaced in accordance with paragraph 11.5, and appointed Governors shall be replaced in accordance with processes agreed with their appointers.

16. Council of Governors – duties of governors

- 16.1** The general duties of the Council of Governors are –
- 16.1.1** to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and
 - 16.1.2** to represent the interests of the members of the trust as a whole and the interests of the public.
- 16.2** The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

17. Council of Governors – meetings of governors

- 17.1** The Chair of the trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 26.1 or paragraph 27.1 below) or, in their absence the Deputy Chair (appointed in accordance with the provisions of paragraph 28 below), shall preside at meetings of the Council of Governors.
- 17.2** Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons. The Chair may also exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.
- 17.3** 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.

18. 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 in accordance with paragraph 46, are attached at Annex 7.

19. Council of Governors – referral to the Panel

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

19.1.1 to act in accordance with its Constitution, or

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

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

20. 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.

21. Council of Governors – travel expenses

The trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the trust.

22. Council of Governors – further provisions

Further provisions with respect to the Council of Governors are set out in Annex 5 and Annex 10.

23. Board of Directors – composition

23.1 The trust is to have a Board of Directors, which shall comprise both Executive Directors and Non-Executive Directors.

23.2 The Board of Directors is to comprise:

23.2.1 a Non-Executive Chair;

23.2.2 up to 7 other Non-Executive Directors; and

23.2.3 up to 7 Executive Directors.

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

23.4 The Chief Executive shall be the Accounting Officer.

23.5 One of the Executive Directors shall be the Finance Director.

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

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

24. 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.

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

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

25.1 they are a member of a Public Constituency, or

25.2 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

25.3 they are not disqualified by virtue of paragraph 31 below.

26. Board of Directors – appointment and removal of chair and other non-executive directors

26.1 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.

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

27. Board of Directors – appointment of deputy chair

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

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

28.1 The Non-Executive Directors shall appoint or remove the Chief Executive.

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

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

29. Board of Directors – disqualification

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

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

29.2 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.

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

29.4 a person who no longer satisfies paragraph 25.1 or 25.2 (if applicable).

29.5 a person who is a member of the Council of Governors

29.6 a person whose tenure of office as a chair or as a member or director of a national health service body has been terminated on the grounds that their appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.

29.7 A person who has been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the cause of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity.

- 29.8 A person where disclosure revealed by a Disclosure and Barring Service check against such a person are such that it would be inappropriate for them to become or continue as a Director or would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute.
- 29.10 A person is subject of a disqualification order made under the Company Directors Disqualification Act 1986.
- 29.11 A person who is the subject of an order under the Sexual Offences Act 2003
- 29.12 A person who is included in any barred list established under the Safeguarding Vulnerable Groups Act 2006
- 29.13 A person who has been been erased, removed or struck off by a direction from a register of professionals and has not subsequently had their qualification re-instated or suspension lifted.
- 29.14 A person who has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a national health service body.
- 29.15 A person who has failed to agree (or having agreed, fails) to abide by the value of the trust's principles as set out in Annex 9.
- 29.16 A person does not meet the criteria set out in Regulation 5(3) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (Fit and Proper Persons' Regulations) (including any modification or re-enactment).

30. Board of Directors – meetings

- 30.1 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.
- 30.2 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.

31. 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 in accordance with paragraph 46, are attached at Annex 8.

32. Board of Directors - conflicts of interest of directors

- 32.1** The duties that a Director of the trust has by virtue of being a Director include in particular –
- 32.1.1** 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 (a "Conflict").
 - 32.1.2** 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.
- 32.2** The duty referred to in sub-paragraph 32.1.1 is not infringed if –
- 32.2.1** The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 32.2.2** The matter has been authorised in accordance with the Constitution.
- 32.3** The duty referred to in sub-paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4** In sub-paragraph 32.1.2, "third party" means a person other than –
- 32.4.1** The trust, or
 - 32.4.2** A person acting on its behalf.
- 32.5** 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.
- 32.6** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 32.7** Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 32.8** 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.
- 32.9** A Director need not declare an interest –
- 32.9.1** If it cannot reasonably be regarded as likely to give rise to a conflict of interest;

32.9.2 If, or to the extent that, the Directors are already aware of it;

32.9.3 If, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered –

32.9.3.1 By a meeting of the Board of Directors, or

32.9.3.2 By a committee of the Directors appointed for the purpose under the Constitution.

32.10 A matter shall have been authorised for the purposes of paragraph 32.2.2 above if:

32.10.1 The Directors, in accordance with the requirements set out in this paragraph 32.10, authorise any matter or situation proposed to them by any Director which would, if not authorised, involve a Director (an "Interested Director") breaching their duty under paragraph 32.1.1 above to avoid Conflicts:

32.10.1.1 the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Directors under the provisions of this Constitution;

32.10.1.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other Interest Director; and

32.10.1.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other Interested Director's vote had not been counted.

32.10.2 Any authorisation of a Conflict under this paragraph 32.10 may (whether at the time of giving the authorisation or subsequently):

32.10.2.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised;

32.10.2.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict;

32.10.2.3 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict

as the Directors think fit;

32.10.2.4 provide that, where the Interested Director obtains, or has obtained (through their involvement in the Conflict and otherwise than through their position as a Director of the Trust) information that is confidential to a third party, they will not be obliged to disclose that information to the Board of Directors, or to use it in relation to the Trust's affairs where to do so would amount to a breach of that confidence; and

32.10.2.5 permit the Interested Director to absent themselves from the discussion of matters relating to the Conflict at any meeting of the Directors and be excused from reviewing papers prepared by, or for, the Directors to the extent they relate to such matters.

32.11 Where the Directors authorise a Conflict, the Interested Director will be obliged to conduct themselves in accordance with any terms imposed by the Directors in relation to the Conflict.

32.12 The Directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation in accordance with the terms of such authorisation.

32.13 A Director is not required, by reason of being a Director, to account to the Trust for any remuneration, profit or other benefit which they derive from or in connection with a relationship involving a Conflict which has been authorised by the Directors (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

33 Board of Directors – remuneration and terms of office

33.1 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.

33.2 The trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors;

33.3 On appointment, the duration of a term of office for a Non-Executive Director (including the Chair) shall be three (3) years. Subject to satisfactory appraisal, a Non-Executive Director (including the Chair) may be re-appointed by the Council of Governors for a further full term, normally service a maximum of six (6) years. Exceptionally, the Council of Governors may agree to extending the term of Office of a Non-Executive Director (including the Chair) by a further twelve (12) months in order to maintain continuity of knowledge and experience within the Board.

33.4 The maximum aggregate period of office of any Non-Executive Director shall not exceed seven (7) years, save that in the event that any Non-Executive Director takes office as Chair after they have been a Non-Executive Director for two (2) or more years, the maximum aggregate period of office for that Non-Executive Director shall not exceed nine(9) years

34 Registers

The trust shall have:

34.1 a register of Members showing, in respect of each Member, the constituency to which they belong and, where there are classes within it, the class to which they belong;

34.2 a register of members of the Council of Governors;

34.3 a register of interests of Governors;

34.4 a register of Directors; and

34.5 a register of interests of the Directors.

35 Registers – inspection and copies

35.1 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.

35.2 The trust shall not make any part of its registers available for inspection by members of the public which shows details of any Member of the trust, if the Member so requests.

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

- 35.3.1** they are to be available for inspection free of charge at all reasonable times; and
 - 35.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 35.4** If the person requesting a copy or extract is not a Member of the trust, the trust may impose a reasonable charge for doing so.

36 Documents available for public inspection

36.1 The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:

36.1.1 a copy of the current Constitution;

36.1.2 a copy of the latest annual accounts and any report of the auditor on them; and

36.1.3 a copy of the latest annual report;

36.2 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:

36.2.1 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.

36.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.

36.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.

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

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

36.2.6 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(NHSE's decision), 65KB (Secretary of State's response to NHSE's decision), 65KC (action following Secretary of

State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.

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

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

36.2.9 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.

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

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

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 Auditor

37.1 The trust shall have an auditor.

37.2 A person may only be appointed auditor if they (or the case of a firm, each of its members) are a member of one or more of the bodies referred to in Paragraph 23 (4) of Schedule 7 to the 2006 Act.

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

37.4 The auditor shall carry out its duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHS England on standards, procedures and techniques adopted.

38 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.

39 Accounts and Records

- 39.1** The trust must keep proper accounts and proper records in relation to the accounts.
- 39.2** NHS England may with the approval of the Secretary of State give directions to the trust as to the content and form of its accounts.
- 39.3** The accounts are to be audited by the trust's auditor.
- 39.4** The trust shall prepare in respect of each financial year annual accounts in such form as NHS England may with the approval of the Secretary of State direct.
- 39.5** The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 39.6** In preparing its annual accounts or in preparing any accounts by virtue of paragraph 39.4 above, the Trust must comply with any directions given by NHS England with the approval of the Secretary of State as to:
- 39.6.1 The methods and principles according to which the annual accounts must be prepared: and/or
 - 39.6.2 The content and form of the annual accounts.
- 39.7** The Trust must:
- 39.7.1 Lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
 - 39.7.2 Send copies of the annual accounts, and any report of the auditor on them to NHS England within such a period as NHS England may direct

40 Annual report, forward plans and non-NHS work

- 40.1** The trust shall prepare an annual report and send it to NHS England.
- 40.2** The trust shall give information as to its forward planning in respect of each financial year to NHS England.
- 40.3** The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 40.4** In preparing the document, the Directors shall have regard to the views of the Council of Governors.

40.5 Each forward plan must include information about:

40.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and

40.5.2 the income it expects to receive from doing so.

40.6 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 40.5.1 the Council of Governors must:

40.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the trust of its principal purpose or the performance of its other functions, and

40.6.2 notify the Directors of the trust of its determination.

40.7 The Trust may implement a proposal 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 health service in England the proposal only if more than half of the members of Council of Governors of the trust voting approve its implementation.

41 Presentation of the annual accounts and reports to the Governors and Members

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

41.1.1 the annual accounts

41.1.2 any report of the auditor on them

41.1.3 the annual report.

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

41.3 The trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 43.1 with the Annual Members' Meeting.

42 Indemnity

The Secretary of the trust and members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their

personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly, and the trust may also take out and maintain at its own cost insurance against such risks, both for its own benefit and for the benefit of such persons.

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 as outlined in the Standing Orders for the Practice and Procedure of the Board of Directors at Annex 8.

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 46.1 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 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 England. For the avoidance of doubt, NHS England's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

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** "Significant transaction" means a transaction which meets the definition set out in Table 1 below:

Table 1: Significant transaction

Ratio	Description	Significant
Assets	The gross assets* subject to the transaction, divided by the gross assets of the trust	>25%
Income	The income attributable to assets or contract associated with the transaction, divided by the income of the trust	>25%
Consideration to total NHS foundation trust capital	The gross capital** of the company or business being acquired/divested, divided by the total capital*** of the trust following completion or the effects on the total capital of the trust resulting from a transaction	>25%

* Gross assets is the total of fixed assets and current assets

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

*** Total capital of the foundation trust equals taxpayers' equity

46 Interpretation and definitions

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

References to statutory provisions shall be deemed to include references to any provision amending, re-enacting or replacing them and to such provisions as amended from time to time.

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

the 2006 Act is the National Health Service Act 2006.

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

Accounting Officer means the Officer responsible and accountable for discharging the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act, which shall be the Chief Executive.

Adviser means a person formally appointed by resolution of the Council of Governors to advise the Council of Governors at meetings of the Council of Governors in an advisory and non-voting capacity.

Annual Members Meeting is defined in paragraph 9 of the constitution.

Audit Committee means a committee whose functions are concerned with the arrangements for providing the Board with an independent and objective review on its financial and risk systems, financial information and compliance with laws, guidance, and regulations governing the NHS and with the arrangements for the monitoring and improving the quality of healthcare for which the trust has responsibility.

Board of Directors (“the Board”) means the Executive and Non-Executive Directors including the Chair as constituted in accordance with the Constitution as the Board of Directors.

Chair is the person appointed by the Council of Governors to lead the Council of Governors and Board of Directors and to ensure that they successfully discharge their overall responsibility for the trust as a whole. The expression “the Chair of the trust” shall be deemed to include the Deputy Chair of the trust if the Chair is absent from the meeting or is otherwise unavailable.

Chief Executive means the accounting officer of the trust.

Committee members means in the context of a Committee persons formally appointed by the Council of Governors or Board of Directors to be members of the Committee.

Council of Governors means the elected and appointed Governors of the trust collectively as a body, as constituted in accordance with the Constitution.

Constitution means this constitution and all annexes to it.

Deputy Chair means the Non Executive Director appointed by the Council of Governors to take on the Chair duties if the Chair is absent for any reason.

Director means a Member of the Board.

Executive Director means a Member of the Board who holds an executive office of the trust.

Finance Director means the Chief Financial Officer of the trust.

Governor means a person who is a member of the Council of Governors.

Licence issued by Monitor the Licence sets out a range of conditions that the Trust must meet.

Member means any person registered as a member of the trust, and authorised to vote in elections to select Governors.

Monitor is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act, which, at the time of the preparation of this document operates as NHS England.

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

NHS England means NHS England leads the National Health Service (NHS) in England. Other than paragraph 46, references to Monitor or NHS Improvement in the Constitution have been updated to refer to NHS England.

Non Executive Director means a member of the Board of Directors who is not an Executive Director of the trust.

Officer means employee of the trust or any other person holding a paid appointment or office with the trust.

Secretary means a person who may be appointed to act independently of the Council of Governors to provide advice on corporate governance issues to the Council of Governors, and the Chair and monitor the trust's compliance with the law, Standing Orders and guidance of the NHSE.

SFIs means Standing Financial Instructions.

SOs mean Standing Orders.

Voluntary Organisation is a body, other than a public or local authority, the activities of which are not carried on for profit.

ANNEX 1 – THE PUBLIC CONSTITUENCY

The trust shall have a single Public Constituency. The area of the Public Constituency will be made up of the wards specified below and the minimum number of Members in the Public Constituency shall be 100.

All local government electoral areas/wards of Suffolk, Norfolk, Cambridgeshire and Essex.

ANNEX 2 – THE STAFF CONSTITUENCY

The Staff Constituency will comprise a single class. The minimum number of Members in the Staff Constituency shall be 100.

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

A. Elected Governors - public members	14
B. Elected Governors - staff members	5
C. Appointed Governors:	7
(a) Local Authority Governors:	
i. Suffolk County Council	1
ii. West Suffolk Council in consultation with Babergh, Braintree, Breckland, East Cambridgeshire, Ipswich, King's Lynn and West Norfolk, Mid Suffolk, South Norfolk, Suffolk Coastal and Waveney councils	1
(b) University of Cambridge Governor	1
(c) Other appointing organisations: (specified for the purposes of sub-paragraph 9(7) of Schedule 7 of the 2006 Act)	
i. Volunteers of WSFT in consultation with the Friends of West Suffolk Hospital	1
ii. Suffolk & Northeast Essex Integrated Care Board in consultation with local general practitioners and West Suffolk Alliance partners to provide a range of views and perspectives	2
iii. University Campus Suffolk (UCS) in consultation with West Suffolk College	1
Or in each case such other organisations as may be the successors to their functions.	

ANNEX 4 –THE MODEL RULES FOR ELECTIONS

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- 36. Receipt of voting documents
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- 42. Arrangements for counting of the votes
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- STV45. First stage
- STV46. The quota
- STV47. Transfer of votes
- STV48. Supplementary provisions on transfer
- STV49. Exclusion of candidates
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- STV51. Order of election of candidates
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- 55. Delivery of documents
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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 Code of Governance (NHSE, 2022) 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;

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

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

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

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

“*telephone short code*” means a short telephone number used for the

purposes of submitting a vote by text message;

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

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

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

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

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

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

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

5. Staff

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

6. Expenditure

6.1 The corporation is to pay the returning officer:

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

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

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

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

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

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

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

12. Declaration of eligibility

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

- (a) that they are not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of his 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 they have received it, and decide whether the candidate has been validly nominated.

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

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

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

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

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

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

20. The ballot paper

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
- (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

("declaration of identity")

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

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

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

Action to be taken before the poll

22. List of eligible voters

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

23. Notice of poll

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

- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

24. Issue of voting information by returning officer

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

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

("postal voting information").

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

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

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

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

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

26. E-voting systems

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

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

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

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

- (a) require a voter to:

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

26.5

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

- (a) require a voter to
 - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
 - (ii) where the election is for a public or patient constituency,

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

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

- (a) require a voter to:
 - (i) provide his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
 in order to be able to cast his or her vote;
- (b) prevent a voter from voting for more candidates than they are entitled to at the election;
- (d) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

29. Spoilt ballot papers and spoilt text message votes

- 29.1 If a voter has dealt with 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 they can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless they:
- (a) are satisfied as to the voter's identity; and
 - (b) have ensured that the completed ID declaration form, if required, has not been returned.
- 29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers"):
- (a) the name of the voter, and

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

29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “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 spoiled text message vote, if they can obtain it.

29.7 The returning officer may not issue a replacement voter ID number in respect of a spoiled text message vote unless they are satisfied as to the voter’s identity.

29.8 After issuing a replacement voter ID number in respect of a spoiled text message vote, the returning officer shall enter in a list (“the list of spoiled text message votes”):

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

30. Lost voting information

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

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

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

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

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

31. Issue of replacement voting information

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

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

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

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

33.1 To cast 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 they wish 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 they 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 they wish to vote.

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

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

36. Receipt of voting documents

36.1 Where the returning officer receives:

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

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

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

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

37. Validity of votes

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

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

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

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

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

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

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

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

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

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

39. De-duplication of votes

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

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

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

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

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier and the voter ID number on the ballot

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

paper in the list of disqualified documents;

- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

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

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

40. Sealing of packets

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

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of spoilt ballot papers and the list of spoilt text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

PART 6: COUNTING THE VOTES

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

“*non-transferable vote*” means a ballot document:

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

or

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

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

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

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

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

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

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

value) of all transferable ballot documents from the candidate who has the surplus,

“stage of the count” means:

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

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

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

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

42. Arrangements for counting of the votes

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

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

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

43. The count

43.1 The returning officer is to:

- (a) count and record the number of:
 - (iii) ballot papers that have been returned; and
 - (iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
- (b) count the votes according to the provisions in this Part of the

rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

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

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

STV44.3 Any text voting record:

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

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

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

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

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

been counted.

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

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

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

STV45. First stage

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

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

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

STV46. The quota

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

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

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

STV47. Transfer of votes

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

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

transferable votes.

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

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

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

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

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

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

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

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

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

whichever is the less.

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

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

filled.

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

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

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

STV48. Supplementary provisions on transfer

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

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

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

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

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

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

STV49. Exclusion of candidates

STV49.1 If:

(a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and

(b) subject to rule STV50, one or more vacancies remain to be filled, the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).

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

(a) ballot documents on which a next available preference is given, and

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

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

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

STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot

documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.

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

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

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

STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value they shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until they have dealt with each sub-parcel of a candidate excluded under rule STV49.1.

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

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

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

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

shall in one operation exclude such two or more candidates.

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

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

STV50. Filling of last vacancies

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

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

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

STV51. Order of election of candidates

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

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

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

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

deemed to have been elected first.

FPP51. Equality of votes

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

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

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

FPP52.2 The returning officer is to make:

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

available on request.

STV52. Declaration of result for contested elections

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

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who they have declared elected –
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chair of the NHS Trust, or
 - (ii) in any other case, to the chair of the corporation, and
- (c) give public notice of the name of each candidate who they have declared elected.

STV52.2 The returning officer is to make:

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule STV44.1,
- (f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

53. Declaration of result for uncontested elections

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

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

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

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

57. Retention and public inspection of documents

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

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

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

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

58.1 The corporation may not allow:

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

- (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
 - (v) the list of eligible voters, or
- (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,
- by any person without the consent of the board of directors of the corporation.

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

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

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

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

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

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

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

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

- FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
 - (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.
- FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- FPP59.5 The returning officer is to:
- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
 - (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and
- ensure that complete electronic copies of the internet voting records telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- FPP59.6 The returning officer is to endorse on each packet a description of:
- (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency, or class within a constituency, to which the election relates.

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

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

60.1 Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application made to NHSE 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 NHSE for the purpose of seeking a referral to the independent election arbitration panel (IEAP).

66.2 An application may only be made once the outcome of the election

has been declared by the returning officer.

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

PART 12: MISCELLANEOUS

67. Secrecy

- 67.1 The following persons:
- (a) the returning officer,
 - (b) the returning officer's staff,

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

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

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

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

A person may not become or continue as a Governor of the trust if –

- (a) they, in the case of a staff Governor or public Governor, ceases to be a Member of the constituency they represents;
- (b) they, in the case of a appointed Governor, have their sponsorship withdrawn by their sponsoring organisation;
- (c) they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a national health service body;
- (d) their tenure of office as the chair or as a member or director of a national 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;
- (e) they are an Executive Director or Non-Executive Director of the trust, or a governor, non executive director, chair, chief executive officer of an organisation the nature of whose business is to give rise to potential conflicts of interest of a personal or prejudicial nature to such a degree as to prevent the person from the proper exercise of their duties as a Governor of this Trust. This may include other NHS Foundation Trusts;
- (f) they are a person who has been been erased, removed or struck off by a direction from a register of professionals and has not subsequently had his qualification reinstated or suspension lifted.
- (g) they have been declared, by a sub-committee of the Council of Governors, to be a vexatious complainant;
- (h) they have failed to agree (or having agreed, fails) to abide by the Code of Conduct for Governors as set out in Annex 6 and the value of the trust's Principles as set out in Annex 9; or
- (i) they have been previously removed as a Governor pursuant to paragraph 12.8 of the Constitution.

ANNEX 6 - CODE OF CONDUCT FOR GOVERNORS

1. Introduction

- 1.1 The NHS Act 2012 sets out the powers of and obligations upon, governors of NHS Foundation Trusts, details of which form part of the Constitution. If Governors operate outside the powers assigned to them or fail to adhere to the obligations of public office, the NHS Act gives the Foundation Trust the power, through its Constitution, to remove them from office.
- 1.2 This Code seeks to outline appropriate conduct for Governors and addresses both the requirements of office and their personal behaviour. Ideally any penalties for non-compliance would never need to be applied, however, a Code is considered an essential guide for Governors, particularly those who are newly elected.
- 1.3 The West Suffolk NHS Foundation Trust operates a just and learning culture, with an emphasis on learning from mistakes rather than blaming individuals. We expect high standards of conduct from our elected and appointed governors and we expect them to take responsibility and be accountable when they fall short. Any investigation into code breaches, as well as establishing the facts, will also seek to understand the reasons for the breach, with a view to remediation rather than punishment.
- 1.4 The Code seeks to expand on or complement the Constitution. Copies will be made available for the information of all Governors and for those considering seeking election to the Council of Governors.
- 1.5 This Code of Conduct does not limit or invalidate the right of the Governors or the Trust to act under the Constitution.
- 1.6 The Code applies to all forms of communication and interaction, including:
 - 1.6.1 at face to face meetings
 - 1.6.2 at online or telephone meetings
 - 1.6.3 in written communication
 - 1.6.4 in verbal communication
 - 1.6.5 in non-verbal communication
 - 1.6.6 in electronic and social media communication, posts, statements and comments.

2. Qualifications for office

- 2.1 Members of the Council of Governors must continue to comply with the qualifications required to hold elected office throughout their period of tenure as defined in the Constitution. The Trust Secretary should be advised of any changes in circumstances, which disqualify the Governor from continuing in office. An example of this would be a public Governor becoming an employee of the Trust, given that the number of employees sitting on the Trust's elected bodies is limited.

- 2.2 Where a Governor has resigned from office, that governor must promptly return to the Trust Secretary any Trust property or confidential paperwork relating to the Trust and the work of the Council of Governors as the Governor may have in his or her possession and continue to comply with the requirements of the Constitution, this Code and Standing Orders for the Council of Governors until such time as this resignation takes effect.

3. General Principles

- 3.1 Governors should at all times:

- 3.1.1 adhere to the Trust's values and supporting behaviours; rules and policies; and support the agreed vision and aims of the Trust in developing a successful Trust for the people of West Suffolk.
- 3.1.2 act in the best interests of the Trust at all times and in accordance with the Constitution, the Standing Orders for the Council of Governors and this Code.
- 3.1.3 contribute to the workings of their Council of Governors in order for it to fulfil its role and functions.
- 3.1.4 recognise that the Council of Governors exercises collective decision-making on behalf of local people, stakeholders and staff and abide by such decisions as are made within that forum.
- 3.1.5 acknowledge that, other than when attending meetings and events as a Governor, Governors will have no rights or privileges over any other Member of the Trust.
- 3.1.6 recognise that the Council of Governors has no managerial role within the Trust and that the roles and responsibilities of a governor are not of a managerial or executive nature.
- 3.1.7 conduct themselves in a manner that reflects positively on the Trust, and act as an ambassador for the Trust.

4. Confidentiality

- 4.1 Governors will receive confidential information during the conduct of their duties and will be expected to respect the confidentiality of that information. Governors are required not to disclose information given to them in confidence by anyone, or information acquired by them which they believe or ought reasonably to be aware, is of a confidential nature.
- 4.2 Matters discussed in closed meetings of the Council of Governors and any meetings relating to disciplinary or code of conduct matters must be assumed to be confidential and not discussed or disclosed to anyone outside the meeting.

5. Trust Policies

- 5.1 The Governors shall comply with the following Trust policies (revised Trust policies will be notified to the Governors from time to time):
- 5.1.1 Email and Internet Policy

- 5.1.2 Respect for Others Policy
- 5.1.3 Equality, Diversity and Inclusion Supporting Equal Opportunities
- 5.1.4 Freedom to Speak up
- 5.1.5 Data Protection Policy
- 5.1.6 Management of Violence and Aggression Policy
- 5.1.7 Such other reasonable Trust policies as are notified to the Governors in writing from time to time.

6. Conflict of interests

- 6.1 Governors should act with the utmost integrity and objectivity and in the best interests of the Trust in performing their duties. They should not use their position for personal advantage or seek to gain preferential treatment. Any Governor who has a material interest in a matter as defined by the Constitution, shall declare such interest to the Council of Governors and:
 - 6.1.1 shall not vote on any such matters.
 - 6.1.2 shall not be present except with the permission of the Council of Governors in any discussion of the matter.
- 6.2 If in any doubt they should seek advice from the Trust Secretary. It is important that conflicts of interest are addressed and are seen to be actioned in the interests of the Trust and all individuals concerned.
- 6.3 Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Governors.

7. Conduct in meetings

- 7.1 Governors should at all times:
 - 7.1.1 be aware that they have a responsibility to attend meetings of the Council of Governors. When this is not possible they should submit an apology to the meeting administrator in advance of the meeting.
 - 7.1.2 be aware that failure to attend three successive public meetings of the council of governors without good reason and prior explanation as set out in the constitution is ground for dismissal from their office, unless the grounds for absence are deemed to be acceptable by the council of governors.
 - 7.1.3 be aware that they are expected to attend for the duration of the meeting.
 - 7.1.4 maintain good practice with respect to the conduct of meetings and respect the views of their fellow council members. Governors should not conduct private conversations when a meeting is taking place.
 - 7.1.5 respect the integrity of the decision-making process in meetings of the

Council of Governors and its committees and not undermine that process by their actions outside those meetings.

7.1.6 respect the confidentiality of matters discussed at closed meetings and not reveal details of information received, discussions, outcomes or individual voting decisions of those present at those meetings without their permission and/or outside due process.

7.1.7 comply with Standing Orders of the Council of Governors and draw the Trust Secretary's attention to any perceived breaches of the Standing Orders.

8. Personal conduct

8.1 Governors are required to adhere to the highest standards of conduct in the performance of their duties as holders of public office.

8.2 Governors must, whilst carrying out their role of Governor:

8.2.1 acknowledge that the Trust is an apolitical organisation.

8.2.2 adhere to good practice in respect of the conduct of meetings and respect the views of their fellow elected governors.

8.2.3 recognise that it is not acceptable or appropriate to represent any trade union, political party or other organisation of which they are a member or represent their views whilst conducting themselves as governor.

8.2.4 be honest and act with integrity and probity at all times.

8.2.5 accept responsibility for their actions.

8.2.6 show their commitment to working as a team member by working with colleagues in the NHS and wider community.

8.2.7 share collective responsibility for all Council decisions regardless of personal opinion.

8.2.8 be mindful of conduct which could be deemed to be unfair or discriminatory and support inclusivity.

8.2.9 treat other governors, members of the public, Directors (executive and non-executive) and other employees with respect and in accordance with the Trust's policy against bullying and harassment.

8.2.10 not intimidate or attempt to intimidate any person who is or is likely to be involved in the administration of any investigation or proceedings in relation to an allegation that a governor has failed to comply with this code of conduct.

8.2.11 recognise that the Council of Governors, the Board of Directors and management have a common purpose, i.e. promote the success of the Trust, and adopt a team approach and support inclusivity

8.2.12 act appropriately in all engagement with the media and, where appropriate, act in accordance with the guidance for governors on dealing with the media.

8.2.13 conduct themselves in such a manner as to reflect positively on the Trust. When attending external meetings or any other events at which they are present, it is important for Governors to be ambassadors for the Trust.

8.2.14 uphold the seven principles of public life as detailed by the Nolan Committee as set out in Annex 9 of the Trust's Constitution.

9. Accountability

9.1 Governors are accountable to the membership and should demonstrate this by attending members' meetings and other key events, which provide opportunities to interface with their electorate in order to best understand their views.

9.2 Governors are also accountable to NHS England for their conduct.

10. Induction and development

10.1 Training is essential for Governors, in respect of the effective performance of their current role. Governors are required to adhere to the Trust's policies in all respects and undertake identified training and develop to allow them to effectively undertake their role.

10.2 Governors must participate in the Trust's induction programme for Governors

11. Visits to trust premises

11.1 Where Governors wish to visit the premises of the trust in a formal capacity as opposed to individuals in a personal capacity, the Council of Governors should liaise with the Secretary to make the necessary arrangements.

12. Non-compliance with the Code of Conduct

12.1 Governors should be aware that non-compliance with the code of conduct, any other action which may be detrimental to the Trust or breach of any other condition for qualification as stated in the Constitution will be dealt with in accordance with the procedure for Managing Governor conduct and expected standards.

12.2 This Code of Conduct does not limit or invalidate the right of the Governors or the trust to act under the Constitution.

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

1. INTERPRETATION

- 1.1 Save as otherwise permitted by law, at any meeting the Chair of the trust shall be the final authority on the interpretation of Standing Orders (of which they should be advised by the Chief Executive or Secretary).
- 1.2 Any expression to which a meaning is given in the National Health Service Act 2006 (“2006 Act”) or in the Constitution shall have the same meaning in these Standing Orders.

2. THE COUNCIL OF GOVERNORS

- 2.1 **Composition of the Council of Governors** - The composition of the Council of Governors shall be in accordance with the Constitution.
- 2.2 **Appointment of the Chair and members** – The Chair is appointed by the Council of Governors, as set out in the Constitution.
- 2.3 **Terms of Office of the Chair and members**- The regulations setting out the period of tenure of office of the Chair and members and for the termination or suspension of office of the Chair and members are contained in the Constitution.
- 2.4 **Appointment and Powers of Deputy Chair** – subject to Standing Order 2.5 below; members of the Council of Governors may appoint one of the Non- Executive Directors, to be Deputy Chair for such period, not exceeding the remainder of their term as a Non-Executive Director of the trust, as they may specify on appointing them.
- 2.5 Any Non-Executive Director so appointed may at any time resign from the office of Deputy Chair and the Council of Governors may thereupon appoint another Non Executive Director as Deputy Chair in accordance with the provisions of Standing Order 2.4.
- 2.6 Where the Chair of the trust has died or has ceased to hold office or where they have been unable to perform their duties as Chair owing to illness or any other cause, the Deputy Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties, as the case may be, and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform their duties, be taken to include references to the Deputy Chair.

3. MEETINGS OF THE COUNCIL OF GOVERNORS

- 3.1 *Admission of the Public and the Press* – The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors but shall be required to withdraw upon the Council of Governors (including a majority of the public Governors present at the meeting) resolving as follows:

“That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest”

3.2 The Chair (or Deputy Chair) shall give such directions as they think fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the trust's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Council of Governors (including a majority of the public Governors present at the meeting) resolving as follows:

“That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Council of Governors to complete business without the presence of the public”

3.3 Nothing in these Standing Orders shall require the trust to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council of Governors.

3.4 **Calling Meetings** – Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine.

3.5 The Council of Governors will hold at least four meetings each year, one of which is the Annual Members Meeting.

3.6 The Chair of the trust may call a meeting of the Council of Governors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of members of the Council of Governors, has been presented to them, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to them at the trust's headquarters, such one-third or more members may forthwith call a meeting.

3.7 **Notice of Meetings** - Before each meeting of the Council of Governors, 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 Governor, by e-mail to the valid email address or sent by post to the usual place of residence of each Governor, so as to be available to them at least five days before the meeting.

3.8 Want of service of the notice on any Governor shall not affect the validity of a meeting.

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

3.10 Agendas will be sent by post or e-mail to Governors five days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three days before the meeting, save in emergency. A notice shall be presumed to have been served one day after posting or delivery of e-mail.

3.11 Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the trust's office at least three days before the meeting, save where the meeting is convened by electronic communication.

- 3.12 **Setting the Agenda** - The Council of Governors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders).
- 3.13 A Governor desiring a matter to be included on an agenda shall make their request in writing to the Chair at least 10 (ten) clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.
- 3.14 **Petitions** - where a petition has been received by the trust the Chair of the Council of Governors shall include the petition as an item for the agenda of the next Council of Governors meeting.
- 3.15 **Chair of Meeting** - At any meeting of the Council of Governors, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair, if there is one and they are present, shall preside. If the Chair and Deputy Chair are absent another Non Executive Director as the members present shall choose who shall preside.
- 3.16 If the Chair, Deputy Chair and other non-executive directors are all absent or have a conflict of interest, the Lead Governor shall preside. In the event of the Lead Governor being absent, the Deputy Lead Governor shall preside. In the event the Deputy Lead Governor also being absent a representative appointed from amongst the governors attending that meeting of the Council shall preside at the meeting and shall have a casting vote.
- 3.17 **Meetings: electronic communication** - In this SO, "electronic communication" means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa): (a) by means of an electronic communications network; or (b) by other means but while in an electronic form.
- 3.17.1 In the Chair's absolute discretion, a meeting of the Council of Governors may be held by way electronic communication. A meeting of the Council of Governors held by way of electronic communication can be (a) held exclusively by electronic communication; or (b) where a select number of Governors are present at the meeting by way of electronic communication whilst the majority attending are physically present at the meeting of the Council of Governors.
- 3.17.2 A Governor in electronic communication with the Chair and all other parties to a meeting of the Council of Governors or of a committee or sub-committee of the Governors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting they have the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
- 3.17.3 A meeting at which one or more of the Governors attends by way of electronic communication is deemed to be held at such a place as the Governors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be

deemed to be held at the place (if any) where a majority of the Governors attending the meeting are physically present, or in default of such a majority, the place at which the Chair of the meeting is physically present.

- 3.17.4 Meetings held in accordance with this SO are subject to SO 3.37 (Quorum). For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.
- 3.17.5 The minutes of a meeting held in this way must state that it was held by electronic communication and that the Governors were all able to hear each other and were present throughout the meeting.
- 3.18 **Notices of Motion** – A member of the Council of Governors desiring to move or amend a Motion shall send a written notice thereof at least 10 (ten) 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.
- 3.19 **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 consent of the Chair.
- 3.20 **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 member who gives it and also the signature of four other Governors. When any such Motion has been disposed of by the Council of Governors, it shall not be competent for any Governor 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.
- 3.21 **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.
- 3.22 When a Motion is under discussion or immediately prior to discussion it shall be open to a member 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 (*)
 - A Motion resolving to exclude the public (including the press).

* In the case of sub-paragraphs denoted by (*) above to ensure objectivity Motions may only be put by a member 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.

- 3.23 **Chair's Ruling** - Statements of members of the Council of Governors made at meetings of the Council of Governors shall be relevant to matter under discussion

at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

- 3.24 **Voting** - every question at a meeting shall be determined by either a majority of the votes of the Governors present, qualified to vote on the issue and voting on the question unless the Constitution requires otherwise. In the case of the number of votes for and against a Motion being equal, the Chair of the meeting, or the person presiding over that issue if the Chair is absent, shall have a second or casting vote.
- 3.25 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, unless at the discretion of the Chair, a vote is held by postal or e-mail vote, or by way of written resolution. A paper ballot may also be used if a majority of the Governors present so request. At all times, no Governor may vote by proxy.
- 3.26 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each governor voted or abstained.
- 3.27 If a Governor so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.28 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.29 A person attending the Council of Governors to represent a Governor during a period of incapacity or temporary absence without formal appointment as a Governor may not exercise the voting rights of the Governor. A person's status when attending a meeting shall be recorded in the minutes.
- 3.30 **Written resolution** - at the discretion of the Chair, the Chair may specify in a notice of a meeting any matter which requires approval by a written resolution and such a matter may be approved in writing provided that at least three quarters of the Governors, and a majority of the elected Governors, approve the resolution in writing within the timescale imposed in such a notice.
- 3.31 **Special provisions relating to the Chair exercising their discretion to call a postal or e-mail vote**
- 3.31.1 The Chair's discretion to hold a postal or e-mail vote may be exercised at any time, and for any reason.
- 3.31.2 If the Chair exercises their discretion to hold a postal or e-mail vote, then the Governors must vote by post or e-mail by sending their postal or e-mail vote back to the Trust Secretary or an employee of the trust holding a paid appointment or office within the trust who is administering and counting the postal or e-mail votes by the Deadline Date. For the avoidance of doubt, if the Chair exercises their discretion to hold a postal or e-mail vote, this postal or e-mail vote will form the only method of voting and no meeting will be held.
- 3.31.3 An individual Governor may only cast one vote unless a second further vote is required owing to the previous vote not being passed. Once a postal or e-mail vote has been cast by a Governor, the vote cannot be revoked or altered in any way.

3.31.4 **Protocol for voting by post** - The Trust Secretary is to publish a notice of the postal vote stating:

3.31.4.1 the details of the Motion;

3.31.4.2 the date and time at which postal votes are required to be sent out to the Governors;

3.31.4.3 the address for return of postal votes including the date and time by which they must be received by the Trust Secretary ("**Deadline Date**"); and

3.31.4.4 the contact details of the Trust Secretary.

3.31.5 As soon as reasonable practicable on or after the publication of the notice of postal vote, the Trust Secretary is to deliver to, or send by post to the usual place of residence of every Governor, so as to be available to them at least 7 (seven) clear days before the Deadline Date, the following information:

3.31.5.1 a ballot paper and ballot paper envelope (ballot paper envelope must have clear instructions to the Governor printed on it, instructing the Governor to seal the ballot paper inside the envelope once the ballot paper has been marked);

3.31.5.2 an ID declaration form (if required);

3.31.5.3 information about the Motion to be voted on; and

3.31.5.4 a covering return envelope providing:

3.31.5.4.1 the address for the return of the ballot paper printed on it;

3.31.5.4.2 pre-paid postage for return to that address;

3.31.5.4.3 clear instructions, either printed on the covering return envelope or elsewhere, instructing the Governor to seal a completed ID declaration form (if required) and the ballot paper envelope, with the ballot paper sealed inside it and return to the Trust Secretary by the Deadline Date.

3.31.6 **Protocol for voting by e-mail** – The Trust Secretary is to email a notice of the email vote to the valid email address of every Governor stating:

3.31.6.1 The details of the Motion;

3.31.6.2 The date and time at which the e-mail votes are required to be sent out to the Governors;

3.31.6.3 The e-mail address for return of e-mail votes includes the date and time by which they must be received by the Trust Secretary; and

3.31.6.4 The contact details of the Trust Secretary.

3.31.7 As soon as is reasonably practicable on or after the e-mail of the notice of the e-mail vote, the Trust Secretary is to e-mail to the valid e-mail address of every

Governor, so as to be available to them at least 7 (seven) clear days before the Deadline Date, the following information:

- 3.31.7.1 a ballot paper attachment in accessible electronic format with clear instructions as to how to cast their vote by e-mail;
- 3.31.7.2 an ID declaration form (if required);
- 3.31.7.3 information about the Motion; and
- 3.31.7.4 a covering email providing:
 - 3.31.7.4.1 the e-mail address for return of the ballot paper;
 - 3.31.7.4.2 clear instructions for the Governor as to how to return their e-mail vote to the Trust Secretary by the Deadline Date.
- 3.32 **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.
- 3.33 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.
- 3.34 Minutes shall be circulated in accordance with Governors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public as required by Code of Practice on Openness in the NHS.
- 3.35 **Variation and Amendment of Standing Orders** – will be undertaken in accordance with paragraph 46 of the Constitution.
- 3.36 **Record of Attendance** – the names of the Chair and Governors present at the meeting shall be recorded in the minutes.
- 3.37 **Quorum** – No business shall be transacted at a meeting unless at least one third of the whole number of the Governors are present, the majority of whom are from a 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 7 days and upon reconvening, those present shall constitute a quorum.
- 3.38 If the Chair or Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Orders 6 or 7) they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. The meeting must then proceed to the next business.

4. ARRANGEMENTS FOR DELEGATION

- 4.1 **Committees** – The Council of Governors shall agree from time to time to the delegation of matters for consideration by committee, or sub-committees which it has formally constituted in accordance with the Constitution. The constitution and terms of reference of these committees or sub-committees and their specific powers

shall be approved by the Council of Governors. Such committees and subcommittees shall be advisory only and not decision-making.

- 4.2 **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 Council of Governors for action or ratification. All members of the Council of Governors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chair as soon as possible.

5. COMMITTEES

- 5.1 Subject to any guidance or best practice advice as may be issued by NHSE, the Council of Governors may and, if directed by NHSE, shall appoint committees of the Council of Governors to assist it in the proper performance of its functions, consisting wholly or partly of the Chair, Governors, and others, including Advisers.
- 5.2 A committee appointed under Standing Order 5.1 may, subject to such directions as may be given by the Council of Governors, appoint sub-committees consisting wholly or partly of members of the committee.
- 5.3 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors with the terms “Chair” to be read as a reference to the Chair of the committee, and the term “Governor” to be read as a reference to a member of the committee as the context permits. There is no requirement to hold meetings of committees, established by the Council of Governors in public.
- 5.4 Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the 2006 Act, the Constitution, and any best practice advice and/or guidance issued by NHSE, but the Council of Governors shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council of Governors at a formal meeting.
- 5.5 Where committees are authorised to establish sub-committees they may not delegate their powers to the sub-committee unless expressly authorised by the Council of Governors.
- 5.6 Any committee or sub-committee established under this Standing Order 5.1 may call upon outside advisers to assist them with their tasks including any Advisers, subject to the advance agreement of the Board of Directors.
- 5.7 The Council of Governors shall approve the appointments to each of the committees which it has formally constituted.
- 5.8 Where the Council of Governors is required to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Council of Governors, such appointments shall be made in accordance with applicable statute and regulations and with best practice advice and/or guidance issued by NHSE.
- 5.9 Where the Council of Governors determines that persons who are neither Governors, nor Directors or Officers of the Trust, shall be appointed to a committee, the terms of such appointment shall be determined by the Council of Governors

subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Board of Directors.

- 5.10 The Council of Governors may appoint members to serve on joint committees with the Board of Directors or committees of the Board of Directors on the request of the Chair.
- 5.11 The Secretary or their deputy will attend all meetings of the Committees in support of them.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 6.1 **Declaration of interests** – The Constitution and the trust’s Code of Conduct requires Governors to declare interests which are relevant and material to the Council of Governors of which they are a member. All existing Governors should declare such interests. Any Governors appointed subsequently should do so on appointment.
- 6.2 Interests which should be regarded as “relevant and material” are:
 - 6.2.1 Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies).
 - 6.2.2 Ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
 - 6.2.3 Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
 - 6.2.4 A position of trust in a charity or Voluntary Organisation in the field of health and social care
 - 6.2.5 Any connection with a voluntary or other organisation contracting for NHS services
 - 6.2.6 To the extent not covered above, any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the NHS Foundation Trust, including but not limited to, lenders or banks.
 - 6.2.7 Any other commercial interest in the decision before the meeting
- 6.3 At the time Governors’ interests are declared, they should be recorded in the Council of Governors minutes. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring.
- 6.4 Governors’ directorships of companies likely or possibly seeking to do business with the trust should be published in the Council of Governors Annual Report. The information should be kept up to date for inclusion in succeeding annual reports.
- 6.5 During the course of a Council of Governors meeting, if a conflict of interest is established, the member concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

- 6.6 There is no requirement in the Code of Conduct for the interests of Governors' spouses or partners to be declared. However Standing Order 7 requires that the interest of members' spouses, if living together, in contracts should be declared. Therefore the interests of Governors' spouses and cohabiting partners should also be regarded as relevant.
- 6.7 If Governors have any doubt about the relevance of an interest, this should be discussed with the Chair. Financial Reporting Standard No 8 (issued by the Accounting Standards Council) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.
- 6.8 **Register of Interests** – The Secretary will ensure that a register of interests is established to record formally declarations of interests of members. In particular the register will include details of all directorships and other relevant and material interests which have been declared by both elected and appointed members.
- 6.9 These details will be kept up to date by means of an annual review of the register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 6.10 The register will be available to the public and the Secretary 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.

7. DISABILITY OF CHAIR AND MEMBERS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

- 7.1 Subject to the following provisions of this Standing Orders, if the Chair or a Governor has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the trust at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 7.2 The Council of Governors may exclude the Chair or a member of the Council of Governors from a meeting of the Council of Governors while any contract, proposed contract to other matter in which they have a pecuniary interest, is under consideration.
- 7.3 Any remuneration compensation or allowances payable to the Chair or a member of the Council of Governors by virtue of the Constitution shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 7.4 For the purpose of this Standing Order the Chair or a member of the Council of Governors shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- a. They, or a nominee of theirs, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

- b. They are a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

And in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

7.5 The Chair or a member shall not be treated as having a pecuniary interest in any contract, proposed contract or any 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; or
- b. of an interest in any company, body or person with which they are connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

7.6 Where the Chair or a member of the Council of Governors has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and the total nominal value of these 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 if the share capital is of more than one class, the total nominal value of shares of any one class in which they have beneficial interest does not exceed one-hundredth of the total issued share capital of that class, this Standing Order shall not prohibit them 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 their duty to disclose their interest.

7.7 The Standing Order applies to a committee or sub-committee as it applies to the trust.

8. SENIOR INDEPENDENT DIRECTOR

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

8.2 The role of the Senior Independent Director is as set out in the Trust's "Senior Independent Director Role Specification" as amended from time to time. For the avoidance of doubt the "Senior Independent Director Role Specification" does not form part of the Constitution.

9. LEAD GOVERNOR AND DEPUTY LEAD GOVERNOR

9.1 The Council of Governors shall appoint from the governors a Lead Governor.

9.2 The role of the Lead Governor is as set out in Annex 11 of the Constitution.

a)

9.3 The Council of Governors shall also appoint a Deputy Lead Governor from the governors, who will take up the role and responsibilities of the Lead Governor on a temporary basis, in the event the Lead Governor is absent for any reason.

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

SECTION A

INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS AND STANDING FINANCIAL INSTRUCTIONS

SECTION B – STANDING ORDERS

1. INTRODUCTION
2. THE BOARD
3. MEETINGS OF THE TRUST
4. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES
5. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION
6. OVERLAP WITH OTHER TRUST POLICY STATEMENTS/PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS
7. DUTIES AND OBLIGATIONS OF DIRECTORS UNDER THE STANDING ORDERS AND STANDING FINANCIAL INSTRUCTIONS
8. CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS

SECTION A

1. INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS AND STANDING FINANCIAL INSTRUCTIONS

- 1.1 Save as otherwise permitted by law, at any meeting the Chair of the trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Chief Executive or Secretary to the Board).
- 1.2 All references in these Standing Orders to the masculine gender shall be read as equally applicable to the feminine gender and vice-versa.

SECTION B – STANDING ORDERS

1. INTRODUCTION

1.1 Statutory Framework

The trust is a public benefit corporation which was established under the 2006 Act on 1 March 2009.

- 1.1.1 The powers of the trust are set out in the 2006 Act subject to any restrictions in the Constitution or the License.
- 1.1.2 The Constitution requires the Board to adopt Standing Orders for the regulation of its proceedings and business. The trust must also adopt Standing Financial Instruction (SFIs) as an integral part of Standing Orders setting out the responsibility of individuals.
- 1.1.3 The trust will also be bound by such other statute, legal provisions and binding guidance from NHSE which governs the conduct of its affairs.
- 1.1.4 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.

1.2 Delegation of Powers

- 1.2.1 The powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 1.2.2 Any of those powers may be delegated to a committee of Directors or to an Executive Director. The Standing Orders set out the detail of these arrangements. Under the Standing Order relating to the Arrangements for the Exercise of Functions (SO 5) the trust is given powers to "make arrangements for the exercise, on behalf of the trust of any of their functions by a committee or subcommittee, or by an Officer of the trust, in each case subject to such restrictions and conditions as the trust thinks fit. Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers). This document has effect as if incorporated into the Standing Orders. Delegated Powers are covered in a separate document entitled – ‘Schedule of Matters reserved to the Board and Scheme of Delegation’ and have effect as if incorporated into the Standing Orders and Standing Financial Instructions.

2. THE BOARD

2.1 Composition of the Board

The composition of the Board shall be in accordance with the Constitution.

2.2 Appointment and Powers of Deputy Chair

2.2.1 In accordance with paragraph 28 of the Constitution and subject to Standing Order 2.2.2 below, the Council of Governors may appoint a Non Executive Director, to be Deputy Chair, for such period, not exceeding the remainder of their term as a member of the Board, as they may specify on appointment.

2.2.2 Any Non Executive Director so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair (in the Chair's capacity as Chair of the Board and the Council of Governors). The Council of Governors may thereupon appoint another Non Executive Director as Chair in accordance with the provisions of Standing Order 2.2.1.

2.2.3 Where the Chair of the trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chair owing to illness or any other cause, the Deputy Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties, as the case may be; and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform those duties, be taken to include references to the Deputy Chair.

2.3 Appointment and Powers of Senior Independent Director

2.3.1 Subject to Standing Order 2.3.2 below, the Board of Directors (in consultation with the Council of Governors) may appoint any Member of the Board, who is also a Non Executive Director, to be the Senior Independent Director, for such period, not exceeding the remainder of their term as a Member of the Board, as they may specify on appointment. The Senior Independent Director shall perform the role set out in the Trust's "Senior Independent Director Role Description", as amended from time to time by resolution of the Board.

2.3.2 Any Non-Executive Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Chair (in consultation with the other Non Executive Directors and the Council of Governors) may thereupon appoint another member of the Board as Senior Independent Director in accordance with the provisions of Standing Order 2.3.1.

2.4 Appointment and Powers of Deputy Chief Executive

The Chair and Chief Executive may jointly appoint or remove one of the Executive Directors as the deputy chief Executive. The powers of the Deputy chief executive are defined in the Board's Scheme of Delegation.

2.5 Role of Directors

The Board will function as a corporate decision making body and Non Executive and Executive Directors will be full and equal Board members. Their role as members of the Board will be to consider the key strategic and managerial issues facing the trust in carrying out its statutory and other functions. In exercising these functions, the Board will consider guidance from NHSE “The Code of Governance” as amended from time to time.

2.6 Corporate role of the Board

2.6.1 All business conducted by the trust shall be conducted in the name of the trust.

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

2.6.3 The powers of the trust established under statute subject to the License shall be exercised by the Board in private session except as otherwise provided for in Standing Order 3.

2.7 Schedule of Matters reserved to the Board and Scheme of Delegation

2.7.1 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 ‘Schedule of Matters Reserved to the Board’ and shall have effect as if incorporated into the Standing Orders. Those powers which it has delegated to Officers and other bodies are contained in the Scheme of Delegation.

2.8 Lead Roles for Directors

2.8.1 The Chair will ensure that the designation of Lead roles as set out in any statutory or other guidance will be made in accordance with that guidance or statutory requirement (e.g. appointing a Lead Board Director with responsibilities for Infection Control or Child Protection Services etc).

3. MEETINGS OF THE TRUST

3.1 Calling meetings

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

3.1.2 The Chair may call a meeting of the Board at any time.

3.1.3 One third or more Directors of the Board may requisition a meeting in writing. If the Chair refuses, or fails, to call a meeting within seven days of a requisition being presented, the Directors signing the requisition may forthwith call a meeting.

3.2 Notice of Meetings and the Business to be transacted

3.2.1 Before each meeting of the Board a written notice specifying the business proposed to be transacted shall be delivered to every Director, or sent by post to the usual place of residence of each Director, so as to be available to Directors at least five days before the meeting. The notice shall be signed

by the Chair or by an Officer authorised by the Chair to sign on their behalf. Want of service of such a notice on any Director shall not affect the validity of a meeting.

3.2.2 In the case of a meeting called by Directors in default of the Chair calling the meeting, the notice shall be signed by those Directors.

3.2.3 No business shall be transacted at the meeting other than that specified on the agenda, or emergency Motions allowed under Standing Order 3.6.

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

3.2.5 In the event that a meeting of the Board is to be held in public pursuant to paragraph 3.17.1, a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the trust's principal offices at least three days before the meeting.

3.3 Agenda and Supporting Papers

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

3.4 Petitions

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

3.5 Notice of Motion

3.5.1 Subject to the provision of Standing Orders 3.7 'Motions: Procedure at and during a meeting' and 3.8 'Motions to rescind a resolution', a Director of the Board wishing to move a Motion shall send a written notice to the Chief Executive who will ensure that it is brought to the immediate attention of the Chair.

3.5.2 The notice shall be delivered at least 10 clear days before the meeting. The Chief Executive shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any Motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

3.6 Emergency Motions

3.6.1 Subject to the agreement of the Chair, and subject also to the provision of Standing Order 3.7 'Motions: Procedure at and during a meeting', a Director of the Board may give written notice of an emergency Motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the trust Board at the commencement of the business

of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

3.7 Motions: Procedure at and during a meeting

3.7.1 Who may propose

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

3.7.2 Contents of Motions

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

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

3.7.3 Amendments to Motions

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

Amendments to Motions shall be moved relevant to the Motion, and shall not have the effect of negating the Motion before the Board.

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

3.7.4 Rights of reply to Motions

a) Amendments

The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original Motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak on it.

b) Substantive/original Motion

The Director who proposed the substantive Motion shall have a right of reply at the close of any debate on the Motion.

3.7.5 Withdrawing a Motion

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

3.7.6 Motions once under debate

When a Motion is under debate, no Motion may be moved other than:

- an amendment to the Motion;
- the adjournment of the discussion, or the meeting;
- that the meeting proceed to the next business;
- that the question should be now put;
- the appointment of an 'ad hoc' committee to deal with a specific item of business;
- that Director be not further heard;

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

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

3.8 Motion to Rescind a Resolution

3.8.1 Notice of Motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of three other Directors, and before considering any such Motion of which notice shall have been given, the trust Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation.

3.8.2 When any such Motion has been dealt with by the trust Board it shall not be competent for any Director other than the Chair to propose a Motion to the same effect within six months. This Standing Order shall not apply to Motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

3.9 Chair of meeting

3.9.1 At any meeting of the trust Board the Chair, if present, shall preside. If the Chair is absent from the meeting, the Deputy Chair (if the Board has appointed one), if present, shall preside.

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

3.10 Chair's ruling

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

3.11 Quorum

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

3.11.2 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

3.11.3 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see Standing Order 7) that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

3.12 Voting

3.12.1 Save as provided in Standing Orders 3.13 - Suspension of Standing Orders and 3.14 - Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of Directors present and voting on the question. In the case of an equal vote, the person presiding (i.e.: the Chair of the meeting) shall have a second, and casting vote.

3.12.2 At the discretion of the Chair all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.

3.12.3 If at least one third of the Directors present so request, the voting on any question may be recorded so as to show how each Director present voted or did not vote (except when conducted by paper ballot).

3.12.4 If a Director so requests, their vote shall be recorded by name.

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

3.12.6 A manager who has been formally appointed by the Board to act up for a Director during a period of incapacity or temporarily to fill a Director vacancy as an Acting Director or Interim Director under paragraph 4 and 5 respectively of Annex 10 of the constitution shall be entitled to exercise the voting rights of the Director.

3.12.7 A manager attending the Board meeting to represent a Director during a period of incapacity or temporary absence who is not an acting Director or

an interim Director for the purposes of the Constitution may not exercise the voting rights of the Director. An Officer's status when attending a meeting shall be recorded in the minutes.

3.13 Suspension of Standing Orders

3.13.1 Except where this would contravene any provision in the Constitution, the License, any statutory provision, any binding guidance issued by NHSE, or the rules relating to the Quorum (Standing Order 3.11), any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the whole number of the Directors are present (including at least one Executive Director and one Non Executive Director) and that at least two-thirds of those Directors present signify their agreement to such suspension. The reason for and decision to waive shall be recorded in the trust Board's minutes.

3.13.2 A separate record of matters discussed during the waiver of Standing Orders shall be made and shall be available to the Chair and Directors of the trust.

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

3.14 Variation and amendment of Standing Orders

3.14.1 These Standing Orders shall only be varied in accordance with paragraph 46 of the Constitution.

3.15 Record of Attendance

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

3.16 Minutes

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

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

3.17 Admission of public and the press

3.17.1 Board meetings shall be held in public but the whole or any part of a meeting may be held in private if the Board so resolves.

3.17.2 In that event members of the public and the press will be excluded from all or part of a Board meeting.

3.17.3 General disturbances

In the event that the public and press are admitted to all or part of a Board meeting pursuant to paragraph 3.17.1 and 3.17.2 above, the Chair (or Deputy Chair if one has been appointed) or the person presiding over the meeting shall give such directions as they think fit with regard to the

arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the trust's business shall be conducted without interruption and disruption and, the public and/or press maybe required to withdraw from a Board meeting at any time and for any reason whatsoever.

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

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

3.18 Observers at trust meetings

The trust 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 trust Board's meetings and may change, alter or vary these terms and conditions as it deems fit.

3.19 Meetings: electronic communication

3.19.1 In this SO, "electronic communication" means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa): (a) by means of an electronic communications network; or (b) by other means but while in an electronic form.

3.19.2 A Director in electronic communication with the Chair and all other parties to a meeting of the Board of Directors or of a committee or sub-committee of the Directors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting they have the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.

3.19.3 A meeting at which one or more of the Directors attends by way of electronic communication is deemed to be held at such a place as the Directors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Directors attending the meeting are physically present, or in default of such a majority, the place at which the Chair of the meeting is physically present.

3.19.4 Meetings held in accordance with this SO are subject to SO 3.11 (Quorum). For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.

3.19.5 The minutes of a meeting held in this way must state that it was held by electronic communication and that the Directors were all able to hear each other and were present throughout the meeting.

4. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

4.1 Subject to the Constitution, the Board shall appoint committees of the Board, consisting wholly of Directors.

4.2 Appointment of Committees

Subject to the Constitution, the trust Board may appoint committees of the trust.

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

4.3 Applicability of Standing Orders and Standing Financial Instructions to Committees

The Standing Orders and Standing Financial Instructions of the trust, as far as they are applicable, shall as appropriate apply to meetings and any committees established by the trust. In which case the term "Chair" is to be read as a reference to the Chair of other committee as the context permits, and the term "member" is to be read as a reference to a member of other committee also as the context permits. (There is no requirement to hold meetings of committees established by the trust in public.)

4.4 Terms of Reference

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

4.5 Delegation of powers by Committees to Sub-Committees

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

4.6 Approval of Appointments to Committees

The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines, and regulations permit, that persons, who are neither members nor Officers, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.

4.7 Committees established by the trust Board

The committees and sub-committees established by the Board may vary from time to time as per operational requirements, legislation and best practice. Their terms of reference may be obtained from the Secretary to the trust.

4.8 The Board of Directors may appoint persons to serve as members on joint committees with the Council of Governors or committees of the Council of Governors on the request of the Chair.

5. ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION

5.1 Delegation of Functions to Committees, Officers or other bodies

Subject to the Constitution and License and such guidance as may be given by NHSE, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by a committee, sub-committee appointed by virtue of Standing Order 4, or by an Officer of the trust, in each case subject to such restrictions and conditions as the trust thinks fit.

5.2 Emergency Powers and urgent decisions

The powers which the Board has reserved to itself within these Standing Orders (see Standing Order 2.7) may in emergency or for an urgent decision be exercised by the Chief Executive and the Chair after having consulted at least two non-Executive Directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the trust Board for noting.

5.3 Delegation to Committees

The Board shall agree from time to time to the delegation of executive powers to be exercised by other committees, or subcommittees, which it has formally constituted in accordance with the Constitution, the License, binding guidance issued by NHSE and the 2006 Act. The Constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board in respect of its sub-committees.

5.4 Delegation to Officers

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

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

5.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Finance Director to provide information and advise the Board in accordance with the Constitution, License and any statutory requirements, or provisions required by NHSE.

5.5 Schedule of Matters Reserved to the trust and Scheme of Delegation of powers

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

5.6 Duty to report non-compliance with Standing Orders and Standing Financial Instructions

If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All Directors of the trust Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

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

6.1 Policy statements: general principles

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

6.2 Specific Policy statements

Notwithstanding the application of Standing Order 6.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following Policy statements:

- the Standards of Business Conduct policy for trust staff;
- the staff Disciplinary and Appeals Procedures adopted by the trust both of which shall have effect as if incorporated in these Standing Orders.

6.3 Standing Financial Instructions

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

6.4 Specific guidance

Notwithstanding the application of Standing Order 6.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following guidance and any other binding guidance issued by NHSE:

- Caldicott Principles 1997;
- Human Rights Act 2018;
- Freedom of Information Act 2000.

7. DUTIES AND OBLIGATIONS OF DIRECTORS UNDER THESE STANDING ORDERS

7.1 Declaration of Interests

7.1.1 Requirements for Declaring Interests and applicability to Board Directors

- (a) All existing Board Directors should declare any relevant and material interests. Any Director appointed subsequently should do so on appointment.

7.1.2 Interests which are relevant and material

- (a) Interests which should be regarded as "relevant and material" are defined under paragraph 34 of the Constitution.
- (b) Any Director who comes to know that the trust has entered into or proposes to enter into a contract in which they or any person connected with them (as defined in Standing Order 7.3 below and elsewhere) has any pecuniary interest, direct or indirect, the Director shall declare their interest by giving notice in writing of such fact to the trust as soon as practicable.

7.1.3 Advice on Interests

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

Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

7.1.4 Recording of Interests in trust Board minutes

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

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

7.1.5 Publication of declared interests in Annual Report

Board Directors' Directorships of companies likely or possibly seeking to do business with the NHS should be published in the trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

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

During the course of a Board 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.

7.2 Register of Interests

- 7.2.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board or Committee Directors. In particular the Register will include details of all directorships and other relevant

and material interests (as defined in SO 7.1.2) which have been declared by both executive and non-executive trust Board Directors.

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

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

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

7.3.1 Definition of terms used in interpreting 'Pecuniary' interest

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

(a) "spouse" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);

(b) "contract" shall include any proposed contract or other course of dealing.

(c) "Pecuniary interest"

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

(i) they, or a nominee of theirs, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or

(ii) they are a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.

(d) Exception to Pecuniary interests

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

(i) neither they or any person connected with them has any beneficial interest in the securities of a company of which they or such person appears as a member, or

(ii) any interest that they or any person connected with them may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in relation to considering or voting on that contract, or

- (iii) those securities of any company in which they (or any person connected with them) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.

Provided however, that where paragraph (iii) above applies the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 7.1.2 (ii).

7.3.2 Exclusion in proceedings of the trust Board

- (a) Subject to the following provisions of this Standing Order, if a Director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- (b) The Board may exclude a Director from a meeting of the Board while any contract, proposed contract or other matter in which they have a pecuniary interest is under consideration.
- (c) Any remuneration, compensation or allowance payable to a Director.
- (d) This Standing Order applies to a committee or subcommittee as it applies to the trust.

7.4 Standards of Business Conduct

7.4.1 Trust Policy

All trust staff and Directors must comply with the trust's Standards of Business Conduct Policy. This section of standing orders shall be read in conjunction with this document.

7.4.2 Interest of Officers in Contracts

- (a) Any Officer or employee of the trust who comes to know that the trust has entered into or proposes to enter into a contract in which they or any person connected with them (as defined in SO 7.3) has any pecuniary interest, direct or indirect, the Officer shall declare their interest by giving notice in writing of such fact to the Chief Executive or trust's Secretary as soon as practicable.
- (b) An Officer should also declare to the Chief Executive any other employment or business or other relationship of theirs, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the trust.
- (c) The trust will require interests, employment or relationships so declared to be entered in a register of interests of staff.

7.4.3 Canvassing of and Recommendations by Directors in Relation to Appointments

- (a) Canvassing of Directors or of any Committee of the trust directly or indirectly for any appointment under the trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- (b) Directors 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.

7.4.4 Relatives of Directors or Officers

- (a) Candidates for any staff appointment under the trust shall, when making an application, disclose in writing 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 them liable to instant dismissal.
- (b) The Chair and every Director and Officer of the trust shall disclose to the Board any relationship between themselves and a candidate of whose candidature that Director or Officer is aware. It shall be the duty of the Chief Executive to report to the trust Board any such disclosure made.
- (c) On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the trust whether they are related to any other Director or holder of any office under the trust.
- (d) Where the relationship to a Director/Officer of the Trust is disclosed, the Standing Order headed 'Disability of Chair and Directors in proceedings on account of pecuniary interest' (Standing Order 7) shall apply.

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

8.1 Custody of Seal

The common seal of the trust shall be kept by the Chief Executive or a nominated Officer by them in a secure place.

8.2 Sealing of Documents

Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two Directors or a Director and the Secretary duly authorised by the Board.

8.3 Register of Sealing

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

8.4 Signature of documents

Where any document will be a necessary step in legal proceedings on behalf of the trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any Executive Director.

In land transactions, the signing of certain supporting documents will be delegated to Officers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

ANNEX 9 – STATEMENT OF TRUST PRINCIPLES

The West Suffolk NHS Foundation Trust will operate within a governance framework which reflects best practice within the NHS. In particular it will adopt the seven principles of public life, determined by the Nolan Report. It will also from time to time develop mission statements, corporate values, codes of conduct and other governance statements.

Nolan Principles: - the seven principles of public life

1. **Selflessness:** Holders of public office should take decisions solely in terms of the public interest. They should not do so to gain financial or other material benefit for themselves, their family or their friends.
2. **Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
3. **Objectivity:** In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holders of public office should make choice on merit.
4. **Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
5. **Openness:** Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
6. **Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
7. **Leadership:** Holders of public office should promote and support these principles by leadership and example.

ANNEX 10 – FURTHER PROVISIONS

1. Trust 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.
- 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.
- 1.3 The Secretary is to be appointed and removed by the Chair and Chief Executive acting jointly.

2. Vacancy of Governor or Director position

- 2.1 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.

3. Absent Director

- 3.1 If:
 - 3.1.1 an Executive Director is temporarily unable to perform their duties due to illness or some other reason (the "Absent Director"); and
 - 3.1.2 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.
- 3.2 For the purposes of paragraph 3.1 of this Annex, the number of Directors appointed under paragraph 23.2.3 of the Constitution shall be relaxed accordingly.
- 3.3 The acting Director will vacate office as soon as the Absent Director returns to office or, if earlier, the date on which the person entitled to appoint them under this paragraph notifies them that they are no longer to act as an acting Director.
- 3.4 The acting Director shall be an Executive Director for the purposes of the 2006 Act. They shall be responsible for their own acts and defaults and they shall not be deemed to be the agent of the Absent Director.

4. Vacant Positions

- 4.1 If:
 - 4.1.1 an Executive Director post is vacant ("Vacant Position"); and
 - 4.1.2 the Board of Directors agree that the Vacant Position needs to be filled by an interim postholder pending appointment of a permanent postholder, then the Chair (if the Vacant Position is the Chief Executive) or the Chief

Executive (in any other case) may appoint a Director as an interim Director (“Interim Director”) to fill the Vacant Position pending appointment of a permanent postholder.

4.1.3 The appointment of an interim Chief Executive shall require the approval of the Council of Governors

4.2 The Interim Director will vacate office on the appointment of a permanent postholder or, if earlier, the date on which the persons entitled to appoint them under this paragraph notifies them that they are no longer to act as an Interim Director.

4.3 The Interim Director shall be an Executive Director for the purposes of the 2006 Act.

5. Title of “Director”

5.1 The trust may confer on senior staff the title “Director” as an indication of their corporate responsibility within the trust but such persons will not be Directors of the trust for the purposes of the 2006 Act (“statutory Directors”) unless their title includes the title “Chief” or “Executive” or “Non Executive Director” or “Chair” or “Chair” and will not have the voting rights of statutory Directors or any power to bind the trust.

6. Disqualification of membership

6.1 An individual may not become or continue as a member of the Trust if:

6.1.1 the individual has been specifically excluded in writing from any of the Trust’s premises or other facilities in whole or in part following a decision of the Board of Directors that such a course of action is necessary because, for example, the individual concerned has been violent, aggressive, has committed an act of gross misconduct or any other action deemed inappropriate; or

6.1.2 the Board of Directors considers that an individual has or is likely to cause harm or detriment to the Trust and after the Trust has consulted with or made reasonable efforts to consult with the individual about the concerns of the Board and the Board notifies the individual about their disqualification accordingly.

6.2 Notwithstanding anything contained in this Constitution, no person who ceases to be a member of the Trust pursuant to paragraph 6.1.1 or 6.1.2 above shall be re-admitted to membership except by a decision of the Board of Directors.

6.3 It is the responsibility of Members to ensure their eligibility and not the trust, 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.

6.4 The Board of Directors may not disqualify a governor from membership unless that governor has been removed from the Council of Governors by a resolution approved in accordance with Annex 6, paragraph 17.

7. Termination of membership

7.1 A member shall cease to be a member if that member:

7.1.1 resigns by notice to the Secretary or the Chief Executive;

7.1.2 ceases to fulfill the requirements of paragraph 6 or 7 of the Constitution;

7.1.3 is disqualified under any other provision of this constitution;

7.1.4 dies; or

7.1.5 the Council of Governors, having made reasonable enquiries, determines that the member no longer wishes to be a member or they cease to be eligible as a member for whatever reason.

ANNEX 11 – LEAD GOVERNOR AND DEPUTY LEAD GOVERNOR

Lead Governor role specification

The roles and responsibilities set out in the document can also be read as the responsibilities of the Deputy Lead Governor whilst undertaking their role.

1. Introduction

The lead governor of West Suffolk NHS Foundation Trust (WSFT) will be appointed to carry out the role described in Appendix B of NHS England's Code of Governance for NHS provider trusts (2022) or any subsequent amendments.

NHS England (NHSE) requires only that the lead governor act as a point of contact between NHSE and the council when needed. Directors and Governors should always remember that the Council of Governors as a whole has responsibilities and powers in statute, and not individual governors. Further guidance on NHSE's expectation of the role is provided as an annex to this role description.

This role description will be kept under review and is subject to approval by the Council of Governors.

Public, Staff and Governors appointed by partners are eligible for the role of Lead Governor.

2. Key working relationships

Trust Chair, Council of Governors, Trust Secretary, Deputy Trust Secretary, FT Office Manager, Senior Independent Director and NHS England (NHSE).

3. Role description

- 3.1 To act as the point of contact between the Governors and NHSE in circumstances where it would not be appropriate for the Chair of the Board of Directors, Senior Independent Director (SID) or the Trust Secretary to deal with a particular matter to contact NHSE directly, or vice versa
- 3.2 To work with the Chair to facilitate effective relations between the Board of Directors and the Council of Governors. This could include joint meetings/workshops with the Board of Directors and attendance of Non-Executive Directors at Council of Governors meetings
- 3.3 To sit on the Nominations and Remuneration Committee for the purpose of appointing the Chair and other Non-Executive Directors and discussing remuneration including allowances and other terms of office
- 3.4 To contribute to the Chair's annual appraisal by the Senior Independent Director, including receiving comments from Governors not directly involved in the appraisal process
- 3.5 To contribute to the appraisal of the non-executive directors (NEDs) by the Chair
- 3.6 To meet with the Chair to help plan and prepare for Council of Governors meetings

- 3.7 To chair meetings of the Council of Governors which cannot be chaired by the Trust Chair, Deputy Chair or other non-executive director due to a conflict of interest. These occasions are likely to be infrequent
- 3.8 Chair informal Governor-only meetings, if required
- 3.9 To ensure a process is in place to understand the views of all Governors
- 3.10 To help ensure a process is in place to support new Governors and to support the induction process for any newly appointed governor.
- 3.11 To help ensure that Governors comply with the Council's Code of Conduct.

4. Person Specification

To be able to fulfil this role effectively, the Lead Governor should ideally have some or all of the following attributes:

- 4.1 Have the confidence of Governor colleagues and of members of the Board of Directors
- 4.2 Ability to commit the necessary time to the role
- 4.3 Ability to influence and negotiate at different levels
- 4.4 Ability to present a well-reasoned view on complex issues
- 4.5 Committed to the success of the Foundation Trust
- 4.6 Demonstrate an understanding of the Trust's constitution and how the Trust is influenced by other organisations.

5. Terms and conditions

- 5.1 The Lead Governor will be a governor who is currently in their elected term of office and will not be eligible to continue in this role if they are not re-elected
- 5.2 Any Governor wishing to stand as Lead Governor will be required to relinquish other responsibilities e.g. committee chair
- 5.3 The term of office for the lead Governor will normally run for three years until one year after Governor elections *
- 5.4 A Governor will not be eligible to stand for election during their final eligible term of office as a Governor
- 5.5 The role specification of the Lead Governor will be reviewed by Standards Committee of the Council of Governors following engagement with the Board of Directors and the Council of Governors and will include the relevant provisions of Appendix B of the NHS Foundation Trust Code of Governance

5.6 If the Lead Governor leaves the role then the Deputy Lead Governor will take up the role until a further Lead Governor election takes place.

** The timing of the Lead Governor term aims to avoid appointment to the role being held immediately after Governor elections. This is because at this point a new governing body has been formed who will need to work together to understand their role and get to know each other. It is recognised that on occasions election of the Lead Governor may be necessary at this time, but the approach tries to minimise this occurrence.*

Deputy Lead Governor role specification:

The Council of Governors may also elect a Deputy Lead Governor from among the governors to meet the demands of the increasing level of responsibility. The Deputy Lead Governor will deputise in the absence of the Lead Governor and will support the Lead Governor in all the duties as specified.

In general, the Deputy Lead Governor is a discretionary role and has no specific powers or responsibilities other than to deputise in the absence of the Lead Governor (with the advance agreement of the Lead Governor). This provides additional resilience and support for the Lead Governor and the smooth running of the Council.

Removal of Lead Governor/Deputy Lead Governor

Removal of the Lead or Deputy Lead Governor before their term of office is over will require approval by the majority of Governors at a meeting of the Council of Governors

NHS England expectations of lead governor role (Appendix B of Code of Governance 2022)

Lead governor

The lead governor has a role in facilitating direct communication between NHS England and the NHS foundation trust's council of governors. This will be in a limited number of circumstances and, in particular, where it may not be appropriate to communicate through the normal channels, which in most cases will be via the chair or the trust secretary, if one is appointed.

It is not anticipated that there will be regular direct contact between NHS England and the council of governors in the ordinary course of business. Where this is necessary, it is important that it happens quickly and in an effective manner. To this end, a lead governor should be nominated and contact details provided to NHS England, and then updated as required. Any of the governors may be the lead governor.

The main circumstances where NHS England will contact a lead governor are where we have concerns about the board leadership provided to an NHS foundation trust, and those concerns may in time lead to our use of our formal powers to remove the chair or non-executive directors. The council of governors appoints the chair and non-executive directors, and it will usually be the case that we will wish to understand the views of the governors as to the capacity and capability of these individuals to lead the trust, and to rectify successfully any issues, and also for the governors to understand our concerns.

NHS England does not, however, envisage direct communication with the governors until such time as there is a real risk that an NHS foundation trust may be in breach of its licence. Once there is a risk that this may be the case, and the likely issue is one of board leadership, we will often wish to have direct contact with the NHS foundation trust's governors, but quickly and through one established point of contact, the trust's nominated lead governor. The lead governor should take steps to understand our role, the available guidance and the basis on which we may take regulatory action. The lead governor will then be able to communicate more widely with other governors. Similarly, where individual governors wish to contact us, this would be expected to be through the lead governor.

The other circumstance where NHS England may wish to contact a lead governor is where, as the regulator, we have been made aware that the process for the appointment of the chair or other members of the board, or elections for governors or other material decisions, may not have complied with the NHS foundation trust's constitution, or alternatively, while complying with the trust's constitution, may be inappropriate. In such circumstances, where the chair, other members of the board of directors or the trust secretary may have been involved in the process by which these appointments or other decisions were made, a lead governor may provide us with a point of contact.